

Network Licence
granted to
Network Rail Infrastructure Limited

(As at 1 April 2019)

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

Table of contents

	Page
Part I - Scope.....	1
Part II - Interpretation	2
Part III – Conditions.....	18
Part A Core Duties and structure	18
1 Core Duties	18
2 Structure of the licence holder	21
3 Sufficient Resources	26
4 Managing change.....	27
Part B Network management	28
5 General network management responsibilities.....	28
6 Route Business network management responsibilities	31
7 System Operator network management responsibilities	34
Part C Information requirements	40
8 Information for ORR.....	40
9 Regulatory accounts.....	41
10 Periodic and annual returns.....	47
11 Reporters	49
Part D Industry obligations	51
12 Information on Stakeholder dealings	51
13 Safety and standards	52
14 Environment	53
15 Rail Delivery Group.....	54
Part E Restrictions on activities	55
16 Financial ring-fence.....	55

17	Land Disposal.....	61
18	Interests in railway vehicles.....	62
19	Cross-subsidy	63
20	Non-discrimination	65
21	Restricted use of Protected Information.....	66
Part F	Corporate matters	67
22	Corporate Governance	67
23	Incentive Schemes.....	68
24	Fees.....	69
25	Insurance	70
26	Claims allocation and handling	71
27	Regulatory Undertakings.....	72
	Schedule - Revocation	77

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;
“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 of and Schedule 6 to the Companies Act 2006;
“Annual Return”	has the meaning set out in Condition 10.4;
“Annual Return Requirements”	has the meaning set out in Condition 10.5;
“Auditor”	has the meaning set out in Condition 9.10;
“Capacity Allocation Process”	has the meaning set out in Condition 7.9;
“Code”	means the Railway Group Standards Code established by RSSB;
“Constitution Agreement”	means the contract of that name which sets out the purpose and governance of RSSB and to which members of RSSB must be a party;
“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: <ul style="list-style-type: none">(a) 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(b) 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;

- “Core Duties” means the Network Management Duty, the Passenger Information Duty and the Stakeholder Engagement Duty;
- “CPI” means the Consumer Prices Index (all items) whose value is published by the Office for National Statistics each month in its statistical bulletin on consumer price inflation or:
- (a) if the Consumer Prices Index for any month has not been published on or before the last day of the third month after such month, such other index for such month or months as ORR, following consultation with the licence holder, determines to be appropriate in the circumstances; or
 - (b) if there is a material change in the basis of the Consumer Prices Index, such other index as ORR, after consultation with the licence holder, determines to be appropriate in the circumstances;
- “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 16.1(b) and 16.1(c) or for the purpose of financing the business and activities referred to in Condition 16.1;

“Delivery Plan”	means a plan which: <ul style="list-style-type: none"> (a) sets out what the licence holder is proposing to do to comply with the Network Management Duty (or, as the case may be, what the Route Business or System Operator is proposing to do to comply with the Network Management Duty in the performance of its functions); and (b) is prepared in such format and structure, to such standard and level of detail so as to enable: <ul style="list-style-type: none"> (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, <p style="text-align: center;">in each case with a reasonable degree of assurance;</p>
“ <i>De Minimis</i> 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 16.3 to 16.6;
“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;
“Disposal Notice”	has the meaning set out in Condition 17.2;
“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;
“Environmental Policy”	has the meaning set out in Condition 14.1(a);
“Effective Date”	means 1 April 2009;

“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;
“Excluded Party”	means: <ul style="list-style-type: none"> (a) the licence holder; (b) Network Rail Infrastructure Finance; and (c) the Secretary of State, but only to the extent that: <ul style="list-style-type: none"> (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;
“Financial Year”	means a 12 month period beginning on 1 April;
“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;
“Incentive Scheme”	means a scheme which provides for financial incentives to be made available to any of the licence holder’s directors and employees or those of its Subsidiaries, where the incentive available is linked to: <ul style="list-style-type: none"> (a) the personal performance of those directors and employees; or (b) the performance of the licence holder (including the performance of one or more Route Businesses or of the System Operator) or its Subsidiaries;

“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;
“Indexed Investment Limit”	means the sum of £304 million plus the amount that is produced when £304 million is multiplied by the percentage change (whether expressed as a positive or negative figure) between the most recent CPI published or determined and as published or determined in respect of October 2018;
“Indexed Turnover Limit”	in respect of a Financial Year means the sum of £203 million plus the amount that is produced when £203 million is multiplied by the percentage change (whether expressed as a positive or negative figure) between the CPI as published or determined in respect of April in that Financial Year and as published or determined in respect of October 2018;
“Land”	includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land;
“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;
“Long Term Plans”	has the meaning set out in Condition 7.5;
“Long Term Planning Objective”	means, in relation to a Long Term Plan, the effective and efficient use and development of the capacity available on the Network, consistent with: <ul style="list-style-type: none"> (a) the funding that is, or may become, available during the period of the Long Term Plan; and (b) the requirements of this licence;
“Managing Change Policy”	means the document of that title, which ORR, from time to time, notifies to the licence holder following consultation, setting out the processes and principles relating to the making of Relevant Changes;

