



Network Rail network licence review

Consultation on draft
network licence

July 2018

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Introduction

1. Network Rail operates under its network licence which requires it to comply with the conditions we set in the public interest. We have statutory powers to take enforcement action if Network Rail breaches its licence conditions.
2. In June, alongside our Periodic Review 2018 (PR18) draft determination we published the supplementary consultation document: [review of Network Rail's network licence](#).
3. We explained in the June licence consultation that we would follow up by publishing the text of the draft revised network licence for consultation and also provide our policy rationale for a small number of specific conditions. In this document we:
 - further explain the changes we are making;
 - explain in Part A our policy for changes to two specific licence conditions (management incentives and safety and standards);
 - set out in Part B the draft network licence; and
 - provide a reference table comprising the proposed changes in our draft network licence from the existing network licence with an explanation of drafting changes (Annex).
4. For full details of our policy proposals, please refer to the June 2018 consultation document and specific consultation questions.
5. In parallel to this consultation, we are also consulting on how we propose to implement PR18 in track and station access contracts (based on our draft determination decisions). The consultation is available [here](#).

Rationale for changes to the network licence

6. The reason for revising the licence is to reflect the devolution to routes and the establishment of a system operator within Network Rail, and ensure that the licence reflects the policy in our overall framework for regulating Network Rail during CP6.
7. Network Rail is undertaking a process of transformation within its business, including reorganising around route businesses and a distinct system operator (SO). Network Rail has also moved fully into the public sector. These changes have prompted us to propose a significant shift in how we regulate the company, focussing our regulation on the routes and SO, while making more use of reputational incentives, including comparison between the routes. More detail on these changes to our regulatory

approach are included in the [PR18 draft determination overview](#) document published in June 2018.

8. The changes we propose to make will align the licence with the PR18 outcomes and ORR's regulatory approach; and will reflect the reclassification of Network Rail as a central government body.

The changes we are proposing

9. As set out in our policy consultation, we are proposing to change the network licence in the following ways.
 - The draft licence requires Network Rail to designate its network into separate route areas and maintain route business units for these areas. It also places a requirement upon Network Rail to maintain a business to fulfil the functions of the SO.
 - We have restructured the existing obligations to broadly reflect the day-to-day responsibilities of the routes and the SO. The draft licence identifies those obligations which apply to route businesses and the SO in order to signal who is accountable and to be able, in future, to hold them to account more clearly if there is a breach.
 - To further support these structural changes, the draft licence also requires Network Rail to maintain appropriate internal governance arrangements. This is consistent with the internal governance principles set out in our PR18 draft determination overview document.
 - The draft licence introduces additional requirements for managing changes that may take place during CP6, including requiring Network Rail to follow certain change processes. Our [working paper on managing change](#) provides more information on our policy in this area.
10. Following the policy consultation in June, we have also made minor changes to strengthen our proposals for the requirements on Network Rail in two areas.
 - Stakeholder engagement duty: While, as stated in our consultation document, we are not going to change the substance of the current duty, we wish to expand it to reflect the principles of stakeholder engagement as set out in our PR18 draft determination. We will not be prescriptive about stakeholder engagement, but expect that, as well as treating particular stakeholders appropriately, Network Rail, its routes and SO will be required to engage in a manner which is effective, inclusive, well governed and transparent. We are proposing that the stakeholder engagement duty should have new requirements

in these areas to support our approach of requiring effective stakeholder engagement in CP6.

- **Route responsibilities:** The definition of route responsibilities now reflects that Network Rail routes take primary responsibility for the improvement, enhancement and development of the network in their route area (as well as for operation, maintenance, renewal and replacement). This supports our ability to hold routes to account for activities on their part of the network and to compare how different routes are performing in these areas over time.

11. One of our objectives is to make the licence more user-friendly for stakeholders. We are proposing updated drafting of the obligations in the licence in a range of areas to simplify and modernise the drafting and to make sure there is a coherent and consistent structure. This includes removing some provisions from the licence which we consider to be unnecessary. Further details are set out in the Annex.
12. We are continuing to consider the best way to structure the licence document and may reorder the presentation of conditions in the interests of making the licence accessible and user-friendly.

Responding to the consultation

13. We welcome comments on this document and the other documents that form part of our licence consultation by **Friday 31 August 2018**. Full details on how to respond are set out in Appendix B of our PR18 [overview document](#). This includes how we will treat any information provided to us, including that which is marked as confidential. Subject to this, we expect to publish responses alongside our final determination.
14. You may wish to use the [pro forma](#) provided (which is for all comments on both our draft determination and licence consultation). We would be grateful if you would make clear in your response where you are commenting on this document. This will assist our process for reviewing comments.

PART A: Explanation of revisions to specific licence conditions

1.1 This section explains the revisions we are proposing to two specific licence conditions not covered by our June policy consultation.

Management incentives

1.2 We propose updating the management incentives condition to reflect the status and structure of Network Rail following reclassification, including the government's role in overseeing remuneration in the public sector. In doing so, we also wish to:

- support effective incentives for improved railway performance, in particular, aligning Network Rail's incentives with the interests of its customers and end users;
- promote transparency around any incentive schemes and their outcomes; and
- enable Network Rail to plan and operate its business efficiently in respect of the recruitment and retention of staff.

1.3 The current condition requires Network Rail to have a Management Incentive Plan and an Employee Scheme. Amongst other things, it also requires Network Rail to:

- have regard to any objectives that ORR may specify from time to time; and
- publish a statement explaining the terms and principles of the Management Incentive Plan and how the criteria have been applied (this is not a requirement for the Employee Scheme).

1.4 We considered that the current condition insufficiently recognises the role of the shareholder in remuneration and does not support the objective of aligning incentives between Network Rail and its customers and end users.

1.5 We propose to amend the licence condition to:

- simplify the requirements by covering any financial incentive scheme for directors or employees, and not referring to specific schemes;
- clarify that the intent of any financial incentive schemes should be to align incentives with the interests of Network Rail's customers and end-users (both passengers and freight).

- require Network Rail to act transparently by publishing how any such scheme is designed and applied, to provide visibility of the incentives to customers/user groups.
- remove ORR's potentially more intrusive roles in setting specific objectives; approving changes to scheme design and writing to Network Rail with specific views on how the scheme(s) should be applied, in order to recognise the role of government, as shareholder, in overseeing remuneration policy; and
- update some of the terminology (e.g. the term 'incentives policy' is no longer used).

1.6 In particular, we are open to views on whether we should:

- continue to require Network Rail to have a management incentive scheme (or schemes) – this is the position illustrated in the draft licence text; or
- allow, but not require, Network Rail to have a management incentive scheme (or schemes).

Railway safety and standards

1.7 This licence condition requires Network Rail to be a member of the Rail Safety and Standards Board and to comply with the Railway Group Standards it issues. However, the condition has become outdated, risking confusion for licence holders, particularly in relation to their duties under railway safety and interoperability legislation.

1.8 Of particular concern is that the current condition only refers to Railway Group Standards. Stakeholders have told us they would like more clarity about the status of Railway Industry Standards, in particular some clear requirements to consult and adopt equally effective measures when deviating from them.

1.9 We propose to revise this condition, with the intention of:

- reflecting the development of the railway technical standards regime since this condition was first put into place;
- clarifying the status of Railway Industry Standards as accepted best practice; and
- more accurately reflecting the licence holder's safety management duties to identify and apply a broader range of relevant technical and operational standards than just Railway Group Standards.

1.10 We have developed our proposal in collaboration with RSSB's Industry Standards Coordination Committee. We propose to amend the licence condition to:

- continue to require Network Rail to be a member of RSSB, but reflect that it may discontinue membership with ORR's approval as set out in the RSSB constitution;
- continue to require Network Rail to comply with Railway Group Standards that are relevant to its activities; and
- require Network Rail to comply with applicable Railway Industry Standards or to consult with affected parties (for example train operators) where it proposes to deviate from a Railway Industry Standard in full or in part and to deploy equally effective means of achieving its purpose.

1.11 Recognising that it is important to achieve consistent approaches at the operator / infrastructure interface, we also propose to make similar changes to the equivalent conditions in other operator licences.

Questions

We welcome all comments on any aspect of our licence consultation and the legal drafting in Part B. Our [June licence consultation](#) set out six overarching questions on which we welcome views. We also welcome views in respect of the specific changes to licence conditions outlined above.

1. Do you agree with our proposed changes to the **management incentives condition**, and what are your views on whether we should require Network Rail to continue to have a management incentive scheme (or schemes), or make this optional?
2. Do you agree with the proposed changes to the **safety and standards** condition?

PART B: Draft legal text of the revised licence

Network Licence

granted to

Network Rail Infrastructure Limited

(As at [1 April 2019])

[In this draft revised licence, the corresponding provisions from the current licence are shown in red for information. These do not form part of the licence text. It is stated that the provision is new where there is no corresponding provision in the current licence.]

Modified:

1 April 2009 – All Conditions

31 March 2010 – Conditions 3 and 17

1 March 2012 – Condition 2

29 January 2013 – Condition 25 (New)

16 December 2013 – Conditions 1, 4, 5, 7, 8, 12, 15, 17, 20 and 24

1 April 2014 linked licence changes – Conditions 3 and 4

[1 April 2019 – All Conditions]

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draft

Part I - Scope

1. The Secretary of State, in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) (“the Act”), hereby grants to Railtrack PLC¹ (“the licence holder”) a licence authorising the licence holder:
 - (a) to be the operator of a network;
 - (b) to be the operator of a train being used on a network for any purpose comprised in the operation of that network; and
 - (c) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in (b) above,subject to the conditions set out in Part III hereof (“the conditions”).
2. This licence shall come into force on 1 April 1994 and shall continue in force unless and until revoked in accordance with the provisions of the Schedule hereto or by not less than 10 years' notice given to the licence holder by the Secretary of State, such notice not to be given earlier than 25 years after the date on which this licence comes into force.

31 March 1994

Signed by authority of
the Secretary of State for Transport

¹ Network Rail Infrastructure Limited since 3 February 2003.

Part II - Interpretation

Definitions

1. In this licence:

- “Access Charge” means any amount payable or proposed to be paid under an access contract or an installation access contract; [Part II, 1]
- “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 1159, 1160 and Schedule 6 of the Companies Act 2006; [Part II, 1]
- “Annual Return” shall have the meaning set out in Condition 9.3; [12.1]
- “Auditor” shall have the meaning set out in Condition 8.10; [11.16]
- “Control” shall be construed in accordance with sub-sections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 with the following modifications namely:
- (i) for the words “the greater part” wherever they occur in sub-section (2) there shall be substituted the words “30 per cent or more”; and
 - (ii) in sub-section (6), for the word “may” there shall be substituted the word “shall”, the words from “and such attributions” onwards shall be omitted and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary; [Part II, 1]

- “Cross-Default Obligation” means a term of any agreement, commitment or arrangement whereby the liability of the licence holder or of Network Rail Infrastructure Finance to:
- (a) pay or repay any debt or other sum; or
 - (b) do anything pursuant to a term of any agreement or arrangement to which that person is a party,
- arises or is increased or accelerated or is capable of arising, increasing or of being accelerated by reason of a default (however such default may be described or defined) by any person other than an Excluded Party unless:
- (i) that liability 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 15.1(b) and 15.1(c) or for the purpose of financing the business and activities referred to in Condition 15.1; [4.32]
- “Delivery Plan” shall have the meaning set out in Condition 4.4; [1.10]
- “*De Minimis* Business” means business or activities which the licence holder and any Subsidiary Undertaking of the licence holder are entitled to conduct or carry on under Conditions 15.4 to 15.7; [4.1]
- “Effective Date” means 1 April 2009; [4.32]
- “Excluded Assets” means, in any provision in which it appears, assets falling within a description or class which ORR determines to be subject to an exclusion from the application of the provision; [1.24]
- “Excluded Party” means:
- (a) the licence holder;
 - (b) Network Rail Infrastructure Finance; and
 - (c) the Secretary of State, but only to the extent that:

