

# **The CVL Network Code**

*(with Explanatory Notes)*

***Version 12 as from 9<sup>th</sup> February 2026***

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## Preface

- A. *The CVL Network Code is a set of rules which is incorporated by reference into, and therefore forms part of, each bilateral access contract between the CVL IM and a holder of access rights. It does not create any contractual relationship between operators of trains.*
- B. *The purpose of the CVL Network Code is to:*
- (i) regulate change, including change to the Working Timetable (as defined in Part A of the CVL Network Code), change to railway vehicles specified in an access contract, change to the CVL (as defined in Part A of the CVL Network Code) and change to the CVL Network Code itself;*
  - (ii) establish procedures relating to environmental damage;*
  - (iii) establish a performance monitoring system; and*
  - (iv) establish procedures in the event of operational disruption.*
- C. *Where the CVL Network Code refers to an obligation to be satisfied by the CVL IM, such references to "the CVL IM" include any third party engaged by the CVL IM, at the CVL IM's own discretion, to satisfy the relevant obligation on the CVL IM's behalf, provided that this will not reduce or limit the CVL IM's liability in respect of the discharge of such obligation.*
- D. *This Preface does not form part of the CVL Network Code.*
- E. *The CVL Network Code and other access documentation relating to the CVL can be found on the infrastructure manager section of the [CVL IM Website](#).*

# Part A– General Provisions

## Explanatory Note

- A. *Part A sets out certain definitions, general provisions and rules of interpretation which apply generally to the CVL Network Code. Definitions which are specific to individual parts of the CVL Network Code are contained in the relevant part.*
- B. *This Explanatory Note does not form part of the CVL Network Code.*

## Condition A1 - GENERAL

### 1.1 **General interpretation**

The paramount objective in the railway industry (including in the operation of the CVL) is to operate a safe and secure railway on which the elements of risk to safety and security are reduced to a level as low as reasonably practicable. Nothing in the CVL Network Code shall be interpreted or construed as compromising that objective or requiring the CVL IM to do anything that is contrary to the CVL IM's network licence.

In the CVL Network Code, unless the context otherwise requires:

(a) *CVL Network Code*

References to the CVL Network Code mean the CVL Network Code as modified from time to time.

(b) *Parts, Conditions and paragraphs*

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of the CVL Network Code.

(c) *Definitions in the Act*

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in the CVL Network Code.

(d) *Statutory provisions*

References to statutory provisions shall be construed as:

- (i) references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification); and/or

- (ii) such other relevant legislation taking effect in Great Britain in respect of the same subject matter as those statutory provisions (including in relation to the Access Regulations, RIRs and ROGS).

(e) *Interpretation Act*

Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in the CVL Network Code and the rules of interpretation contained in the Interpretation Act 1978 shall apply to the interpretation of the CVL Network Code.

(f) *Include*

The words "**include**" and "**including**" and cognate expressions are to be construed without limitation.

(g) *Other documents etc.*

Any agreement, instrument, licence, standard (including any CVL Standard), timetable, code or other document referred to in the CVL Network Code or entered into, approved, authorised, accepted or issued by a person pursuant to the CVL Network Code shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard (including any CVL Standard), timetable, code or other document, as it may then have been amended, varied, supplemented or novated.

(h) *Conflict*

In the event of any discrepancy, inconsistency, divergence or anomaly or any conflict of interpretation between the CVL Network Code and an Access Agreement (not including the CVL Network Code), unless expressly provided to the contrary, the following order of precedence shall apply:

- (i) the CVL Network Code; and
- (ii) the Access Agreement.

(i) *Time limits*

Where in the CVL Network Code any obligation of an Access Party is required to be performed within a specified time limit that obligation shall continue after that time limit if the Access Party fails to comply with that obligation within the time limit.

(j) *Headings*

The headings and references to headings shall be disregarded in construing the CVL Network Code.

(k) *Ruling language*

All notices served under the CVL Network Code shall be in the English language.

(l) *Use of singular and plural*

Use of the singular shall include the plural and vice versa.

## 1.2 **Definitions**

In the CVL Network Code, unless the context otherwise requires:

<b>"Access Agreement"</b>	means any particular access contract or framework agreement, whether or not entered into pursuant to any directions of ORR under the Act, incorporating the CVL Network Code;
<b>"Access Beneficiary"</b>	means, in respect of an Access Agreement, the Train Operator or Access Option Holder who is party to that Access Agreement;
<b>"access option"</b>	has the meaning ascribed to it in section 17(6) of the Act;
<b>"Access Option Holder"</b>	means any person who may exercise an access option in respect of a railway facility:  (a) which is not a station or a light maintenance depot; and  (b) in respect of which the facility owner is the CVL IM;
<b>"Access Parties"</b>	means, in respect of an Access Agreement, the CVL IM and the Access Beneficiary which is party to that Access Agreement;
<b>"Access Regulations"</b>	means The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended from time to time);
<b>"Act"</b>	means the Railways Act 1993;
<b>"Affiliate"</b>	means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes, "**holding company**" and "**subsidiary**" have the meanings ascribed to them in section 1159 of the Companies Act 2006;

**"Change of Law"**

means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

- (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (b) Value Added Tax;

**"Compatibility File"**

means a document prepared in accordance with the applicable Railway Group Standards which describes:

- (a) the Specified Equipment;
- (b) the proposed changes to the Specified Equipment;
- (c) the methods used to assess compatibility of the proposed changes to the Specified Equipment with the CVL; and
- (d) the criteria used to assess compatibility and how those criteria have been derived;

**"Competent Authority"**

means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether

autonomous or not and including ORR) whether of the United Kingdom or of the European Union, which has, in respect of an Access Agreement, jurisdiction over either or both of the Access Parties to, or the subject matter of, that agreement, provided that "**Competent Authority**" shall not include Her Majesty's Government or the Welsh Ministers (or any department, minister, official or nominee of them) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;

**"CVL"**

means the railway network known as the Cardiff Core Valley Lines, which connects with the NR Network at two separate connection points:

(i) at the Core Valley Lines' west boundary, between Ninian Park (exclusive) and Waun-gron Park stations on the Up and Down Treforest lines at 1m 20ch (ELR = RAD); and

(ii) at the Core Valley Lines' east boundary, between Cardiff Central (exclusive) and Cardiff Queen Street stations on the Up and Down Llandaff lines at 0m 13ch (ELR = CEJ),

and includes the following railway lines to the extent the CVL IM is the facility owner (locations inclusive unless specified otherwise):

- (a) Rhymney to the Core Valley Lines east boundary at (ii) above;
- (b) Heath Junction to Coryton;
- (c) Ystrad Mynach to Cwmbargoed;
- (d) Merthyr Tydfil to Queen Street, North Junction;
- (e) Aberdare to Abercynon;
- (f) Aberdare to Hirwaun;

- (g) Treherbert to Pontypridd;
- (h) Radyr to Core Valley Lines west boundary at (i) above; and
- (i) Cardiff Queen Street to Cardiff Bay,

<b>"CVL Access Dispute Resolution Rules" or "CVL ADRR"</b>	mean the set of rules entitled "CVL Access Dispute Resolution Rules" and as may be updated from time to time in accordance with its terms;
<b>"CVL ADRR Forum"</b>	means "Forum" as defined in the CVL ADRR;
<b>"CVL IM"</b>	means Seilwaith Amey Cymru / Amey Infrastructure Wales Limited, a company registered in England and Wales under registered number 11389544;
<b>"CVL IM Website"</b>	means the infrastructure manager section of the Transport for Wales Rail Services website ( <a href="https://tfwrail.wales/">https://tfwrail.wales/</a> );
<b>"CVL Network Change"</b>	has the meaning ascribed to it in Part G of the CVL Network Code;
<b>"CVL Network Code"</b>	means this document entitled " <b>CVL Network Code</b> ";
<b>"CVL Restriction of Use"</b>	means, for the purposes of the CVL Network Code, a restriction of use of all or any part of the CVL;
<b>"CVL Vehicle Change"</b>	has the meaning ascribed to it in Part F of the CVL Network Code;
<b>"Delay Attribution Principles and Rules"</b>	means, subject to Condition A1.1(g), the document which provides guidance on the attribution of delay across the NR Network, entitled "Delay Attribution Principles of Rules" as issued by the Board (as defined in Part B of the CVL Network Code) and which the CVL IM has adopted to attribute responsibility for capacity, lateness and service interval failures on the CVL (as may be updated from time to time in accordance with its terms);

<b>"Direction"</b>	means, in respect of an Access Agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;
<b>"Franchised Services"</b>	has the meaning ascribed to it in Condition A1.6;
<b>"Freight Customer Access Option Holder"</b>	means an Access Option Holder whose access option is an Access Agreement with the CVL IM pursuant to which that Access Option Holder can draw down rights to a Train Operator to enable it to operate services for the carriage of goods by railway for or on behalf of that Access Option Holder;
<b>"hard copy information"</b>	<p>means any relevant item which it is not reasonably practicable for the CVL IM to Publish on its Website, having regard, in particular, to whether such relevant item is, or is likely to be:</p> <ul style="list-style-type: none"> <li data-bbox="730 1160 1294 1191">(a) unavailable in electronic form; or</li> <li data-bbox="730 1227 1391 1346">(b) incapable of being downloaded and/or printed by any class of persons accessing the CVL IM Website; or</li> <li data-bbox="730 1382 1391 1451">(c) exceptionally costly to Publish on its Website.</li> </ul>
<b>"Legal Requirement"</b>	<p>means, in relation to any person, any of the following:</p> <ul style="list-style-type: none"> <li data-bbox="730 1597 1391 1671">(a) any enactment to the extent that it applies to that person;</li> <li data-bbox="730 1706 1391 1982">(b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the Commission of the European Union which is binding on that person to the extent that it is so binding; and</li> </ul>

- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

<b>"Network Rail"</b>	means Network Rail Infrastructure Limited, a company registered in England and Wales under registered number 2904587 having its registered office at 1 Eversholt Street, London NW1 2DN;
<b>"Network Rail Network Code"</b>	means the document commonly known as the <b>"Network Code"</b> published by Network Rail which applies to the operation of railway vehicles on the NR Network;
<b>"New Working Timetable"</b>	means the version of the New Working Timetable (to the extent applicable to the CVL) published by Network Rail (on behalf of the CVL IM) at D-26 in accordance with Condition <b>DError! Reference source not found.</b> ;
<b>"non-sensitive version"</b>	means a version of a relevant item: <ul style="list-style-type: none"><li>(a) from which Sensitive Information has been excised; and/or</li><li>(b) in which Sensitive Information has been replaced by a summary containing no Sensitive Information;</li></ul>
<b>"NR Network"</b>	means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;
<b>"Office of Rail and Road"</b>	has the meaning ascribed to it in section 15 of the Railways and Transport Safety Act 2003 and references to <b>"ORR"</b> shall be construed accordingly;
<b>"Potential Access Party"</b>	means any person who proposes in good faith to enter into an Access Agreement or become

an Access Option Holder provided that such person has first undertaken to the CVL IM to be bound by the relevant provisions of the CVL Network Code and the CVL ADRR;

**"Principal Change Date"** has the meaning ascribed to it in 0 of the CVL Network Code;

**"Publish on its Website"** means, in relation to any Specified Information to be published on the CVL IM Website, placing such Specified Information on the CVL IM Website in a prominent position and with links which enable visitors to that site to locate it quickly and without difficulty, and **"Published on its Website"** and **"Publication on its Website"** shall be construed accordingly;

**"Railway Funding Authority"** has the meaning ascribed to it in section 45 of the Railways Act 2005;

**"Railway Group Standards"** means technical standards and operating procedures authorised pursuant to the Railway Group Standards Code issued by the Rail Safety and Standards Board Limited and approved by ORR, and the Railway Industry Standards;

**"Railway Industry Standards"** means the railway industry standards produced under governance arrangements approved by the Industry Standards Coordination Committee on behalf of the railway industry;

**"relevant item"** means, in respect of any Specified Information, the whole or part of any information, statement, proposal, draft, instrument or other document which constitutes or forms part of that specified information;

**"RIRS"** means the Railways (Interoperability) Regulations 2011;

**"ROGS"** means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**"Routes"** means, in respect of an Access Agreement, those parts of the CVL which a Train Operator

	has permission to use pursuant to that agreement;
<b>"Secure Information"</b>	means a relevant item, the publication of which may, in the reasonable opinion of the CVL IM, create any risk to the safety or security of the CVL;
<b>"Sensitive Information"</b>	means a relevant item, the publication of which by the CVL IM: <ul style="list-style-type: none"> <li>(a) is likely materially to compromise or otherwise prejudice the commercial interests of any Access Party or any of its Affiliates; or</li> <li>(b) may reasonably be expected seriously and prejudicially to affect the interests of any person;</li> </ul>
<b>"Services"</b>	means, in respect of an Access Agreement: <ul style="list-style-type: none"> <li>(a) the services for the carriage of passengers by railway;</li> <li>(b) the services for the carriage of goods by railway; and</li> <li>(c) any other train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset,</li> </ul> <p>in each case as provided for in that Access Agreement;</p>
<b>"Specified Equipment"</b>	means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on all or part of the CVL pursuant to that Access Agreement;
<b>"Specified Information"</b>	means any information, statement, proposal, draft, instrument or other document;
<b>"Statement of Compatibility"</b>	means the written statement containing the information prescribed by the applicable Railway Group Standards, including:

- (a) the compatibility between the Specified Equipment and the CVL;
- (b) the configuration of the Specified Equipment;
- (c) operational requirements and limitations;
- (d) route constraints; and
- (e) network factors,

within which compatibility of the Specified Equipment and the CVL has been assessed;

**"Systems Code"**

means the document known as the "Code of Practice for the Management and Development of Railway Code Systems" issued by Network Rail, as may be updated from time to time in accordance with its terms, or such alternative documents as may be identified by the CVL IM from time to time;

**"Technical Specification for Interoperability"**

has the meaning ascribed to the term **"TSI"** in the RIRS;

**"Timetable Period"**

has the meaning ascribed to it in 0 of the CVL Network Code;

**"Train Operator"**

means (without prejudice to Condition A1.3), in respect of an Access Agreement, a person (whether or not an operator of trains) who has permission to use the track pursuant to that Access Agreement;

**"Transport for Wales"**

is a private limited company incorporated in England and Wales with company number 09476013 and with its registered address at Qed Centre Main Avenue, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff, CF37 5YR;

**"Value Added Tax"**

means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition

to this and "VAT" shall be construed accordingly;

**"Welsh Ministers"** means the Welsh Ministers whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, CF10 3NO, or any successor to all or part of their rights and functions;

**"Working Day"** means each of Monday to Friday (inclusive) excluding common law and statutory public holidays on which banks in the City of London are not open for business; and

**"Working Timetable"** has the meaning ascribed to it in Condition D2.1 of the CVL Network Code;

### 1.3 ***References to Train Operator***

Each reference to a Train Operator, or to any obligation of a Train Operator, shall, insofar as the Train Operator is not an operator of a train, be construed as a reference to the person whose operation of trains on the CVL derives from that Train Operator's Access Agreement or (as the case may be) to that person's obligation and, in the latter case, the Train Operator shall procure that the person concerned performs the relevant obligation.