- “Network” means:
- (a) the network of which the licence holder is the operator under this licence; and
 - (b) in (and for the purposes of):
 - (i) the definitions of Long Term Planning Objective and Relevant Assets; and
 - (ii) Conditions 1.1, 1.2 and 2.6(a),
- also includes any station or light maintenance depot in which the licence holder has an estate or interest, or over which the licence holder has a right;
- “Network Business” means:
- (a) the business of providing and operating the Network, including the maintenance, renewal, replacement, improvement, enhancement and development of the Network; and
 - (b) any ancillary service related to the business and activities in paragraph (a);
- and (without limitation) includes:
- (i) the purpose of financing the business referred to in paragraph (a) and the services referred to in paragraph (b); and
 - (ii) any payment or transaction lawfully made or undertaken by the licence holder for a purpose within Conditions 16.8(b)(i) to (vii);
- “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;
- “Network Management Duty” has the meaning set out in Condition 1.3;

“Network Planning Documents”	means plans, strategies or other documents demonstrating the licence holder’s compliance and proposed compliance with the Network Management Duty (or, as the case may be, the Route Business’s or System Operator’s compliance and proposed compliance with the Network Management Duty in the performance of its functions), including: <ul style="list-style-type: none"> (a) a Delivery Plan; and (b) such other plans, strategies or documents that ORR reasonably requires the licence holder (or, as the case may be, a Route Business or the System Operator) to prepare from time to time;
“Network Rail Infrastructure Finance”	means: <ul style="list-style-type: none"> (a) Network Rail Infrastructure Finance plc; and (b) (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;
“ORR”	means the Office of Rail and Road;
“Passenger Information Duty”	has the meaning set out in Condition 1.6;
“Periodic Return”	has the meaning set out in Condition 10.1;
“Permitted Business”	means the Network Business and the Permitted Non-Network Business;
“Permitted Non-Network Business”	means any business, other than the Network Business and the exploitation of land (which includes the disposal of land within the meaning of Condition 17 (<i>Land Disposal</i>)), of the type transferred to the licence holder under the Railtrack Transfer Scheme;
“Permitted Purpose”	means the purposes of the Permitted Business;

“Planning Document Requirements and Guidelines”

means the requirements and guidelines relating to the Network Planning Documents and Long Term Plans, including in relation to:

- (a) the period in respect of which any such document is prepared;
- (b) the format, structure, standard and level of detail of any such document; and
- (c) how any such document is provided to ORR or published,

as ORR from time to time notifies to the licence holder following consultation, provided that any requirement or guideline relating to a Delivery Plan shall apply only if it is notified to the licence holder not less than 5 months before the Delivery Plan is to be published;

“Potential Funder”

means any person who has expressed to the licence holder in writing a serious and credible interest in providing or intention to provide finance for or in connection with:

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

“Potential Provider”

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

“Protected Information”	<p>means any information which:</p> <ul style="list-style-type: none"> (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, <p>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 Condition 21;</p>
“Rail Industry Standards”	has the meaning set out in the Standards Manual, established by RSSB;
“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;
“Railway Group Standards”	means standards authorised under the Code;
“RDG”	means Rail Delivery Group Limited (a company limited by guarantee and registered in England and Wales under number 08176197);
“RDG Articles”	means the articles of association of RDG;
“Regulatory Accounting Guidelines”	<p>means those requirements and guidelines issued by ORR from time to time which set out:</p> <ul style="list-style-type: none"> (a) the format and content of the regulatory financial statements and the accounting policies to be applied in their preparation; (b) any requirements to provide information on any transactions or arrangements between the licence holder and any Affiliate or Related Undertaking; (c) requirements for the licence holder to prepare and publish information in respect of proposed enhancements and enhancements actually made; and

	(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;
"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;
"Relevant Assets"	means: <ul style="list-style-type: none"> (a) any Land; (b) any railway assets; and (c) any other assets (including information technology systems) which have, or are designed to have, a dedicated use in the operation, maintenance, renewal, replacement, improvement, enhancement or development of the Network, <p>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, but excluding for the purposes of any provision assets falling within a description or class which ORR determines to be subject to an exclusion from the application of that provision;</p>
"Relevant Change"	has the meaning set out in the Managing Change Policy;
"Relevant Claims Handling Arrangements"	has the meaning set out in Condition 26.1;
"Relevant Date"	means 1 January 2003;

“Relevant Industry Processes”	means arrangements, whether contractual, regulatory or voluntary, to which the licence holder is a party, or is subject, which involve establishing, or making changes to, a timetable;
“Relevant Other Business”	means any business which is conducted or any activity which is carried on, which is: <ul style="list-style-type: none"> (a) not for a Permitted Purpose; and (b) not a business or activity to which ORR has given its prior consent under Condition 16 (<i>Financial Ring-fence</i>) or, as the case may be, Condition 27 (<i>Regulatory Undertakings</i>);
“Relevant Period”	means one of 13 consecutive periods in each Financial Year, each such period being: <ul style="list-style-type: none"> (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;
“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;
“Relevant Purpose”	means: <ul style="list-style-type: none"> (a) for a Permitted Purpose; (b) for the purposes of <i>De Minimis</i> Business conducted in accordance with Conditions 16.3 to 16.6; or (c) for any business or activity for which ORR has given its prior consent under Condition 16 (<i>Financial Ring-fence</i>) or, as the case may be, Condition 27 (<i>Regulatory Undertakings</i>);
“Relevant Timetable Changes”	means changes to the national timetable of railway passenger services occasioned by: <ul style="list-style-type: none"> (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;