- (i) an agreement or arrangement entered into before the Effective Date has the benefit of credit support from the Secretary of State (whether or not through the State Financial Indemnity and whether or not called upon before, on or after the Effective Date); and
 - (ii) an agreement or arrangement entered into on or after the Effective Date is supported by the State Financial Indemnity; [4.32]
- “Financial Year” means a 12 month period beginning on 1 April; [New]
- “Funder” means any local, national or supra-national authority or agency and each Passenger Transport Executive or other person who provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways; [Part II, 1]
- “Indebtedness” means all liabilities due now or at a later time, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing on them and all costs, charges, penalties and expenses incurred in connection with them; [4.32]
- “Licensed Activities” means things authorised to be done by the licence holder in its capacity as operator of a network or trains under this licence; [Part II, 1]
- “Long Term Plans” shall have the meaning set out in Condition 5.4; [1.14]
- “Long Term Planning Objective” shall have the meaning set out in Condition 5.5; [1.15]
- “Network Business” means
- (i) the business of providing and operating the network, including the maintenance, renewal, replacement, improvement, enhancement and development of the network; and
 - (ii) any ancillary service related to the business and activities in paragraph (i);

and (without limitation) includes:

- (a) the purpose of financing the business referred to in paragraph (i) and the services referred to in paragraph (ii); and
- (b) any payment or transaction lawfully made or undertaken by the licence holder for a purpose within Conditions 15.9(b)(i) to (vii); [Part II, 1]

“Network Planning Requirements”

shall have the meaning set out in Condition 4.3; [New]

“Network Rail Infrastructure Finance”

means:

- (i) Network Rail Infrastructure Finance plc; and
- (ii) (unless ORR consents otherwise) 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; [4.32]

“ORR”

means the Office of Rail and Road; [Part II, 1]

“Permitted Business”

means the Network Business and the Permitted Non-Network Business; [Part II, 1]

“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 16 (*Land Disposal*)), of the type transferred to the licence holder under the Railtrack Transfer Scheme; [Part II, 1]

“Permitted Purpose”

means the purposes of the Permitted Business; [4.32]

“Potential Provider” and/or “Potential Funder”

means, as appropriate, any person who has expressed to the licence holder in writing a serious and credible interest in providing or intention to provide:

- (a) services relating to railways;
- (b) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction; or
- (c) finance for or in connection with any such service, facility or network. [1.24]

“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 under section 97 of, and Schedule 8 to, the Act; [Part II, 1]
“Regulatory Accounting Guidelines”	means those requirements and guidelines issued by ORR from time to time which set out: <ul style="list-style-type: none"><li data-bbox="558 504 1455 638">(a) the format and content of the regulatory financial statements and the accounting policies to be applied in their preparation;<li data-bbox="558 672 1455 806">(b) any requirements to provide information on any transactions or arrangements between the licence holder and any Affiliate or Related Undertaking;<li data-bbox="558 840 1455 1086">(c) requirements for 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; and<li data-bbox="558 1120 1455 1400">(d) any requirements on the provision to ORR and publication of such other information as ORR may reasonably require in order to monitor the licence holder’s financial performance and financial position or assist in the determination of the licence holder’s Access Charges; [11.9]
“Relevant Purpose”	means: <ul style="list-style-type: none"><li data-bbox="558 1478 1455 1523">(i) for a Permitted Purpose;<li data-bbox="558 1534 1455 1624">(ii) for the purposes of <i>De Minimis</i> Business conducted in accordance with Conditions 15.4 to 15.7; or<li data-bbox="558 1635 1455 1803">(iii) for any business or activity for which ORR has given its prior consent under Condition 15 (<i>Financial Ring-fence</i>) or, as the case may be, Condition 26 (<i>Regulatory Undertakings</i>); [4.32]

“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 1161 of the Companies Act 2006, and “participating interest” is to be construed in accordance with paragraph 8 of Schedule 8 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008; [Part II, 1]
“Relevant Assets”	means assets, other than Excluded Assets, in which the licence holder has an interest, whether legal or beneficial, including as owner, occupier, operator, lessee (of whatever rank) or as the holder of any other right; [1.24]
“Relevant Route”	means the Route in respect of which the Route Business is maintained; [New]
“Route”	shall have the meaning set out in Condition 2.3(a); [New]
“Route Area”	shall have the meaning set out in Condition 2.2; [New]
“Route Business”	shall have the meaning set out in Condition 2.3; [New]
“Route Functions”	shall have the meaning set out in Condition 2.3; [New]
“Route Responsible Officer”	shall have the meaning set out in Condition 2.5(a); [New]
“Resources”	includes (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities; [4.14]
“System Operator”	shall have the meaning set out in Condition 2.8; [New]
“SO Functions”	shall have the meaning set out in Condition 2.8; [New]
“SO Responsible Officer”	shall have the meaning set out in Condition 2.10(a); [New]
“Subsidiary”	shall have the same meaning set out in section 1159 of the Companies Act 2006; [4.32]
“Subsidiary Undertaking”	shall have the same meaning set out in section 1162 of the Companies Act 2006; [4.32] and
“Stakeholder”	means any person, organisation, community or public authority:

- (a) with whom the licence holder has, or is likely to have in the future, a significant relationship;
- (b) who may be impacted by the activities of the licence holder, or
- (c) who has expressed in writing to the licence holder a serious and credible interest in providing (or in providing finance in connection with):
 - (i) services relating to railways;
 - (ii) a railway facility; or
 - (iii) a network. [8.8]

2. In this licence:

- (a) unless the context requires otherwise, any reference to “the network” means the network of which the licence holder is the operator under this licence; [Part II, 1] and
- (b) in Conditions 1.1 to 1.3, 4, 5.1 to 5.10 and 6, any reference to a “network” also includes a station or light maintenance depot where the licence holder has any estate or interest in, or right over, such station or light maintenance depot. [1.24]

Definitions and rules of interpretation in legislation

- 3. The Interpretation Act 1978 shall apply to this licence as if it were an Act of Parliament. [Part II, 9]
- 4. Terms and expressions defined in the Act, the Transport Act 2000 and the Railways Act 2005 shall, unless the context requires otherwise, have the same meanings in this licence. [Part II, 10]

General rules of interpretation

- 5. 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. [Part II, 2]
- 6. In interpreting this licence, headings shall be disregarded. [Part II, 3]

7. In this licence, where there is an overlap between two or more provisions:
 - (a) compliance with any more specific obligations shall not be regarded as exhaustive of compliance with more general obligations; and
 - (b) in complying with those more specific obligations, the licence holder shall at all times comply with the more general obligations. [1.3, 2.3, 8.3]

System Operator and Route Business Responsibilities

8. Where, in this licence, a provision states that the System Operator “shall” comply with a specified obligation (including a restriction), in each case this shall mean that the licence holder must ensure that the System Operator complies with that obligation. [New]
9. Where, in this licence, a provision states that a Route Business “shall” comply with a specified obligation (including a restriction), in each case this shall mean that the licence holder must ensure that the Route Business complies with that obligation. [New]
10. Where, in this licence, a provision refers to an obligation on the System Operator and each Route Business “in the performance of their functions”, this shall mean:
 - (a) in the case of the System Operator, in the performance of the SO Functions; and
 - (b) in the case of a Route Business, in its performance of its Route Functions. [New]

Time limits

11. Where in this licence the licence holder (or, as the case may be, the System Operator or a Route Business) 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. [Part II, 4]
12. Where this licence provides for anything to be done by any person within a particular period of time or on or by a particular day or date, ORR may vary

that period, day or date by giving notice to the licence holder and such other persons as appear to it likely to be affected by the variation. [Part II, 5]

Provision of information

13. Where a condition of this licence requires the licence holder (or, as the case may be, the System Operator or a Route Business) to produce a document or to provide information, this shall not require it to produce a document or to provide information:
- (a) for any purpose referred to in section 58 of the Act which the licence holder could not be compelled to produce or provide under that section; or
 - (b) which the licence holder could not be compelled to produce or to give in evidence in civil proceedings in any court. [10.4]

ORR consent

14. Where in this licence there is a provision for ORR to give its consent:
- (a) ORR may give such consent subject to conditions;
 - (b) any consent given shall be in writing and may be expressed in general or specific terms. [Part II, 6]

Notices and guidelines

15. Where in this licence there is a provision for ORR to give a notice or to issue guidelines to the licence holder, ORR shall first consult the licence holder and take into consideration any representations duly made. [Part II, 7]

Service of documents

16. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence. [Part II, 8]

Part III – Conditions

Part A The licence holder’s Core Duties and structure

1 Core Duties

Network Management Duty

- 1.1 The “Network Management 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 for the railway. [1.1]
- 1.2 For these purposes, the reasonable requirements for the railway are the reasonable requirements of persons providing services relating to railways and Funders, including Potential Providers or Potential Funders, in respect of:
- (a) the quality and capability of the network; and
 - (b) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network. [1.1]
- 1.3 The licence holder shall achieve the Network Management 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 (the “Network Management Duty”). [1.2]

Passenger Information Duty

- 1.4 The “Passenger Information Purpose” is to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the licence holder’s network to enable train operators

to meet their information obligations to passengers and prospective passengers, including when there is disruption. [2.1]

- 1.5 The licence holder shall achieve the Passenger Information Purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available (the “Passenger Information Duty”). [2.2]

Stakeholder Engagement Duty

- 1.6 The “Stakeholder Engagement Purpose” is to ensure that the licence holder treats Stakeholders in ways appropriate to their reasonable requirements in their capacity as Stakeholders. [8.1]
- 1.7 The licence holder shall achieve the Stakeholder Engagement Purpose and, in particular, shall, to the greatest extent reasonably practicable:
- (a) deal with Stakeholders with due efficiency and economy, in a timely manner and with the degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network facility owner and operator;
 - (b) prepare and deliver programmes of engagement with Stakeholders which will support the licence holder’s achievement of the Network Management Purpose;
 - (c) ensure that engagement is targeted to the interests of particular Stakeholders in a fair and proportionate manner;
 - (d) adopt effective processes and governance arrangements relating to engagement with Stakeholders; and
 - (e) make available sufficient information to enable effective engagement with Stakeholders, including information on:
 - (i) the licence holder’s performance;
 - (ii) the licence holder’s programmes of engagement and processes relating to Stakeholder engagement; and
 - (iii) the ways in which engagement with Stakeholders has impacted the conduct of the Network Business.

(the “Stakeholder Engagement Duty”). [8.2]

System Operator and Route Business responsibilities

1.8 The System Operator and each Route Business shall comply with the Core Duties in the performance of their functions. [1.2, 2.2, 8.2]

Interpretation

1.9 In this condition:

“Core Duties”

means the Network Management Duty, the Passenger Information Duty and the Stakeholder Engagement Duty. [New]

draft

2 Structure of the licence holder

- 2.1 The licence holder shall structure the Network Business so that it complies with this condition. **[New]**

The Route Businesses

- 2.2 The licence holder shall at all times have designated the geographical area covered by the network into areas (“Route Areas”), where:
- (a) Scotland is a Route Area; and
 - (b) the remaining geographical area covered by the network is designated into one or more Route Areas. **[New]**
- 2.3 The licence holder shall establish and maintain a business unit (a “Route Business”) in respect of each Route Area, to:
- (a) take primary responsibility for the operation, maintenance, renewal, replacement, improvement, enhancement and development of the part of the network falling within that Route Area (the “Route”), excluding any such responsibility which falls within the SO Functions; and
 - (b) comply with the Route Business’s obligations under this licence (together the Route Business’s “Route Functions”). **[New]**
- 2.4 The licence holder shall establish, maintain and comply with governance arrangements which enable each Route Business to perform its Route Functions effectively and efficiently (and which facilitate such performance). **[New]**
- 2.5 In particular, those governance arrangements must:
- (a) require for each Route Business the appointment of an officer whose primary responsibility is to manage and oversee the activities of that Route Business (the “Route Responsible Officer”);
 - (b) enable each Route Business to choose:
 - (i) what goods and services should be procured for the Route Business and in respect of the Relevant Route;

(ii) how those goods and services should be procured,

other than in circumstances where the licence holder is able to demonstrate that enabling such a choice by Route Businesses would be inconsistent with anything which the licence holder is required to do or not do pursuant to a condition of this licence or otherwise by or under any enactment; and

(c) in such circumstances, ensure that each Route Business is consulted on the procurement of those goods and services and has the ability to make informed representations on the suitability of those goods and services at any time. **[New]**

Freight and national passenger operators

2.6 The licence holder shall ensure that the structure of the Network Business enables it to properly take into account the interests of:

- (a) freight operators; and
- (b) passenger operators which operate services across more than one Route Area.

