

**Network Licence**  
**granted to**  
**Network Rail Infrastructure Limited**

**(As at 1 April 2014)**

*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*

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# Part I - Scope

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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 PLC<sup>1</sup> (“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

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<sup>1</sup> Network Rail Infrastructure Limited since 3 February 2003.

# Part II - Interpretation

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- 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 and Schedule 6 of the Companies Act 2006;
  - “control” shall be construed in accordance with sub-sections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 with the following modifications namely:
    - (i) for the words “the greater part” wherever they occur in sub-section (2) there shall be substituted the words “30 per cent or more”; and
    - (ii) in sub-section (6), for the word “may” there shall be substituted the word “shall”, the words from “and such attributions” onwards shall be omitted and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary;
  - “funder” means any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) and each Passenger Transport Executive or other person who provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways;
  - “licence holder’s network” means the network of which the licence holder is the operator pursuant to this licence;
  - “licensed activities” means things authorised to be done by the licence holder in its capacity as operator of a network or trains pursuant to this licence;

“London TravelWatch”	means the London Transport Users’ Committee and any successor which performs the same functions;
“Network Business”	means <ul style="list-style-type: none"> <li>(i) the business of providing and operating the licence holder’s network, including the maintenance, renewal, replacement, improvement, enhancement and development of the network; and</li> <li>(ii) any ancillary service related to the business and activities in paragraph (i);</li> </ul> and, without limitation, includes: <ul style="list-style-type: none"> <li>(a) the purpose of financing the business in paragraph (i) and the services in paragraph (ii); and</li> <li>(b) any payment or transaction lawfully made or undertaken by the licence holder for a purpose within conditions 4.13(b)(i) to (vii);</li> </ul>
“ORR”	means the Office of Rail Regulation;
“Permitted Business”	means the Network Business and the Permitted Non-Network Business;
“Permitted Non-Network Business”	means any business, other than the Network Business and the exploitation of land (which includes the disposal of land within the meaning of Condition 7), of the type transferred to the licence holder pursuant to the Railtrack Transfer Scheme;
“Railtrack Transfer Scheme”	means the transfer scheme in respect of which the licence holder is the transferee made by the Board under section 85 of the Act and as varied pursuant to section 97 of, and Schedule 8 to, the Act;
“related undertaking”	in relation to the licence holder means any undertaking in which the licence holder has a participating interest (and for this purpose “undertaking“ has the meaning given by section 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;
“Passenger Focus”	means the Passengers’ Council and any successor which performs the same functions; and
“TfL”	means Transport for London.

2. Any reference in this licence to a numbered paragraph is a reference to the paragraph bearing that number in the condition in which the reference occurs.
3. In interpreting this licence, headings shall be disregarded.
4. Where in this licence the licence holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the licence holder fails to comply with that obligation within that time limit.
5. Where this licence provides for anything to be done by any person within a particular period of time or on or by a particular day or date, ORR may vary that period, day or date by giving notice to the licence holder and such other persons as appear to it likely to be affected by the variation.
6. Where in this licence there is a provision for ORR to give its consent, ORR may give such consent subject to conditions. Any consent given by ORR under this licence shall be in writing and may be expressed in general or specific terms.
7. Where in this licence there is a provision for ORR to give a notice or to issue guidelines to the licence holder, ORR shall first consult the licence holder and take into consideration any representations duly made.
8. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
9. The Interpretation Act 1978 shall apply to this licence as if it were an Act.
10. Terms and expressions defined in the Railways Act 1993, the Transport Act 2000 and the Railways Act 2005 shall, unless the contrary intention appears, have the same meanings in this licence.

# Part III - Conditions

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## ***Part A Network management and timetabling***

### **1 Network management**

#### *Purpose*

1.1 The purpose is to secure:

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

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

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

#### *General duty*

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

#### *Specific obligations*

1.3 The following obligations in this condition are without prejudice to the generality of the general duty in condition 1.2 and compliance with those obligations shall not be regarded as exhausting that general duty. In fulfilling

each of those obligations, the licence holder shall at all times comply with the general duty in condition 1.2.

### *Planning*

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

- 1.9 Any notice or guidelines to the licence holder issued under condition 1.8 may include a procedure under which ORR may object to the contents of a plan, strategy or other document on grounds specified in the notice or guidelines.

*Delivery plan*

- 1.10 In complying with the duty in condition 1.4, the licence holder shall prepare, provide to ORR and publish a delivery plan setting out what the licence holder proposes to do to comply with the general duty in condition 1.2.
- 1.11 The delivery plan shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by a notice or in guidelines issued to the licence holder under condition 1.8 so as to enable:
- (a) providers of services relating to railways and potential providers to plan their businesses; and
  - (b) funders of services relating to railways and potential funders to plan their future financial and service requirements,
- in each case with a reasonable degree of assurance.
- 1.12 No notice or guidelines issued by ORR under condition 1.8 shall be effective in relation to the delivery plan unless:
- (a) it is issued on or before the date which is 5 months before the delivery plan is to be published; and
  - (b) ORR has first consulted the licence holder and taken into consideration any representations duly made.
- 1.13 The licence holder shall be excused from the obligation to publish any part of the delivery plan to the extent that ORR:
- (a) is satisfied, after consultation with the licence holder, that publication would or might seriously and prejudicially affect the interests of the licence holder or any other person; and
  - (b) gives notice to the licence holder to that effect.

### *Long term planning process*

- 1.14 In complying with condition 1.4, the licence holder shall establish and maintain long term plans to promote the long term planning objective in accordance with guidelines issued by ORR under condition 1.8.
- 1.15 The long term planning objective referred to at 1.14 means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence.
- 1.16 The licence holder shall have due regard to the long term plans when carrying out its licensed activities.
- 1.17 The licence holder shall from time to time and when so directed by ORR review and, if necessary, amend each long term plan to ensure that it continues to promote the long term planning objective.