“Reporter”	means a person appointed by ORR for the purposes of Condition 11 (<i>Reporters</i>) in accordance with any criteria and procedure set out in the Reporter Guidelines;
“Reporter Guidelines”	has the meaning set out in Condition 11.5;
“Resources”	includes (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities;
“Route Area”	has the meaning set out in Condition 2.2;
“Route Business”	has the meaning set out in Condition 2.3;
“Route Functions”	has the meaning set out in Condition 2.3;
“Route Responsible Officer”	has the meaning set out in Condition 2.5(a);
“RSSB”	means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675);
“Rules of the Financial Conduct Authority”	means the rules made by or under Part VI of the Financial Services and Markets Act 2000 and contained in the FCA Handbook, or equivalent rules of any successor body;
“System Operator”	has the meaning set out in Condition 2.6;
“SO Functions”	has the meaning set out in Condition 2.6;
“SO Responsible Officer”	has the meaning set out in Condition 2.8(a);
“Stakeholder”	means any person: <ul style="list-style-type: none"> (a) who has, or in the future is likely to have, a significant relationship with the licence holder; (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; or
- (ii) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;

“Stakeholder Engagement Duty” has the meaning set out in Condition 1.8;

“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;

“Subsidiary” has the meaning set out in section 1159 of the Companies Act 2006;

“Subsidiary Undertaking” has the meaning set out in section 1162 of the Companies Act 2006;

“the UK Corporate Governance Code” means the code published by the Financial Reporting Council in July 2018, or any successor document having a similar purpose and content; and

“Undertaking” means a legally enforceable undertaking in favour of the licence holder.

Definitions and rules of interpretation in legislation

2. The Interpretation Act 1978 shall apply to this licence as if it were an Act of Parliament.
3. 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.

General rules of interpretation

4. 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.
5. In interpreting this licence, headings shall be disregarded.

6. 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 (or, as the case may be, a Route Business or the System Operator) shall at all times comply with the more general obligations.

Route Business and System Operator Responsibilities

7. Where, in this licence, a provision states that a Route Business “shall” comply with a specified obligation (including a restriction), in each case this means that the licence holder must ensure that the Route Business complies with that obligation on the licence holder’s behalf, provided that in doing so the Route Business may be assisted by any other Route Business, the System Operator or any other business unit of the licence holder.
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 means that the licence holder must ensure that the System Operator complies with that obligation on the licence holder’s behalf, provided that in doing so the System Operator may be assisted by any Route Business or any other business unit of the licence holder.
9. Where, in this licence, a provision refers to an obligation on each Route Business and the System Operator “in the performance of their functions”, this means:
 - (a) in the case of the Route Business, in its performance of its Route Functions; and
 - (b) in the case of a System Operator, in the performance of the SO Functions.

Time limits

10. Where in this licence the licence holder (or, as the case may be, a Route Business or the System Operator) 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.

11. 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 it considers are likely to be affected by the variation.

Provision of information

12. Where a condition of this licence requires the licence holder (or, as the case may be, a Route Business or the System Operator) 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.

Disclosure of information

13. Where in this licence there is a requirement relating to the disclosure of information by the licence holder (or, as the case may be, a Route Business or the System Operator), references to the disclosure of information shall include authorising disclosure of, or access, to such information.

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; and
 - (b) any consent given shall be in writing and may be expressed in general or specific terms.

Notification of requirements, guidelines etc.

15. Where in this licence there is a provision for ORR to notify something to the licence holder following consultation, ORR shall consult the licence holder and

take into consideration any representations duly made before notifying the licence holder.

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 III – Conditions

Part A 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 requirements set out in Condition 1.2.
- 1.2 For these purposes, the requirements 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.
- 1.3 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”).
- 1.4 In complying with the Network Management Duty, the licence holder shall in particular ensure that it duly takes into account the interests of all classes of passenger operator and freight operator in satisfying the requirements set out in Condition 1.2.

Passenger Information Duty

- 1.5 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 Network (including when there is disruption) to enable train operators to meet their information obligations to passengers and prospective passengers (including obligations to enable railway passengers to plan and make their journeys with a reasonable degree of assurance).
- 1.6 The licence holder shall:
- (a) achieve the Passenger Information Purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available; and
 - (b) cooperate with train operators whenever necessary to achieve the Passenger Information Purpose
- (the “Passenger Information Duty”).

Stakeholder Engagement Duty

- 1.7 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.
- 1.8 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; and
 - (b) ensure that its engagement with Stakeholders is:
 - (i) effective in supporting the licence holder’s achievement of the Network Management Purpose and the Passenger Information Purpose, including by ensuring Stakeholders’ views are duly taken into account;

- (ii) inclusive, in that the licence holder seeks to involve all relevant Stakeholders in a fair and proportionate manner, including by adopting different approaches to reflect Stakeholders' different capabilities and interests;
- (iii) well-governed, in that it is underpinned by effective processes and governance arrangements; and
- (iv) transparent, in that sufficient information is made available to enable effective engagement with Stakeholders

(the "Stakeholder Engagement Duty").