### 1.4 ***Notices***

1.4.1 Any notice, consent or approval to be given under the CVL Network Code by any person:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and:
  - (i) delivered by hand at, or sent by prepaid first class post or recorded delivery to, the intended recipient's registered address or principal business address within Great Britain; or
  - (ii) sent by email to the email address of the intended recipient most recently provided by the intended recipient to the sender, or sent by other electronic means.

1.4.2 For the purposes of Condition A1.4.1, delivery by hand shall include delivery by a reputable firm of couriers.

1.4.3 Any notice, consent or approval given in accordance with Condition A1.4.1 shall be deemed to have been received in accordance with Condition A4.2.

#### 1.5 ***Good faith***

The Access Parties shall, in exercising their respective rights and complying with their respective obligations under the CVL Network Code (including when conducting any discussions or negotiations arising out of the application of the CVL Network Code or exercising any discretion under it) at all times act in good faith.

#### 1.6 ***Franchised services***

References to Franchised Services include:

- (a) railway passenger services which the appropriate designating authority has designated as eligible for provision under franchise agreements pursuant to section 23 of the Act;
- (b) railway passenger services provided by a person appointed as a concessionaire or concession operator by a Railway Funding Authority; and
- (c) railway passenger services provided by the relevant franchising authority, or another person on behalf of the relevant franchising authority, under section 30 of the Act.

#### 1.7 ***Standard forms***

If the CVL IM Publishes on its Website any standard forms for the purposes of notifications made, or responses to such notifications, under the CVL Network Code, these standard forms shall be used by any person notifying or responding to a notification under the CVL Network Code unless it is not reasonably practicable to do so.

#### 1.8 ***Dispute resolution procedures***

Nothing in this CVL Network Code shall prevent an Access Party from referring any dispute to be dealt with in accordance with a dispute resolution procedure other than the CVL ADRR where this is permitted by the relevant access contract.

### **Condition A2 - STANDARDS OF DOCUMENTATION**

Where in the CVL Network Code any person is required to prepare, produce or publish any Specified Information, that obligation is an obligation to ensure that the Specified Information:

- 2.1 is in terms which are, to the greatest extent reasonably practicable, precise, clear and unambiguous; and
- 2.2 contains the information specified for its contents by the provision of the CVL Network Code which requires its preparation, production or publication, and this Condition A2 is without prejudice to any further or other requirements specified in the CVL Network Code and/or the Access Agreement in relation to the Specified Information.

### **Condition A3 - PUBLICATIONS**

#### **3.1 *General Obligation***

3.1.1 Where in the CVL Network Code the CVL IM is required to publish any Specified Information, the CVL IM shall have satisfied that obligation if the Specified Information is, subject to Condition A3.1.2, Published on its Website.

3.1.2 Any Train Operator shall be entitled to request a hard copy of any information published pursuant to Condition A3.1.1 subject to paying the CVL IM's reasonable copying and administration charges.

#### **3.2 *Sensitive Information***

Where in the CVL Network Code the CVL IM is required to publish any Specified Information which includes relevant items which are Sensitive Information, that obligation shall be satisfied in respect of any relevant item if it publishes a non-sensitive version (such as a redacted version) of that relevant item.

#### **3.3 *Secure information***

Where in the CVL Network Code the CVL IM is required to publish any Specified Information which includes relevant items which are Secure Information, that obligation shall be satisfied if it:

- (a) indicates on the CVL IM Website:
  - (i) in general terms, the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person to whom the CVL IM owes an obligation under Condition A3.1.2 with a paper copy of the relevant item, which may be redacted at the CVL IM's discretion; and

- (b) complies with requests of the kind specified in Condition Part A3.3(a)(ii).

### 3.4 **Hard copy information**

3.4.1 Where in the CVL Network Code the CVL IM is required to publish any Specified Information which includes relevant items which are hard copy information, but are not Sensitive Information, that obligation shall be satisfied if it:

- (a) indicates on the CVL IM Website:
  - (i) the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.4.1(a)(ii).

### 3.5 **Hard copy Sensitive Information**

3.5.1 Where in the CVL Network Code the CVL IM is required to publish any Specified Information which includes relevant items which are hard copy information and are Sensitive Information, that obligation shall be satisfied if it:

- (a) indicates on the CVL IM Website:
  - (i) the nature of the relevant item; and
  - (ii) that it will comply with all reasonable requests to supply any person with a paper copy of the non-sensitive version of the relevant item; and
- (b) complies with requests of the kind specified in Condition A3.5.1(a)(ii).

### 3.6 **Determination**

3.6.1 A determination as to whether any relevant item is Sensitive Information may be made:

- (a) in relation to a relevant item submitted to the CVL IM by another person, by the person submitting the relevant item, in the exercise of his rights under Condition A3.7.1; and
- (b) in relation to any other relevant item, by the CVL IM.

3.6.2 A determination as to whether any relevant item is Secure Information or hard copy information may be made by the CVL IM.

### 3.7 **Non-sensitive versions**

3.7.1 Any person who is obliged to submit Specified Information to the CVL IM may submit a non-sensitive version of particular relevant items, provided that they also submit such relevant items in their entirety and the CVL IM shall publish the non-sensitive version of those relevant items.

3.7.2 If no non-sensitive version of a particular relevant item is submitted to the CVL IM, the CVL IM shall be entitled to assume that the relevant item does not contain any Sensitive Information and shall publish that relevant item in its entirety.

### 3.8 **Appeals**

3.8.1 If any Access Party is dissatisfied with a determination made by:

- (a) the CVL IM under Condition A3.6.1(b) or Condition A3.6.2; or
- (b) any other person under Condition A3.6.1(a),

it may refer the matter for determination in accordance with the CVL ADRR.

3.8.2 If any Access Party or Potential Access Party is dissatisfied with any decision of the relevant CVL ADRR Forum in relation to any matter referred to it under Condition A3.8.1, that Access Party may refer the matter to the Office of Rail and Road for determination under Part M.

## **Condition A4- NOTICE BY ORR**

### 4.1 ***Giving of Notice***

Where in the CVL Network Code there is provision for a notice to be given by ORR for any purpose, such notice:

- (a) may be given from time to time; and
- (b) shall only have effect if it has been:
  - (i) given to every Access Party, Transport for Wales, the Welsh Ministers and every other person who has notified ORR that it wishes to receive any such notice; and
  - (ii) Published on its Website and placed on the register maintained under section 72 of the Act (as a document issued or made by it under an access agreement).

## 4.2 ***Deemed Receipt***

A notice given under the CVL Network Code shall be deemed to have been received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by email or other electronic means (subject to confirmation of receipt of delivery):
  - (i) on the day of transmission if sent before 1700 hours on a Working Day; or
  - (ii) in any other case, at 0900 hours on the first Working Day following the day of transmission.

## 4.3 ***Reasons for decisions***

An express provision of the CVL Network Code which requires or contemplates that ORR should give reasons for its decision in any case does not affect the right of any person to be given reasons for any other decision of ORR in any other case.

## **Condition A5 - LIMITATION ON LIABILITY**

### 5.1 ***General***

If an Access Party fails to perform an obligation under the CVL Network Code, the provisions of its Access Agreement limiting the liability of such Access Party under that contract shall have effect in relation to such failure unless and to the extent that:

- (a) an express provision states otherwise in any Part of the CVL Network Code; or
- (b) an express provision states otherwise in the relevant Access Agreement.

### 5.2 ***Saving***

Condition A5.1 does not apply to an obligation to pay compensation under Condition F3, Condition G2 or Condition G4 of the CVL Network Code.

## **Condition A6 - CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

### 6.1 ***Application to third parties***

Except as provided in this Condition A6, no person who is not an Access Party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the CVL Network Code.

## **6.2 *Application to CVL Network Code***

Where in the CVL Network Code a right is given to any person who is not an Access Party, that person shall be entitled to enforce directly any such right under the Contracts (Rights of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award. The consent of such person who is not an Access Party, other than ORR (where applicable), shall not be required to any amendment to the CVL Network Code.

## **Condition A7 - CONSULTATION**

### **7.1 *Consultation by a meeting***

Where in the CVL Network Code a person is required to consult with other persons on any matter, such consultation may take place at a meeting to which such persons are invited.

## Part B – Performance Monitoring

### Explanatory Note

- A. *Part B provides for the establishment by the CVL IM of a Performance Monitoring System, designed to record whether trains pass specified monitoring points, the times at which they do so and the difference between those times and the corresponding scheduled times. The system is also designed to enable the CVL IM to determine and record the cause of any delay or cancellation. Provision is made for the CVL IM to notify and seek agreement from affected Train Operators having access to the CVL as to the cause of any such delay or cancellation, and there are procedures specified for resolving cases where the CVL IM and a Train Operator disagree as to cause.*
- B. *The CVL IM and Network Rail have reached a contractual arrangement with the effect that Network Rail will in practice fulfil certain of the CVL IM's responsibilities with regards to performance monitoring on the CVL, and such responsibilities may be fulfilled by Network Rail on behalf of the CVL IM.*
- C. *Train Operators are given the right to notify the CVL IM if the Performance Monitoring System is not fit for purpose and require the CVL IM to investigate the grounds for such notification and report on its findings.*
- D. *Both the CVL IM and Train Operators are given the right to audit and inspect the records and monitoring equipment of the relevant Performance Monitoring System and to require tests of the Performance Monitoring System to be carried out in the presence of an independent expert.*
- E. *Condition B5.3 makes provision for the Access Parties to agree a more onerous Performance Monitoring System than that contemplated by Part B. The model set out in Part B is therefore a minimum standard.*
- F. *Part B incorporates the Delay Attribution Principles and Rules, which is a document issued by the Board (as defined in this Part B) providing guidance on the attribution of delay, and the Performance Data Accuracy Code (also issued by the Board), which encompasses defined standards of accuracy of performance data.*
- G. *The CVL IM and Access Parties may make proposals to change the Delay Attribution Principles and Rules and the Performance Data Accuracy Code pursuant to this Part B. In order to maintain consistency in the industry, these are the same Delay Attribution Principles and Rules as used on the NR Network.*
- H. *Where the relevant Access Party proposing the amendment to the Delay Attribution Principles and Rules and/or the Performance Data Accuracy Code*

*operates on the CVL but not the NR Network, such Access Party would need to follow the procedure set out in this Part B for proposing amendments to the Delay Attribution Principles and Rules and/or the Performance Data Accuracy Code. Where the relevant Access Party proposing the amendment to the Delay Attribution Principles and Rules and/or the Performance Data Accuracy Code operates on the CVL and the NR Network, the relevant Access Party has the option of proposing amendments pursuant to (i) the procedures set out in Part B of the Network Rail Network Code (in which case such Access Party must notify the CVL IM of its amendment proposal) or (ii) pursuant to this Part B of the CVL Network Code.*

- I. Where an Access Party who also has a track access contract with Network Rail to use the NR Network proposes a change to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code under the Network Rail Network Code, that Access Party shall be responsible for collating any relevant representations provided by the CVL IM and other Access Parties and submitting such representations as part of the process set out in Part B of the Network Rail Network Code.*
- J. The CVL IM uses the services of the Board (as defined in this Part B) for matters relating to the CVL but will not be involved in the governance processes of such Board.*
- K. This Explanatory Note does not form part of the CVL Network Code.*

## DEFINITIONS

In this Part B, unless the context otherwise requires:

<b>"Board"</b>	means the Delay Attribution Board which also provides services to the NR Network constituted in accordance with Condition B6.2 of the Network Rail Network Code;
<b>"Board Secretary"</b>	means the secretary of the Board;
<b>"Performance Data Accuracy Code"</b>	means, subject to Condition A1.1(g), the code issued by the Board relating to the standards of performance data accuracy entitled "Performance Data Accuracy Code" (as may be amended and/or updated from time to time in accordance with its terms);
<b>"Performance Monitoring System"</b>	means the system for monitoring train performance described in Condition B1; and
<b>"Proposal for Amendment"</b>	means any proposal for amendment in respect of the Delay Attribution Principles and Rules or the Performance Data Accuracy Code.

## Condition B1- PROCEDURES FOR MONITORING PERFORMANCE

### 1.1 *Performance Monitoring System*

1.1.1 The CVL IM shall operate a system for monitoring train performance which accurately records:

- (a) the times at which trains arrive at, depart from and pass specified points;
- (b) the difference between the time at which a train arrives at, departs from or passes a specified point and the time published for such arrival, departure or passing in the Working Timetable;
- (c) all cancelled trains and trains failing to pass any specified point; and
- (d) the cause of train delays and cancellations.

1.1.2 Where this Part B refers to any obligations, responsibilities or actions of, or to be carried out by, the CVL IM in respect of performance monitoring, the CVL IM and Network Rail have agreed that in practice certain of such obligations, responsibilities and actions will be fulfilled by Network Rail. Such obligations, responsibilities and actions shall be discharged where they are fulfilled by Network Rail on the CVL IM's behalf.

## 1.2 ***The Performance Data Accuracy Code***

### 1.2.1 *Incorporation*

The Performance Data Accuracy Code is incorporated into and shall form part of the CVL Network Code.

### 1.2.2 *Obligations and Rights*

Each Access Party shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 "**accurately**" shall be construed in accordance with the Performance Data Accuracy Code.

## 1.3 ***The Delay Attribution Principles and Rules***

The Delay Attribution Principles and Rules are incorporated into and shall form part of the CVL Network Code. If there is any proposal to modify the Delay Attribution Principles and Rules at any time:

1.3.1 Condition B2.5 of the CVL Network Code shall apply to any modification proposed by the CVL IM or an Access Party; and

1.3.2 Condition B2.6 of the CVL Network Code shall apply to any modification proposed by Network Rail or a party other than the CVL IM or an Access Party.

## **Condition B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS**

### 2.1 ***Determination of causes of delays or cancellations***

The CVL IM shall, in relation to any train delay or cancellation on the CVL (subject to any thresholds agreed between the CVL IM and each Train Operator), determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as practicable, the extent to which each person or cause is so responsible.

### 2.2 ***Information relating to causes of train delays or cancellations***

The CVL IM shall, when determining and recording the persons and causes which are responsible for train delays and cancellations, have due regard to all information which is relevant in the circumstances, including the following:

- (a) information from any computerised or other recording system which the CVL IM may, for the time being, be permitted to use for the purposes of a particular Access Agreement;

- (b) information supplied by any persons duly authorised to participate in the signalling of trains;
- (c) information supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by other operators of railway assets;
- (d) information supplied by the CVL IM, Network Rail, or other providers of railway networks, whether such information is within that person's knowledge or based on information supplied by persons engaged or acting on behalf of, or otherwise in accordance with or subject to the instructions of, that person;
- (e) information supplied by any provider of rolling stock, whether such information is within its knowledge or based on information supplied by other operators of rolling stock; and
- (f) information and guidance set out in the Delay Attribution Principles and Rules.