### *Capacity allocation*

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

### *Asset management*

- 1.19 In complying with the general duty in condition 1.2, the licence holder shall:
- (a) develop the policies and criteria it will apply in respect of the maintenance, renewal, replacement, improvement, enhancement and development of the relevant assets, which shall demonstrate how the licence holder will comply with the general duty in condition 1.2;
  - (b) apply those policies and criteria; and
  - (c) make appropriate information about those policies and criteria readily accessible to persons providing services relating to railways and funders, including potential providers and potential funders.

- 1.20 The licence holder shall maintain appropriate, accurate and readily accessible information about the relevant assets, including their condition, capability and capacity.
- 1.21 ORR may permit the licence holder to exclude from the definition of “relevant assets” assets of such description or classes as shall be provided to and approved by ORR.
- 1.22 The licence holder shall from time to time and when so directed by ORR review and, if necessary, revise the policies and criteria provided for in condition 1.19 to ensure that they remain sufficient to comply with the general duty in condition 1.2.

*Timetable planning*

1.23 In complying with the general duty in condition 1.2 the licence holder shall:

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

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

*Interpretation*

1.24 In this condition:

“excluded assets”	means assets which are the subject of an exclusion granted under condition 1.21;
“network”	includes, where the licence holder has any estate or interest in, or right over a station or light maintenance depot, such station or light maintenance depot;
“network 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;
“relevant assets”	means assets, other than excluded assets, in which the licence holder has an interest, legal or beneficial, including as owner, occupier, operator, lessee (of whatever rank) or as the holder of any other right;
“relevant industry processes”	means arrangements, whether contractual, regulatory or voluntary, to which the licence holder is a party, or is subject, which involve establishing, or making changes to, a timetable;
“relevant person”	means each train operator, each holder of an access option and each other person who has been allowed to participate in the procedure for developing the timetable under the network code, as amended from time to time;
“potential provider” and/or “potential funder”	means, as appropriate, any person who has expressed in writing to the licence holder a serious and credible: <ul style="list-style-type: none"> <li>(a) interest in providing or intention to provide; or</li> <li>(b) interest in providing or intention to provide finance for or in connection with</li> </ul> either or both of: <ul style="list-style-type: none"> <li>(i) services relating to railways; and</li> <li>(ii) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction.</li> </ul>

## **2 Information for passengers**

### *Purpose*

- 2.1 The purpose is to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the licence holder's network to enable train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption.

### *General duty*

- 2.2 The licence holder shall achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available.

### *Specific obligations*

- 2.3 The following obligations in this condition are without prejudice to the generality of the general duty in condition 2.2 and compliance with these obligations shall not be regarded as exhausting that general duty. In fulfilling these obligations the licence holder shall at all times comply with the general duty in condition 2.2.

### *Cooperation*

- 2.4 The licence holder shall cooperate, as necessary, with train operators to enable them to provide appropriate, accurate and timely information to enable railway passengers to plan and make their journeys with a reasonable degree of assurance, including when there is disruption.
- 2.5 In particular, the licence holder shall:
- (a) use reasonable endeavours to resolve promptly any timetabling disputes; and
  - (b) respond expeditiously to any timetabling matter which a train operator reasonably considers to be urgent.

### *National timetable*

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

### *Changes to the national timetable*

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

so as to provide appropriate, accurate and timely information on relevant changes to train operators.

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

- (a) any renewal, maintenance and enhancement of the network; or
  - (b) any restriction of use of which the licence holder is, or reasonably ought to be, aware.
- 2.8 The licence holder shall be in compliance with its obligation under condition 2.7 to provide timely information where it has provided train operators with access to appropriate, accurate information about relevant changes not less than 12 weeks before the date such changes are to have effect.
- 2.9 In circumstances where the licence holder is not in compliance with condition 2.7 by virtue of condition 2.8, the licence holder shall not be in breach of its obligation under condition 2.7 to provide timely information to the extent that:
- (a) providing the information 12 weeks or more before the relevant changes are to have effect would conflict, to a significant degree, with its duty under condition 1.2; and
  - (b) it provides access to appropriate, accurate information about relevant changes to holders of passenger licences as soon as is reasonably practicable having regard to all relevant circumstances.

### *Access to information for enquiry services*

- 2.10 The licence holder shall grant access to information it holds on the planned movement of trains on its network to persons providing or seeking to provide

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

**Part B Restrictions on activities**

**3 Financial indebtedness**

3.1 Except with the written consent of ORR, the licence holder shall use reasonable endeavours to ensure that at any time the amount of financial indebtedness of:

- (a) the licence holder;
- (b) Network Rail Infrastructure Finance; and
- (c) any subsidiaries of the licence holder or Network Rail Infrastructure Finance

does not exceed the limits set out in table 3.1. The limits on financial indebtedness are expressed in table 3.1 as a percentage of the Value of the RAB.

**Table 3.1: Restrictions on the ratio of financial indebtedness to the Value of the RAB**

<b>Financial year</b>	<b>Limit</b>
2014-15	75%
2015-16	75%
2016-17	75%
2017-18	75%
2018-19	75%

- 3.2 The limit in table 3.1 which applies in 2018-19 shall also apply to each subsequent financial year unless ORR determines different limits following consultation with the licence holder.
- 3.3 If at any time the total amount of financial indebtedness of the licence holder, any subsidiaries of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance exceeds the limit set out in table 3.1 applicable to that financial year the licence holder shall, within

such time period as ORR may notify as being appropriate in the circumstances:

- (a) provide to ORR details of the steps it intends to take to reduce the amount to that limit or below;
- (b) take those steps; and
- (c) provide to ORR evidence that it has taken those steps.

3.4 The licence holder shall:

- (a) provide, from time to time as requested by ORR and in any event every year in the regulatory financial statements the licence holder prepares pursuant to condition 11, confirmation that, in respect of the financial year to which the statements relate, it has complied, and, in respect of the following financial year, it is not aware of any circumstances which will prevent it complying and it is likely to comply, with condition 3.1 and (where applicable) condition 3.3 and, if so requested by ORR, evidence in support of that confirmation; and
- (b) notify ORR immediately in writing if at any time the licence holder becomes aware of any circumstance that means it is no longer complying, or that causes it no longer to have the reasonable expectation that it is likely to comply, with condition 3.1 and (where applicable) condition 3.3.