Route Business and System Operator responsibilities

- 1.9 Each Route Business and the System Operator shall comply with the Core Duties in the performance of their functions.

2 Structure of the licence holder

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

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) the geographical area covered by the Network in Scotland is designated into one or more Route Areas; and
 - (b) the remaining geographical area covered by the Network is designated into one or more Route Areas.
- 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:
 - (i) the part of the Network falling within that Route Area; and
 - (ii) any station in relation to which the Route Business is given this responsibility by the licence holder,provided that this shall not include taking primary responsibility for matters set out in Condition 2.6(b) and this paragraph shall not require a Route Business to take primary responsibility for running the process for managing the allocation of capacity on that part of the Network; and
 - (b) comply with the Route Business’s obligations under this licence (together the Route Business’s “Route Functions”).
- 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).
- 2.5 In particular, those governance arrangements must:

- (a) ensure that for each Route Business there is an officer appointed 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 use of the Route Business and in respect of the part of the Network falling within its Route Area (whether provided to the Route Business by the licence holder or by a third party); and
 - (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 (including the requirement under the Network Management Duty to act in an efficient and economical manner) or otherwise by or under any enactment; and
- (c) where a Route Business is not enabled to make such a choice, ensure that the 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.

The System Operator

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

- (a) promote the coordinated and integrated operation and development of the Network;
- (b) take primary responsibility for:
 - (i) establishing and maintaining Long Term Plans to promote the Long Term Planning Objective;

- (ii) establishing and maintaining the process for managing the allocation of capacity on the Network and providing advice in relation to capacity allocation;
 - (iii) running the process for timetabling railway services (and timetabling 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").

2.7 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).

2.8 In particular, those governance arrangements must:

- (a) ensure that there is an officer appointed 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 (whether provided to the System Operator by the licence holder or by a third party);
 - (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 (including the requirement under the Network Management Duty to act in an efficient and economical manner) or otherwise by or under any enactment; and
- (c) where the System Operator is not enabled to make such a choice, 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.

Freight and passenger services crossing Route Areas

2.9 The licence holder shall ensure that the structure of the Network Business and its governance arrangements enable it to duly take into account:

- (a) the interests of freight operators; and
- (b) the interests of passenger operators in respect of passenger services which cross more than one Route Area.

2.10 For the purposes of Condition 2.9, the licence holder shall adopt an effective structure, which may include establishing and maintaining one or more business units to take primary responsibility for ensuring that such interests are duly taken into account.

Establishing and maintaining business units

2.11 The licence holder shall assign such personnel to Route Businesses and the System Operator as it considers appropriate to ensure compliance with this licence.

2.12 The licence holder shall allocate:

- (a) to a Route Business any Relevant Assets which constitute the part of the Network falling within its Route Area and any Relevant Assets which constitute a station in relation to which the Route Business has primary responsibility under Condition 2.3(a); and
- (b) to a Route Business or the System Operator such other Relevant Assets as the licence holder considers appropriate to ensure compliance with this licence.

2.13 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 which are assigned to it;
- (ii) the Relevant Assets which are allocated to it;
- (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).

Cooperation and assistance

- 2.14 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.
- 2.15 Each Route Business and the System Operator shall provide any cooperation and assistance to the licence holder (including, as the case may be, to any Route Business and the System Operator) as is reasonably required of them to enable compliance with this licence.

Commercially sensitive information

- 2.16 The licence holder shall establish, maintain and comply with arrangements to ensure that commercially sensitive information obtained by a Route Business or the System Operator in the performance of its functions is treated appropriately and disclosed only to the extent necessary for the conduct of the Network Business in accordance with this licence or disclosed otherwise with the consent of the person to whom the information relates.

3 Sufficient Resources

3.1 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 the interests of passenger operators in respect of services which cross more than one Route Area;
- (b) enable the Route Businesses and the System Operator 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.

Route Business and System Operator responsibilities

3.2 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.

3.3 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 Managing change

4.1 The licence holder shall:

- (a) only make a Relevant Change where, before making it, the licence holder has complied 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.

4.2 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.

Part B Network management

5 General network management responsibilities

Planning

5.1 The licence holder shall plan how it will comply with the Network Management Duty over the short, medium and long term to meet reasonably foreseeable future demand for railway services.

5.2 In undertaking that planning, the licence holder shall:

(a) consult, and take into account the views of:

(i) each Route Business and the System Operator;

(ii) persons providing services relating to railways (including the views of freight operators and the views of passenger operators in respect of passenger services which cross more than one Route Area); and

(iii) Funders,

so as to facilitate effective industry-wide planning;

(b) prepare its Network Planning Documents (including its Delivery Plan), taking into account the contents of Network Planning Documents prepared by the Route Businesses and the System Operator;

(c) revise its Network Planning Documents whenever this is reasonably required by ORR;

(d) provide its Network Planning Documents to ORR; and

(e) publish its Delivery Plan (subject to Condition 5.4) and, where required under Condition 5.3, other of its Network Planning Documents.

5.3 The licence holder shall ensure that each of its Network Planning Documents is prepared, provided to ORR and published in accordance with any Planning Document Requirements and Guidelines.

5.4 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.