2.7 For the purposes of Condition 2.6, the licence holder shall adopt an effective structure, which may involve establishing and maintaining a business unit for those purposes. **[New]**

The System Operator

2.8 The licence holder shall establish and maintain a business unit (a “System Operator”) to:

- (a) promote the coordinated and integrated operation of the network;
- (b) take primary responsibility for:
 - (i) establishing and maintaining Long Term Plans to promote the Long Term Planning Objective;
 - (ii) the process for managing the allocation of capacity on the network;

- (iii) the process for timetabling railway services (and other activities) on the network; and
 - (iv) the holding and controlling of information relating to those processes; and
 - (c) comply with the System Operator’s obligations under this licence (together the “SO Functions”). **[New]**
- 2.9 The licence holder shall establish, maintain and comply with governance arrangements which enable the System Operator to perform the SO Functions impartially, effectively and efficiently (and which facilitate such performance). **[New]**
- 2.10 In particular, those governance arrangements must:
- (a) require the appointment of an officer whose primary responsibility is to manage and oversee the activities of the System Operator (the “SO Responsible Officer”); and
 - (b) enable the System Operator to choose:
 - (i) what goods and services should be procured for it;
 - (ii) how those goods and services should be procured, other than in circumstances where the licence holder is able to demonstrate that enabling such a choice by the System Operator would be inconsistent with anything which the licence holder is required to do or not do pursuant to any condition of this licence or otherwise by or under any enactment; and
 - (c) in such circumstances, ensure that the System Operator is consulted on the procurement of goods and services and has the ability to make informed representations on the suitability of those goods and services at any time. **[New]**
- 2.11 The licence holder shall establish, maintain and comply with arrangements to ensure that commercially sensitive information obtained by the System Operator from any person in the performance of the SO Functions:

- (a) is not directly or indirectly disclosed to any person other than to the extent that this is necessary for the performance of the SO Functions in accordance with this licence; and
- (b) is not used for any purpose other than the purpose for which it was obtained. [New]

Establishing and maintaining business units

- 2.12 The licence holder shall assign such personnel to Route Businesses and the System Operator as it considers appropriate to ensure compliance with this licence. [New]
- 2.13 The licence holder shall allocate:
- (a) to a Route Business any assets which constitute the Relevant Route; and
 - (b) to a Route Business or the System Operator such other assets as the licence holder considers appropriate to ensure compliance with this licence. [New]
- 2.14 The licence holder shall maintain appropriate, accurate and readily accessible records of how its Route Businesses and the System Operator are maintained, including being able to show at all times:
- (a) the Route Areas;
 - (b) in respect of each Route Business and the System Operator:
 - (i) the personnel assigned to it under Condition 2.12;
 - (ii) the Relevant Assets allocated to it under Condition 2.13;
 - (iii) the Relevant Assets which it uses (in which the licence holder or one of its Affiliates has an interest) but which are not allocated to it; and
 - (iv) the services which are provided to it in the performance of its Route Functions or, as the case may be, the SO Functions (whether provided by the licence holder or by a third party). [New]

Cooperation and assistance

- 2.15 The licence holder shall ensure that each Route Business and the System Operator receives any cooperation and assistance in the performance of its functions which is required to enable compliance with this licence. [New]
- 2.16 The System Operator and each Route Business shall provide any cooperation and assistance to the licence holder (including, as the case may be, to the System Operator and any Route Business) as is reasonably required of them to enable compliance with this licence. [New]

Sufficient Resources

- 2.17 The licence holder shall at all times act in a manner calculated to secure that it has available sufficient Resources, on such terms and with all such rights as shall:
- (a) enable it to properly and efficiently carry on the Permitted Business, including properly taking into account the interests of freight operators and passenger operators which operate services across more than one Route Area;
 - (b) enable the System Operator and the Route Businesses to properly and efficiently perform their functions; and
 - (c) enable it to comply in all respects with its obligations under the Act and this licence. [4.14]

System Operator and Route Business responsibilities

- 2.18 The System Operator shall at all times act in a manner calculated to secure that it has available sufficient Resources, on such terms and with all such rights as shall enable it to:
- (a) properly and efficiently carry on the SO Functions, including complying in all respects with its obligations under this licence; and
 - (b) comply in all respects with the licence holder's obligations under the Act in the performance of the SO Functions. [4.14]

2.19 Each Route Business shall at all times act in a manner calculated to secure that it has available sufficient Resources, on such terms and with all such rights as shall enable it to:

- (a) properly and efficiently carry on its Route Functions, including complying in all respects with its obligations under this licence; and
- (b) comply in all respects with the licence holder's obligations under the Act in the performance of its Route Functions. [4.14]

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3 Managing Change

3.1 The licence holder shall:

- (a) not make a Relevant Change unless, before making it, the licence holder complies with all applicable parts of the Managing Change Policy; and
- (b) in making a Relevant Change and afterwards, comply with all applicable parts of the Managing Change Policy,

in each case in accordance with any timescales set out in the Managing Change Policy. [New]

3.2 Where, in circumstances which are specified in the Managing Change Policy and having followed any process set out in the Managing Change Policy, ORR directs that the licence holder:

- (a) shall not make a Relevant Change; or
- (b) may only make a Relevant Change subject to complying with specified conditions (whether taking effect before, during or after the Relevant Change is made),

the licence holder shall comply with that direction. [New]

Interpretation

3.3 In this condition:

- (a) “Managing Change Policy” means the document of that title, which ORR, from time to time, provides by notice to the licence holder, setting out the processes and principles relating to the making of Relevant Changes, which may include (without limitation) requirements on the licence holder to:
 - (a) notify ORR where it is proposing to make a Relevant Change;

- (b) provide information on the Relevant Change to ORR;
- (c) conduct analysis in relation to the impact of the Relevant Change;
- (d) consult the System Operator, Route Businesses and any business unit maintained (or other part of the business adopted) under Condition 2.7 in relation to the Relevant Change;
- (e) consult Stakeholders in relation to the Relevant Change; and
- (f) conduct monitoring of the impact of the Relevant Change after it has been made; and

- (b) “Relevant Change” shall have the meaning set out in the Managing Change Policy. [New]

Part B Network Management

4 Licence holder network management responsibilities

Planning

- 4.1 The licence holder shall comply with the Network Planning Requirements in respect of the network, including preparing and publishing a Delivery Plan for the network. [1.4, 1.6]
- 4.2 In complying with the Network Planning Requirements, the licence holder shall:
- (a) consult each Route Business and the System Operator; and
 - (b) take into account the contents of plans, strategies or other documents prepared by the Route Businesses and the System Operator in preparing its own plans, strategies and other documents (including taking into account the contents of the Delivery Plans prepared by the System Operator and the Route Businesses in preparing its Delivery Plan). [New]

Network Planning Requirements

- 4.3 The “Network Planning Requirements” are:
- (a) to plan how the Network Management Duty will be complied with over the short, medium and long term to meet reasonably foreseeable future demand for railway services; [1.4]
 - (b) in undertaking that planning, to consult, and take into account the views of, persons providing services relating to railways and Funders so as to facilitate effective industry-wide planning; [1.5]
 - (c) in undertaking that planning, to prepare and provide to ORR (in accordance with Conditions 4.4 to 4.6) plans, strategies or other documents demonstrating its compliance and proposed compliance with the Network Management Duty, including:
 - (i) a Delivery Plan;

- (ii) such other plans, strategies or documents that ORR may reasonably require the licence holder to prepare from time to time; and
- (iii) any revisions of the plans, strategies and other documents referred to in this Condition 4.3(c) that ORR reasonably requires from time to time; [1.6] and
- (d) to publish (in accordance with Conditions 4.5 to 4.7) the Delivery Plan and, where required under Condition 4.5, other plans, strategies and documents referred to in Condition 4.3(c). [1.6, 1.8 and 1.10]

4.4 A “Delivery Plan” is a plan which:

- (a) sets out what the licence holder or, as the case may be, the System Operator or Route Business preparing the plan is proposing to do to comply with the Network Management Duty; and
- (b) is prepared in such format and structure, to such standard and level of detail so as to enable:
 - (i) providers of services relating to railways and Potential Providers to plan their businesses; and
 - (ii) Funders and Potential Funders to plan their future financial and service requirements,in each case with a reasonable degree of assurance. [1.10-1.11]

4.5 Each of the plans, strategies and other documents prepared under this condition shall be:

- (a) prepared in respect of such period, in such format and structure and to such standard and level of detail and in accordance with any such other requirements or guidelines; and
- (b) provided to ORR and published in accordance with any such requirements or guidelines,

as ORR may, from time to time, specify by notice to the licence holder (subject to Conditions 4.6 and 4.7 for requirements or guidelines relating to a Delivery Plan). [1.8]

- 4.6 No notice issued by ORR under Condition 4.5 shall be effective in relation to a Delivery Plan unless:
- (a) it is issued on or before the date which is 5 months before the Delivery Plan is to be published; and
 - (b) ORR has first consulted the licence holder and taken into consideration any representations duly made. [1.12]
- 4.7 The licence holder is not required to publish any part of a Delivery Plan to the extent that ORR:
- (a) is satisfied, after consultation with the licence holder, that publication of that part 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. [1.13]

Asset management policies and criteria

- 4.8 In complying with the Network Management Duty, the licence holder shall:
- (a) adopt policies and criteria in respect of the maintenance, renewal, replacement, improvement, enhancement and development of the Relevant Assets, which demonstrate how the licence holder will comply with the Network Management Duty; [1.19(a)]
 - (b) from time to time and whenever directed by ORR review and, if necessary, revise any such adopted policies and criteria to ensure that they continue to demonstrate how the licence holder will comply with the Network Management Duty; [1.22]
 - (c) in its development and revision of those policies and criteria, consult the System Operator and each Route Business; [New] and
 - (d) make appropriate information about the policies and criteria which it has adopted readily accessible to persons providing services relating to

railways and Funders, including Potential Providers and Potential Funders. [1.19(c)]

- 4.9 The licence holder shall apply the policies and criteria which it has adopted. [1.19(b)]

Maintaining asset information

- 4.10 The licence holder shall maintain:

- (a) appropriate information about the Relevant Assets, other than Relevant Assets which have been allocated to a Route Business, including information about their condition, capability and capacity; and
- (b) appropriate collated information about the Relevant Assets on a network-wide basis. [1.20]

- 4.11 The information maintained under Condition 4.10 must be accurate and readily accessible. [1.20]

Due Regard to the Long Term Plans

- 4.12 The licence holder shall have due regard to the Long Term Plans when carrying out its licensed activities. [1.16]

5 The System Operator network management responsibilities

Decision making

5.1 The System Operator shall secure that the decisions in respect of:

- (a) Long Term Plans;
- (b) the allocation of capacity on the network; and
- (c) timetabling on the network,

are made by persons with appropriate expertise and in an impartial and transparent manner. **[New]**

5.2 In particular, the System Operator shall not, and shall secure that any other person making such decisions does not, unduly discriminate between different Route Businesses or between a Route Business and any other business unit within the licence holder. **[New]**

Planning

5.3 The System Operator shall comply with the Network Planning Requirements (including preparing and publishing a Delivery Plan) in respect of the performance of the SO Functions. **[1.4, 1.6]**

5.4 In complying with the Network Planning Requirements, the System Operator shall establish and maintain plans to promote the Long Term Planning Objective (“Long Term Plans”). **[1.14]**

5.5 The “Long Term Planning Objective” is, in relation to a Long Term Plan, the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the Long Term Plan and with the requirements of this licence. **[1.15]**

5.6 The System Operator shall from time to time and whenever directed by ORR review and, if necessary, amend a Long Term Plan to ensure that it continues to promote the Long Term Planning Objective. **[1.17]**

Due Regard to the Long Term Plans

- 5.7 The System Operator shall have due regard to the Long Term Plans in the performance of the SO Functions. [1.16]

Asset management policies and criteria

- 5.8 The System Operator shall apply the policies and criteria adopted under Condition 4.8 in the performance of the SO Functions, provided that this shall not prevent the System Operator from proposing changes to any such policies and criteria in any Long Term Plan. [1.19(b)]

Capacity allocation

- 5.9 In complying with the Network Management Duty, the System Operator shall run an efficient and effective process, reflecting best practice, for managing the allocation of capacity on the network. [New]
- 5.10 In complying with the Network Management Duty, the System Operator shall cooperate with any Potential Provider or Potential Funder so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the network could be satisfied. [1.18]

Timetable planning

- 5.11 In complying with the Network Management Duty, the System Operator shall:
- (a) run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it; and
 - (b) where necessary and appropriate, initiate changes to Relevant Industry Processes,
- so as to enable persons providing railway services and other Relevant Persons to plan their businesses with a reasonable degree of assurance and to meet their obligations to railway users. [1.23]
- 5.12 The System Operator shall respond expeditiously to any timetabling matter which a train operator reasonably considers to be urgent. [2.5(b)]