3.5 Except with the written consent of ORR the licence holder shall pay the Secretary of State, at least annually, a fee in respect of the state financial indemnity.

3.6 In this condition:

“fee” means the amount equal to 1.10 per cent (on an annual basis) of the daily outstanding amount of financial

indebtedness incurred by Network Rail Infrastructure Finance and which is supported by the state financial indemnity;

“financial indebtedness”

means the sum of:

- (a) all financial liabilities arising from all transactions (including any forward sale or purchase agreement) which have the commercial effect of a borrowing;
- (b) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; and
- (c) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraph (a);

less

- (d) cash and cash equivalents which are assets or investments that are held for the purpose of meeting short-term cash commitments or other investments with a maturity of twelve months or less for the purpose of pre-funding the repayment of financial indebtedness.

For the purposes of this condition:

(a) financial indebtedness excludes:

- (i) any financial indebtedness between the licence holder or any of the licence holder’s subsidiaries and Network Rail Infrastructure Finance or any of Network Rail Infrastructure Finance’s subsidiaries;
- (ii) any financial indebtedness between the licence holder and any of its subsidiaries;
- (iii) any financial indebtedness between any of the licence holder’s subsidiaries;
- (iv) any financial indebtedness between Network Rail Infrastructure Finance and any of its subsidiaries; and

(v) any financial indebtedness between any of Network Rail Infrastructure Finance's subsidiaries;

(b) financial indebtedness is:

- (i) calculated by reference to the principal amount outstanding of any such financial indebtedness (and no mark to market value will be used to calculate its amount); and
- (ii) measured as specified in the regulatory accounting guidelines, issued in accordance with condition 11, in force at the applicable time;

(c) where financial indebtedness denominated in a foreign currency is hedged by a foreign currency derivative transaction protecting against or benefiting from fluctuations in foreign exchange rates, the principal amount outstanding shall be calculated by reference to the sterling amount payable under the relevant derivative;

“Network Rail Infrastructure Finance”

has the meaning given to it by condition 4.32;

“state financial indemnity”

means the financial indemnity provided by the Strategic Rail Authority on 29 October 2004 (and transferred to the Secretary of State on 26 June 2005), which is available until 2052; and

“Value of the RAB”

means the value of the licence holder's assets calculated in accordance with the regulatory accounting guidelines, issued in accordance with condition 11, in force at the applicable time.

## 4 Financial ring-fence

### *Restriction of activities*

4.1 The licence holder shall not, and shall procure that its subsidiary undertakings shall not, conduct any business or carry on any activity other than:

- (a) the Permitted Business;
- (b) business or activities which the licence holder and any subsidiary undertaking of the licence holder are entitled to conduct or carry on under the *de minimis* provisions under conditions 4.7 to 4.10; and
- (c) any other business or activity for which ORR has given its written consent for the purposes of this condition 4.

4.2 The licence holder shall, unless ORR otherwise consents:

- (a) procure from Network Rail Infrastructure Finance an undertaking or undertakings in favour of the licence holder which shall provide that Network Rail Infrastructure Finance will not conduct any business or carry on any activity other than for the purpose of financing:
  - (i) the Permitted Business;
  - (ii) business or activities which the licence holder and any subsidiary undertaking of the licence holder are entitled to conduct or carry on under the *de minimis* provisions under conditions 4.7 to 4.10; or
  - (iii) any other business or activity for which ORR has given written consent for the purposes of this condition 4,

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

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

4.3 Save with the prior written consent of ORR, the licence holder shall not after the relevant date, and shall procure an undertaking that its subsidiary undertakings and Network Rail Infrastructure Finance and its subsidiary undertakings shall 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) business or activities which the licence holder and any subsidiary undertaking of the licence holder are entitled to conduct or carry on under the *de minimis* provisions under conditions 4.7 to 4.10 (including financing such business or activity); and
  - (iii) any other business or activity (including financing that business or activity) for which ORR has given its written consent for the purposes of this condition 4,  
  
provided always that where such a body corporate conducts the business or carries on the activities of raising finance for the Permitted Business, that body corporate must be the licence holder or a subsidiary of the licence holder; and
- (b) investments acquired in the usual and ordinary course of the treasury management operations of, as the case may be, the licence holder, its subsidiary undertakings, Network Rail Infrastructure Finance or its subsidiary undertakings, subject to such entity maintaining in force, in relation to its operations, a system of internal controls which complies with best corporate governance practice.

4.4 For the purposes of this condition 4, any reference to an obligation on the licence holder to procure an undertaking is to be read as requiring, as appropriate, either:

- (a) a legally enforceable undertaking; or
- (b) a legally enforceable undertaking forming part of a contract to which the licence holder and, where applicable, the licence holder's subsidiary

undertakings, Network Rail Infrastructure Finance or its subsidiary undertakings are parties.

- 4.5 For the purposes of conditions 4.3, 4.11 and 4.13, where there is an obligation on the licence holder to procure an undertaking from Network Rail Infrastructure Finance or its subsidiary undertakings, the licence holder shall have satisfied that obligation where it has used its reasonable endeavours to procure such an undertaking.
- 4.6 ORR, in deciding whether to give its consent under this condition 4, may have regard, among other matters, to the risks imported to the Network Business by the activity in question and the benefits accruing, or likely to accrue, to the Network Business out of that activity.