Asset management policies and criteria

5.5 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 (including satisfying the reasonable requirements of freight operators and the reasonable requirements of passenger operators in respect of passenger services which cross more than one Route Area);
- (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;
- (c) in its development and revision of those policies and criteria, consult each Route Business and the System Operator; 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.

5.6 The licence holder shall apply the policies and criteria which it has adopted.

Maintaining asset information

5.7 The licence holder shall maintain:

- (a) appropriate information about the Relevant Assets, other than (for the purpose of this condition) 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.

5.8 The information maintained under Condition 5.7 must be accurate and readily accessible.

Due regard to the Long Term Plans

5.9 The licence holder shall have due regard to the Long Term Plans when carrying out its Licensed Activities.

Capacity allocation

5.10 In complying with the Network Management Duty, the licence holder shall:

- (a) ensure that the Capacity Allocation Process (established and maintained under Condition 7.9) is complied with;
- (b) ensure that decisions in respect of the allocation of capacity on the Network are made by persons with appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination); and
- (c) at all times have appointed an officer who has overall responsibility for the operation of the Capacity Allocation Process.

6 Route Business network management responsibilities

Planning by the Route Businesses

- 6.1 Each Route Business shall plan how it will comply with the Network Management Duty in the performance of its Route Functions over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 6.2 In undertaking that planning, each Route Business shall:
- (a) consult, and take into account the views of:
 - (i) persons providing services relating to railways on the part of the Network falling within its Route Area (including the views of freight operators and the views of passenger operators in respect of passenger services which also cross other Route Areas); and
 - (ii) Funders,so as to facilitate effective industry-wide planning;
 - (b) prepare its Network Planning Documents (including its Delivery Plan);
 - (c) revise its Network Planning Documents whenever this is reasonably required by ORR;
 - (d) provide its Network Planning Documents to ORR; and
 - (e) publish (subject to Condition 6.4) its Delivery Plan and, where required under Condition 6.3, other of its Network Planning Documents.
- 6.3 Each Route Business shall ensure that each of its Network Planning Documents prepared under this condition is prepared, provided to ORR and published in accordance with any Planning Document Requirements and Guidelines.
- 6.4 The Route Business 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.

Due regard to the Long Term Plans

6.5 Each Route Business shall have due regard to the Long Term Plans in the performance of its Route Functions.

Asset management policies and criteria

6.6 Each Route Business shall apply the policies and criteria adopted under Condition 5.5 in the performance of its Route Functions.

Maintaining asset information

6.7 Each Route Business shall maintain appropriate information about the Relevant Assets which have been allocated to it by the licence holder, including information about their condition, capability and capacity.

6.8 The information maintained under Condition 6.7 must be accurate and readily accessible.

Capacity allocation

6.9 In complying with the Network Management Duty, each Route Business shall promptly and duly respond to:

- (a) any requests for information in relation to the allocation of capacity on the part of the Network falling within its Route Area, taking all reasonable steps to ensure that information provided is accurate; and
- (b) any requests for advice on the allocation of capacity on that part of the Network, ensuring that such advice is given by persons with appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination).

- 6.10 In complying with the Network Management Duty, each Route Business shall comply with any other responsibilities which are set out for it in the Capacity Allocation Process (established and maintained under Condition 7.9).
- 6.11 In complying with the Network Management Duty, each Route Business shall cooperate with any Potential Provider, Potential Funder or appropriate franchising authority so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the Network may be satisfied.

7 System Operator network management responsibilities

System Operator Planning

- 7.1 The System Operator shall plan how it will comply with the Network Management Duty in the performance of the SO Functions over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 7.2 In undertaking that planning, the System Operator shall:
- (a) consult, and take into account the views of:
 - (i) persons providing services relating to railways (including the views of freight operators and the views of passenger operators in respect of passenger services which cross more than one Route Area); and
 - (ii) Funders,so as to facilitate effective industry-wide planning;
 - (b) prepare its Network Planning Documents (including its Delivery Plan);
 - (c) revise its Network Planning Documents whenever this is reasonably required by ORR;
 - (d) provide its Network Planning Documents to ORR; and
 - (e) publish its Delivery Plan (subject to Condition 7.4) and, where required under Condition 7.3, other of its Network Planning Documents.
- 7.3 The System Operator shall ensure that each of its Network Planning Documents is prepared, provided to ORR and published in accordance with any Planning Document Requirements and Guidelines.
- 7.4 The System Operator 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.

Long Term Plans

7.5 In addition to its other planning activities, the System Operator shall:

- (a) establish and maintain plans to promote the Long Term Planning Objective (“Long Term Plans”), in a manner which enables the licence holder to comply with the Network Management Duty to meet reasonably foreseeable future demand for railway services;
- (b) in preparing Long Term Plans consult, and take into account the views of:
 - (i) persons providing services relating to railways (including the views of freight operators and the views of passenger operators in respect of passenger services which cross more than one Route Area); and
 - (ii) Funders,so as to facilitate effective industry-wide planning;
- (c) secure that the decisions in respect of Long Term Plans are made by persons with appropriate expertise and in a transparent and impartial manner (including that there is no undue discrimination, in particular between different Route Businesses);
- (d) 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;
- (e) provide its Long Term Plans to ORR; and
- (f) where required under Condition 7.6, publish its Long Term Plans.