Timetable disputes

- 5.13 The System Operator shall use reasonable endeavours to resolve promptly any timetabling disputes. [2.5(a)]

Cooperation in relation to information for passengers

- 5.14 The System Operator shall cooperate, as necessary, with train operators to enable them to provide appropriate, accurate and timely information to enable railway passengers to plan and make their journeys with a reasonable degree of assurance, including when there is disruption. [2.4]

National timetable

- 5.15 Except where ORR consents otherwise, the System Operator shall procure the publication of a national timetable of railway passenger services. [2.6]

Changes to the national timetable

- 5.16 The System Operator shall:
- (a) establish and maintain efficient and effective processes reflecting best practice; and
 - (b) apply those processes to the greatest extent reasonably practicable having regard to all relevant circumstances,
- so as to provide appropriate, accurate and timely information on Relevant Changes to train operators. [2.7]
- 5.17 For the purposes of Condition 5.16, information on a Relevant Change shall be deemed to be timely:
- (a) where the System Operator has provided train operators with access to the information not less than 12 weeks before the date that the Relevant Change is to have effect; [2.8] or
 - (b) where:
 - (i) providing the information 12 weeks or more before the Relevant Change is to have effect would conflict, to a significant degree, with the Network Management Duty; and

- (ii) the System Operator provides access to the information to holders of passenger licences as soon as is reasonably practicable having regard to all relevant circumstances. [2.9]

Access to information for enquiry services

- 5.18 The System Operator shall grant access to information it holds on the planned movement of trains on the network to Enquiry Service Providers in accordance with Conditions 5.19 and 5.20. [2.10]
- 5.19 The System Operator shall grant access to such information as Enquiry Service Providers reasonably require for the proper carrying out of their operations. [2.10]
- 5.20 The System Operator shall ensure that access to such information is granted on reasonable terms (including terms relating to the prices charged, means of access and confidentiality). [2.10]

Interpretation

5.21 In this condition:

- (a) “Enquiry Service Provider” means a person providing or seeking to provide credible enquiry services relating to the operation of railway passenger services on the network; [2.10]
- (b) “Network Code” means the set of rules called the “Network Code” which is incorporated by reference into, and therefore forms part of, each bilateral track access contract between the licence holder and the beneficiary under that track access contract; [1.24]
- (c) “Relevant Changes” means changes to the national timetable of railway passenger services occasioned by:

- (a) any renewal, maintenance and enhancement of the network; or
 - (b) any restriction of use of which the licence holder is, or reasonably ought to be, aware; [\[2.7\]](#)
- (d) “Relevant Industry Processes” means arrangements, whether contractual, regulatory or voluntary, to which the licence holder is a party, or is subject, which involve establishing, or making changes to, a timetable; [\[1.24\]](#) and
- (e) “Relevant Person” means each train operator, each holder of an access option and each other person who has been allowed to participate in the procedure for developing the timetable under the Network Code, as amended from time to time. [\[1.24\]](#)

6 Route Business network management responsibilities

Planning by the Route Businesses

- 6.1 Each Route Business shall comply with the Network Planning Requirements (including preparing and publishing a Delivery Plan) in respect of the performance of its Route Functions relating to the Relevant Route. [1.4, 1.6]

Due Regard to the Long Term Plans

- 6.2 Each Route Business shall have due regard to the Long Term Plans in the performance of its Route Functions. [1.16]

Asset management policies and criteria

- 6.3 Each Route Business shall apply the policies and criteria adopted under Condition 4.8 in the performance of its Route Functions. [1.19(b)]

Maintaining asset information

- 6.4 Each Route Business shall maintain appropriate information about the Relevant Assets which have been allocated to it by the licence holder under Condition 2.13, including information about their condition, capability and capacity. [1.20]
- 6.5 The information maintained under Condition 6.4 must be accurate and readily accessible. [1.20]

Part C Information Requirements

7 Information for ORR

Information Requests

- 7.1 The licence holder shall provide to ORR on request any information which ORR reasonably requires for the purpose of carrying out any of its functions under Part I of the Act, subject to Condition 7.2. [10.1]
- 7.2 This condition shall not require the provision of information to ORR for the purposes of any function of ORR under sections 69 and 71 of the Act. [10.3]
- 7.3 Information required to be provided under this condition shall be provided in such form and manner and at such times as reasonably requested by ORR. [10.2]

Confirmation regarding System Operator and Route Business information

- 7.4 Where directed by ORR, the licence holder shall ensure that the response to a request under Condition 7.1 which relates to the SO Functions or the Route Functions is accompanied by either:
- (a) confirmation by the SO Responsible Officer or, as the case may be, the relevant Route Responsible Officer that the response is accurate and complete; or
 - (b) a statement of the reasons why such a confirmation is not being given. [New]

System Operator and Route Business responsibilities

- 7.5 Where, in requesting information under Condition 7.1, ORR requests information from the System Operator or a Route Business, the System Operator or, as the case may be, Route Business shall comply with that request. [10.1]

8 Regulatory accounts

Financial statements and accounting records

- 8.1 The licence holder shall in respect of each Financial Year:
- (a) prepare regulatory financial statements in relation to:
 - (i) itself; and
 - (ii) unless ORR consents otherwise, Network Rail Infrastructure Finance,

in accordance with this condition and the Regulatory Accounting Guidelines; [11.2] and
 - (b) compile any further information which is required by the Regulatory Accounting Guidelines. [11.9]
- 8.2 Where directed by ORR, the licence holder shall ensure that a financial statement prepared, or further information compiled, is accompanied by either:
- (a) confirmation by the SO Responsible Officer or, as the case may be, the relevant Route Responsible Officer that the information in the financial statement of further information relating to the System Operator or, as the case may be, the Route Business is accurate and complete; or
 - (b) a statement of the reasons why such a confirmation is not being given.
[New]
- 8.3 The licence holder shall, and shall procure that any Affiliate or Related Undertaking of the licence holder and Network Rail Infrastructure Finance maintains such accounting records, other records and reporting arrangements as are necessary to enable the licence holder to properly prepare the regulatory financial statements and further information required by this condition. [11.3]
- 8.4 The licence holder shall:

- (a) maintain all systems of control and other governance arrangements that ensure the information collected and reported to ORR is in all material respects accurate, complete and is fairly presented; and
- (b) ensure that such governance arrangements are kept under regular review by the directors of the licence holder so that they remain effective for this purpose. [11.3]

Resources Statement

8.5 The licence holder shall make a statement following the end of each Financial Year certifying either:

- (a) that its directors have a reasonable expectation that the licence holder will have available sufficient Resources to enable it to:
 - (i) properly and efficiently carry on the Permitted Business; and
 - (ii) comply in all respects with its obligations under the Act and this licence,for the period of 12 months commencing on the date of the statement;
- (b) that its directors have such a reasonable expectation, subject to one or more factors; or
- (c) that in the opinion of its directors, the licence holder will not have sufficient Resources to enable it to:
 - (i) properly and efficiently carry on the Permitted Business; and
 - (ii) comply in all respects with its obligations under the Act and this licence,

for the period of 12 months commencing on the date of the statement

(a “Resources Statement”). [11.5, 11.6]

8.6 Before it makes a Resources Statement, the licence holder shall consult the System Operator and each Route Business on what that Resources Statement should certify and the reasons for that certification. [New]

- 8.7 The licence holder shall ensure that any Resources Statement:
- (a) is in a form which is set out in the Regulatory Accounting Guidelines for the purposes of this condition; [11.6] and
 - (b) is 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. [11.5]
- 8.8 The licence holder shall annex to each Resources Statement:
- (a) details of the main factors which the directors of the licence holder have taken into account in making the Resources Statement, including details of how the views held by the System Operator and Route Businesses have been taken into account;
 - (b) where the Resources Statement certifies the expectation referred to in Condition 8.5(b), a description any factor to which the expectation is subject; and
 - (c) any other information which is required by the Regulatory Accounting Guidelines. [11.7, New]
- 8.9 The licence holder shall:
- (a) notify ORR in writing immediately if its directors become aware of any circumstance that causes them no longer to have a reasonable expectation expressed in the most recent Resources Statement which the licence holder has provided to ORR; 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 from time to time adopted by the Financial Conduct Authority acting in its capacity as a competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000, publish any such notification in such form and manner as ORR may direct. [11.8]

The Auditor

- 8.10 The licence holder shall:

- (a) appoint a person to report on its regulatory financial statements (the “Auditor”); [11.16]
- (b) enter into a contract of appointment with the Auditor which includes a term that the Auditor will provide:
 - (i) such further explanation or clarification of their reports; and
 - (ii) such further financial information in respect of the matters which are the subject of their reports,as ORR reasonably requires for the exercise of its functions, including, in relation to monitoring, compliance by the licence holder with the conditions of this licence. [11.12]

8.11 The licence holder shall procure a report by the Auditor addressed to ORR:

- (a) stating whether, in its opinion, the regulatory financial statements have been prepared in accordance with this condition (including the Regulatory Accounting Guidelines);
- (b) stating whether, in its 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 (including with the Regulatory Accounting Guidelines); and
- (c) stating whether any information on enhancement expenditure produced as part of the regulatory financial statements or further information has been prepared in accordance with the Regulatory Accounting Guidelines and is consistent with such expenditure presented in the primary financial statements. [11.10]

8.12 The licence holder shall procure a report prepared by the Auditor and addressed to ORR to accompany the Resources Statement:

- (a) stating whether the Auditor is aware of any inconsistencies between that Resources Statement (and any annexes) and any of:

- (i) the regulatory financial statements and further information referred to in this condition; and
 - (ii) any information which the Auditor obtained in the course of its audit work for the licence holder; and
- (b) detailing any such inconsistencies. [11.11]

Publication and provision of information

8.13 The licence holder shall provide to ORR:

- (a) a copy of the regulatory financial statements for a Financial Year together with any further information which is required by the Regulatory Accounting Guidelines;
- (b) the Auditor's report in respect of those regulatory financial statements;
- (c) the Resources Statement (including its annexes) made following the Financial Year and the accompanying Auditor's report,

as soon as reasonably practicable and in any event not later than 1 July following the end of the Financial Year. [11.13]

8.14 The licence holder shall:

- (a) publish the documents and information referred to in Condition 8.13 within one calendar month of providing them to ORR, subject to any redactions approved by ORR; and
- (b) make available any of the documents and information which have been published to any member of the public on request. [11.13]

System Operator and Route Business responsibilities

8.15 The System Operator and the Route Businesses shall engage fully with any consultation under Condition 8.6. [New]

9 Periodic and annual returns

Periodic returns

- 9.1 The licence holder shall prepare a return for each Relevant Period, in a form approved by ORR (a “Periodic Return”). [12.6]
- 9.2 The licence holder shall provide each Periodic Return to ORR as soon as reasonably practicable following the end of the Relevant Period to which it relates and in any event not later than 21 days after the end of that Relevant Period. [12.6]

Annual returns

- 9.3 The licence holder shall prepare and provide to ORR a return for each year in accordance with this condition (an “Annual Return”). [12.1]
- 9.4 Subject to Condition 9.6, the Annual Return for a year must comply with the requirements set out by ORR by notice to the licence holder, including requirements as to:
- (a) the form and content of the Annual Return; and
 - (b) the dates to which the Annual Return relates
- (the “Annual Return Requirements”). [12.2]
- 9.5 Subject to Condition 9.6, the Annual Return for a year must be provided to ORR by a date specified by ORR in a notice to the licence holder which is:
- (a) not less than 3 months after the last date to which the Annual Return relates; and
 - (b) unless the licence holder agrees otherwise, at least 6 months after the date on which ORR gives notice to the licence holder of the Annual Return Requirements
- (the “Specified Return Date”). [12.3]
- 9.6 If ORR has not notified the licence holder of both the Annual Return Requirements and the Specified Return Date for an Annual Return 3 months

or more before the last date to which the Annual Return relates, the licence holder shall:

- (a) provide the Annual Return to ORR by the next date with the same day and month as the most recent Specified Return Date; and
- (b) ensure that the Annual Return complies with the Annual Return Requirements relevant to the most recent Specified Return Date. [12.4]

9.7 The licence holder shall publish the Annual Return within one calendar month of the date it was required to be provided to ORR. [12.5]