## **2.3 Notification and agreement of delays or cancellations**

### **2.3.1 Notification of delays or cancellations**

The CVL IM shall, as soon as reasonably practicable following the occurrence on the CVL of any train delay or cancellation affecting a Train Operator's train, notify that operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by the CVL IM to that operator. Any such notification shall be sent using the Performance Monitoring System (and/or any such other means of notification that has been agreed for this purpose) and at the same time provide reasons for doing so.

### **2.3.2 Consideration by a Train Operator**

A Train Operator shall consider each delay or cancellation attributed to it by the CVL IM, and if the Train Operator wishes to refer the attribution for further investigation it shall do so within two Working Days of receipt of that notice utilising the Performance Monitoring System (or any other means of notification that has been agreed for this purpose between that Train Operator and the CVL IM), and at the same time give its reasons for doing so. The name & contact details of the designated representative appointed by the Train Operator for the purposes of Condition B2.4.2 must also be made available within the same timeframe to the CVL IM.

### **2.3.3 Agreement of delay attribution**

Any attribution shall, unless referred for further investigation by that Train Operator within two Working Days of receipt of that notice in accordance with Condition B2.3.2, be deemed to be agreed by that Train Operator.

## 2.4 ***Matters referred for further investigation***

### 2.4.1 *Procedure for conducting further investigation*

Within the next two Working Days after receipt of a notification from a Train Operator in accordance Condition B2.3.2, the CVL IM and that Train Operator shall attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and the relevant information set out in the Delay Attribution Principles and Rules.

### 2.4.2 *Referral for review*

If agreement has not been reached within the two Working Days referred to in Condition B2.4.1, the matter shall then, notwithstanding Condition B2.4.3 (b) become subject to a period of review, of no more than 20 working days by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by the CVL IM for the purposes of this Condition B2.4.2.

### 2.4.3 *Referral for further guidance or resolution*

If the CVL IM and the Train Operator are unable to agree on the attribution , within:

- (a) The further 20 Working Days of review by the designated senior managers in accordance with Condition B2.4.2;
- (b) Such longer period as the CVL IM and the Train Operator have agreed ,within the same further 20 Working Days in order to continue and conclude the designated senior reviewing managers review.

then either or both parties involved in a dispute may notify the Board Secretary (by any electronic communication method made available by the Board Secretary for such purposes) of their wish to seek guidance from the Board, on the appropriate application of the Delay Attribution Principles and Rules or on any other relevant matter.

### 2.4.4 Provision of information

- (a) Both the CVL IM and the Train Operator (or, in the case of a single request, the party requesting guidance from the Board) shall provide copies of completed request for guidance forms in connection with their dispute to the Board Secretary in order for their views to be considered **56**

**days** after the Board Secretary confirms to both parties acknowledgement of a request for guidance.

- (b) Both parties shall make reasonable efforts to attend, or be represented at, the Board meeting where the guidance request will be considered, providing such meeting is no less than 35 days after date in 2.4.4(a).

#### 2.4.5 *Guidance from the Board*

- (a) When submitting a request for guidance, parties should be aware that the Board can:
  - i. Provide clarification on attribution principles that are not explicitly documented in the DAPR Delay Attribution Principles and Rules or associated guidance documents and/or have potentially been misinterpreted.
  - ii. Provide guidance on the correct Delay Code and/or Responsible Manager Code (terms defined in the Delay Attribution Principles and Rules Sections B5 and B6) to use in connection with an incident based on the above.
- (b) When submitting a request for guidance, parties should be aware that the Board cannot:
  - i. Carry out investigations into the facts of an incident on behalf of the disputing parties.
  - ii. Provide technical insight into the causes behind a fleet or infrastructure asset failure.
- (c) In the event that the Board cannot, will not, or does not provide guidance on all matters submitted for its consideration in relation to a specific enquiry, it will provide enquiring parties with a written explanation on the reasons for this.
- (d) If, within 10 Working Days of guidance or a written explanation in accordance with this Condition 2.4.5 (c), being received from the Board or any designated sub-committee pursuant to Condition B2.4.3, the CVL IM and the Train Operator are unable to agree on the attribution, either or both shall refer the matter for determination in accordance with the CVL ADRR.

#### 2.4.6 Precedence

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement the CVL IM and the Train Operator may substitute for any timescale prescribed in this Condition B2.4 a

corresponding timescale in Schedule 8 or its equivalent (Performance Regime) of that Access Agreement.

## 2.5 ***Amendments to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code proposed by the CVL IM or an Access Party***

### 2.5.1 *Entitlement to make a Proposal for Amendment*

The CVL IM and/or any Access Party shall be entitled to submit a Proposal for Amendment, it being acknowledged that for any such Proposal for Amendment to be implemented, it must also be approved pursuant to the processes required by the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable). Any Proposal for Amendment made in accordance with this Condition B2.5 shall be sent to the CVL IM and copied to all Access Parties and shall be in the form required by the CVL IM, except that, where an Access Party intends to submit a Proposal for Amendment, and such Access Party is also a TAC Party (as defined in the Network Rail Network Code), Condition B2.7 of this CVL Network Code shall apply.

### 2.5.2 *Notice of Proposal for Amendment*

The CVL IM shall, within five Working Days following circulation or receipt of a Proposal for Amendment or, where the CVL IM did not submit that proposal, within five Working Days following receipt of a response to any clarification that the CVL IM may reasonably request from the sponsor of the Proposal for Amendment:

- (a) give notice to Network Rail and the Board that it has received a Proposal for Amendment which the CVL IM may request to be considered and which the CVL IM and each Access Party is considering pursuant to this Part B of the CVL Network Code; and
- (b) invite the submission to the CVL IM of written representations in respect of that Proposal for Amendment within such period as is reasonable in all the circumstances (the "**Consultation Period**"), being a period of not less than 20 Working Days from the date of notification under paragraph (a) above.

### 2.5.3 *Material modification of Proposal for Amendment*

If at any time a Proposal for Amendment is (with the consent of the party proposing such Proposal for Amendment) modified in a material way, the CVL IM shall treat the proposal as a new Proposal for

Amendment and the provisions of Conditions B2.5.1 and B2.5.2 shall apply thereto.

#### 2.5.4 *Meeting to discuss a Proposal for Amendment*

At the end of the Consultation Period, unless all parties are in unanimous agreement in support of the Proposal for Amendment (in which case, Condition B2.5.6 shall apply), the CVL IM shall give notice to each Access Party calling a meeting to discuss the Proposal for Amendment and any written representations it has received in respect of that Proposal for Amendment.

#### 2.5.5 *Approval of Changes to Delay Attribution Principles and Rules or Performance Data Accuracy Code*

At any meeting to discuss a Proposal for Amendment held in accordance with Condition B2.5.4, those present may be asked to vote on whether they support the Proposal for Amendment. Upon any such vote, the CVL IM and each Access Party shall be entitled to one vote. A Proposal for Amendment shall have been approved only where 75% or more of those present and voting at the meeting support such Proposal for Amendment (and, if approved, Condition B2.5.6 shall apply).

#### 2.5.6 *Submission of Proposal for Amendment*

- (a) If a Proposal for Amendment is either unanimously agreed pursuant to Condition B2.5.4 or approved pursuant to Condition B2.5.5, the CVL IM may, if it has the right to do so or if the Board otherwise agrees to consider an amendment, procure that the Board considers an amendment to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) in the same terms as the approved Proposal for Amendment pursuant to Condition B2.5.4 or B2.5.5 (as the case may be). If the CVL IM does not procure that the Board considers such amendment to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable), the Proposal for Amendment in question shall not proceed and no Access Party shall have any recourse against the CVL IM in respect of such Proposal for Amendment.
- (b) The CVL IM may, if it has the right to do so, make such further representations to the Board in relation to the Proposal for Amendment as each Access Party may reasonably request.

#### 2.5.7 *Decision to Approve*

The CVL IM and each Access Party acknowledge and agree that:

- (a) any decision made in accordance with the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) to approve a Proposal for Amendment will state the date from which it is proposed that such approved amendment is to take effect, being a date no earlier than the date on which the decision was made; and
- (b) no Proposal for Amendment shall have effect unless ORR gives notice to the Board in writing that it approves the proposal and confirms the date of introduction.

#### 2.5.8 *Notification of approval*

If ORR gives its approval of the Proposal for Amendment, the CVL IM shall, as soon as reasonably practicable:

- (a) notify details of the approved amendment and when it will take effect to all Access Parties; and
- (b) circulate the revised version of the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable), as updated by the Board to reflect the approved amendment, to all Access Parties and to ORR.

#### 2.5.9 *Decision to Reject*

The CVL IM shall, as soon as reasonably practicable following a decision made in accordance with the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable), or following receipt of notification of a decision of ORR, to reject a Proposal for Amendment, notify the sponsor of the Proposal for Amendment of that decision.

### 2.6 ***Proposal submitted by a person other than the CVL IM or an Access Party to modify Delay Attribution Principles and Rules or Performance Data Accuracy Code***

2.6.1 If Network Rail or any other person (other than the CVL IM or an Access Party) proposes a modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code and such modification will or is reasonably likely to have an impact on the CVL IM or any Access Party:

- (a) the CVL IM may, where it has the right to do so, use reasonable endeavours to:

- (i) ensure that the CVL IM is informed of any proposed modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code;
  - (ii) make representations to the Board Secretary (as defined in Part B of the CVL Network Code) on behalf of the CVL IM and/or any Access Party in connection with any such proposed modification; and
  - (iii) procure that the Board Secretary (as defined in Part B of the CVL Network Code) takes into account any representations made by the CVL IM (on behalf of the CVL IM and/or any Access Party) in connection with any such proposed modification;
- (b) the CVL IM shall, within 5 Working Days of being notified of such proposed modification, notify each Access Party of the proposed modification;
  - (c) the CVL IM shall consult with each Access Party in relation to the proposed modification;
  - (d) within 15 Working Days of the notification pursuant to Condition B2.6.1(b), each Access Party shall provide any representations it may have in relation to the proposed modification;
  - (e) the CVL IM may, where it has the right to do so, make equivalent representations to those provided pursuant to Condition B2.6.1(d) to the Board on behalf of the Access Parties (together with any representations which it may have); and
  - (f) the CVL IM and each Access Party shall be bound by the modifications made to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) as a result of the modification process set out in Part B of the Network Rail Network Code (which the CVL IM shall notify each Access Party the outcome of).

**2.7 *Proposal submitted by an Access Party who is also an access party under the Network Rail Network Code to modify Delay Attribution Principles and Rules or Performance Data Accuracy Code***

2.7.1 If an Access Party who is also a TAC Party (as defined in the Network Rail Network Code) intends to propose a modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code, such Access Party shall be entitled to propose such modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code pursuant to either:

- (a) the applicable procedures contained in Part B of the Network Rail Network Code, in which case such applicable procedures and Conditions B2.7.2 to B2.7.5 of the CVL Network Code shall apply; or
- (b) Condition B2.5 of the CVL Network Code.

2.7.2 An Access Party proposing a modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) as described in Condition B2.7.1(a) shall:

- (a) promptly notify the CVL IM and all other Access Parties that it is proposing a modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) pursuant to Part B of the Network Rail Network Code, together with the wording of the proposed modification; and
- (b) consult with the CVL IM and each other Access Party in relation to such proposed modification promptly following the notification pursuant to Condition B2.7.2(a) above.

2.7.3 Within 20 Working Days of the notification pursuant to Condition B2.7.2(a), the CVL IM and each other Access Party shall provide to the Access Party proposing the modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) any representations they may have in relation to the proposed modification.

2.7.4 The Access Party proposing the modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) shall make equivalent representations to those provided pursuant to Condition B2.7.3 on behalf of the CVL IM and the other Access Parties in accordance with the process set out in the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable).

2.7.5 The CVL IM and each Access Party shall be bound by the modifications made to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) as a result of the process set out therein (which the Access Party proposing the modification to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code (as applicable) shall notify the CVL IM and each other Access Party the outcome of).

## **Condition B3 - SYSTEM INVESTIGATION**

### **3.1 *Notification of unsatisfactory system***

A Train Operator may, when it has reasonable grounds for considering that the Performance Monitoring System of the CVL IM is not satisfying the requirements set out in Condition B1, notify the CVL IM of the manner in which the Performance Monitoring System is alleged not to satisfy such requirements.

### 3.2 ***Investigation of system***

As soon as reasonably practicable following receipt of a notice from a Train Operator under Condition B3.1, the CVL IM shall investigate the matters complained of and shall, within the period of 20 Working Days following the date of receipt of that notice, prepare and deliver to that Train Operator a report of its investigations which shall include:

- (a) details of all relevant tests and checks carried out by the CVL IM;
- (b) the results of the CVL IM's investigations;
- (c) the CVL IM's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1 in the manner alleged by that Train Operator or in any other respect;
- (d) the CVL IM's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- (e) any steps which the CVL IM is taking or proposes to take in respect of any failure to satisfy the said requirements.

### 3.3 ***Adjustment to prior results***

If it is established in accordance with Condition B3.2 or Condition B4.2 that the Performance Monitoring System is not satisfying the requirements set out in Condition B1, the results obtained from the Performance Monitoring System for the period of two months preceding the date of the investigation or, if later, since the date of the last investigation under Condition B3.1 (but not in respect of earlier periods), shall be deemed to have been adjusted by the CVL IM in a manner which it considers is fair and reasonable in order to correct the results (but without requiring the CVL IM to amend such results in the Performance Monitoring System).

## **Condition B4- RECORDS, AUDIT AND TESTING**

### 4.1 ***Obligation to keep information***

The Access Parties shall, for a period of not less than six years, keep summaries of all material information relating to the monitoring of train performance.

### 4.2 ***Right to audit and inspect***

Any Access Party may, without prejudice to Condition B3.2 and on giving at least five Working Days' prior notice to the other Access Party:

- (a) audit and inspect at any reasonable time all processes, systems and records of the Performance Monitoring System for any particular period and in relation to the Train Operator's Services;
- (b) inspect at any reasonable time all such premises and equipment as are used in connection with the Performance Monitoring System to monitor train performance in respect of the Train Operator's Services; and
- (c) require the other Access Party to carry out analysis, investigations and tests of the Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the first Access Party, such tests to be as reasonably required by the first Access Party to determine its accuracy and suitability to monitor train performance in respect of the Train Operator's Services.

#### **4.3 *Costs to be borne by investigating party***

Subject to Condition B4.4, any audit, inspection, analysis, investigation or testing carried out at the request of an Access Party in accordance with Condition B4.2 shall be at the requesting Access Party's own cost.

#### **4.4 *Costs to be borne by party subject to investigation***

Where the overall results of the Performance Monitoring System for the period investigated are shown as a result of any audit, inspection, analysis, investigation or testing to be inaccurate in any material respect due to any act or omission by the Access Party which is the subject of the audit, inspection, analysis, investigation or testing, that Access Party shall bear the reasonable cost of both Access Parties of that audit, inspection, analysis, investigation or testing.