7.6 The System Operator shall ensure that each Long Term Plan is prepared, provided to ORR and published in accordance with any Planning Document Requirements and Guidelines.

Due Regard to the Long Term Plans

7.7 The System Operator shall have due regard to the Long Term Plans in the performance of the SO Functions.

Asset management policies and criteria

7.8 The System Operator shall apply the policies and criteria adopted under Condition 5.5 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.

Capacity allocation

7.9 In complying with the Network Management Duty, the System Operator shall:

- (a) establish and maintain an efficient and effective process for managing the allocation of capacity on the Network (the “Capacity Allocation Process”), which:
 - (i) reflects best practice; and
 - (ii) clearly assigns responsibilities for all parts of the process;
- (b) keep the Capacity Allocation Process under review and where necessary and appropriate, make changes to it; and
- (c) comply with any other responsibilities which are set out for it in the Capacity Allocation Process.

7.10 In complying with the Network Management Duty, the System Operator shall:

- (a) promptly and duly respond to any requests for information in relation to the allocation of capacity, taking all reasonable steps to ensure that information provided is accurate; and
- (b) promptly and duly respond to any requests for advice on the allocation of capacity, ensuring that such advice is given by persons with

appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination).

- 7.11 In complying with the Network Management Duty, the System Operator shall cooperate with any Potential Provider, Potential Funder or appropriate franchising authority so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the Network may be satisfied.

Timetable planning

- 7.12 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.

- 7.13 The System Operator shall secure that the decisions in respect of timetabling on the Network are made by persons with appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination).
- 7.14 The System Operator shall respond expeditiously to any timetabling matter which a train operator reasonably considers to be urgent.

Timetable disputes

- 7.15 The System Operator shall use reasonable endeavours to resolve promptly any timetabling disputes.

National timetable

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

Changes to the national timetable

7.17 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 Timetable Changes to train operators.

7.18 For the purposes of Condition 7.17, information on a Relevant Timetable 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 Timetable Change is to have effect; or
- (b) where:
 - (i) providing the information 12 weeks or more before the Relevant Timetable 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.

Access to information for enquiry services

7.19 The System Operator shall grant access to information which the licence holder holds on the planned movement of trains on the Network to Enquiry Service Providers in accordance with Conditions 7.20 and 7.21.

7.20 The System Operator shall grant access to such information as Enquiry Service Providers reasonably require for the proper carrying out of their operations.

7.21 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).

Part C Information requirements

8 Information for ORR

Information requests

- 8.1 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 8.2.
- 8.2 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.
- 8.3 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.

Confirmation regarding Route Business and System Operator information

- 8.4 Where directed by ORR, the licence holder shall ensure that the response to a request under Condition 8.1 which relates to a Route Business (or its Route Functions) or the System Operator (or the SO Functions) is accompanied by either:
- (a) confirmation by the relevant Route Responsible Officer or, as the case may be, the SO Responsible Officer that the response is accurate and complete; or
 - (b) a statement of the reasons why such a confirmation is not being given.

Route Business and System Operator responsibilities

- 8.5 Where, in requesting information under Condition 8.1, ORR requests information from a Route Business or the System Operator, the Route Business or, as the case may be, System Operator shall comply with that request.

9 Regulatory accounts

Financial statements and accounting records

- 9.1 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; and
 - (b) compile any further information which the Regulatory Accounting Guidelines require to be compiled.
- 9.2 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 relevant Route Responsible Officer or, as the case may be, the SO Responsible Officer that the information in the financial statement of further information relating to the Route Business or, as the case may be, the System Operator is accurate and complete; or
 - (b) a statement of the reasons why such a confirmation is not being given.
- 9.3 The licence holder shall maintain, 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.

9.4 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.

Resources Statement

9.5 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 the reasonable expectation set out in paragraph (a), 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”).

- 9.6 Before it makes a Resources Statement, the licence holder shall consult each Route Business and the System Operator on what that Resources Statement should certify and the reasons for that certification.
- 9.7 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; 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.
- 9.8 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 Route Businesses and the System Operator have been taken into account;
 - (b) where the Resources Statement certifies the expectation referred to in Condition 9.5(b), a description of any factor to which the expectation is subject; and
 - (c) any other information relating to the preparation or content of the Resources Statement which the Regulatory Accounting Guidelines require to be compiled.
- 9.9 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.

The Auditor

9.10 The licence holder shall:

- (a) enter into a contract to appoint a person to report on its regulatory financial statements (the “Auditor”);
- (b) ensure that the contract of appointment between it and the Auditor includes a term that the Auditor will provide:
 - (i) such further explanation or clarification of its reports; and
 - (ii) such further financial information in respect of the matters which are the subject of its 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.

9.11 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.

- 9.12 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.

Publication and provision of information

- 9.13 Unless ORR consents otherwise, 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; and
 - (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.

- 9.14 The licence holder shall:
- (a) publish the documents and information referred to in Condition 9.13 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.