Confirmation regarding System Operator and Route Business information

9.8 Where directed by ORR, the licence holder shall ensure that a Periodic Return or an Annual Return is accompanied by:

- (a) confirmation from the SO Responsible Officer or, as the case may be, the relevant Route Responsible Officer that the information in the return relating to the System Operator or, as the case may be, the Route Business is accurate and complete; or
- (b) a statement of the reasons why such a confirmation is not being given. [New]

Interpretation

9.9 In this condition:

- (a) “Annual Return Requirements” shall have the meaning set out in Condition 9.4;
- (b) “Periodic Return” shall have the meaning set out in Condition 9.1;
- (c) “Relevant Period” means one of 13 consecutive periods in each Financial Year, each such period being:
 - (a) 28 days in length; or

- (b) for the first and last period in the Financial Year, such length as is at that time adopted by the licence holder for its accounting purposes generally; and
- (d) “Specified Return Date” shall have the meaning set out in Condition 9.5. [12.6]

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10 Reporters

Inquiries by Reporters

- 10.1 The licence holder shall comply with any request made by ORR for the licence holder to engage a person appointed by ORR (a “Reporter”) to conduct an inquiry into (and report on) a Relevant Matter, subject to Condition 10.3. [13.2]
- 10.2 A matter is a “Relevant Matter” if it is:
- (a) any matter considered by ORR as material to the setting by ORR of Access Charges;
 - (b) any matter in respect of which the licence holder is required to make an Annual Return; and
 - (c) any matter relating to the condition, capacity or capability of any premises or assets used or intended to be used by the licence holder for the provision of railway services. [13.2]
- 10.3 The licence holder shall not be required to engage a Reporter unless the scope and content of the particular inquiry to which the request relates has been:
- (a) discussed with the licence holder;
 - (b) defined and costed in a written proposal made by the Reporter; and
 - (c) approved by ORR, subject to such modifications (if any) as it may reasonably require, having taken into account any representations made by the licence holder. [13.3]
- 10.4 Before the inquiry is conducted, the licence holder shall ensure that it has entered into a contract with the Reporter:
- (a) which makes provision for payment by the licence holder to the Reporter in respect of any such inquiry;
 - (b) which contains a term that the Reporter owes a duty of care to ORR in respect of any such inquiry; and
 - (c) the terms of which have been approved by ORR. [13.4]

- 10.5 Where any such inquiry is being conducted, the licence holder shall, and shall procure so far as it is able to do so that its Affiliates and its Auditor, cooperate with the Reporter, so as to enable the Reporter to complete and report on the inquiry. [13.6]
- 10.6 The licence holder shall comply with any requirements or guidelines (“Reporter Guidelines”) which ORR may from time to time specify by notice to the licence holder, including (without limitation):
- (a) any criteria for the engaging and removal of a Reporter;
 - (b) any procedures for the engaging of a Reporter;
 - (c) any particular terms to be included in any contract between the licence holder and a Reporter;
 - (d) any procedures for specifying and approving the scope and content of an inquiry; and
 - (e) any details of what is required to comply with the duty to cooperate referred to in Condition 10.5. [13.5]

System Operator and Route Business responsibilities

- 10.7 Where any inquiry is being conducted by a Reporter, the System Operator and each Route Business shall cooperate with the Reporter, so as to enable the Reporter to complete and report on the inquiry. [13.6]
- 10.8 Where, in requesting the engaging of a Reporter under Condition 10.1, ORR requests that the inquiry is managed by the System Operator or a Route Business, the System Operator or, as the case may be, Route Business shall manage the engaging of the Reporter and the conduct of the inquiry (in accordance with this condition). [13.2]
- 10.9 In complying with Conditions 10.7 and 10.8, the System Operator and the Route Businesses shall comply with any Reporter Guidelines. [13.5]

Interpretation

- 10.10 In this condition:

- (a) “Relevant Matter” shall have the meaning set out in Condition 10.2;
- (b) “Reporter” shall have the meaning set out in Condition 10.1; and
- (c) “Reporter Guidelines” shall have the meaning set out in Condition 10.5. [13.2, 13.5, 13.7]

draft

Part D Industry Obligations

11 Information on stakeholder dealings

11.1 The licence holder shall:

- (a) publish information, by code of practice or otherwise, on the principles and procedures by which it will comply with the Stakeholder Engagement Duty;
- (b) ensure that the information which is published is sufficient in form and content to facilitate efficient and effective dealings between the licence holder and its Stakeholders; and
- (c) from time to time and whenever directed by ORR review and, if necessary, revise the information so that it may better facilitate such dealings. [8.6]

12 Safety and standards

12.1 Except where ORR consents otherwise, the licence holder shall:

- (a) be a member of RSSB and a party to the Constitution Agreement;
- (b) comply with its obligations under the Constitution Agreement and the articles of association of RSSB; and
- (c) exercise its rights under the Constitution Agreement and the articles of association of RSSB so as to ensure that RSSB acts in accordance with the Constitution Agreement. [22.1]

12.2 The licence holder shall comply with:

- (a) the Code; [22.2]
- (b) such Railway Group Standards as are applicable to its Licensed Activities; [22.2] and
- (c) subject to Condition 12.3, such Railway Industry Standards (or parts thereof) as are applicable to its Licensed Activities. [New]

12.3 The licence holder is not required to comply with an applicable Railway Industry Standard (or part thereof) where:

- (a) it has, in consultation with affected parties, identified an equally effective measure which will achieve the purpose of the standard; and
- (b) it has adopted and is complying with that measure. [New]

System Operator and Route Business responsibilities

12.4 The System Operator and the Route Businesses shall in the performance of their functions comply with:

- (a) the Code and the standards with which compliance is required under Condition 12.2; [22.2, New] and
- (b) any measure adopted under Condition 12.3. [New]

Interpretation

12.5 In this condition:

- (a) “Code” means the Railway Group Standards Code established by RSSB;
- (b) “Constitution Agreement” means the contract of that name which sets out the purpose and governance of RSSB and to which members of RSSB must be a party;
- (c) “Railway Group Standards” means standards authorised pursuant to the Code;
- (d) “Railway Industry Standards” shall have the meaning set out in the Standards Manual, established by RSSB; and
- (e) “RSSB” means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675). [22.3, New]

13 Environment

Environmental Policy

- 13.1 The licence holder shall, taking due account of any relevant guidance issued to it by ORR, maintain:
- (a) a written policy designed to protect the environment from the effect of Licensed Activities (the “Environmental Policy”); and
 - (b) operational objectives and management arrangements to give effect to the Environmental Policy. [23.1]
- 13.2 The licence holder shall review and if necessary revise the Environmental Policy, the operational objectives and the management arrangements periodically and otherwise as appropriate having regard to all relevant circumstances. [23.1]
- 13.3 Where it makes a material modification to the Environmental Policy, operational objectives or management arrangements, the licence holder shall promptly send to ORR a copy of the Environmental Policy and a general description of the operational objectives and management arrangements. [23.2]
- 13.4 The licence holder shall have regard to the Environmental Policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively. [23.3]

Extent of this condition

- 13.5 Nothing contained in this condition shall require the undertaking of any action that entails excessive cost taking into account all relevant circumstances, including the nature and scale, of operations of the type carried out by the licence holder. [23.1]

System Operator and Route Business responsibilities

- 13.6 The System Operator and the Route Businesses shall in the performance of their functions have regard to the Environmental Policy and operational objectives and each use their reasonable endeavours to operate the management arrangements effectively, subject to Condition 13.5. [23.3]

Interpretation

13.7 In this condition:

“Environmental
Policy”

shall have the meaning set out in
Condition 13.1(a). [23.1]

draft

14 Rail Delivery Group

General Duty

14.1 The licence holder shall:

- (a) remain a Member of RDG;
- (b) and comply with its obligations under the RDG Articles. [25.1]

System Operator and Route Business responsibilities

14.2 The System Operator and the Route Businesses shall in the performance of their functions comply with the licence holder's obligations under the RDG Articles. [25.1]

Interpretation

14.3 In this condition:

- (a) "Member" has the meaning ascribed to it in the RDG Articles;
- (b) "RDG" means the Rail Delivery Group (a company limited by guarantee and registered in England and Wales under number 08176197); and
- (c) "RDG Articles" means the articles of association of RDG. [25.2]

Part E Restrictions on Activities

15 Financial ring-fence

Restriction of activities

15.1 The licence holder shall not, and shall procure that its Subsidiary Undertakings do not, conduct any business or carry on any activity other than:

- (a) the Permitted Business;
- (b) *De Minimis* Business; and
- (c) any other business or activity for which ORR has given its consent for the purposes of this condition. [4.1]

System Operator and Route Business responsibilities

15.2 The System Operator and the Route Businesses shall not conduct any business or carry on any activity other than:

- (a) the Permitted Business;
- (b) *De Minimis* Business; and
- (c) any other business or activity for which ORR has given its written consent for the purposes of this condition. [4.1]

Investments

15.3 Except where ORR consents otherwise, the licence holder shall not after the Relevant Date acquire or retain shares or other investments of any kind except:

- (a) shares or other investments in a body corporate which does not conduct any business or carry on any activity other than:
 - (i) the Permitted Business;
 - (ii) *De Minimis* Business; and

- (iii) any other business or activity (including financing that business or activity) for which ORR has given its consent for the purposes of this condition,

provided always that where such a body corporate conducts the business or carries on the activities of raising finance for the Permitted Business, that body corporate must be the licence holder or a Subsidiary of the licence holder; and

- (b) investments acquired in the usual and ordinary course of the treasury management operations of, as the case may be, the licence holder, its Subsidiary Undertakings, Network Rail Infrastructure Finance or its Subsidiary Undertakings, subject to such entity maintaining in force, in relation to its operations, a system of internal controls which complies with best corporate governance practice. [4.3]

De Minimis Business

15.4 Nothing in this condition shall prevent the licence holder and any Subsidiary Undertaking or Related Undertaking from:

- (a) conducting Relevant Other Business; or
- (b) acquiring or retaining shares or other investments in any body corporate which conducts Relevant Other Business,

provided that such Relevant Other Business is *De Minimis* Business. [4.7]

15.5 Subject to Condition 15.7, the Relevant Other Business is “*De Minimis* business” if both:

- (a) the aggregate turnover of all of the Relevant Other Business carried on by the licence holder and the Equity Share of the aggregate turnover of all of the Relevant Other Business carried on by all Affiliates and Related Undertakings does not in any Financial Year exceed the Indexed Turnover Limit for that Financial Year; and
- (b) the aggregate amount of all investments (determined in accordance with Condition 15.6) in bodies corporate which conduct Relevant Other Business, acquired or retained by the licence holder, Affiliates and

Related Undertakings does not at any time exceed the Indexed Investment Limit,

provided that where Relevant Other Business has been treated as *De Minimis* Business and ORR consent is subsequently given to it, then (unless that consent otherwise provides) any turnover or investment previously attributable to that Relevant Other Business shall not be counted in determining the aggregate turnover or aggregate amount. [4.8, 4.9(e)]

15.6 For the purpose of Condition 15.5:

- (a) an “investment” means any form of financial support or assistance given by or on behalf of the licence holder, Affiliate or Related Undertaking (as the case may be) to the body corporate which conducts Relevant Other Business, whether on a temporary or permanent basis, and includes any commitment to provide any such support or assistance in the future; and
- (b) at any point in time, the amount of the investment is the sum of:
 - (i) the value at which such investment was included in the audited historical cost balance sheet of the licence holder at [31 March 2009] (or, where the investment was not so included, zero);
 - (ii) the aggregate gross amount of all expenditure (whether of a capital or revenue nature) however incurred by the licence holder in respect of such investment in all completed accounting reference periods since [31 March 2009]; and
 - (iii) all commitments and liabilities (whether actual or contingent) of the licence holder relating to such investments outstanding at the end of the most recently completed accounting reference period,

less the sum of the total gross amount of all income (whether of a capital or revenue nature and however received by the licence holder) in respect of such investment in all completed accounting reference periods since [31 March 2009]. [4.9(d)]

15.7 Where ORR so directs, a business or activity (or a class of business or activity) shall be prohibited from constituting *De Minimis* Business for the purposes of this condition. [4.10]