*De minimis*

- 4.7 Nothing in this condition 4 shall prevent the licence holder and any subsidiary undertaking or related undertaking of the licence holder from conducting relevant other business, or acquiring or retaining shares or investments in any undertaking which conducts relevant other business, as long as such relevant other business is *de minimis* business.
- 4.8 The relevant other business will be “*de minimis* business” if both:
- (a) the aggregate turnover of all the relevant other business carried on by the licence holder and the equity share of the aggregate turnover of all the relevant other business carried on by all the licence holder’s affiliates or related undertakings does not in any period of twelve months commencing on 1 April of any year exceed the indexed turnover limit for that period of twelve months;
- and
- (b) the aggregate amount of all investments (determined in accordance with condition 4.9(d)) made by the licence holder in relevant other business, carried on by the licence holder and all affiliates or related undertakings does not at any time exceed the indexed investment limit.
- 4.9 For the purpose of condition 4.8:

- (a) the “indexed turnover limit” in respect of any period of twelve months starting on 1 April of any year means the sum of £140 million plus the amount that is produced when £140 million is multiplied by the percentage change (whether expressed as a positive or negative figure) between the RPI as published or determined in respect of April in that period of twelve months and as published or determined in respect of April 2006;
- (b) the “indexed investment limit” means the sum of £210 million plus the amount that is produced when £210 million is multiplied by the percentage change (whether expressed as a positive or negative figure) between the most recent RPI published or determined and as published or determined in respect of April 2006;
- (c) “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;
- (d) “investment” means any form of financial support or assistance given by or on behalf of the licence holder for the relevant other business of the licence holder or an affiliate or related undertaking whether on a temporary or permanent basis and includes any commitment to provide any such support or assistance in the future. 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) howsoever incurred by the licence holder in respect of such investment in all completed accounting reference periods since 31 March 2009;
  - (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;

- (e) 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 count towards any indexed turnover or investment limits.

4.10 ORR may in writing designate any business or activity as not being a *de minimis* business for the purpose of the limitations in conditions 4.7 to 4.9. Such designation may be subject to conditions.

*Prohibition on cross-default, indebtedness and intra-group transactions*

4.11 The licence holder shall not, from the relevant date, and shall procure an undertaking or undertakings that its subsidiary undertakings and Network Rail Infrastructure Finance and its subsidiary undertakings shall not, from the effective date, without the prior written consent of ORR:

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

- 4.12 Condition 4.11 shall not prevent the licence holder, its subsidiary undertakings, Network Rail Infrastructure Finance or its subsidiary undertakings, from giving any guarantee permitted by and in compliance with the requirements of condition 4.13(a).
- 4.13 Save with the prior written consent of ORR, the licence holder shall not after the relevant date, and shall procure an undertaking or undertakings that its subsidiary undertakings and Network Rail Infrastructure Finance and its subsidiary undertakings shall not after the effective date:
- (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or guarantee any liability or obligation of another person other than on an arm's length basis, on normal commercial terms, for a Relevant Purpose and (where relevant) in accordance with condition 7; or
  - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate 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 4.29 and 4.30;
    - (ii) repayment of capital;
    - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
    - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis and on normal commercial terms;
    - (v) repayment of any loan or payment under a loan (including, but not limited to, related interest, fees, indemnities and costs) not prohibited by condition 4.13(a);
    - (vi) payments for the surrender of group corporation tax relief or for the surrender of advance corporation tax calculated on a basis not exceeding the value of the benefit received; or

- (vii) an acquisition of shares or other investments in conformity with the restriction on the acquisition of shares or other investments set out in condition 4.3 of this licence, made on an arm's length basis and in accordance with normal commercial terms,

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

#### *Sufficiency of resources*

- 4.14 The licence holder shall at all times act in a manner calculated to secure that it has available to itself sufficient resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as shall enable it to:
- (a) properly and efficiently carry on the Permitted Business; and
  - (b) comply in all respects with its obligations under the Act and this licence.

#### *Credit rating*

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

#### *Undertakings from ultimate holding company and from Network Rail Infrastructure Finance*

##### Undertaking not to put the licence holder in breach of its licence

- 4.16 The licence holder shall, unless ORR otherwise consents, procure from each company and any other person which is at any time an ultimate holding company of the licence holder an undertaking in favour of the licence holder.
- 4.17 The undertaking referred to in condition 4.16 shall provide that any such ultimate holding company will refrain from any action, and will procure that any person (including without limitation a corporate body) that is a subsidiary of, or is controlled by, the ultimate holding company (other than the licence holder and any subsidiary of the licence holder) will refrain from any action, which

would then be likely to cause the licence holder to breach any of its obligations under the Act or this licence.

- 4.18 The undertaking referred to in condition 4.16 shall be in a form specified by ORR.
- 4.19 The undertaking referred to in condition 4.16 shall be obtained within seven days of the company or other person in question becoming an ultimate holding company of the licence holder and shall remain in force for so long as the licence holder remains the holder of this licence and the ultimate holding company remains the ultimate holding company of the licence holder.

#### Undertaking to provide information

- 4.20 The licence holder shall, unless ORR otherwise consents, procure from each company or any other person which is at any time an ultimate holding company of the licence holder an undertaking in favour of the licence holder.
- 4.21 The undertaking referred to in condition 4.20 shall require any such ultimate holding company to give to the licence holder, and to procure that any person (including without limitation, a corporate body) that is a subsidiary of, or is controlled by, the ultimate holding company (other than the licence holder and its subsidiaries) will give to the licence holder, all such information as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide information to ORR and such additional information as ORR may require about the activities of that ultimate holding company and its subsidiaries and the financing of them.
- 4.22 The undertaking referred to in condition 4.20 shall be in a form specified by ORR.
- 4.23 The undertaking referred to in condition 4.20 shall be obtained within seven days of the company or other person in question becoming an ultimate holding company of the licence holder and shall remain in force for so long as the licence holder remains the holder of this licence and the ultimate holding company remains the ultimate holding company of the licence holder.
- 4.24 The licence holder shall, unless ORR otherwise consents, procure from Network Rail Infrastructure Finance an undertaking in favour of the licence holder. The undertaking shall require Network Rail Infrastructure Finance to

give to the licence holder all such information in its possession as may be necessary to enable the licence holder to meet its obligations under the Act and under this licence to provide documents and provide information to ORR and such additional information as ORR may require about the activities of Network Rail Infrastructure Finance.

4.25 The undertaking referred to in condition 4.24 shall be in a form approved by ORR.

4.26 The licence holder shall:

- (a) deliver to ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to this condition 4;
- (b) inform ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to this condition 4 has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from ORR to enforce any of the undertakings procured pursuant to this condition 4.