### **Condition B5 - CO-OPERATION**

#### **5.1 *Review of operations***

The Access Parties shall, not less than once every six months, meet, review performance and discuss alterations to their operations which will improve train performance and reduce train delays and cancellations.

#### **5.2 *Implementation of alterations***

The Access Parties agree to use all reasonable endeavours to implement any alterations agreed under Condition B5.1.

### 5.3 ***Obligations in Access Agreement***

Nothing in this Part B shall restrict the Access Parties from agreeing, in an Access Agreement, obligations in relation to performance monitoring which are more onerous than those contained in this Part B.

## **Part C – Modifications to the CVL Network Code**

### **Explanatory Note**

- A. Part C provides a process by which the CVL Network Code, the CVL ADRR and certain other arrangements may be changed. The process set out in Part C is, in certain circumstances, also used in relation to changes to aspects of Access Agreements into which the CVL Network Code is incorporated.*
- B. A CVL Proposal for Change (as defined in this Part C) may be initiated by ORR, an Access Beneficiary or the CVL IM and is subject to the consultation process set out in this Part C.*
- C. This Explanatory Note does not form part of the CVL Network Code.*

## DEFINITIONS

In this Part C, except where the context otherwise requires:

- "Consultation Period"** means the period for consultation described in Condition C1.2(b);
- "CVL Proposal for Change"** means any proposal to change the CVL Network Code (including the CVL ADRR), together with any modification of that proposal as referred to in Condition C1.3;
- "Sponsor"** means the person who proposes a CVL Proposal for Change.

### **Condition C1- RECEIPT AND NOTIFICATION OF CVL PROPOSALS FOR CHANGE SPONSORED BY THE CVL IM OR AN ACCESS BENEFICIARY**

#### **1.1 *Entitlement to make CVL Proposal for Change***

The CVL IM and each Access Beneficiary shall be entitled to make a CVL Proposal for Change for consideration. Any such CVL Proposal for Change shall be sent by the Sponsor to all other persons entitled to make a CVL Proposal for Change and ORR and shall:

- (a) be in writing;
- (b) specify the wording of the proposed change;
- (c) specify the date or series of dates on which it is proposed that the change come into effect, if other than the period of 14 days after any approval notified by ORR pursuant to Condition C2; and
- (d) be supported by an explanation in reasonable detail of the reasons for the proposed change.

A CVL Proposal for Change may be made in respect of:

- (a) an established part of the CVL Network Code; and/or
- (b) a part for which amendments have been approved or directed by ORR under Condition C2 or Condition C3 but which have not taken effect and, in relation to a change being made under Condition C3, no appeal has been received within the timeframe for appeals under Condition C3. In such a case the CVL Proposal for Change should take account of any such approved or directed amendment. If such a CVL Proposal for Change would affect any such approved or directed amendment, it can only take effect in relation to that part after the amendment on which it is based takes effect.

## 1.2 ***Notice of CVL Proposal for Change***

The CVL IM shall, within seven days following circulation or receipt of a CVL Proposal for Change or, if the CVL IM is not the Sponsor of that CVL Proposal for Change, within seven days following receipt of any clarification that the CVL IM may reasonably request from the Sponsor of that CVL Proposal for Change:

- (a) give notice to each Access Beneficiary and to ORR of its provisional timescale for consulting on and considering that CVL Proposal for Change; and
- (b) invite the submission to the CVL IM of written representations in respect of that CVL Proposal for Change within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition C1.2(a) above.

## 1.3 ***Modification of CVL Proposal for Change***

1.3.1 A modification to any CVL Proposal for Change may be proposed by the CVL IM, ORR or an Access Beneficiary at any time during the Consultation Period and shall be copied to all other persons entitled to make such a modification to a CVL Proposal for Change.

1.3.2 The CVL IM and the Sponsor of the CVL Proposal for Change (where the Sponsor is not the CVL IM) shall consider any modifications which are proposed to a CVL Proposal for Change and:

- (a) where the proposed modification is a material modification, then the CVL IM shall treat the proposal as a new CVL Proposal for Change; and
- (b) where the proposed modification is not a material modification, then the CVL IM shall consider the CVL Proposal for Change, as modified, but shall not treat the proposal as a new CVL Proposal for Change,

provided that where the CVL IM and the Sponsor of the CVL Proposal for Change (where the Sponsor is not the CVL IM) cannot agree within five Working Days whether or not a proposed modification is material then, for the purposes of this Condition C1.3, the modification will be treated as though it is a material modification.

## 1.4 ***Clarification***

The Sponsor of a CVL Proposal for Change shall promptly comply with all reasonable written requests of the CVL IM, ORR or an Access Beneficiary for further clarification of that CVL Proposal for Change.

## 1.5 ***Meeting to discuss a CVL Proposal for Change***

Within seven days following the end of the Consultation Period, the CVL IM shall give notice to each Access Beneficiary and ORR calling a meeting to discuss the CVL Proposal for Change and any written representations it has received in respect of that CVL Proposal for Change. The CVL IM shall inform each Access Beneficiary and ORR of the date, venue and time of such meeting (having first made reasonable efforts to consult with each Access Beneficiary and ORR as to such date, venue and time).

**1.6 Further consultation**

If a request is made at any meeting convened pursuant to Condition C1.5 to carry out further consultation in respect of any CVL Proposal for Change, the CVL IM shall consider whether further consultation is required in order to provide each Access Beneficiary with sufficient time to make all relevant representations, and if the CVL IM determines that further consultation is required, it shall carry out that further consultation as soon as reasonably practicable.

**Condition C2 - CONSIDERATION OF CVL PROPOSAL FOR CHANGE SPONSORED BY THE CVL IM OR AN ACCESS BENEFICIARY**

**2.1 Submission of CVL Proposal for Change to ORR**

Following the conclusion of the Consultation Period and, where applicable, following the conclusion of any meeting called by the CVL IM pursuant to Condition C1.5 and any further consultation conducted pursuant to Condition C1.6, the CVL IM shall submit the CVL Proposal for Change to ORR, together with a written memorandum:

- (a) explaining the reason for the CVL Proposal for Change;
- (b) containing details of the results of the consultation process including, where relevant, any further consultation process (in each case including copies of any representations made during such consultation process);
- (c) confirming whether or not the CVL IM supports the CVL Proposal for Change (including its reasons);
- (d) confirming whether or not each Access Beneficiary supports the CVL Proposal for Change (including their reasons (to the extent that they are known to the CVL IM, having made reasonable enquiry)); and
- (e) stating the date or series of dates upon which it is considered that the CVL Proposal for Change should take effect should ORR approve the CVL Proposal for Change pursuant to Condition C2.3, such date being no earlier than 14 days after the date on which ORR gives notice of any such approval.

## **2.2 Request for further information from the Sponsor of a CVL Proposal for Change**

The Sponsor of the CVL Proposal for Change, including where such Sponsor is the CVL IM, shall use its reasonable endeavours to provide any further information required in relation to the consideration of a CVL Proposal for Change by ORR.

## **2.3 Notification of approval or rejection of a CVL Proposal for Change**

2.3.1 ORR may notify the CVL IM as soon as reasonably practicable of its approval or rejection of a CVL Proposal for Change sponsored by an the CVL IM or an Access Beneficiary submitted to it pursuant to Condition C2.1 and, where relevant, any further information submitted to it pursuant to Condition C2.2, provided that ORR may make any minor clarificatory modifications before approving any such CVL Proposal for Change.

2.3.2 No CVL Proposal for Change sponsored by the CVL IM or an Access Beneficiary shall have effect unless ORR gives notice to the CVL IM in writing that it approves the proposal pursuant to Condition C2.3.1 and only if the following conditions have been satisfied (and ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

- (a) the CVL Proposal for Change in question promotes or achieves the objectives specified in section 4 of the Act; and
- (b) the interests of any relevant person or persons would not be unfairly prejudiced (including taking into consideration the impact on the financial position of the CVL IM and/or any Access Beneficiary) if the CVL Proposal for Change were made, unless such unfair prejudice is outweighed by or is likely to be outweighed by any prejudice which will or is likely to be sustained by any other relevant person or persons if the CVL Proposal for Change is not made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

## **2.4 Notification to parties**

Where ORR gives notice to the CVL IM pursuant to C2.3.2, the CVL IM shall ensure that all Access Beneficiaries shall be notified of the change and its effective date.

## **2.5 Effective date of change**

Any notice given under C2.4 shall specify the effective date(s) of the proposed change which, unless otherwise determined, shall be 14 days from the date of notification made pursuant to Condition C2.4.

### **Condition C3 - MODIFICATION BY ORR**

- 3.1 The CVL Network Code shall have effect with the modifications specified in any notice given by ORR for the purposes of this Condition C3, provided that ORR shall be satisfied as to the need for the modification as provided in Condition C3.2, the procedural requirements of Condition C3.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C3.4.
- 3.2 A notice given by ORR under Condition C3.1 shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
- (a) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
  - (b) the interests of any relevant person or persons would be unfairly prejudiced (including taking into consideration the impact on the financial position of the CVL IM and/or any Access Beneficiary) if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.
- 3.3 The procedural requirements which require to have been followed for the purposes of Condition C3.1 are:
- (a) ORR shall have sent a copy of its proposal to the CVL IM and each Access Beneficiary which shall:
    - (i) be in writing;
    - (ii) specify the wording of the modification proposed;
    - (iii) specify the date or series of dates on which it is proposed that the modification come into effect; and
    - (iv) be supported by an explanation in reasonable detail of the reason for the proposed modification, which must include the reasons why it considers the conditions in C3.2 would be satisfied;

- (b) ORR shall have invited the submission of written representations on the documentation provided pursuant to Condition 3.3(a) above from the CVL IM and each Access Beneficiary within such period as is reasonable in all circumstances;
- (c) ORR shall have taken such representations into account (other than those which are frivolous or trivial) in making its decision on the modification to be made; and
- (d) ORR shall have notified the CVL IM and each Access Beneficiary of its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions, which may be provided at the same time as the notice under Condition C3.1.

### 3.4 **Effect**

A notice under Condition C3.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice.

### **Condition C4 - NON-EFFECTIVE CVL PROPOSALS FOR CHANGE**

A notice under Part C of the CVL Network Code shall not have effect in relation to any CVL Proposal for Change which relates to Condition C2.3.2 or proposed modification which relates to Condition C3.

### **Condition C5 - PROVISION OF REVISED TEXTS**

The CVL IM shall, as soon as reasonably practicable following issue of a notice under Condition C3.1 or following approval of a CVL Proposal for Change by ORR pursuant to Condition C2.3, supply to all Access Beneficiaries and ORR a revised version of the amended documentation incorporating the change and shall Publish on its Website a revised copy of such documentation.

### **Condition C6 - MODIFICATION OF CVL NETWORK CODE FOLLOWING AMENDMENTS TO THE DELAY ATTRIBUTION PRINCIPLES AND RULES OR THE PERFORMANCE DATA ACCURACY CODE**

6.1 The CVL IM shall be entitled to modify the CVL Network Code at any time without complying with the requirements of Condition C1 to Condition C5:

6.1.1 where such modifications to the CVL Network Code are necessary to reflect modifications to the Delay Attribution Principles and Rules and/or the Performance Data Accuracy Code; and

6.1.2 provided that:

- (i) the CVL IM has notified each Access Party of its proposal to modify the CVL Network Code in accordance with this Condition C6; and
- (ii) ORR has approved the CVL IM's proposed modification to the CVL Network Code.

6.2 Any such modification made by the CVL IM pursuant to this Condition C6 shall come into effect 14 days after the date on which ORR gives notice of its approval in accordance with Condition C6.2 to the CVL IM, or such earlier date as ORR may specify in such notice.

### **Condition C7- MODIFICATIONS IN THE FIRST TWO YEARS OF OPERATIONS**

7.1 Subject to the remaining provisions of this Condition C7, on or before 31 March 2022, the CVL IM shall be entitled to make such modifications to the CVL Network Code as may be reasonably necessary and expedient without complying with the requirements of Condition C1 to Condition C5.

7.2 The entitlement set out in Condition C7.1 shall only apply if:

7.2.1 any of the following has occurred (or the CVL IM believes that any of the following is reasonably likely to occur):

- (a) any of the provisions of the CVL Network Code, when operated in practice in accordance with their terms, do not operate as intended;
- (b) the CVL IM experiences substantial difficulties in implementing the provisions of the CVL Network Code in accordance with their terms; or
- (c) there are any material issues relating to the interface between the operation of the CVL Network Code and the operation of equivalent provisions set out in the Network Rail Network Code;

7.2.2 the issue identified under Condition C7.2.1 was not reasonably foreseeable at the time of entering into the first Access Agreement in respect of the CVL;

7.2.3 the CVL IM has notified each Access Beneficiary of its proposal to modify the CVL Network Code in accordance with the process set out in this Condition C7;

7.2.4 the CVL IM has:

- (a) received no objection from an Access Beneficiary to the proposed modification to the CVL Network Code, which any

Access Beneficiary shall be entitled to submit to the CVL IM in the event that the proposed modification would have an adverse effect on that Access Beneficiary; or

- (b) received such objection from an Access Beneficiary as set out in Condition 7.2.4(a) above and resolved that objection with the relevant Access Beneficiary such that the relevant Access Beneficiary withdraws its objection; and

7.2.5 ORR has approved the proposed modification.

7.3 Where the CVL IM proposes a modification to the CVL Network Code in accordance with this Condition C7 and an Access Beneficiary submits an objection to such proposed modification to the CVL Network Code, either the CVL IM or the relevant Access Beneficiary shall be entitled to refer such matter to be determined in accordance with the CVL ADRR if the CVL IM and the relevant Access Beneficiary are unable to reach an agreement with regards to the proposed modification of the CVL Network Code.

7.4 In exercising its entitlement pursuant to Condition C7.1, the CVL IM shall only be permitted to make such modifications to the CVL Network Code which are reasonably necessary and expedient to remedy the issue identified under Condition C7.2.1.

7.5 Any such modification made by the CVL IM pursuant to this Condition C7 shall come into effect 14 days after the date on which ORR gives notice of its approval in accordance with Condition C7.2 to the CVL IM, or such earlier date as ORR may specify in such notice.

7.6

- (a) Subject to the remainder of this Condition C7.6, this Condition C7 shall cease to have effect on 31 March 2022.
- (b) Any proposed modifications which are in progress as at 31 March 2022 shall be permitted to conclude in accordance with this Condition C7.
- (c) Any modifications which have been made to the CVL Network Code in accordance with this Condition C7 prior to 31 March 2022 (or which fall within the scope of Condition C7.6(b)) shall continue in full force and effect notwithstanding this Condition C7 ceasing to have effect.