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

15.8 Except where ORR consents otherwise, the licence holder shall not, from the Relevant Date:

- (a) enter into an agreement or arrangement incorporating a Cross-Default Obligation; or
- (b) continue or permit to remain in effect any agreement, commitment 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:
 - (i) the Cross-Default Obligation is solely referable to an arrangement, commitment or agreement entered into prior to the Relevant Date; and
 - (ii) the terms of that agreement, commitment or arrangement 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,

provided that this shall not prevent the licence holder from giving any guarantee permitted by and in compliance with Condition 15.9(a). [4.11, 4.12]

15.9 Except where ORR consents otherwise, 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 any other form of security or encumbrance, undertake any Indebtedness to any other person or guarantee any liability or obligation of another person other than on an arm's length basis, on normal commercial terms and for a Relevant Purpose and (where relevant) in accordance with Condition 16 (*Land Disposal*); or

- (b) transfer, lease, license or lend any sum, asset, right or benefit to any Affiliate or Related Undertaking of the licence holder otherwise than by way of:
- (i) a dividend or other distribution out of distributable reserves, subject to Conditions 15.10 and 15.11;
 - (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, on normal commercial terms and (where relevant) in accordance with Condition 16 (*Land Disposal*);
 - (v) repayment of any loan or payment under a loan (including, but not limited to, related interest, fees, indemnities and costs) not prohibited by Condition 15.9(a);
 - (vi) payments for the surrender of group corporation tax relief or for the surrender of advance corporation tax calculated on a basis not exceeding the value of the benefit received; or
 - (vii) an acquisition of shares or other investments in conformity with the restriction on the acquisition of shares or other investments set out in Condition 15.3, made on an arm's length basis and in accordance with normal commercial terms. [\[4.13\]](#)

Payment of dividends

15.10 The licence holder shall be in breach of this condition if its directors declare or recommend a dividend unless ORR has consented in writing to the declaration or recommendation no more than 6 months prior to it being made. [\[4.29\]](#)

15.11 The licence holder shall not:

- (a) make any form of distribution within the meaning of sections 829, 830, 849 or 850 of the Companies Act 2006; or
- (b) redeem or repurchase any share capital of the licence holder,

unless ORR has consented in writing to the distribution, redemption or repurchase no more than 6 months prior to it being made. [4.30]

Relevant payments to Funders

15.12 The licence holder shall not make a payment to a Funder other than in the ordinary course of business or to comply with a legal obligation, unless ORR has consented in writing to the payment no more than 6 months prior to it being made. [4.31]

Interpretation

15.13 In this condition:

- (a) “Equity Share” means, in relation to any shareholding, the nominal value of the equity shares held by the licence holder in an Affiliate or Related Undertaking expressed as a percentage of the nominal value of the entire issued equity share capital of that Affiliate or Related Undertaking; [4.9(c)]
- (b) “Indexed Investment Limit” means the sum of [£210 million] plus the amount that is produced when [£210 million] is multiplied by the percentage change (whether expressed as a positive or negative figure) between the most recent RPI published or determined and as published or determined in respect of April 2006; [4.9(b)]
- (c) “Indexed Turnover Limit” in respect of a Financial Year means the sum of [£140 million] plus the amount that is produced when [£140 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 April in that Financial Year and as published or determined in respect of April 2006; [4.9(a)] and
- (d) “Relevant Date” means 1 January 2003; [4.32]

- (e) “Relevant Other Business” means any business which is conducted or any activity which is carried on, which is:
- (i) not for a Permitted Purpose; and
 - (ii) not a business or activity to which ORR has given its prior consent under this condition; [4.32] and
- (f) “RPI” means the general index of retail prices published by the Office for National Statistics each month in respect of all items or:
- (i) if the index for any month shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may, after consultation with the licence holder, determine to be appropriate in the circumstances; or
 - (ii) if there is a material change in the basis of such index, such other index as ORR, after consultation with the licence holder, determines to be appropriate in the circumstances. [4.32]

16 Land Disposal

Disposal of Land by the licence holder

16.1 The licence holder shall not Dispose of any Land except:

- (a) where the Disposal is required by or under any enactment; or
- (b) where:
 - (i) if the Disposal relates to Land which is allocated to a Route Business under Condition 2.13, the Route Business has approved the Disposal;
 - (ii) the System Operator has approved the Disposal; and
 - (iii) ORR has consented to the Disposal. [7.1, 7.2, New]

Applying for ORR's consent

16.2 Where the licence holder seeks ORR's consent to a particular Land Disposal it shall give written notice to ORR (in such form and containing such details as specified by ORR from time to time), specifying:

- (a) the land Disposal which it intends to make; and
 - (b) the earliest date on which it proposes to make the Disposal (the "Disposal Date")
- (the "Disposal Notice"). [7.3]

16.3 The licence holder shall give the Disposal Notice to ORR at least two months before the Disposal Date. [7.3]

16.4 Where it has given a Disposal Notice, the licence holder shall provide any further information which ORR requires. [7.4]

16.5 Unless otherwise agreed between ORR and the licence holder, where ORR does not by the Disposal Date inform the licence holder that it consents or refuses to consent to the Disposal set out in the Disposal Notice, ORR will be deemed to have consented to that Disposal. [7.5]

System Operator and Route Business responsibilities

16.6 The System Operator and the Route Businesses shall not cause the licence holder to Dispose of Land in breach of this condition. [7.1]

Interpretation

16.7 In this condition:

- (a) “Disposal” or “Dispose” includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party;
- (b) “Disposal Date” shall have the meaning set out in Condition 16.2(b);
- (c) “Disposal Notice” shall have the meaning set out in Condition 16.2; and
- (d) “Land” includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land. [7.7]

17 Interests in railway vehicles

Prohibition on holding a direct/indirect interest in railway vehicles

- 17.1 The licence holder shall not hold any direct or indirect interest in the ownership or operation of any railway vehicle in Great Britain, except where:
- (a) ORR has consented to the licence holder holding the interest;
 - (b) the railway vehicle is used wholly or mainly for the Licensed Activities;
or
 - (c) the railway vehicle forms part of the Royal Train. [5.1, 5.4]

System Operator and Route Business responsibilities

- 17.2 The System Operator and the Route Businesses shall not cause the licence holder to hold an interest in breach of this condition. [5.1]

Interpretation

- 17.3 For the purposes of Condition 17.1, the licence holder holds a “direct interest” in the ownership or operation of a railway vehicle where the licence holder has:
- (a) any legal or beneficial interest in any railway vehicle (in whole or in part); or
 - (b) the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle. [5.2]
- 17.4 For the purposes of Condition 17.1, the licence holder holds an “indirect interest” in the ownership or operation of a railway vehicle where that vehicle:
- (a) is operated by one of its Affiliates; or
 - (b) is a vehicle in which one of its Affiliates has any legal or beneficial interest (in whole or in part). [5.3]

18 Cross-subsidy

Prohibition of cross-subsidy

18.1 The licence holder shall, except in so far as ORR otherwise determines:

- (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,

subject to Condition 18.2. [6.1]

Exceptions

18.2 For the purposes of this condition:

- (a) any Access Charge;
- (b) any 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; and
- (c) anything which the licence holder is required to do or not do pursuant to any other condition of this licence or otherwise by or under any enactment,

shall not constitute an “unfair cross-subsidy”. [6.3-6.5]

Accounting records

18.3 The licence holder shall:

- (a) maintain accounting records for the Network Business which are separate from those of the other businesses and activities of the licence holder and its Affiliates; and
- (b) maintain such other accounting records as ORR reasonably requires for the purpose of monitoring compliance with this condition. [6.2]

- 18.4 The licence holder shall ensure that any accounting records maintained pursuant to Condition 18.3 comply with such accounting policies as ORR reasonably requires. [6.2]
- 18.5 The licence holder shall, on ORR's request, allow such records and information to be audited (at the expense of the licence holder) by a person approved by ORR for the purpose of assessing compliance with this condition. [6.2]

System Operator and Route Business responsibilities

- 18.6 The System Operator and the Route Businesses shall not, through involvement in an unfair cross-subsidy, cause the licence holder to breach Condition 18.1. [6.1]

19 Non-discrimination

- 19.1 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. [9.1]

System Operator and Route Business responsibilities

- 19.2 The System Operator and each Route Businesses shall not cause the licence holder to unduly discriminate in breach of Condition 19.1. [9.1]

draft

20 Restricted use of Protected Information

20.1 The licence holder shall not disclose Protected Information other than:

- (a) with the consent of the person who provided the Protected Information to the licence holder (or from whom it was obtained);
- (b) to employees, agents, consultants, advisers and contractors of the licence holder to the extent necessary for the effective conduct of Licensed Activities;
- (c) to the Secretary of State, Scottish Ministers, the Welsh Assembly Government or ORR; or
- (d) in compliance with the duties of the licence holder under the Act, conditions of any licence, any other enactment, any requirement of The London Stock Exchange Limited or any regulatory authority or pursuant to any judicial or arbitral process. [14.1]

20.2 Where the licence holder discloses Protected Information to a person in a manner which is permitted under Condition 20.1, the licence holder shall take all reasonable steps to ensure that the person:

- (a) does not use the Protected Information for any purpose other than that for which it was provided to that person; and
- (b) does not disclose the Protected Information other than in accordance with the provisions of this condition. [14.2]

System Operator and Route Business responsibilities

20.3 The System Operator and the Route Businesses shall not cause Protected Information to be disclosed in breach of Condition 20.1. [14.1]

20.4 Where the System Operator or a Route Business is involved in a disclosure of Protected Information which is permitted under Condition 20.1, the System Operator or as the case may be the Route Business shall take the steps required by Condition 20.2. [14.2]

Interpretation

20.5 In this condition:

(a) “Protected Information”

means any information which:

- (a) relates to the affairs of a particular person; and
- (b) has been provided to or obtained by the licence holder in the course of its dealings in connection with any actual or proposed agreement which is in a class of agreement referred to in the Act,

but excluding information that is in or enters into the public domain otherwise than as a consequence of disclosure by the licence holder (or any person to whom it is disclosed by the licence holder) which will breach this condition. [14.3]

20.6 In this condition, disclosure of Protected Information shall include authorising disclosure of, or access, to Protected Information. [14.1]

Part F Corporate matters

(No specified responsibilities for the System Operator and Route Businesses)

21 Corporate Governance

21.1 Except where ORR consents otherwise, the licence holder shall follow best practice corporate governance arrangements including by, so far as reasonably practicable:

- (a) complying with the relevant provisions and principles of the UK Corporate Governance Code;
- (b) maintaining a board of directors with an appropriate balance of skills, experience, independence and knowledge, where at least 2 non-executive directors have substantial experience of working in the rail industry; and
- (c) publishing, or procuring the publication of, such relevant information as is required by the Rules of the Financial Conduct Authority of a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority. **[15.1]**

Interpretation

21.2 In this condition:

- (a) “the UK Corporate Governance Code” means the code published by the Financial Reporting Council in April 2016, or any successor document having a similar purpose and content; and
- (b) “Rules of the Financial Conduct Authority” means the rules made under Part VI of the Financial Services and Markets Act 2000 and contained in the Financial Conduct Authority Handbook, or equivalent rules of any successor body. **[15.2]**

22 Incentive Schemes

- 22.1 The licence holder shall adopt and comply with one or more incentive schemes, to cover any financial incentive to which its directors and employees and those of its Subsidiaries may be entitled (“Incentive Schemes”). [16.4-16.14]
- 22.2 In adopting any Incentive Scheme, the licence holder shall take all reasonable steps to ensure that the criteria to be applied in determining whether a financial incentive is available (and the amount of any incentive) are aligned with the interests of train operators, passengers, freight operators and freight customers. [16.4-16.14]
- 22.3 The licence holder shall publish details on the terms of any Incentive Scheme adopted under this condition, including:
- (a) details of the categories of persons to whom the Incentive Scheme applies;
 - (b) the maximum entitlement of any such category of persons; and
 - (c) the criteria to be applied in determining the amount of the incentive and the relative weighting given to each criterion. [16.4-16.14]
- 22.4 The licence holder shall publish a statement at least once a year summarising how the criteria referred to in Condition 22.3(c) have been applied in determining the amount of any financial incentives which have been paid, provided that a statement published under this condition is not required to include the amount of financial incentives which have been paid to specified individuals. [16.4-16.14]

Interpretation

- 22.5 In this condition:

“Incentive Schemes”	shall have the meaning set out in Condition 22.1. [16.4, 16.11]
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23 Fees

ORR fees

- 23.1 In each Financial Year, the licence holder shall make a payment to ORR which is the aggregate of:
- (a) the annual fee for this licence, as determined by ORR; and
 - (b) an amount which ORR has determined is a fair proportion of the amount estimated by ORR (following consultation with the Competition and Markets Authority) as having been incurred by the Competition and Markets Authority in the calendar year immediately preceding the end of the Financial Year in connection with references made to it under section 13 of the Act relating to:
 - (i) this licence; or
 - (ii) any class of licence of which ORR determines that this licence forms part. **[18.1]**

23.2 The licence holder shall make the payment determined under Condition 23.1 by such date as ORR requires, being not less than 30 days after the day on which ORR notifies the licence holder of the amount of the payment. **[18.1]**

State Financial Indemnity Fee

23.3 Except with the consent of ORR, the licence holder shall pay to the Secretary of State, at least annually, the State Financial Indemnity Fee. **[3.5]**

Interpretation

23.4 In this condition:

- (a) “Excluded Financial Indebtedness” means any Financial Indebtedness:
- (a) 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;

- (b) between the licence holder and any of its Subsidiaries;
 - (c) between any of the licence holder's Subsidiaries;
 - (d) between Network Rail Infrastructure Finance and any of its Subsidiaries; or
 - (e) between any of Network Rail Infrastructure Finance's Subsidiaries;
- (b) "Financial Indebtedness" means the sum of:
- (a) all financial liabilities arising from all transactions (including any forward sale or purchase agreement) which have the commercial effect of a borrowing;
 - (b) 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
 - (c) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraph (a);
- less
- (d) cash and cash equivalents which are assets or investments that are held for the purpose of meeting short-term cash commitments or other investments with a maturity of twelve months or less for the purpose of pre-funding the repayment of any item referred to in paragraphs (a) to (c).