Route Business and System Operator responsibilities

9.15 The Route Businesses and the System Operator shall engage fully with any consultation referred to in Condition 9.6.

10 Periodic and annual returns

Periodic returns

- 10.1 The licence holder shall prepare a return for each Relevant Period (a “Periodic Return”).
- 10.2 Unless otherwise agreed, the Periodic Return for a Relevant Period must comply with the requirements, including requirements as to form and content, which ORR has most recently notified to the licence holder (following consultation) at least 3 months before the start of the Relevant Period.
- 10.3 The licence holder shall provide each Periodic Return to ORR as soon as reasonably practicable and in any event not later than 21 days following the end of the Relevant Period to which it relates.

Annual returns

- 10.4 The licence holder shall prepare a return for each year in accordance with this condition (an “Annual Return”).
- 10.5 Subject to Condition 10.6, unless otherwise agreed the licence holder shall comply with the requirements for the Annual Return which ORR has most recently notified to the licence holder following consultation (the “Annual Return Requirements”), including requirements as to:
 - (a) form and content;
 - (b) the dates to which the Annual Return relates; and
 - (c) the date, being not less than 3 months after the last date to which the Annual Return relates, by which the Annual Return must be provided to ORR.
- 10.6 Unless otherwise agreed, if ORR has not:
 - (a) notified the licence holder of its proposal for the Annual Return Requirements (for the purpose of consultation) 5 months or more before the first date to which the Annual Return relates; and

- (b) notified the licence holder of the Annual Return Requirements 3 months or more before the first date to which the Annual Return relates;

the licence holder shall instead comply with the requirements applicable to the previous Annual Return.

- 10.7 The licence holder shall publish the Annual Return within one calendar month of the date it was required to be provided to ORR.

Confirmation regarding Route Business and System Operator information

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

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

11 Reporters

Reviews by Reporters

- 11.1 The licence holder shall comply with any request made by ORR for the licence holder to engage a Reporter to conduct a review into (and report on) any such matter as ORR reasonably requires for the purpose of carrying out any of its functions under Part I of the Act, subject to Condition 11.2.
- 11.2 The licence holder shall not be required to engage a Reporter unless the scope and content of the particular review 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 reasonably requires, having taken into account any representations made by the licence holder.
- 11.3 Before the review 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 review;
 - (b) which contains a term that the Reporter owes a duty of care to ORR in respect of any such review; and
 - (c) the terms of which have been approved by ORR.
- 11.4 Where any such review is being conducted or planned, 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 review.
- 11.5 The licence holder shall comply with any requirements or guidelines for the purposes of this condition (“Reporter Guidelines”) which ORR from time to time notifies to the licence holder following consultation, 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 a review; and
- (e) any details of what is required to comply with the duty to cooperate referred to in Condition 11.4.

Route Business and System Operator responsibilities

11.6 Where any review is being conducted or planned by a Reporter, each Route Business and the System Operator shall:

- (a) cooperate with the Reporter, so as to enable the Reporter to complete and report on the review; and
- (b) in doing so comply with any Reporter Guidelines.

Part D Industry obligations

12 Information on Stakeholder dealings

12.1 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.

13 Safety and standards

13.1 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.

13.2 The licence holder shall comply with:

- (a) the Code;
- (b) such Railway Group Standards as are applicable to its Licensed Activities; and
- (c) subject to Condition 13.3, such Rail Industry Standards (or parts thereof) as are applicable to its Licensed Activities.

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

- (a) it has, following consultation with such persons as it considers are likely to be affected, identified an equally effective measure which will achieve the purpose of the standard; and
- (b) it has adopted and is complying with that measure.

Route Business and System Operator responsibilities

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

- (a) the Code and the standards with which compliance is required under Condition 13.2; and
- (b) any measure adopted under Condition 13.3.

14 Environment

Environmental Policy

- 14.1 The licence holder shall, taking due account of any relevant guidance issued to it by ORR from time to time, 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.
- 14.2 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.
- 14.3 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.
- 14.4 The licence holder shall have regard to the Environmental Policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Extent of this condition

- 14.5 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.

Route Business and System Operator responsibilities

- 14.6 The Route Businesses and the System Operator 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 14.5.

15 Rail Delivery Group

General Duty

15.1 The licence holder shall:

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

Route Business and System Operator responsibilities

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

Interpretation

15.3 In this condition "Member" has the meaning ascribed to it in the RDG Articles.

Part E Restrictions on activities

16 Financial ring-fence

Restriction of activities

16.1 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.

Investments

16.2 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.

De Minimis Business

16.3 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*.

16.4 Subject to Condition 16.6, 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 16.5) 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.

16.5 For the purpose of Condition 16.4:

- (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.

16.6 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.

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

- 16.7 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 16.8(a).

16.8 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 17 (*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 16.9 and 16.10;
 - (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 17 (*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 16.8(a);
- (vi) payments for the surrender of group corporation tax relief 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 16.2, made on an arm's length basis and in accordance with normal commercial terms.

Payment of dividends

16.9 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.

16.10 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.

Relevant payments to Funders

16.11 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.

Route Business and System Operator responsibilities

16.12 The Route Businesses and the System Operator 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.

17 Land Disposal

Disposal of Land by the licence holder

17.1 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 within a Route Business's Route Area, the Route Business has been consulted in relation to the Disposal and has not objected;
 - (ii) the System Operator has been consulted in relation to the Disposal and has not objected; and
 - (iii) ORR has consented to the Disposal.