## **Condition C8 – MODIFICATIONS DUE TO AN AMENDMENT TO THE NETWORK RAIL NETWORK CODE**

- 8.1 Subject to the remaining provisions of this Condition C8, the CVL IM shall be entitled to make modifications to the CVL Network Code without complying with the requirements of Condition C1 to Condition C7.
- 8.2 The entitlement set out in Condition C8.1 shall only apply if such modification to the CVL Network Code:
  - (a) is reasonably necessary as a result of modification(s) that have been made to the Network Rail Network Code;
  - (b) the CVL IM has notified each Access Beneficiary and ORR of its proposal to modify the CVL Network Code; and
  - (c) ORR has approved the proposed modification to the CVL Network Code.
- 8.3 Any modification made by the CVL IM to the CVL Network Code pursuant to this Condition C8 shall come into effect 14 days after the date on which ORR gives notice of its approval to such modification in accordance with Condition C8.2(c), or such earlier date as ORR may specify in such notice

## Part D– Timetable Change

### Explanatory Note

- A. *Part D of the CVL Network Code sets out the procedures by which the Working Timetable, CVL Engineering Access Statement and Timetable Planning Rules may be changed. Although changes may be made to the Working Timetable at any time, significant changes in the passenger timetable may be made only twice a year, namely at the dates referred to as the Principal Change Date (in December) and the Subsidiary Change Date (in May).*
- B. *Prior to the date on which the CVL IM became infrastructure manager of the CVL, Network Rail's timetabling responsibilities related to the NR Network (which, prior to the date on which the CVL became infrastructure manager, included the CVL). The CVL IM and Network Rail have reached a contractual arrangement with the effect that, for services on the CVL and cross-border services which utilise both the CVL and the NR Network, Network Rail will in practice also fulfil the CVL IM's timetabling responsibilities.*
- C. *Significant timetable change may require discussion between Timetable Participants and Network Rail (on behalf of the CVL IM) over a period of several years. At least two years before each Principal Change Date, Network Rail (on behalf of the CVL IM), in collaboration with potential Timetable Participants will commence preparation of a timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *The development of a robust timetable demands dialogue between Network Rail (on behalf of the CVL IM) and Timetable Participants (i.e. Train Operators and others entitled to take part in the process), between the Timetable Participants themselves, and also between Timetable Participants and their customers or customers' representative bodies.*
- E. *Network Rail (on behalf of the CVL IM) has the role of managing the Working Timetable for the CVL. As the CVL is connected to the NR Network and it is expected that services will use both the CVL and the NR Network, the CVL IM expects to work closely with Network Rail in the preparation of the Working Timetable to ensure that contiguous services can be operated across all pieces of infrastructure. Network Rail (on behalf of the CVL IM) is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Subject to the application of the Act and the Access Regulations, a Train Operator's Train Slots are protected insofar as they are based on Firm Rights which are not inconsistent with the applicable CVL*

*Engineering Access Statement and/or applicable Timetable Planning Rules, provided that the Firm Rights have been asserted no later than the Priority Date.*

- F. Each year, at the start of the timetable development process, Network Rail shall (on behalf of the CVL IM) review the applicable Timetable Planning Rules and the CVL IM shall review the applicable CVL Engineering Access Statement to decide if any amendments should be made in respect of the period of the annual timetable commencing on the next Principal Change Date. In addition, each year, at the start of the process for development of the timetable changes applying from the Subsidiary Change Date, Network Rail shall (on behalf of the CVL IM) undertake a more limited review of the applicable Timetable Planning Rules and the CVL IM shall undertake a more limited review of the applicable CVL Engineering Access Statement. Timetable Planning Rules are consulted on each review, and there is a right to refer disputes to the CVL ADRR.*
- G. Each year at or before the start of the timetable development process there will be dialogue between Network Rail (on behalf of the CVL IM) and Timetable Participants regarding the timetable published at D-26 in the process relating to the immediately preceding Timetable Change Date and any variations to those train services which the Timetable Participants aspire to run in that timetable year. Each Timetable Participant will notify Network Rail (with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of any changes in the contractual rights (as set out in the Timetable Participant's Access Agreement with the CVL IM) that the Timetable Participant will wish to exercise in support of these services, giving reasons for such changes, and will also notify the CVL IM (with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of any changes to the Train Slots which will be sought. The notification must be made on or before the Priority Date.*
- H. Network Rail (on behalf of the CVL IM) shall consult with Timetable Participants to establish their aspirations for development of their services in the relevant timetable development periods. Timetable Participants shall, on or before the Priority Date, notify Network Rail (on behalf of the CVL IM, with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of the Firm Rights they wish to exercise, in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date. Taking into account the notifications made by the Timetable Participants and the Decision Criteria, Network Rail (on behalf of the CVL IM) will prepare and issue the New Working Timetable on or before the last day of the Timetable Preparation Period.*

- I. *Following issue of the New Working Timetable, Network Rail (on behalf of the CVL IM) will continue to work with Timetable Participants to further refine the timetable plan to include any new aspirations of the Timetable Participants. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. Network Rail (on behalf of the CVL IM) will publish its proposed New Working Timetable and Timetable Participants will have a right of appeal against decisions made by Network Rail (on behalf of the CVL IM) reflected in that Timetable.*
- J. *In its capacity as manager of the Working Timetable, Network Rail (on behalf of the CVL IM) is required to make a number of decisions, including whether to accept Access Proposals for new or different timetable slots and how to reconcile competing or conflicting Access Proposals. Network Rail (on behalf of the CVL IM) must have due regard to the Act, the Access Regulations and to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable CVL Engineering Access Statement and applicable Timetable Planning Rules. These criteria are to be weighed and balanced by Network Rail (on behalf of the CVL IM) in the light of the particular circumstances surrounding each decision and in certain circumstances Network Rail (on behalf of the CVL IM) must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available.*
- K. *Under part D of the Network Rail Network Code, Network Rail develops a Calendar of Events. This shows events, going forward for a period of at least four years, which are likely to require significant changes to the working timetable for the NR Network. The CVL IM may request that Network Rail includes any CVL IM Event in Network Rail's Calendar of Events to ensure the same approach is adopted to events which may affect the CVL and the NR Network.*
- L. *It is expected that the normal means of resolving timetable disputes between Network Rail (on behalf of the CVL IM) and each Timetable Participant will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Timetable Participants to appeal against any relevant decision made by Network Rail (on behalf of the CVL IM) in accordance with the CVL ADRR.*
- M. *The Annexes to 0 set out the timeframes for the timetable development process and any variations to the Working Timetable requested following D-26.*
- N. *This Explanatory Note does not form part of the CVL Network Code.*

## Condition D1 - INTRODUCTION

### 1.1 Overview

- 1.1.1 It is the responsibility of the CVL IM to establish a timetable for the CVL, referred to as the "**Working Timetable**". Where this 0 refers to any obligations, responsibilities or actions of, or to be carried out by, the CVL IM in respect of the timetabling process, the CVL IM and Network Rail have agreed that in practice certain of such obligations, responsibilities and actions will be fulfilled by Network Rail. Such obligations, responsibilities and actions shall be discharged where they are fulfilled by Network Rail on the CVL IM's behalf. Accordingly, any references in this 0 to such obligations, responsibilities or actions of, or to be carried out by, the CVL IM in respect of the timetabling process shall be interpreted as references to such obligations, responsibilities or actions being fulfilled by Network Rail on behalf of the CVL IM.
- 1.1.2 From the date on which the CVL IM becomes infrastructure manager of the CVL, the timetabling process set out in this Part D shall be part of a continuing process following on from the timetabling process previously carried out by Network Rail.
- 1.1.3 Subject to Condition D7 but notwithstanding any other Conditions contained in this 0, where this 0 refers to a Timetable Participant submitting an Access Proposal (as defined in Condition D.**Error! Reference source not found.**), notification or any other correspondence, objection or representation in respect of the timetabling process to the CVL IM, such correspondence shall instead be sent to Network Rail with a copy of such correspondence to be sent to the CVL IM.
- 1.1.4 The Working Timetable is re-issued in revised form twice a year. The process for producing the bi-annual revision of the Working Timetable is described in Condition D2.
- 1.1.5 In the period between bi-annual revisions of the Working Timetable, either the CVL IM or Timetable Participants may wish to vary the Working Timetable, whether by altering or removing a scheduled Train Slot or by inserting a new Train Slot. The CVL IM shall operate the processes described in Condition D3 to facilitate variations to a Working Timetable in appropriate circumstances.
- 1.1.6 In conducting the processes set out in this Part D, decisions must be made by the CVL IM in accordance with the principles set out in Condition D4.

1.1.7 Condition D5 describes the processes by which a Timetable Participant, dissatisfied with a decision of the CVL IM made in respect of this 0, may in specified circumstances appeal against that decision.

1.1.8 The CVL IM requires access to the CVL in order to fulfil its obligations in relation to the CVL. The processes by which:

(a) the Working Timetable is updated on a bi-annual basis (as described in Condition D2); and

(b) variations to the Working Timetable outside that bi-annual process are facilitated (as described in Condition D3),

include arrangements to procure access to the CVL required by the CVL IM. Where such access is required over a period greater than that covered by one revision of the Working Timetable, the CVL IM may wish to conduct an extraordinary process of consultation with parties affected by those works. A process for such consultation is described in Condition D6.

1.1.9 It is the responsibility of the CVL IM and all Timetable Participants to collaborate with each other so that the implementation of the procedures in this 0 is carried out with optimal efficiency. The CVL IM and Timetable Participants shall each establish and maintain systems and resources which are necessary and sufficient to facilitate such collaboration and their compliance with the procedures set out in this Part D.

1.1.10 In addition to compliance with the processes described in this 0, Timetable Participants may be separately required to consult with the Welsh Ministers, Transport for Wales, user representatives, other infrastructure managers and any other parties with the right to be so consulted, regarding proposals for the development of Services.

1.1.11 In this Part D, capitalised words have the meanings shown below:

**"Access Proposal"** shall have the meaning ascribed to it in Condition DError! Reference source not found.;

**"Advanced Notice of Timetable Change"** shall have the meaning shown in Condition D2.3.1;

**"Advanced Register of Possessions"** Forms part of the CVL Engineering Access Statement and shall have the

meaning shown in the CVL Engineering Access Statement in relation to Strategic Maintenance (Section 5) and the Register of Disruptive Possessions (Section 7).

**"Access Rights"**

shall have the meaning ascribed to it in Condition D8.4;

**"Ancillary Movement"**

means a train movement which is not an express part of any Services but which is necessary or reasonably required for giving full effect to the train movements which are an express part of a Service and shall include any such train movement as is referred to in paragraph (c) of the definition of "**Services**" to the extent that it is not expressly provided for in an Access Agreement;

**"Calendar of Events"**

means a calendar, produced by Network Rail for the NR Network and the CVL, going forward for a period of at least four years showing events which are likely to require significant changes to the working timetable for the NR Network in a future bi-annual timetable revision process and in relation to which the CVL IM may seek to include CVL IM Events from time to time in accordance with Condition D7;

**"Considerations"**

shall have the meaning ascribed to it in Condition D4.6.1(b);

**"Contingent Right"**

means a right which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in Schedule 5 of the relevant Train Operator's Access Agreement;

**"CVL Engineering Access Statement"**

means publication consisting of two documents;

(I) Standard Possession Opportunities

(II) Advanced Register of Possessions

issued at separate timescales and setting out, for any part of the CVL, each of the following matters:

- (a) the location, number, timing and duration of any Restrictions of Use; and
- (b) any alternative train routes or stopping patterns which may apply during any Restriction of Use referred to in paragraph (a) above,

which for the period December 2019-December 2020 shall be the document titled Engineering Access Statement 2020 published by Network Rail (so far as such document applies to the Routes), and from December 2020 may be such other document as may be published by the CVL IM or designated by the CVL IM to be the CVL Engineering Access Statement from time to time;

**"CVL IM Event"**

means an event, or grouping of events having an impact on the CVL, that the CVL IM has requested Network Rail to include in the Calendar of Events;

**"CVL IM Variation"**

shall have the meaning ascribed to it in Condition D3.1.2;

**"CVL Railway Operational Code"**

shall have the meaning ascribed to it in Part H of the CVL Network Code;

**"D-X"**

shall have the meaning ascribed to it in Condition **D**Error! Reference source not found.;

**"Decision Criteria"**

shall have the meaning ascribed to it in Condition D4.6;

**Development Timetable**

a timetable which may be produced by an Event Steering Group in preparation for an Event;

<b>"Draft Calendar of Events"</b>	means a draft Calendar of Events;
<b>"Draft Rules"</b>	shall have the meaning ascribed to it in Condition D <b>Error! Reference source not found.</b> ;
<b>"Event"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) an "Event" as defined under the Network Rail Network Code that may impact timetables on the CVL Network; or</li> <li>(b) a proposal by an Access Party or Potential Access Party or an anticipated event which could reasonably be expected to lead to a proposal by an Access Party or Potential Access Party, which is likely to require significant changes to the Working Timetable in a future bi-annual timetable revision process carried out in accordance with Condition D2,</li> </ul> <p>and shown in the Calendar of Events;</p>
<b>"Event Steering Group"</b>	<p>means a group established under the Network Rail Network Code comprising of representatives from Network Rail, other infrastructure managers, funders and any timetable participants (as defined in the Network Rail Network Code) who:</p> <ul style="list-style-type: none"> <li>(a) are likely to be affected by the Event; and</li> <li>(b) agree to be on the group,</li> </ul> <p>as may be supplemented by the CVL IM and Timetable Participants in respect of a CVL IM Event or an Event having an impact on the CVL;</p>
<b>"Exercised"</b>	shall mean as a consequence of:

- (a) submitting an Access Proposal to the CVL IM by the Priority Date in accordance with Conditions **DError! Reference source not found.** and **DError! Reference source not found.**; or
  - (b) a Rolled Over Access Proposal;
- “F-X”** shall have the meaning ascribed to it in Condition D2.1.8;
- “Financial Year”** means the period beginning on the first Sunday in April of the relevant year and ending the day before the first Sunday of April in the following year.
- “Financial Half Year”** Means for the purposes of this Part D the Financial Year is split into two halves producing two Financial Half Year dates. The first half shall run from the first Sunday of April of the relevant year for 26 calendar weeks. The second half shall start on the 27th Sunday of the Financial Year of the relevant year and run through to the end of the Financial Year.
- "Firm Right"** means a right:
- (a) of a Timetable Participant under an Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; or
  - (b) of the CVL IM under the Rules;
- and which in either such case is not expressed to be subject to any contingency outside the control of the right holder (save that in the case of (a), the right may be subject to the Rules);

**"Flexing Right"**

means a right, exercisable by the CVL IM in allocating a Train Slot in the New Working Timetable or relevant Working Timetable, to vary a Train Slot:

- (a) sought in an Access Proposal; or
- (b) arising from a Rolled Over Access Proposal; or
- (c) sought in a Train Operator Variation Request,

in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant or, where the Train Slot which is being varied is a Strategic Train Slot, in any way without limitation;

**"Initial Consultation Period"**

shall have the meaning ascribed to it in Condition **D**~~Error! Reference source not found.~~;

**"International Freight Capacity"**

means any capacity on the CVL:

- (a) required to be available to comply with the obligations relating to the carriage of rail freight through the Channel Tunnel in clause 3.2 of the Channel Tunnel usage contract dated 29 July 1987 between The Channel Tunnel Group Limited, France-Manche SA, The British Railways Board and La Société Nationale des Chemins de Fer Français; and referred to in clause 3 of the Back-to-Back Agreement relating to the Channel Tunnel usage contract dated 10 May 1994 between the British Railways Board, European Passenger Services Limited, the British Railways Board acting through its Railfreight Distribution Division, Railtrack Plc and the Secretary of State for Transport

(as may be amended from time to time); or

- (b) reserved for allocation or that has been allocated by the International Freight Corridor One Stop Shop,

in each case such capacity to be represented and included in the New Working Timetable and Working Timetable by way of International Freight Train Slots;

**"International Freight Capacity Notice"** means a notice issued in accordance with Condition D9 setting out International Freight Train Slots;

**"International Freight Corridor"** means any network corridor between infrastructure managers operating over part of the CVL designated as an international rail freight corridor for the purposes of Regulation 913/2010;

**"International Freight Corridor One Stop Shop"** means the One Stop Shop Service set up under Regulation 913/2010 to allocate capacity on the International Freight Corridor;

**"International Freight Train Slot"** means a Train Slot included in the New Working Timetable and Working Timetable to represent International Freight Capacity;

**"International Freight Variation"** shall have the meaning shown in Condition D3.1.5;

**"International Operator"** means each Timetable Participant which has rights to train movements through the Channel Tunnel;

**"International Path"** means any Train Slot on the CVL which is used for carrying goods or passengers through the Channel Tunnel and, in relation to a Train Slot used for carrying goods through the Channel Tunnel, it also means any connecting Train Slot used for the primary purpose of conveying the goods which have passed

or are to pass through the Channel Tunnel (but excluding any International Freight Train Slot);

<b>"Long Term Plan"</b>	means a strategy established and maintained to promote the effective and efficient use and development of the capacity available on the CVL, consistent with the funding that is, or is likely to become, available during the period of the strategy, if any;
<b>"Network Rail Restriction of Use"</b>	means a restriction of use of all or any part of the NR Network which affects the CVL;
<b>"Network Services"</b>	shall have the meaning ascribed to it in section 82(2) of the Railways Act 1993;
<b>"New Working Timetable"</b>	shall have the meaning ascribed to it in Condition <b>D</b> <b>Error! Reference source not found.</b> ;
<b>"One Stop Shop Service"</b>	means the service offered by Network Rail under which an International Operator can apply to Network Rail to obtain an extension to an International Path over the network of one or more adjoining infrastructure managers belonging to RailNetEurope;
<b>"Possessions Strategy Notice"</b>	shall have the meaning ascribed to it in Condition D6.3.1;
<b>"Possessions Strategy Participants"</b>	shall have the meaning ascribed to it in Condition D6.1.1;
<b>"Possessions Strategy Proposal"</b>	shall have the meaning ascribed to it in Condition D6.1.2;
<b>"Principal Change Date"</b>	shall have the meaning ascribed to it in Condition <b>D</b> <b>Error! Reference source not found.</b> ;
<b>"Prior Working Timetable"</b>	shall have the meaning ascribed to it in Condition <b>D</b> <b>Error! Reference source not found.</b> ;

<b>"Priority Date"</b>	shall have the meaning ascribed to it in Condition D <b>Error! Reference source not found.</b> ;
<b>"Quantum Access Right"</b>	shall have the meaning shown in Part J of this code;
<b>"RailNetEurope"</b>	means the association set up by a majority of European rail infrastructure managers and allocation bodies to enable fast and easy access to European rail, as well as to increase the quality and efficiency of international rail traffic;
<b>"Restriction of Use"</b>	means a CVL Restriction of Use or a Network Rail Restriction of Use (as the context may require);
<b>"Rolled Over Access Proposal"</b>	means an Access Proposal that was submitted in a previous revision of the Working Timetable resulting in Train Slots being included in the Prior Working Timetable which the relevant Timetable Participant does not seek to vary in the New Working Timetable in accordance with this 0;
<b>"Rules"</b>	means the Timetable Planning Rules and the CVL Engineering Access Statement;
<b>"Short Term Plan"</b>	shall have the meaning ascribed to it in Condition D3.7.1;
<b>"Strategic Capacity Statement"</b>	means the statement published by the CVL IM setting out Strategic Capacity;
<b>"Strategic Capacity"</b>	means capacity for potential use by new services to be included in the New Working Timetable and Working Timetable by way of a Strategic Train Slot;
<b>"Strategic Train Slot"</b>	means a Train Slot included in the New Working Timetable and Working

	Timetable to represent Strategic Capacity;
<b>"Subsidiary Change Date"</b>	shall have the meaning ascribed to it in Condition DError! Reference source not found.;
<b>"Timetable Change Date"</b>	shall have the meaning ascribed to it in Condition DError! Reference source not found.;
<b>"Timetable Participant"</b>	(a) an Access Beneficiary; or  (b) Potential Access Party;
<b>"Timetable Period"</b>	the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date.
<b>"Timetable Planning Rules"</b>	means a document (as may be amended from time to time in accordance with its terms) regulating, for any part of the CVL and the NR Network, the standard timings and other matters necessary to enable trains to be included in the New Working Timetable or scheduled into the Working Timetable applicable to that part of the relevant network, being rules which specify (amongst other matters)  (a) timings (including specified allowances) allowed for travel between specified points on the CVL or NR Network for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train;  (b) timing margins or allowances for stopping at junctions and other specified points;  (c) minimum timing margins or headways between successive

trains travelling on the same section of track;

- (d) timing geography;
- (e) minimum and maximum time periods for stopping at stations and other specified points;
- (f) restrictions as to the speed of railway vehicles on any section of track;
- (g) a procedure for generating new or amended values for inclusion in the Timetable Planning Rules; and
- (h) a procedure for accommodating changes to the Timetable Planning Rules between D-64 and D-44,

which for the period December 2019-December 2020 shall be the document issued by Network Rail titled Timetable Planning Rules 2020, and from December 2020 may be such other document as may be published by the CVL IM or designated by the CVL IM to be the Timetable Planning Rules from time to time;

<b>“Timetable Preparation Period”</b>	shall have the meaning shown in Condition DError! Reference source not found.;
<b>“Timetable Variation”</b>	shall have the meaning shown in Condition D3.1.3;
<b>“Timetable Variation by Consent”</b>	shall have the meaning shown in Condition D3.6.1;
<b>“Timetable Week”</b>	shall have the meaning shown in Condition D3.2.1;
<b>“Timetabling Panel”</b>	shall have the meaning shown in the CVL ADRR;

<b>"Timing Load"</b>	means, in relation to a Service, the timing reference code which details the maximum speed and particular combination of traction type and trailing weight, together with whether any vehicles may be conveyed to which local speed restrictions will apply;
<b>"Train Operator Variation"</b>	shall have the meaning ascribed to it in Condition D3.1.1;
<b>"Train Operator Variation Request"</b>	shall have the meaning ascribed to it in Condition D3.3.1;
<b>"Train Slot"</b>	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
<b>"TW-X"</b>	shall have the meaning ascribed to it in Condition D3.2.1;
<b>"Variation Request"</b>	a CVL IM Variation Request or a Train Operator Variation Request (as applicable); and
<b>"Works"</b>	means any inspection, maintenance, renewal, repair, replacement, improvement, enhancement or development of, or any other work in relation to, any part of the CVL.

## **Condition D2 - BI-ANNUAL TIMETABLE REVISION PROCESS**

### **2.1 Preliminary**

- 2.1.1 The Working Timetable shall show every train movement on the CVL, including:
- (a) every Service;
  - (b) every Ancillary Movement;
  - (c) every Strategic Train Slot;
  - (d) every International Freight Train Slot; and

- (e) the times of:
  - (i) departure from origin and arrival at destination;
  - (ii) arrival at and departure from every intermediate stopping point;
  - (iii) such passing points, in accordance with the Timetable Planning Rules, as the CVL IM (acting reasonably) considers appropriate; and
  - (iv) all relevant timing allowances.

The Working Timetable shall also include freight train planning publications and documents detailing platform arrangements.

2.1.2 the CVL IM shall re-issue the Working Timetable in revised form on two occasions in each year, after a consultation and revision process conducted by the CVL IM in accordance with this Condition D2.

2.1.3 The implementation dates for the two annual revisions of the Working Timetable will conform with Schedule 4 of the Access Regulations. To the extent permitted by the Access Regulations, following consultation with other infrastructure managers, the CVL IM may vary the change implementation dates from time to time, provided that all Timetable Participants have been informed of and not objected to the change. Each change implementation date is referred to as a "**Timetable Change Date**". The first and main change implementation date, occurring in the winter of a calendar year, is referred to as the "**Principal Change Date**". The second change implementation date, occurring in the summer after the Principal Change Date, is referred to as the "**Subsidiary Change Date**".

2.1.4 This Condition D2 describes the process by which the CVL IM will revise the Working Timetable on each of the Timetable Change Dates. Unless stated otherwise in this 0, this process will be followed regardless of whether the change is to be implemented on a Principal Change Date or on a Subsidiary Change Date.

2.1.5 For the purposes of this 0, a Timetable Change Date shall be designated by the letter "**D**". The sequence of events culminating in the adoption of a revised Working Timetable is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date "**D**". Each week commences at 0200 on a Sunday and expires at 0159 on the following Sunday. So, for example, "**D minus 26**" (or "**D-26**") refers to the 26th week prior to

date "D". Where in this 0 any step or event is required or stated to occur by any week designated in this way, it must occur no later than 1700 on Friday of the preceding week. So, for example, a step which is required to occur no later than "D-26" must occur no later than:

- (a) 1700 on Friday;
- (b) in the week commencing on the Sunday which occurs 27 weeks prior to a Timetable Change Date.

2.1.6 To produce the timetable to take effect on a Timetable Change Date, the CVL IM shall use as the starting point the timetable published at D-26 in the process related to the immediately preceding Timetable Change Date subject to the following amendments only:

- (a) any variations as a result of the appeals process;
- (b) in relation to the International Freight Train Slots to be included in the timetable to take effect on a Principal Change Date, the CVL IM shall reflect the International Freight Train Slots published in the International Freight Capacity Notice published at D-60 in the process relating to that Principal Change Date along with any amendments made as a result of any appeal;
- (c) where agreed with the relevant Timetable Participant(s), CVL IM may reflect the content of a Development Timetable produced by an Event Steering Group; and
- (d) the CVL IM may delete any Train Slots (but not any International Freight Train Slots) in respect of which it believes, acting reasonably and after consultation with the relevant Timetable Participant (if appropriate), that the relevant Timetable Participant, or its successor, will not have the necessary access rights at the time of the intended operation of the Train Slots.

This starting point is referred to as the "**Prior Working Timetable**".

2.1.7 Not later than D-73 in relation to the Principal Change Date only, the CVL IM shall publish to all Timetable Participants a calendar showing the milestone dates which will apply (for the purposes of this Condition D2) to the process of planning the New Working Timetables to take effect as Working Timetables on the Principal Change Date and the Subsidiary Change Date.

2.1.8 For the purposes of this Part D, a Financial Half Year shall be designated with the letter "F". The sequence of events culminating in the publication of the Advanced Register of Possessions is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date "F". Each week commences at 02:00 on a Sunday and expires at 01:59 on the following Sunday. So, for example, "F minus 26" (or F-26) refers to the 26th week prior to date "F". Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 5pm on Friday of the preceding week. So, for example, a step which is required to occur no later than "F-26" must occur no later than:

- (a) 5pm on Friday;
- (b) in the week commencing on the Sunday which occurs 27 weeks prior to the start of a Financial Half Year.

## 2.2 ***Revision of Timetable Planning Rules and CVL Engineering Access Statement – D-64 to D-44 and F-64 to F-46***

2.2.1 Both the Timetable Planning Rules and the CVL Engineering Access Statement (together referred to as the "**Rules**") are revised on a bi-annual basis, with each revised version (excluding the Advanced Register of Possessions )being operative for the same Timetable Period as the Working Timetable to which they pertain. The Rules (excluding the Advanced Register of Possessions) must be revised and updated, in accordance with the procedures described in this Condition **DError! Reference source not found.**, as a first stage in the preparation of a New Working Timetable.

2.2.1 A The Rules shall permit the operation of International Freight Train Slots included in the applicable International Freight Capacity Notice.

2.2.2 Between D-64 and D-60, the CVL IM shall consult with Timetable Participants in respect of any proposed changes to the Engineering Access Statement (excluding the Advanced Register of Possessions)..

2.2.3 Following consultation in accordance with Condition **DError! Reference source not found.**, and not later than D-59, the CVL IM shall provide to all Timetable Participants a draft of the revised Engineering Access Statement (excluding the Advanced Register of Possessions).

2.2.4 Following provision of the Draft Engineering Access Statement and by D-54:

- (a) Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have to the Draft Rules provided to them in accordance with **DError! Reference source not found.**

2.2.5 Following D-54 and by D-44, the CVL IM shall consider the representations and objections made to it by Timetable Participants pursuant to Condition **DError! Reference source not found.** and any changes to International Freight Train Slots reflected in the applicable International Freight Capacity Notice and may amend the Draft Engineering Access Statement . Not later than D-44, the CVL IM shall issue the final revised Engineering Access Statement (excluding the Advanced Register of Possessions). to all Timetable Participants.

2.2.6 In preparing revised Engineering Access Statement , the CVL IM shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Engineering Access Statement .

2.2.7 Between D-44 and publication of the New Working Timetable at D-26, the CVL IM may further revise the Engineering Access Statement (excluding the Advanced Register of Possessions) where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Engineering Access Statement , the CVL IM must first consult with all Timetable Participants who may be affected by the proposed changes. The CVL IM will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created by this Condition **DError! Reference source not found.** is without prejudice to the amending power referred to in Condition D3.4.

2.2.8 The Advanced Register of Possessions is revised on a bi-annual basis, each version being aligned to a Financial Half Year. The Advanced Register of Possessions must be revised and updated in accordance with this Condition D2.2.

2.2.9 By F-60 the CVL IM shall consult with Timetable Participants in respect of proposed changes to the Advanced Register of Possessions.

2.2.10 Following consultation in accordance with D2.2.9 and not later than F-59, the CVL IM shall provide to all Timetable Participants a draft of the revised Advanced Register of Possessions (the “Draft Advanced Register of Possessions”).