- (c) “Financial Indebtedness Principles” means the principles that:
- (a) Financial Indebtedness is:
 - (i) 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); and
 - (ii) measured as specified in the Regulatory Accounting Guidelines; and
 - (b) where Financial Indebtedness denominated in a foreign currency is hedged by a foreign currency derivative transaction protecting against or benefiting from fluctuations in foreign exchange rates, the principal amount outstanding shall be calculated by reference to the sterling amount payable under the relevant derivative.
- (d) “State Financial Indemnity” means the financial indemnity provided by the Strategic Rail Authority on 29 October 2004 (and transferred to the Secretary of State on 26 June 2005), which is available until 2052; and
- (e) “State Financial Indemnity Fee” means an amount equal to [1.10] per cent (on an annual basis) of the daily outstanding amount of Financial Indebtedness (other than Excluded Financial Indebtedness), which is:
- (a) incurred by Network Rail Infrastructure Finance;

(b) supported by the State Financial Indemnity; and

(c) calculated in accordance with the Financial Indebtedness Principles. [3.6]

draft

24 Insurance

24.1 The licence holder shall:

- (a) maintain insurance against third party liabilities in respect of the Licensed Activities; and
- (b) only maintain such insurance on terms to which ORR has consented.
[20.1]

draft

25 Claims allocation and handling

25.1 Except where ORR consents otherwise, the licence holder shall at all times be a party to the agreements or arrangements relating to:

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

which have been approved by ORR (the “Relevant Claims Handling Arrangements”). [21.1]

25.2 Except with the consent of ORR, the licence holder shall not, in relation to any of 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 has under any of the Relevant Claims Handling Arrangements; or
- (b) varying the Relevant Claims Handling Arrangements,

other than as provided for under the terms of the Relevant Claims Handling Arrangements. [21.2]

Interpretation

25.3 In this condition:

“Relevant
Claims
Handling
Arrangements”

shall have the meaning set out in
Condition 25.1. [21.2]

26 Regulatory Undertakings

Undertakings from Subsidiaries, Network Infrastructure Finance and its Subsidiaries

26.1 Except where ORR consents otherwise, the licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 26.4) Network Rail Infrastructure Finance and its Subsidiary Undertakings will not after the Effective Date, acquire or retain shares or other investments of any kind except:

- (a) shares or other investments in a body corporate which does not conduct any business or carry on any activity other than:
 - (i) the Permitted Business;
 - (ii) *De Minimis* Business; and
 - (iii) any other business or activity (including financing that business or activity) for which ORR has given its consent for the purposes of this condition,

provided always that where such a body corporate conducts the business or carries on the activities of raising finance for the Permitted Business, that body corporate must be the licence holder or a Subsidiary of the licence holder; and

- (b) investments acquired in the usual and ordinary course of the treasury management operations of, as the case may be the licence holder's Subsidiary Undertakings, Network Rail Infrastructure Finance or its Subsidiary Undertakings, subject to such entity maintaining in force, in relation to its operations, a system of internal controls which complies with best corporate governance practice. **[4.3]**

26.2 The licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 26.4) Network Rail Infrastructure Finance and its Subsidiary Undertakings shall not, from the Effective Date, without the prior consent of ORR:

- (a) enter into an agreement or arrangement incorporating a Cross-Default Obligation; or

- (b) continue or permit to remain in effect any agreement, commitment or arrangement incorporating a Cross-Default Obligation subsisting on the Effective Date, save that any Cross-Default Obligation in existence at that date may remain in effect for so long as and provided that:
 - (i) the Cross-Default Obligation is solely referable to an arrangement, commitment or agreement entered into prior to the Effective Date; and
 - (ii) the terms of that agreement, commitment or arrangement 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,

provided that such Undertakings are not required to prevent the giving of any guarantee which is permitted by and in compliance with Condition 26.3(a).

[4.11, 4.12]

26.3 Except where ORR consents otherwise, the licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 26.4) Network Rail Infrastructure Finance and its Subsidiary Undertakings shall not after the Effective Date:

- (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or any other form of security or encumbrance, undertake any Indebtedness to any other person or guarantee any liability or obligation of another person other than on an arm's length basis, on normal commercial terms and for a Relevant Purpose; or
- (b) transfer, lease, license or lend any sum, asset, right or benefit to any Affiliate or Related Undertaking of the licence holder otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves, subject to Conditions 15.10 and 15.11;
 - (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, on normal commercial terms;
- (v) repayment of any loan or payment under a loan (including, but not limited to, related interest, fees, indemnities and costs) not prohibited by Condition 26.3(a);
- (vi) payments for the surrender of group corporation tax relief or for the surrender of advance corporation tax calculated on a basis not exceeding the value of the benefit received; or
- (vii) an acquisition of shares or other investments in conformity with the restriction on the acquisition of shares or other investments set out in Condition 26.1, made on an arm's length basis and in accordance with normal commercial terms. [4.13]

26.4 For the purposes of Conditions 26.1 to 26.3, where there is an obligation on the licence holder to procure an Undertaking from Network Rail Infrastructure Finance or its Subsidiary Undertakings, the licence holder shall have satisfied that obligation where it has used its reasonable endeavours to procure such an Undertaking. [4.5]

Undertakings from Network Rail Infrastructure Finance

26.5 Except where ORR consents otherwise, the licence holder shall:

- (a) procure from Network Rail Infrastructure Finance an Undertaking 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) *De Minimis* Business; or
 - (iii) any other business or activity for which ORR has given written consent for the purposes of this condition; or

- (b) otherwise procure that Network Rail Infrastructure Finance does not conduct any business or carry on any activity other than for the purpose referred to in Condition 26.5(a). [4.2]

26.6 Except where ORR consents otherwise, the licence holder shall procure from Network Rail Infrastructure Finance an Undertaking requiring it to give to the licence holder:

- (a) all such Information in its possession as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide Information to ORR; and
- (b) such additional Information as ORR requires about the activities of Network Rail Infrastructure Finance. [4.24]

26.7 Except where ORR consents otherwise, the licence holder shall procure from Network Rail Infrastructure Finance an Undertaking requiring Network Rail Infrastructure Finance to:

- (a) prepare and give to the licence holder financial statements in relation to Network Rail Infrastructure Finance and its Subsidiaries; and
- (b) ensure that such financial statements are in such form and cover such periods as is required by the Regulatory Accounting Guidelines. [11.14]

Undertakings from any Ultimate Controller

26.8 Except where ORR consents otherwise, the licence holder shall, procure from any Ultimate Controller an Undertaking (in a form specified by ORR) that the Ultimate Controller will:

- (a) refrain from any action; and
- (b) procure that any person that is a Subsidiary of, or is controlled by, the Ultimate Controller (other than the licence holder and any Subsidiary of the licence holder), will refrain from any action,

which would then be likely to cause the licence holder to breach any of its obligations under the Act or this licence. [4.16, 4.17, 4.18]

26.9 Except where ORR consents otherwise, the licence holder shall procure from each Ultimate Controller an Undertaking (in a form specified by ORR) requiring the Ultimate Controller to:

- (a) give to the licence holder; and
- (b) procure that any person that is a Subsidiary of, or is controlled by, the Ultimate Controller (other than the licence holder and its Subsidiaries) will give to the licence holder,

all such Information as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide Information to ORR and such additional Information as ORR requires about the activities of that Ultimate Controller and its Subsidiaries and the financing of them. [4.20, 4.21, 4.22]

26.10 The licence holder shall procure the Undertakings referred to in Conditions 26.8 and 26.9 within seven days of the person becoming an Ultimate Controller. [4.19, 4.23]

Notification of and enforcing Undertakings

26.11 Wherever the licence holder has procured an Undertaking in accordance with this condition, it shall:

- (a) deliver to ORR evidence (including a copy of all such Undertakings) that the licence holder has complied with the obligation to procure any Undertaking required by this condition;
- (b) ensure that the Undertaking remains in force (or that a further Undertaking is procured meeting the requirements of this condition) for as long as the Subsidiary, Network Rail Infrastructure Finance, the Subsidiary of Network Rail Infrastructure Finance or an Ultimate Controller from whom the Undertaking has been procured remains the Subsidiary, Network Rail Infrastructure Finance, the Subsidiary of Network Rail Infrastructure Finance or an Ultimate Controller, as the case may be;

- (c) inform ORR immediately in writing if the directors of the licence holder become aware that an Undertaking required by this condition is not in place or that its terms have been breached; and
- (d) comply with any direction from ORR to enforce an Undertaking. [4.23, 4.26, 11.15]

Prohibition on agreements and arrangements

26.12 Except where ORR consents otherwise, the licence holder shall not enter (directly or indirectly) into any agreement or arrangement with an Ultimate Controller or any of its Subsidiaries (other than a Subsidiary of the licence holder) at a time when:

- (a) any Undertaking required under Conditions 26.6, 26.8 and 26.9 is not in place;
- (b) there is an unremedied breach of such an Undertaking; or
- (c) the licence holder is in breach of any of Conditions 26.11(a), 26.11(c) or 26.11(d). [4.27]

26.13 Except where ORR consents otherwise, the licence holder shall not enter (directly or indirectly) into any agreement or arrangement with Network Rail Infrastructure Finance or any of its Subsidiaries at a time when:

- (a) the licence holder is in breach of any requirement to procure, or use reasonable endeavours to procure, an Undertaking under Conditions 26.1, 26.2, 26.3, 26.5 and 26.6;
- (b) there is an unremedied breach of such an Undertaking; or
- (c) the licence holder is in breach of the terms of any of Conditions 26.11(a), 26.11(c) or 26.11(d). [4.28]

Interpretation

26.14 In this condition:

- (a) “Information” shall include, in any form or medium, any documents, accounts, estimates, returns, forecasts, reports and data of any kind (whether or not prepared specifically at the request of ORR) of any description specified by ORR; [4.32]
- (b) “Undertaking” means a legally enforceable undertaking in favour of the licence holder; and [4.4]
- (c) “Ultimate Controller” means each of:
- (a) a holding company of the licence holder which is not itself a Subsidiary of another company;
 - (b) 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
 - (c) 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. [4.32]

Schedule - Revocation

1. The Secretary of State may, after consultation with the Office of Rail Regulation², 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

² Now the Office of Rail and Road

- (iii) that cessation of control does not take place within that period.

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ANNEX: Reference table - location of conditions from current licence

The revised draft licence includes changes to the wording and structure of provisions to make the licence more readable and user-friendly and to simplify the drafting in some places. It also includes the removal of some provisions which are considered to be unnecessary to retain in the licence.

The table below shows where provisions in the current licence have been moved or deleted in the new licence. As well as setting out the condition references, the table provides some explanation for drafting amendments where we consider it may be helpful to inform consultees.

This table should be read in conjunction with our June 2018 consultation document which explains a number of new provisions which are set out in the revised licence and the reasoning behind our proposed allocation of current licence obligations to the routes and the System Operator.