4.27 The licence holder shall not, save with ORR's prior written consent, enter (directly or indirectly) into any agreement or arrangement with any ultimate holding company of the licence holder or any subsidiary of such ultimate holding company (other than a subsidiary of the licence holder) at a time when (a) an undertaking required pursuant to conditions 4.16 to 4.25 is not in place; (b) there is an unremedied breach of such undertaking; or (c) the licence holder is in breach of the terms of condition 4.26.

4.28 The licence holder shall not, save with ORR's prior written consent, enter (directly or indirectly) into any agreement or arrangement with Network Rail Infrastructure Finance or any subsidiary of Network Rail Infrastructure Finance at a time when (a) subject to condition 4.5, an undertaking required pursuant to condition 4.2, 4.3, 4.11, 4.13 or 4.24 is not in place; (b) there is an unremedied breach of such undertaking; or (c) the licence holder is in breach of the terms of condition 4.26.

### *Payment of dividends*

- 4.29 The directors of the licence holder shall not declare or recommend a dividend unless ORR has consented in writing to the declaration or recommendation of the dividend no more than 6 months prior to it being made.
- 4.30 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*

- 4.31 The licence holder shall not make a payment to a funder other than in the ordinary course of business or to comply with a legal obligation, unless ORR has consented in writing to the payment no more than 6 months prior to it being made.
- 4.32 In this condition:
- |                            |   |
|----------------------------|---|
| “cross-default obligation” | means a term of any agreement or arrangement whereby the liability of the licence holder or of Network Rail Infrastructure Finance to:  |
|                            | (a) pay or repay any debt or other sum; or  |
|                            | (b) do anything pursuant to a term of any agreement or arrangement to which that person is a party  |
|                            | arises or is increased or accelerated or is capable of arising, increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than an excluded party unless: |

- (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 4.2(a)(ii) and (iii) or for the purpose of financing the matters referred to in subparagraphs (a)(i) to (iii) of condition 4.2;

“effective date” means 1 April 2009;

“excluded party” means:

- (a) the licence holder;
- (b) Network Rail Infrastructure Finance; and
- (c) the Secretary of State, but only to the extent that:
  - (i) an agreement or arrangement entered into before the effective date has the benefit of credit support from the Secretary of State (whether or not through the state financial indemnity and whether or not called upon before, on or after the effective date); and
  - (ii) an agreement or arrangement entered into on or after the effective date is supported by the state financial indemnity;

“indebtedness” means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing on them and all costs, charges, penalties and expenses incurred in connection with them;

“information” shall include, 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;

“investment grade rating”	means a rating recognised as investment grade by Standard and Poor’s Rating Group (or any of its subsidiaries), by Moody’s Investors Service Inc. (or any of its subsidiaries) or by Fitch Ratings Limited (or any of its subsidiaries) or by any other reputable credit rating agency which, in ORR’s opinion, notified in writing to the licence holder, has comparable standing in the United Kingdom and the United States of America;
“Network Rail Infrastructure Finance”	means: <ul style="list-style-type: none"> <li>(i) Network Rail Infrastructure Finance plc; and</li> <li>(ii) (unless ORR otherwise consents) any other person which carries out the same, or substantially the same, functions as Network Rail Infrastructure Finance plc in relation to the financing of the licence holder;</li> </ul>
“permitted purpose”	means the purposes of the Permitted Business;
“relevant date”	means 1 January 2003;
“relevant other business”	means any business which is conducted or any activity which is carried on, which is: <ul style="list-style-type: none"> <li>(i) not for a permitted purpose; and</li> <li>(ii) not a business or activity to which ORR has given its prior written consent under this condition 4;</li> </ul>
“Relevant Purpose”	means: <ul style="list-style-type: none"> <li>(i) for a permitted purpose;</li> <li>(ii) for the purposes of <i>de minimis</i> business conducted in accordance with conditions 4.7 to 4.10; or</li> <li>(iii) for any business or activity for which ORR has given its prior written consent under this condition 4.</li> </ul>

“RPI”	<p>means the general index of retail prices published by the Office for National Statistics each month in respect of all items or:</p> <ul style="list-style-type: none"> <li>(i) if the index for any month shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may, after consultation with the licence holder, determine to be appropriate in the circumstances; or</li> <li>(ii) if there is a material change in the basis of such index, such other index as ORR, after consultation with the licence holder, determines to be appropriate in the circumstances;</li> </ul>
“state financial indemnity”	has the meaning given to it in Condition 3.5;
“subsidiary”	shall bear the same meaning as that attributed to it in section 1159 of the Companies Act 2006;
“subsidiary undertaking”	shall bear the same meaning as that attributed to it in section 1162 of the Companies Act 2006;
“ultimate holding company”	<p>means each of:</p> <ul style="list-style-type: none"> <li>(i) a holding company of the licence holder which is not itself a subsidiary of another company;</li> <li>(ii) where a holding company of the licence holder which is not a subsidiary of another company has entered into an agreement relating to the exercise of voting rights in or the appointment or removal of directors of the licence holder or any company of which the licence holder is a subsidiary, every party to that agreement; and</li> <li>(iii) where the exercise of voting rights in or the appointment or removal of directors of a holding company of the licence holder which is not a subsidiary of another company is controlled by an agreement, every party to that agreement.</li> </ul>

## **5 Interests in railway vehicles**

- 5.1 The licence holder shall not be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.
- 5.2 For the purposes of condition 5.1 the licence holder is “directly interested” in the ownership or operation of railway vehicles where the licence holder:
- (a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or
  - (b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.
- 5.3 For the purposes of condition 5.1 the licence holder is “indirectly interested” in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).
- 5.4 Condition 5.1 shall not apply in respect of a railway vehicle where:
- (a) it is used wholly or mainly for the purposes as set out in Part 1 (Scope) of this licence; or
  - (b) it forms part of the Royal Train; or
  - (c) ORR has consented to the licence holder having an interest in the ownership or operation of that railway vehicle.

## **6 Prohibition of cross subsidy**

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

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

6.2 The licence holder shall:

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

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

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

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

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

## **7 Land disposal**

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

7.2 The licence holder may dispose of any land where:

(a) ORR consents to such disposal; or

(b) the disposal is required by or under any enactment.