- 2.2.11 Following distribution of the Draft Advanced Register of Possessions, and by F-54, Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have to the Draft Advanced Register of Possessions provided to them in accordance with Condition D2.2.10.
- 2.2.12 Following F-54 and by F-46 the CVL IM shall consider representations and objections made to it by Timetable Participants pursuant to Condition D2.2.11 and may amend the Draft Advanced Register of Possessions. Not later than F-46, the CVL IM shall issue the final revised Advanced Register of Possessions to all Timetable Participants.
- 2.2.13 In preparing the Advanced Register of Possessions, the CVL IM shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Advanced Register of Possessions.
- 2.2.14 Between F-46 and publication of the New Working Timetable at D-26, the CVL IM may further revise the Advanced Register of Possessions where it considers, acting reasonably, such revision necessary or desirable. Before making further revisions to the Advanced Register of Possessions, The CVL IM must consult with all Timetable Participants who may be affected by the proposed changes. The CVL IM will inform all affected Timetable Participants of any changes as soon as practicable after they are made. The amending power created by this Condition D2.2.14 is without prejudice to the amending power referred to in Condition D3.4.
- 2.2.15 Between D-64 and D-54, CVL IM shall consult with Timetable Participants in respect of any proposed changes to the Timetable Planning Rules
- 2.2.16 Following consultation in accordance with Condition D2.2.15 and not later than D-53, the CVL IM shall provide to all Timetable Participants a draft of the revised Timetable Planning Rules
- 2.2.17 Following distribution of the Draft Timetable Planning Rules and by D-49, Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have to the Draft Timetable Planning Rules provided to them in accordance with D2.3.3.
- 2.2.18 Following D-49 and by D-46, the CVL IM shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.3.4 and any changes to International Freight

Train Slots reflected in the applicable International Freight Capacity Notice and may amend the Draft Timetable Planning Rules. Not later than D-46, CVL IM shall issue the final revised Timetable Planning Rules to all Timetable Participants.

2.2.19 In preparing revised Timetable Planning Rules, the CVL IM shall be required to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Timetable Planning Rules.

2.2.20 Between D-46 and publication of the New Working Timetable at D-26, the CVI IM may further revise the Timetable Planning Rules where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Timetable Planning Rules, the CVL IM must first consult with all Timetable Participants who may be affected by the proposed changes. The CVL IM will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created by this Condition D2.2.20 is without prejudice to the amending power referred to in Condition D3.4.

2.2.21 Subject to Condition D.2.2.1622 below, any Timetable Participant dissatisfied with any decision of the CVL IM in respect of those Rules (including any decision to revise those Rules pursuant to Condition D2.2.7 or D2.2.14 or D2.2.20) is entitled to appeal against any part of it. Any such appeal shall be conducted in accordance with Condition D5 and must be made by a Timetable Participant:

- (a) in respect of any decision to revise the Rules pursuant to Condition D2.2.7 or D2.2.14 or D2.2.20, within five Working Days of receipt of the CVL IM's decision;
- (b) otherwise, within fifteen Working Days of receipt of the CVL IM's decision.

2.2.22 No appeal may be brought pursuant to Condition D2.2.21 in respect of any part of the Rules, which conforms with any Possessions Strategy Notice which has:

- (a) not been appealed in the timeframe for appeal set out in Condition D6.4.1; or
- (b) has been appealed but has been finally determined by a timetabling Panel or the Office of Rail and Road.

## 2.3 *Timetable consultation – D-55 to D-40*

2.3.1 Each Timetable Participant shall provide to the CVL IM at the earliest opportunity but no later than D-55 an Advance Notice of Timetable Change (ANTC) that either:

- (a) summarises at a high level, any new Services or changes to Services where known by that Timetable Participant for that Timetable Period; and
- (b) indicates which new Services or changes to Services that the Timetable Participant proposes to operate in that Timetable Period are within the remit of an ESG and whether those Services are consistent with the conclusions of that ESG (including a statement regarding the consistency of plans with any relevant Development Timetable produced by that ESG); or
- (c) states if no new Services or changes to Services are anticipated by that Timetable Participant for that Timetable Period.

If the CVL IM considers that the introduction of any such new Services or changes to Services indicated in the ANTC may necessitate substantial timetable changes, it may commence the Initial Consultation Period, referred to in Condition D2.3.3 below, before D-55. In any event, the CVL IM shall consult with Timetable Participants who may be affected by the proposed new Services or changes to Services and shall provide them with all available relevant information in respect of those proposals.

2.3.2 The CVL IM shall:

- (a) use its reasonable endeavours to ensure that by no later than D-48, provisional paths connecting into and from the NR Network have been established in cooperation with Network Rail (taking into account paths which may be available on the NR Network) and included on a provisional basis in the New Working Timetable; and
- (b) by no later than D-45, the CVL IM shall publish the Strategic Capacity Statement which is relevant to the preparation of the New Working Timetable. The Strategic Capacity Statement published no later than D-45 shall be deemed to be an Access Proposal, submitted to the CVL IM in accordance with Conditions **D**~~Error!~~ **Reference source not found.** and **D**~~Error!~~ **Reference source not found.**, in relation to the Strategic Paths contained in it.

- 2.3.3 During the period from D-55 to D-40 (or such extended period referred to in Condition **D****Error! Reference source not found.**):
- (a) Timetable Participants shall indicate the changes (if any) that they propose should be made in preparing the New Working Timetable; and
  - (b) the CVL IM shall consult with Timetable Participants in respect of the New Working Timetable.

The period of consultation required by this Condition is referred to as the "**Initial Consultation Period**".

- 2.3.4 During the Initial Consultation Period, the CVL IM shall:
- (a) use its reasonable endeavours to answer enquiries made by Timetable Participants in connection with matters that may affect or relate to the New Working Timetable; and
  - (b) facilitate and co-ordinate dialogue with all Timetable Participants and (as may be appropriate) between Timetable Participants in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary services patterns and efficiency of operation.
- 2.3.5 Each Timetable Participant shall co-operate with the CVL IM in order to enable the CVL IM to co-ordinate the timetabling and operation of all services on the CVL so that all services may be scheduled to operate on the CVL and other connected networks in a co-ordinated and robust manner, such that there may be a continuous through service from the CVL to other connected networks and vice versa.
- 2.3.6 Not later than D-48, the CVL IM shall consult with International Operators and other infrastructure managers and shall provisionally include in the New Working Timetable the International Paths which any International Operator wishes to operate.
- 2.3.7 Not later than D-45 the CVL IM shall provide to the Timetable Participants a copy of the Prior Working Timetable. If any changes are made to the Prior Working Timetable as a result of the appeal process under Condition **D****Error! Reference source not found.**, then the CVL IM shall notify these changes to Timetable Participants as soon as reasonably practicable.
- 2.3.8 The consultation process set out in this Condition **D****Error! Reference source not found.** shall not extend to International Freight Capacity.

2.4 **Submission of Access Proposals by Timetable Participants – before and after the Priority Date at D-40**

- 2.4.1 A Timetable Participant shall set out its requirements in respect of the New Working Timetable in a written proposal, to be referred to as an "**Access Proposal**" where:
- (a) it wishes to exercise any Firm Rights and/or Contingent Rights and/or any expectation of rights to obtain Train Slots in respect of the relevant Timetable Period, where those rights were not exercised to obtain Train Slots in the Prior Working Timetable; and/or
  - (b) it wishes to make changes to any Train Slot in the Prior Working Timetable;
  - (c) it wishes to set out its requirements in response to a notification by the CVL IM under Condition **DError! Reference source not found.**; and/or
  - (d) it wishes to use any International Freight Train Slot where the criteria in Condition **DError! Reference source not found.** are met.
- 2.4.2 Where a Timetable Participant does not intend using a Train Slot, which is included in the Prior Working Timetable, in the relevant Timetable Period, it shall notify this fact to the CVL IM in writing by D-40 or as soon as practicable thereafter.
- 2.4.3 Access Proposals may be submitted to the CVL IM during the period up to D-28, or in the case of a further or revised Access Proposal submitted under Condition **DError! Reference source not found.**, during the period up to D-26. However, Timetable Participants shall submit their Access Proposals (and any revised Access Proposals) as early as reasonably practicable in order to facilitate optimal planning of the New Working Timetable by the CVL IM and to ensure optimal consultation between the CVL IM and all Timetable Participants.
- 2.4.4 Access Proposals submitted by D-40 (the "**Priority Date**") are given priority in the compilation of the New Working Timetable in certain circumstances set out in Condition D4.2. Access Proposals submitted after the Priority Date but by D-28, and any further or revised Access Proposals submitted under Condition **DError! Reference source not found.** by D-26 will be incorporated by the CVL IM into the New Working Timetable as far as reasonably practicable, taking into account the complexity of the Access Proposal including any reasonable foreseeable consequential

impact on the New Working Timetable and the time available before the end of the Timetable Preparation Period, and in accordance with the principles set out in Condition D4.2.

2.4.5 Any subsequent or revised Access Proposal submitted by a Timetable Participant shall amend an Access Proposal submitted earlier where it sets out different requirements to the earlier submitted Access Proposal regarding the manner in which a right is to be exercised. In such case the date on which the subsequent or revised Access Proposal is submitted will be treated, for the purposes of Condition D4.2.24.2.2, as the date of notification of the relevant right.

2.4.6 Where a Timetable Participant has:

- (a) submitted an Access Proposal which cannot be accommodated in the New Working Timetable; or
- (b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable; or
- (c) submitted a proposal purporting to be an Access Proposal but which is defective or incomplete, (which may include, as an example, providing insufficient information required under Condition D2.5.1); or
- (d) submitted an Access Proposal which is within itself inconsistent with the Timetable Planning Rules,

the CVL IM must notify the Timetable Participant of this fact, as soon as possible after it has become aware of it, so that the Timetable Participant has the opportunity to submit a further Access Proposal under Condition D**Error! Reference source not found.**

2.4.7 An Access Proposal in relation to all or any part of an International Freight Train Slot listed in section A of the applicable International Freight Capacity Notice may not be made under this Part D.

2.4.8 An Access Proposal in relation to all or any part of an International Freight Train Slot listed in section B of the applicable International Freight Capacity Notice may not be made under this Part D unless that proposal is in connection with a train service, the purpose of which is the carriage of goods through the Channel Tunnel or the conveyance of goods which have passed or are to pass through the Channel Tunnel.

## 2.5 ***Content of an Access Proposal***

2.5.1 Each Access Proposal shall include as a minimum in respect of each Train Slot, save to the extent that the CVL IM expressly agrees in writing to the contrary:

- (a) the dates on which Train Slots are intended to be used;
- (b) the start and end points of the train movement;
- (c) the intermediate calling points;
- (d) the times of arrival and departure from and routing between, any point specified under Conditions **D**~~Error! Reference source not found.~~ **Error! Reference source not found.** and **D**~~Error! Reference source not found.~~ **Error! Reference source not found.** above;
- (e) the railway vehicles or Timing Load to be used;
- (f) any required train connections with other railway passenger services;
- (g) any proposed Ancillary Movements;
- (h) any required platform arrangements at the start, end and all intermediate calling points;
- (i) any relevant commercial and service codes;
- (j) the proposed maximum train speed and length and, in relation to a freight train, the proposed maximum train weight, and
- (k) the proposed previous and next working of the railway vehicles of the proposed Train Slot provided that the vehicles have not left the network.

2.5.2 Where an Access Proposal has been submitted by a Timetable Participant, the CVL IM shall be entitled to require any further information in respect of that Access Proposal that it reasonably considers to be necessary or beneficial to the preparation of the New Working Timetable.

## 2.6 ***Timetable Preparation – D-40 to D-26***

2.6.1 During the Timetable Preparation Period (D-40 to D-26) (the "**Timetable Preparation Period**"), the CVL IM shall compile the proposed New Working Timetable.

2.6.2 Between D-40 and D-26:

- (a) all Timetable Participants shall have access to the evolving draft of the New Working Timetable either:
  - (i) by way of "read-only" remote computer access or such other electronic means reasonably requested by a Timetable Participant; or
  - (ii) to the extent that a Timetable Participant does not have the required systems to facilitate remote computer access, by read-only computer access upon attendance at such of Network Rail's offices specified by Network Rail; and
- (b) the CVL IM shall consult further with Timetable Participants in respect of their Access Proposals and the evolving draft of the New Working Timetable, and shall continue to answer enquiries and facilitate and co-ordinate dialogue as stated in Condition D**Error! Reference source not found.**

2.6.3 In compiling the New Working Timetable, the CVL IM shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.2.

## 2.7 ***New Working Timetable Publication – D-26***

2.7.1 The New Working Timetable shall be published by the CVL IM at D-26, subject only to variations made in the course of Condition D2.7.2 and the appeal process described in this Condition D**Error! Reference source not found.**

2.7.2 Not later than D-24, any Timetable Participant affected by the publication of the New Working Timetable shall be entitled to respond to the CVL IM stating where it disputes, seeks alternative proposals or requires further information regarding the published New Working Timetable

2.7.3 Where a Timetable Participant has responded to the CVL IM by D-24, not later than D-22, The CVL IM shall respond fully and promptly and where possible, taking into account the nature of the enquiry or information requested, provide that Timetable Participant with any further information and revisions to the New Working Timetable by D-22, so as to enable a Timetable Participant to comply with the timescales in Condition D2.7.4. Any revisions in accordance with this Condition to the New Working Timetable are to be by consent only.

2.7.4 Any Timetable Participant affected by the New Working Timetable shall be entitled to appeal against any part of it (other than in respect

of International Freight Train Slots consulted under Condition D9.2), provided that an appeal is lodged within twenty Working Days of its publication. All such appeals shall be conducted in accordance with Condition D5.

- 2.7.5 The CVL IM shall promptly make all revisions to the New Working Timetable required by all appeal decisions, and shall notify all Timetable Participants upon completion of those changes.

## 2.8 **Summary**

- 2.8.1 A timeline, showing a summary of the bi-annual timetable amendment process, is attached at Annex 1. Where there is any conflict between the timeline and the wording of Condition D1 to Condition D7, the wording of Condition D1 to Condition D7 shall prevail.

## **Condition D3- VARIATIONS TO THE WORKING TIMETABLE**

### 3.1 **Overview**

- 3.1.1 From D-26 and during the relevant Timetable Period, Timetable Participants may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots.

Any such variation is referred to as a "**Train Operator Variation**". The process to be followed where a Timetable Participant seeks a Train Operator Variation is set out in Condition D3.3.

- 3.1.2 From D-26 and during the relevant Timetable Period, the CVL IM may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots,

(but in each case not any Train Slot that is an International Train Slot) in order to facilitate a Restriction of Use. Any such variation is

referred to as a "**CVL IM Variation**". The process to be followed where a CVL IM Variation is sought with more than 12 weeks' notice is set out in Condition D3.4. The process to be followed where a CVL IM Variation is sought with less than 12 weeks' notice is set out in Condition D3.5.

3.1.3 Train Operator Variations and CVL IM Variations are collectively referred to as "**Timetable Variations**".

3.1.4 In considering or making any Timetable Variation, the CVL IM shall be required and entitled to act in accordance with the duties and powers set out in Conditions D4.3 and D4.4.

3.1.5 From D-26 and during the relevant Timetable Period, the CVL IM may vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) amending the detail of one or more International Freight Train Slots; or
- (b) removing one or more International Freight Train Slots.

Any such variation is referred to as an "International Freight Variation". The CVL IM may only make an International Freight Variation in the circumstances set out in Condition D3.1.6.