Current licence condition	New position in revised licence	Explanation of changes
Network management		
1.1	1.1, 1.2	Network management purpose separated into two provisions to make it easier to read.
1.2	1.3, 1.8	-
1.3	Part II, 7	Interpretation of general/specific requirements moved to Part II (<i>Interpretation</i>) and simplified.
1.4	4.1, 4.3(a), 5.3, 6.1	Requirements relating to planning (applicable to licence holder, System Operator and Route Businesses) now grouped together, in a section on "Network Planning Requirements". Also relevant to current licence conditions 1.5 – 1.13.
1.5	4.3(b)	Forms part of the Network Planning Requirements section.
1.6	4.1, 4.3, 5.3, 6.1	Forms part of the Network Planning Requirements section. Reference to 'route utilisation strategies' removed on the basis that these are no longer relevant to be included in the licence.

Current licence condition	New position in revised licence	Explanation of changes
1.7	Deleted	The reference to all documents being on a network-wide basis is inconsistent with the responsibilities of Route Businesses to prepare documents for the routes. The documents must still meet any requirements set by ORR relating to their scope.
1.8	4.3, 4.5	Forms part of the Network Planning Requirements section.
1.9	Deleted	Deleted on the basis that it is unnecessary.
1.10	4.3, 4.4	Forms part of the Network Planning Requirements section.
1.11	4.4	Forms part of the Network Planning Requirements section.
1.12	4.6	Forms part of the Network Planning Requirements section.
1.13	4.7	Forms part of the Network Planning Requirements section.
1.14	5.4	-
1.15	5.5	-
1.16	4.12, 5.7, 6.2	-
1.17	5.6	-
1.18	5.10	-
1.19(a)	4.8(a)	-
1.19(b)	4.9, 5.8, 6.3	For 5.8, exception added to make clear that the System Operator is not in breach of the requirement if it proposes changes to policies/criteria as part of a Long Term Plan.
1.19(c)	4.8(d)	-
1.20	4.10, 4.11, 6.4, 6.5	-
1.21	Deleted	The provision is unnecessary. Excluded Assets are captured within the definitions provisions in Part II (Interpretation).
1.22	4.8(b)	-
1.23	5.11	-

Current licence condition	New position in revised licence	Explanation of changes
1.24	Part II, 1, 5.21(b), (d), (e)	Definitions used in more than one condition moved to Part II (<i>Interpretation</i>). Definitions relevant to SO Functions moved to Condition 5 (<i>The System Operator network responsibilities</i>).
Information for passengers		
2.1	1.4	-
2.2	1.5, 1.8	-
2.3	Part II, 7	Interpretation of general/specific requirements moved to Part II (<i>Interpretation</i>) and simplified.
2.4	5.14	-
2.5(a)	5.13	-
2.5(b)	5.12	-
2.6	5.15	-
2.7	5.16, 5.21(c)	Definition of “Relevant Changes” moved to definition provision of the condition.
2.8	5.17(a)	Reworded to make clear that it is setting out circumstances where there will be no breach.
2.9	5.17(b)	Reworded to make clear that it is setting out circumstances where there will be no breach.
2.10	5.18, 5.19, 5.20, 5.21(a)	Provision split for readability.
Financial indebtedness		
3.1	Deleted	See Part B of our June 2018 consultation document
3.2	Deleted	See Part B of our June 2018 consultation document
3.3	Deleted	See Part B of our June 2018 consultation document
3.4	Deleted	See Part B of our June 2018 consultation document.

Current licence condition	New position in revised licence	Explanation of changes
3.5	23.3	-
3.6	23.4	Definitions relating to the State Financial Indemnity Fee rearranged for readability. The percentage value for this fee will be considered further and may be subject to change. To be finalised with the PR18 final determination as part of our decisions on cost of capital.
Financial ring-fence		
4.1	Part II, 1, 15.1-15.2	New definition of “ <i>De Minimis</i> Business” to simplify the drafting and remove duplication.
4.2	26.5	All provisions requiring undertakings to be procured have been moved to a separate condition in Condition 26 (following the other corporate conditions) and grouped to make the licence more user-friendly.
4.3	15.3, 26.1	Undertakings moved to a separate condition
4.4	26.14(b)	Moved to become a defined term to make the licence more user-friendly and simplified.
4.5	26.4	-
4.6	Deleted	Deleted on the basis that it is unnecessary detail to be set out in licence conditions.
4.7	15.4	Drafting split for readability.
4.8, 4.9(e)	15.5	Merged for readability.
4.9 (a) - (c)	15.13 (a) - (c)	Definitions applicable to whole condition moved to definitions provision. We will consider updating the definitions for “Investment Turnover Limit” and “Indexed Investment Limit”, so that indexation is by reference to the Consumer Price Index (CPI), rather than the Retail Price Index (RPI), in line with our approach to indexation for PR18.
4.9(d)	15.6	Drafting split for readability. We will give further consideration to whether the dates set out in this provision should be updated.
4.10	15.7	Reworded to make the provision simpler.
4.11	15.8, 26.2	Undertakings moved to a separate condition. Lengthy paragraph split for readability.

Current licence condition	New position in revised licence	Explanation of changes
4.12	15.8, 26.2	-
4.13	15.9, 26.3	Undertakings moved to a separate condition. References to land disposal condition moved for readability.
4.14	2.17, 2.18, 2.19	See Part A of our June 2018 consultation document.
4.15	Deleted	See Part B of our June 2018 consultation document.
4.16-4.18	26.8	Provisions rearranged to simplify drafting.
4.19	26.10	-
4.20 - 4.22	26.9	Provisions rearranged to simplify drafting.
4.23	26.10, 26.11	-
4.24	26.6, 26.8	-
4.26	26.11	Provision added to make more readable the requirement to maintain undertakings over time.
4.27	26.12	Drafting split for readability.
4.28	26.13	Drafting split for readability.
4.29	15.10	Change to state expressly that the obligation relates to the licence holder.
4.30	15.11	-
4.31	15.12	-
4.32	Part II, 1, 15.13(d), (e), (f), 26.14(a), (c)	Definitions relevant to ring-fencing and undertakings conditions moved to Part II (<i>Interpretation</i>). Definitions relevant to undertakings condition only moved to that condition.
Interests in railway vehicles		
5.1	17.1, 17.2	-
5.2	17.3	-

Current licence condition	New position in revised licence	Explanation of changes
5.3	17.4	-
5.4	17.1	Exceptions made more prominent to make the condition more user-friendly.
Prohibition of cross subsidy		
6.1	18.1, 18.6	-
6.2	18.3-18.5	Lengthy paragraph split for readability.
6.3-6.5	18.2	Exceptions moved into a single list for readability.
Land disposal		
7.1	16.1, 16.6	-
7.2	16.1	-
7.3	16.2-16.3	Timing requirements for the notice set out more expressly to make the condition more readable.
7.4	16.4	-
7.5	16.5	Amended to state expressly where ORR's consent is deemed to have been given, to make the provision more readable.
7.6	Deleted	Deleted on the basis that it is unnecessary detail to be set out in licence conditions and has been long-standing published policy.
7.7	16.7	-
Stakeholder relationships		
8.1	1.6	-
8.2	1.7, 1.8	Includes strengthened stakeholder engagement duty (explained in para 10 above).
8.3	Part II, 7	Interpretation of general/specific requirements moved to Part II (<i>Interpretation</i>) and simplified.
8.4	Deleted	See Part B of our June 2018 consultation document

Current licence condition	New position in revised licence	Explanation of changes
8.5	Deleted	See Part B of our June 2018 consultation document.
8.6	11.1	-
8.7	Deleted	Deleted on the basis that this is unnecessary.
8.8	Part II, 1	Moved to Part II (Interpretation) and new definition adopted – see Part A of our June 2018 consultation document.
Non-discrimination		
9.1	19.1-19.2	To simplify the provision, ORR proposes to remove its ability to consent. ORR does not consider that it would consent to unduly discriminatory conduct.
Information for ORR		
10.1	7.1, 7.5	-
10.2	7.3	-
10.3	7.2	-
10.4	Part II, 13	Moved to Part II (<i>Interpretation</i>), because the provision applies to the licence generally.
10.5	Deleted	Deleted on the basis that it is unnecessary to state this expressly in the licence.
Regulatory accounts		
11.1	Deleted	Deleted on the basis that it is not necessary to retain such a provision in the licence.
11.2	8.1	Drafting split for readability.
11.3	8.3, 8.4	Lengthy paragraph with more than one obligation split for readability.
11.4	Deleted	This provision contains detailed and specific accounting rules. It has been deleted as it would be more appropriate for these details to be set out in Regulatory Accounting Guidelines.

Current licence condition	New position in revised licence	Explanation of changes
11.5	8.5, 8.7	Provision split to make it more readable.
11.6	8.5, 8.7	Simplified to set out the different matters which can be certified in accordance with the condition, whilst allowing ORR to publish separately the detail of the statements themselves. It is not appropriate for this detail to be included in the licence condition.
11.7	8.8	-
11.8	8.9	Reference to information around the re-opener provisions removed on the basis that it is unnecessary.
11.9	Part II, 1, 8.1(b)	New definition of “Regulatory Accounting Guidelines” moved to Part II (<i>Interpretation</i>). Drafting simplified to remove some unnecessary text.
11.10	8.11	Drafting split for readability.
11.11	8.12	Drafting split for readability.
11.12	8.10	Drafting split for readability.
11.13	8.13, 8.14	Split for readability. Reference to ORR extending timescales removed on the basis that this is unnecessary – it is covered by a rule of interpretation in Part II (<i>Interpretation</i>).
11.14	26.7	Undertaking provision moved to undertaking condition.
11.15	26.11	-
11.16	8.10(a)	-
Annual and periodic returns		
12.1	9.3	Order of periodic and annual returns reversed to make the provision more user-friendly.
12.2	9.4	-
12.3	9.5	-
12.4	9.6	Amended to set out a simpler method for explaining where the licence holder is required to adopt the previous reporting requirements and reporting date.

Current licence condition	New position in revised licence	Explanation of changes
12.5	9.7	Remove reference to consultation with ORR on the basis that it is unnecessary.
12.6	9.1, 9.2, 9.9(c)	Provision split for readability.
Reporters		
13.1	Deleted	This provision sets out the purpose of the condition. It has been deleted on the basis that it is not necessary to retain such a provision in the licence.
13.2	10.1, 10.2, 10.8, 10.10	Changed to set out expressly the circumstances in which ORR may require a reporter to conduct an inquiry.
13.3	10.3	-
13.4	10.4	-
13.5	10.6, 10.9, 10.10	-
13.6	10.5, 10.7	-
13.7	10.10	-
Restricted use of information		
14.1	20.1, 20.3, 20.6	Exceptions moved into a single list to make the provision more readable.
14.2	20.2, 20.4	Provision split for readability.
14.3	20.5	Change made to the definition of “Protected Information” to make clear that the reference to agreements is to agreements referred to in the Railways Act 1993.
Governance		
15.1	21.1	Make more readable the circumstances in which the licence holder is required to act so far as reasonably practicable.
15.2	21.2	Date of publication of the UK Corporate Governance Code updated.

Current licence condition	New position in revised licence	Explanation of changes
Management incentive plan		
16.1	Deleted	Deleted on the basis that the provision is out of date.
16.2	Deleted	Deleted on the basis that the provision is out of date.
16.3	Deleted	Deleted on the basis that the provision is out of date.
16.4 – 16.14	22.1 – 22.5	Simplified and amended in line with the explanation set out in Part A above.
Fees		
18.1	23.1, 23.2	Reference to Competition and Markets Authority updated.
Change of control		
19.1	Deleted	See Part B of our June 2018 consultation document
Insurance		
20.1	24.1	Drafting split for readability.
Claims allocation and handling		
21.1	25.1	-
21.2	25.2 -25.3	-
Safety and standards		
22.1	12.1	Added provision for an exception where ORR consents, in line with the explanation set out in Part A above.
22.2	12.2(a)(b), 12.4(a)	Added provision relating to Railway Industry Standards, in line with the explanation set out in Part A above.
22.3	12.5	-

Current licence condition	New position in revised licence	Explanation of changes
Environment		
23.1	13.1-13.2, 13.5, 13.7	Lengthy paragraph split for readability.
23.2	13.3	-
23.3	13.4	-
Rail Delivery Group		
25.1	14.1-14.2	-
25.2	14.3	-



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