7.3 Where the licence holder seeks ORR's consent it must give a minimum of 2 months' prior written notice specifying the land disposal it intends to make (the notice). A notice under this condition shall be in such form and contain such particulars as ORR specifies.

7.4 Having given such notice, the licence holder shall provide further information as ORR may require.

7.5 Unless otherwise agreed between ORR and the licence holder, if ORR does not inform the licence holder of a consent or refusal of consent within the time specified in the notice, the licence holder will be deemed to have consent and may dispose of land in accordance with the notice.

7.6 If ORR refuses consent to the disposal of land specified in the notice, the licence holder will be informed of any entitlement to appropriate compensation for the loss of value (if any) as a result of not being able to make such disposal.

7.7 In this condition:

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

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

## ***Part C Dealings with third parties***

### **8 Stakeholder relationships**

#### *Purpose*

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

#### *General duty*

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

#### *Specific obligations*

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

#### *Cooperation with the Mayor of London and TfL*

- 8.4 The licence holder shall cooperate with the Mayor of London and TfL for the purpose of:
- (a) ensuring the efficient provision of railway services and of railway facilities; and
  - (b) coordinating where possible anticipated investment projects to the extent that such matters affect, or may affect, both the licence holder's

provision of railway services and those in respect of which the Mayor of London and TfL have responsibility.

*Cooperation with passenger representatives*

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

*Dealings with stakeholders*

- 8.6 The licence holder shall publish information, by code of practice or otherwise, on the principles and procedures by which it will comply with its general duty in condition 8.2 sufficient to facilitate efficient and effective dealings between the licence holder and its stakeholders. The licence holder shall from time to time and when so directed by ORR review and, if necessary, revise the information so that it may better fulfil the purpose of this condition 8.

*Exception*

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

*Interpretation*

- 8.8 In this condition:

“stakeholder”	means:
	(a) any person providing services relating to railways;
	(b) any person providing a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;
	(c) any funder;

- (d) any other person who has expressed in writing to the licence holder a serious and credible:
  - (i) interest in providing or intention to provide;  
or
  - (ii) interest in providing or intention to provide finance for or in connection with  
either or both of:
    - (i) services relating to railways; and
    - (ii) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;
- (e) the Mayor of London and TfL in respect of their functions related to the provision of services relating to railways (including but not limited to those for which the Mayor of London and TfL have responsibility);
- (f) Passenger Focus and London TravelWatch in respect of their respective statutory functions.

## **9 Non-discrimination**

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

## ***Part D Information requirements***

### **10 Information for ORR**

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

## **11 Regulatory accounts**

### *Purpose*

- 11.1 The purpose of this condition 11 is to procure the provision of annual information on the financial performance and financial position of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance which:
- (a) is relevant to ORR and other persons for the assessment and determination of the licence holder's access charges; and
  - (b) allows the financial performance and financial position of the licence holder to be monitored against the Determination Assumptions.

### *General duty*

- 11.2 To achieve the purpose in condition 11.1, the licence holder shall prepare regulatory financial statements in relation to itself and, unless ORR otherwise consents, to Network Rail Infrastructure Finance in accordance with the following paragraphs of this condition 11 and any Regulatory Accounting Guidelines from time to time issued by ORR.
- 11.3 The licence holder shall, and shall procure that any affiliate or related undertaking of the licence holder and Network Rail Infrastructure Finance shall, maintain such accounting records, other records and reporting arrangements as are necessary to enable the licence holder to properly prepare the regulatory financial statements required by condition 11.2. The licence holder shall 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 that all control and other governance arrangements are kept under regular review by the directors of the licence holder so that they remain effective for this purpose.

### *Specific obligations*

- 11.4 The financial statements referred to in condition 11.2:

- (a) shall be prepared in respect of the financial year ended 31 March 2002 and (save as otherwise provided in this condition 11 or the Regulatory Accounting Guidelines) on a consistent basis in respect of each financial year;
- (b) shall be prepared such that, so far as is reasonably practicable, the definition of items in primary statements; the valuation of assets and liabilities; the treatment of income and expenditure as capital or revenue; adjustments in respect of the provision, utilisation, depreciation and amortisation of assets and liabilities; and any other relevant accounting policies shall be consistent with:
  - (i) ORR's valuation of the Regulatory Asset Base for the purpose of determining access charges for the access review periods specified in the Regulatory Accounting Guidelines; and
  - (ii) the Determination Assumptions for the access review periods specified in the Regulatory Accounting Guidelines;(and so that where the presentation of an item in the primary statements departs from the basis for the Regulatory Asset Base or the Determination Assumptions, a reconciliation shall be included by way of a note);
- (c) shall include, as a primary statement, a statement of regulatory financial performance comparing income and expenditure, for the access review periods specified in the Regulatory Accounting Guidelines with the Determination Assumptions;
- (d) shall include all details reasonably necessary to reconcile items included in the primary statements with any corresponding items in annual statutory accounts for the access review periods specified in the Regulatory Accounting Guidelines; and
- (e) shall include narrative explaining the material variances from the previous year and from the Determination Assumptions.

### *Sufficiency of resources*

11.5 The licence holder shall make a statement, which shall be approved by a resolution of the board of directors of the licence holder and signed by a director of the licence holder pursuant to that resolution, certifying the adequacy (or otherwise) of the management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities of the licence holder for the period of 12 months commencing on the date of the statement.

11.6 The statement made under condition 11.5 shall be in one of the following forms:

either:

(a) “After making enquiries, and subject to the outcome of any access charges review which is due to be concluded within the 12 month period referred to in this statement, the directors of the licence holder have a reasonable expectation that the licence holder will have available to it, after taking into account in particular, but without limitation:

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

sufficient resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, to enable the licence holder to: (a) properly and efficiently carry on the Permitted Business; and (b) comply in all respects with its obligations under the Act and under its network licence, for the period of 12 months referred to in this statement.”

or:

(b) “After making enquiries, and subject to the outcome of any access charges review which is due to be concluded within the 12 month period referred to in this statement, the directors of the licence holder have a reasonable expectation, subject to the factors set out below, that the licence holder will have available to it, after taking into account in particular, but without limitation:

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

sufficient resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, to enable the licence holder to: (a) properly and efficiently carry on the Permitted Business; and (b) comply in all respects with its obligations under the Act and under its network licence, for the period of 12 months referred to in this statement. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licence holder to do this.”

or:

(c) “In the opinion of the directors of the licence holder, the licence holder will not have available to it sufficient resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, to enable the licence holder to: (a) properly and efficiently carry on the Permitted Business; and (b) comply in all respects with its obligations under the Act and under its network licence, for the period of 12 months referred to in this statement.”