Applying for ORR's consent

17.2 Where the licence holder seeks ORR's consent to a particular Disposal of Land, it shall give written notice to ORR (in such form and containing such details as specified by ORR from time to time) specifying the Disposal of Land which it intends to make (the "Disposal Notice").

17.3 Where the licence holder proposes to make the Disposal by a particular date or within a particular period, it shall give the Disposal Notice to ORR at least two months before that date or period.

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

17.5 Unless otherwise agreed between ORR and the licence holder, where ORR does not inform the licence holder that it consents or refuses to consent to the Disposal within two months of the date on which ORR received the Disposal Notice, ORR will be deemed to have consented.

Route Business and System Operator responsibilities

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

18 Interests in railway vehicles

Prohibition on holding a direct/indirect interest in railway vehicles

- 18.1 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.

Route Business and System Operator responsibilities

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

Interpretation

- 18.3 For the purposes of Condition 18.1, 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.
- 18.4 For the purposes of Condition 18.1, 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).

19 Cross-subsidy

Prohibition of cross-subsidy

19.1 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 or of any Affiliate of the licence holder,

subject to Condition 19.2.

Exceptions

19.2 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”.

Accounting records

19.3 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.

- 19.4 The licence holder shall ensure that any accounting records referred to in Condition 19.3 comply with such accounting policies as ORR reasonably requires.
- 19.5 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.

Route Business and System Operator responsibilities

- 19.6 The Route Businesses and the System Operator shall not, through involvement in an unfair cross-subsidy, cause the licence holder to breach Condition 19.1.

20 Non-discrimination

- 20.1 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.
- 20.2 In particular, for these purposes the licence holder shall not unduly discriminate against:
- (a) freight operators; or
 - (b) passenger operators in respect of passenger services which cross more than one Route Area.

Route Business and System Operator responsibilities

- 20.3 The Route Businesses and the System Operator shall not cause the licence holder to unduly discriminate in breach of Conditions 20.1 and 20.2.

21 Restricted use of Protected Information

- 21.1 The licence holder shall not disclose Protected Information other than:
- (a) with the consent of the person to whose affairs the Protected Information relates;
 - (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 or any regulatory authority or pursuant to any judicial or arbitral process.
- 21.2 Where the licence holder discloses Protected Information to a person in a manner which is permitted under Condition 21.1, 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.

Route Business and System Operator responsibilities

- 21.3 The Route Businesses and the System Operator shall not cause Protected Information to be disclosed in breach of Condition 21.1.
- 21.4 Where a Route Business or the System Operator is involved in a disclosure of Protected Information which is permitted under Condition 21.1, the Route Business or, as the case may be, the System Operator shall take the steps required by Condition 21.2.

Part F Corporate matters

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

22 Corporate Governance

22.1 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.

23 Incentive Schemes

- 23.1 Where the licence holder adopts any Incentive Scheme, it 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) under the Incentive Scheme are aligned with the interests of passengers, freight customers and passenger and freight operators, in a manner which is consistent with the Network Management Duty.
- 23.2 The licence holder shall publish details on the terms of any Incentive Scheme which it has adopted, 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.
- 23.3 The licence holder shall publish a statement at least once a year summarising how the criteria referred to in Condition 23.2(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.

24 Fees

24.1 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.

24.2 The licence holder shall make the payment determined under Condition 24.1 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.

25 Insurance

25.1 The licence holder shall:

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

26 Claims allocation and handling

26.1 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 from time to time (the “Relevant Claims Handling Arrangements”).

26.2 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.

27 Regulatory Undertakings

Undertakings from Subsidiaries, Network Rail Infrastructure Finance and its Subsidiaries

27.1 Except where ORR consents otherwise, the licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 27.4) 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.

27.2 The licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 27.4) 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 27.3(a).

27.3 Except where ORR consents otherwise, the licence holder shall procure Undertakings that its Subsidiary Undertakings and (subject to Condition 27.4) Network Rail Infrastructure Finance and its Subsidiary Undertakings will 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;
 - (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 27.3(a);
- (vi) payments for the surrender of group corporation tax relief 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 27.1, made on an arm's length basis and in accordance with normal commercial terms.

27.4 For the purposes of Conditions 27.1 to 27.3, 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.

Undertakings from Network Rail Infrastructure Finance

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

- (a) procure from Network Rail Infrastructure Finance an Undertaking 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 27.5(a).

27.6 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.

27.7 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.

Notification of and enforcing Undertakings

27.8 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 Undertaking, Network Rail Infrastructure Finance or the Subsidiary Undertaking of Network Rail Infrastructure Finance from whom the Undertaking has been procured remains the Subsidiary Undertaking, Network Rail Infrastructure Finance or the

Subsidiary Undertaking of Network Rail Infrastructure Finance, 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.

Prohibition on agreements and arrangements

27.9 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 27.1, 27.2, 27.3, 27.5 and 27.6;
- (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 27.8(a), 27.8(c) or 27.8(d).

Interpretation

27.10 In this condition “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.

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 activities³ for a continuous period of at least one year;
 - (d) if any person obtains control⁴ 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

² Now the Office of Rail and Road

³ See the definition of "Control" in Part II

⁴ See the definition of "Licensed Activities" in Part II

have control of the licence holder within the period of 3 months beginning with the day of service of the notice; and

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