11.7 The licence holder shall submit to ORR details of the main factors which the directors of the licence holder have taken into account in making the statement

under condition 11.5 and the information specified in the Regulatory Accounting Guidelines. In the case of a statement of the kind contemplated by condition 11.6(b) the licence holder shall also submit with the statement a description of the factors which may cast doubt on the ability of the licence holder to carry on the activities authorised by this licence.

11.8 The licence holder shall -

- (a) notify ORR in writing immediately if its directors become aware of any circumstance that causes them no longer to have the reasonable expectation expressed in the most recent statement made under condition 11.5 in the forms set out in condition 11.6; and
- (b) subject to complying, as if it were a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority, with the listing rules of the Financial Services Authority acting in its capacity as a competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000, publish its notification to ORR in such form and manner as ORR may direct. This notification will include the information specified in the Regulatory Accounting Guidelines in relation to the operation of the re-opener provisions.

#### *Regulatory Accounting Guidelines*

11.9 ORR may from time to time issue Regulatory Accounting Guidelines, which may:

- (a) further specify the accounting policies, format and content of the financial statements and the matters to be shown or reported in them;
- (b) provide for appropriate segmental analysis and/or further breakdown of any items contained in the financial statements;
- (c) provide for specification or description of any transactions or arrangements between the licence holder and any affiliate or related undertaking (including, without limitation, so as to enable ORR to monitor compliance with the conditions of this licence);

- (d) further include provision requiring the licence holder to prepare and publish information in respect of proposed enhancements which the licence holder shall log up as enhancement expenditure, and annually, information on those enhancements actually made; and
- (e) specify the provision and/or 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.

### *Auditors*

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

- (a) stating whether, in their opinion, the regulatory financial statements (other than those referred to in condition 11.10(c)) and information on proposed enhancements have been prepared in accordance with this condition, including Regulatory Accounting Guidelines;
- (b) stating whether, in their opinion, the regulatory financial statements present fairly the financial performance and financial position of the licence holder and (to the extent that they relate to Network Rail Infrastructure Finance) of Network Rail Infrastructure Finance in accordance with this condition and any Regulatory Accounting Guidelines; and
- (c) stating whether the information on enhancement expenditure produced in accordance with condition 11.9(d) has been prepared in accordance with the Regulatory Accounting Guidelines and is consistent with such expenditure presented in the primary financial statements.

11.11 Each statement made under condition 11.5 shall be accompanied by a report prepared by the Auditors and addressed to ORR, stating whether the Auditors are aware of any inconsistencies between that statement and any supporting statements and either the financial statements referred to in condition 11.2 or any information which the Auditors obtained in the course of their audit work for the licence holder and, if so, the report of the auditors should state what the inconsistencies are.

11.12 The licence holder shall enter into a contract of appointment with the Auditors which shall include a term that the Auditors will provide such further explanation or clarification of their reports and such further financial information in respect of the matters which are the subject of their reports as ORR may reasonably require for the exercise of its functions, including, in relation to monitoring, compliance by the licence holder with the conditions of this licence.

*Publication and provision of information*

11.13 The licence holder shall deliver to ORR a copy of the financial statements together with any information provided for in the Regulatory Accounting Guidelines, the Auditors' report referred to in condition 11.10 and the statement referred to in condition 11.5 as soon as reasonably practicable and in any event not later than 1 July following the end of the financial year to which they relate (or a later date approved by ORR). The financial statements, information, the Auditors' report referred to in condition 11.10 and the statement referred to in condition 11.5, subject to any modifications approved by ORR, (including the deletion of any information the publication of which ORR is satisfied would or might seriously and prejudicially affect the interests of the licence holder or any other person), shall be published within one calendar month of delivery to ORR and then made available to any member of the public on request.

11.14 With a view to enabling the licence holder to comply with its obligations under condition 11.2, the licence holder shall, unless ORR otherwise consents, procure from Network Rail Infrastructure Finance a legally enforceable undertaking or undertakings in favour of the licence holder which shall require Network Rail Infrastructure Finance to prepare and give to the licence holder financial statements in relation to Network Rail Infrastructure Finance and its subsidiaries in such a form and covering such periods as may be specified in any Regulatory Accounting Guidelines from time to time issued by ORR.

11.15 The licence holder shall:

- (a) deliver to ORR evidence (including a copy of all such undertakings) that the licence holder has complied with the obligation to procure any undertaking pursuant to condition 11.14;

- (b) inform ORR immediately in writing if the directors of the licence holder become aware that any undertaking procured pursuant to condition 11.14 has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from ORR to enforce any of the undertakings procured pursuant to condition 11.14.

11.16 In this condition:

“Auditors”	means the person appointed by the licence holder for the purpose of reporting on the regulatory financial statements referred to in this condition 11;
“Determination Assumptions”	means any assumptions (including their definitions and bases of measurement) from time to time notified to the licence holder by ORR as assumptions that have been used for determining access charges;
“Network Rail Infrastructure Finance”	has the meaning given to it by condition 4.32;
“Regulatory Accounting Guidelines ”	means any guidelines issued by ORR from time to time in accordance with condition 11.9;
“Regulatory Asset Base”	means the value of the licence holder for regulatory purposes.

## **12 Annual and periodic returns**

### *Annual returns*

- 12.1 The licence holder shall prepare and provide to ORR an annual return by a specified return date each year.
- 12.2 The annual return must comply with the requirements set out by ORR following consultation with the licence holder, including:
- (a) as to its form and content; and
  - (b) the dates to which the annual return relates.
- 12.3 The specified return date must be a date:
- (a) not less than 3 months after the last day to which the annual return relates; and
  - (b) at least 6 months after the date on which ORR notifies the licence holder of the annual return requirements unless the licence holder otherwise agrees.
- 12.4 If, in any year, ORR has not consulted on the annual return requirements or specified a return date in accordance with conditions 12.2 and 12.3, the licence holder shall prepare and provide an annual return for that particular year by the day and month previously specified in accordance with condition 12.3 and on the basis of the annual return requirements relevant to that specified return date.
- 12.5 The licence holder shall publish the annual return within one calendar month of the return date, following consultation with ORR.

### *Periodic returns*

- 12.6 The licence holder shall prepare and provide to ORR returns for each relevant period, in a form approved by ORR, as soon as reasonably practicable and in any event not later than 21 days after the end of the relevant period (or a later date approved by ORR). In this condition 12.6 “relevant period” shall mean each of 13 consecutive periods in each financial year commencing on 1 April, each such period being 28 days in length, save that the length of the first and

last period in such financial year shall be such as shall be adopted by the licence holder for its accounting purposes generally.

## **13 Reporters**

- 13.1 The role of the Reporter is to provide ORR with independent, professional opinions and advice relating to the licence holder's provision or contemplated provision of railway services, with a view to ORR relying on those opinions or advice in the discharge by ORR of its functions under, or in consequence of, the Act. Where appropriate, ORR shall give the licence holder an opportunity to make representations on those opinions or advice before relying on them.
- 13.2 Subject to condition 13.3, ORR may require the Reporter to inquire and report:
- (a) into any matter considered by ORR as material to the setting by ORR of access charges;
  - (b) into any matter in respect of which the licence holder shall be required, by notice, to make an annual return pursuant to condition 12; and
  - (c) into any matter relating to the condition, capacity or capability of any premises or assets used or intended to be used for the provision of railway services by the licence holder.
- 13.3 The scope and content of any inquiry proposed to be undertaken by the Reporter in accordance with condition 13.2 shall be:
- (a) discussed with the licence holder;
  - (b) defined and costed in a written proposal made by the Reporter; and
  - (c) approved by ORR, subject to such modifications (if any) as it may reasonably require, having taken into account any representations by the licence holder.
- 13.4 The contract between the licence holder and the Reporter shall:
- (a) make provision for payment by the licence holder to the Reporter; and
  - (b) contain a term that the Reporter shall owe a duty of care to ORR
- in respect of any inquiry conducted and report produced pursuant to this condition 13. The terms of the contract of appointment shall be subject to approval by ORR.

- 13.5 The licence holder shall comply with any Reporter Guidelines notified to it by ORR. Reporter Guidelines may (without limitation):
- (a) set out the criteria for the appointment and removal of the Reporter;
  - (b) establish procedures for the appointment of the Reporter;
  - (c) specify particular terms of the contract between the licence holder and the Reporter;
  - (d) establish procedures for specifying and approving the scope and content of any inquiry undertaken by the Reporter under this condition 13; and
  - (e) set out details of what is required to comply with the licence holder's duty to co-operate referred to in condition 13.6.
- 13.6 The licence holder shall, and shall procure so far as it is able to do so that its affiliates and its Auditors shall, co-operate fully with the Reporter, so as to enable the Reporter to complete and report on any inquiry the Reporter is required to undertake under this condition 13.
- 13.7 In this condition:
- “Auditors” has the meaning given by condition 11.

## **14 Restricted use of information**

- 14.1 The licence holder shall not, without the consent of the person who has provided protected information, authorise access to or disclose protected information other than:
- (a) to employees, agents, consultants, advisers and contractors of the licence holder who need to be informed for the effective conduct of licensed activities;
  - (b) to the Secretary of State, Scottish Ministers, the Welsh Assembly Government or ORR; or
  - (c) in compliance with the duties of the licence holder under the Act, conditions of any licence, any other enactment, any requirement of the Stock Exchange or any regulatory authority or pursuant to any judicial or arbitral process.

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

14.3 In this condition:

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

### **15 Governance**

15.1 Except as ORR otherwise consents the licence holder must follow best practice corporate governance arrangements, so far as is reasonably practicable, by:

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

15.2 In this condition:

“the UK Corporate Governance Code” means the code published by the Financial Reporting Council in September 2012, or any successor document having a similar purpose and content;

and

“rules of the Financial Conduct Authority” means the rules made by or under Part VI of Financial Services and Markets Act 2000 and contained in the Financial Conduct Authority Handbook, or equivalent rules of any successor body.

## **16 Management incentive plan**

### *Incentive policy*

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

### *Management incentive plan*

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

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

#### *Employee scheme*

- 16.11 The licence holder shall maintain, implement and comply with an incentive scheme for employees other than those to whom the MIP applies (an "Employee Scheme"). Without prejudice to condition 16.12, the Employee Scheme shall be aligned with the incentive policy referred to in condition 16.1.

- 16.12 When formulating the Employee Scheme, the licence holder shall have regard in particular to the considerations described in condition 16.5.
- 16.13 The licence holder shall send the Employee Scheme to ORR at least once a year and a new Employee Scheme shall be sent to ORR whenever there is any material change to the Employee Scheme's contents during the course of the year to which it relates.
- 16.14 Information required to be sent to ORR under this condition shall be provided in such form and manner and on such dates as ORR may require.

**17 Not in use**

## **18 Fees**

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

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

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

## **19 Change of control**

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

## ***Part F Standard industry obligations***

### **20 Insurance**

- 20.1 The licence holder shall, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR consent.

## **21 Claims allocation and handling**

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

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

as may have been approved by ORR.

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

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

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

## 22 Safety and standards

22.1 The licence holder shall:

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

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

22.3 In this condition:

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

## **23 Environment**

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

**24 Not in use**

## **25 Rail Delivery Group**

25.1 The licence holder shall:

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

25.2 In this condition:

“Member” has the meaning ascribed to it in the RDG Articles;

“RDG” means the Rail Delivery Group (a company limited by guarantee and registered in England and Wales under number 08176197); and

“RDG Articles” means the articles of association of RDG.

# Schedule - Revocation

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