3.1.6 The CVL IM may only make an International Freight Variation to:

- (a) reflect the allocation by the International Freight Corridor One Stop Shop of an International Freight Train Slot in section A of an International Freight Capacity Notice in accordance with Regulation 913/2010;
- (b) reflect the allocation by the CVL IM of an International Freight Train Slot in section B of an International Freight Capacity Notice in accordance with the provisions of this Part D;
- (c) reflect an International Freight Train Slot in section A of an International Freight Capacity Notice becoming available for allocation by the CVL IM in accordance with the provisions of this Part D;
- (d) reflect changes to an International Freight Train Slot required as a result of an agreement it has reached with the International Freight Corridor One Stop Shop;
- (e) in the case of an International Freight Train Slot in section A of an International Freight Capacity Notice, reflect or facilitate

a Restriction of Use (but only where that Restriction of Use is needed in relation to a case of force majeure (including urgent and unforeseeable safety critical work) within the meaning of Regulation 913/2010); or

- (f) in the case of an International Freight Train Slot in section B of an International Freight Capacity Notice, reflect or facilitate a Restriction of Use.

### 3.2 ***Timeline for the Planning of Timetable Variations***

3.2.1 CVL IM Variations are planned by the CVL IM on a week by week basis. Each week of a Working Timetable is referred to as a "**Timetable Week**". Each Timetable Week commences at 0001 on a Saturday and expires at 2400 on the following Friday. The sequence of events by which variations are finalised is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to the commencement of Timetable Week "**TW**". So, for example, "**TW minus 12**" (or "**TW-12**") refers to the 12th week prior to the start of a given Timetable Week "**TW**". Where in this 0 any step or event is required or stated to occur by any week designated in this way, it must occur no later than 1700 on Friday of the preceding week. So, for example, a step which is required to occur no later than "**TW-12**" must occur no later than:

- (a) 1700 on Friday;
- (b) in the week commencing on the Sunday which occurs 13 weeks prior to the commencement of week TW.

3.2.2 Not later than D-26, the CVL IM shall provide to all Timetable Participants a calendar pertaining to each Timetable Week, showing the milestone dates which will apply (pursuant to this Condition D3) to the planning of all Timetable Variations in respect of that Timetable Week.

### 3.3 ***Train Operator Variations after D-26***

3.3.1 Where a Timetable Participant seeks a Train Operator Variation, it shall submit to the CVL IM a written request, referred to as a "**Train Operator Variation Request**".

3.3.2 A Train Operator Variation Request shall contain a full description of the variation sought and, where it relates to the addition or amendment of any Train Slot to be included in the Working Timetable, shall provide the same information in respect of the variation as would be contained in an Access Proposal (save that where a proposed Train Slot amendment does not involve revision

of any information previously supplied to the CVL IM in an Access Proposal for that Train Slot, the Train Operator Variation Request need not repeat that information).

3.3.3 From D-26 and during the relevant Timetable Period, a Timetable Participant is entitled to make a Train Operator Variation Request and the CVL IM shall have the power to accept, reject or modify it, subject to the timeframes set out in Conditions D3.3.6 and D3.3.7 below and acting in accordance with Condition D4.3.

3.3.4 Where a Train Operator Variation Request is received:

- (a) on any day which is not a Working Day; and/or
- (b) after 1000 hours on a Working Day,

it shall be deemed to have been received on the next Working Day thereafter.

3.3.5 For the purposes of calculating the CVL IM's response time to a Train Operator Variation Request set out in Condition D3.3.6, the day of the CVL IM's receipt of a Train Operator Variation Request is described as day one and each Working Day following this adds a day onto the description. For example, the Working Day after the day of receipt of the request is day two.

3.3.6 The CVL IM shall notify its acceptance, rejection or modification of a Train Operator Variation Request, by the following latest times:

- (a) as soon as reasonably practicable, where the request is to operate a Train Slot on day one or day two;
- (b) by 1500 hours on day one, where the request is to operate a Train Slot on day three;
- (c) by 1000 hours on day two, where the request is to operate a Train Slot on day four;
- (d) by 1500 hours on day two, where the request is to operate a Train Slot on day 5;
- (e) by 1500 hours on day three, where the request is to operate a Train Slot on day 6;
- (f) by 1000 hours on day four, where the request is to operate a Train Slot on day 7;
- (g) where Conditions D3.3.6(a), (b), (c), (d), (e) or (f) above do not apply, within five Working Days of receipt of the request

unless otherwise agreed between the Timetable Participant and the CVL IM, where the parties acting reasonably, consider the volume of changes requested and the timescales over which the variations are required to operate.

- 3.3.7 Not used.
- 3.3.8 Where the CVL IM fails to notify its response to a Train Operator Variation Request in accordance with Condition D3.3.6 and the request, if accepted, would not give rise to any conflict with:
- (a) the New Working Timetable after it is published at D-26; or
  - (b) the relevant Working Timetable; or
  - (c) the Rules,
- it shall be deemed to have accepted the request.
- 3.3.9 Subject to Condition D3.3.10 below, where a Timetable Participant is dissatisfied with any final decision of the CVL IM in response to a Train Operator Variation Request, it may appeal against that decision in accordance with Condition D5, provided that it submits its appeal no later than five Working Days after it is notified of the relevant decision by the CVL IM.
- 3.3.10 Not used.
- 3.3.11 (a) Where the CVL IM rejects any Train Operator Variation Request it must provide written reasons for its decision.
- (b) Where the CVL IM modifies any Train Operator Variation Request it must provide written reasons for its decision upon request from the Train Operator.
- 3.3.12 A Train Operator Variation Request in relation to all or any part of an International Freight Train Slot listed in section A of the applicable International Freight Capacity Notice may not be made under this Part D.
- 3.3.13 A Train Operator Variation Request in relation to all or any part of an International Freight Train Slot listed in section B of the applicable International Freight Capacity Notice may not be made under this Part D unless that request is in connection with a train service, the purpose of which is the carriage of goods through the Channel Tunnel or the conveyance of goods which have passed or are to pass through the Channel Tunnel.

#### 3.4 ***CVL IM Variations with at least 12 Weeks' Notice***

- 3.4.1 The procedures described in this Condition D3.4 are designed to facilitate the planning of all Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.
- 3.4.2 The CVL IM shall be entitled to make a variation to the Working Timetable provided that:
- (a) the CVL IM Variation is made only for the purpose of taking CVL Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition **DError! Reference source not found.** or as amended in accordance with the procedure established pursuant to Condition D3.4.3; or
  - (b) the CVL IM Variation is made for the purpose of facilitating a Network Rail Restriction of Use which is consistent with the Rules (as defined in the Network Rail Network Code) applicable on the relevant part of the NR Network; and
  - (c) (in the case of both Conditions D3.4.2(a) and D3.4.2(b)) the CVL IM complies with the procedure set out in this Condition D3.4.
- 3.4.3 The CVL IM shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Condition **DError! Reference source not found.**, and is to be utilised in order to facilitate changes which the CVL IM considers necessary to take CVL Restrictions of Use or to facilitate Network Rail Restrictions of Use.
- 3.4.4 The procedure referred to in Condition D3.4.3:
- (a) must require that no amendment to the Rules may be made unless the CVL IM has consulted with all Timetable Participants likely to be affected by the amendment;
  - (b) must require that all decisions of the CVL IM be made by application of the Decision Criteria in accordance with Condition D4.6;
  - (c) may authorise changes to the procedure.
- 3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall be subject to the appeal procedures in Condition D5 as if they were made pursuant to a procedure set out in this 0.

- 3.4.6 Notwithstanding anything stated elsewhere in this Part D, where any amendment is made to the procedure referred to in Condition D3.4.3 by use of that procedure, the amendment shall not take effect until the determination of any appeal against the same.
- 3.4.7 Where the CVL IM proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, the CVL IM shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by the CVL IM at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.
- 3.4.8 After TW-30 but by TW-26, the CVL IM shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all the CVL IM Variations to be made.
- 3.4.9 To facilitate the planning of any CVL IM Variation, the CVL IM may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.
- 3.4.10 Where the CVL IM requires a revised Access Proposal:
- (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
  - (b) the CVL IM shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
  - (c) the CVL IM shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-16.
- 3.4.11 The CVL IM may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.
- 3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by the CVL IM, the CVL IM shall be entitled to make a CVL IM Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of the CVL IM's decision.

- 3.4.13 Not later than TW-14, the CVL IM shall notify all Timetable Participants of its decision in respect of the CVL IM Variations to be made pursuant to the procedure in this Condition D3.4.
- 3.4.14 Not later than TW-13, any Timetable Participant affected by the CVL IM's decision notified pursuant to Condition D3.4.13 shall inform the CVL IM whether it accepts or disputes that decision.
- 3.4.15 At TW-12, the CVL IM shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the CVL IM Variations to be made pursuant to this Condition D3.4.
- 3.4.16 Subject as provided in Condition D3.4.12, any Timetable Participant which is dissatisfied with any final decision of the CVL IM in respect of a CVL IM Variation may appeal against it in accordance with Condition D5.

### 3.5 ***CVL IM Variations with less than 12 Weeks' Notice***

- 3.5.1 It may be necessary for CVL Restrictions of Use to be arranged by the CVL IM or Network Rail Restrictions of Use to be arranged by Network Rail, with less than 12 weeks' notice or otherwise outside the process described in Condition D3.4. The following paragraphs of this Condition D3.5 are intended to facilitate any such Restrictions of Use.
- 3.5.2 Where the CVL IM proposes to make any variation to the Working Timetable in circumstances where it is not reasonably practicable to comply with the timing requirements of Condition D3.4, the CVL IM shall follow the procedures set out in Condition D3.4 save that:
  - (a) the timing requirements specified there; and
  - (b) Conditions D3.4.13, D3.4.14 and D3.4.15,shall not apply. In carrying out those procedures, the CVL IM shall be permitted (for itself) and shall prescribe (for affected Timetable Participants) such time periods for each step as are reasonably practicable in the circumstances. The CVL IM shall notify all affected Timetable Participants of its final decision in respect of any such change as soon as reasonably practicable. Any variation to a Working Timetable made pursuant to this Condition D3.5.2 shall be a **"CVL IM Variation"** for the purposes of this 0.
- 3.5.3 Any Timetable Participant which is dissatisfied with any final decision of the CVL IM in respect of a CVL IM Variation made pursuant to Condition D3.5.2 may appeal in accordance with Condition D5.

### 3.6 ***Timetable Variations by consent***

3.6.1 Notwithstanding anything stated in this Condition D3, where the CVL IM and all affected Timetable Participants have so consented in writing, a Timetable Variation may be made without the need for compliance with such of the requirements of this Condition D3 as are specified in the consent. Such a variation is referred to as a "**Timetable Variation by Consent**".

### 3.7 ***Publication of Timetable Variations***

3.7.1 Where, pursuant to the processes described in this Condition D3, any Timetable Variation or Timetable Variation by Consent has been finalised, it shall be recorded by the CVL IM in one or more schedules (each referred to as a "**Short Term Plan**"). Each Short Term Plan shall be made available to affected Timetable Participants (by the same means as are described in Condition D**Error! Reference source not found.****Error! Reference source not found.**) as soon as reasonably practicable after the relevant variation has been approved by the CVL IM, and the affected part(s) of the New Working Timetable or Working Timetable shall be annotated to refer to the relevant Short Term Plan(s).

### 3.8 ***Operation of Part H***

3.8.1 In addition to any variation to the New Working Timetable or Working Timetable arising pursuant to the procedures set out in this Condition D3, variations may also arise from time to time by reason of the operation of the CVL Railway Operational Code, and this Condition D3 is subject to the operation of that Code.

### 3.9 ***Summary***

3.9.1 A timeline, showing a summary of the process for variations to the Working Timetable, is attached at Annex 2. Where there is any conflict between the timeline and the wording of Condition D1 to Condition D7, the wording of Condition D1 to Condition D7 shall prevail.

## **Condition D4 - DECISIONS BY THE CVL IM**

### 4.1 ***Decisions concerning the Rules***

4.1.1 In conducting the processes set out in Condition D**Error! Reference source not found.** by which the Rules are revised on a bi-annual basis (including the amendment process described in Condition D**Error! Reference source not found.**), the CVL IM shall make all

decisions by application of the Decision Criteria in the manner set out in Condition D4.6.

#### 4.2 ***Decisions arising in the preparation of a New Working Timetable***

4.2.1 In compiling a New Working Timetable in accordance with Condition **DError! Reference source not found.**, the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6 and conduct itself as set out in this Condition D4.2.

4.2.2 The CVL IM shall endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions **DError! Reference source not found.** and **DError! Reference source not found.** and accommodate all Rolled Over Access Proposals, subject to the following principles:

- (a) a New Working Timetable shall conform with the Rules and the applicable International Freight Capacity Notice applicable to the corresponding Timetable Period;
- (b) each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant;
- (c) in compiling a New Working Timetable, the CVL IM is entitled to exercise its Flexing Right;
- (d) where the principles in Conditions D4.2.2(a), D4.2.2(b) and D4.2.2(c) above have been applied but the CVL IM is unable to include all requested Train Slots in the New Working Timetable, the Train Slots shall be allocated in the following order of priority:
  - (i) first to:
    - (A) the Firm Rights of any Timetable Participant that will subsist during the whole of the Timetable Period and which have been Exercised; and
    - (B) any rights the CVL IM has for Network Services included in the Rules;
  - (ii) second to Firm Rights of any Timetable Participant, that were in force at the Priority Date but will expire prior to or during the Timetable Period and which have been Exercised, provided that the CVL IM considers (acting reasonably) that new Firm Rights, substantially the same as the expiring rights, will be in force during the Timetable Period;

(iii) third to Contingent Rights or any expectation of rights of any Timetable Participant which have been Exercised, provided the CVL IM considers (acting reasonably) they will be Firm Rights or Contingent Rights in force during the Timetable Period;

(iv) fourth to any:

(A) rights (including any Firm Rights or Contingent Rights), or expectation of any rights (including any Firm Rights or Contingent Rights) of any Timetable Participant notified in an Access Proposal submitted after the Priority Date but before D-26 in accordance with Conditions **D** and **D**. Where more than one set of rights or expectation of rights are so notified, capacity is to be allocated in the order in which Access Proposals containing details of the rights (or expectations thereof) are received by the CVL IM; and

(B) Strategic Capacity contained in the Strategic Capacity Statement.

4.2.3 For the purposes of Condition D4.2.2(d)(iv) an Access Proposal shall be deemed to have been received by the CVL IM:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place in the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by email or other electronic means (subject to confirmation of receipt of delivery):
  - (i) on the day of transmission if sent before 1700 on a Working Day; or
  - (ii) in any other case, at 0900 hours on the first Working Day following the day of transmission.

#### 4.3 ***Decisions concerning Train Operator Variations***

4.3.1 In responding to a Train Operator Variation Request, the CVL IM shall conduct itself as follows:

- (a) it is entitled to exercise its Flexing Right;

- (b) when exercising its power set out in Condition D3.3.3 the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6 except that it shall not accept a Train Operator Variation Request if to do so would give rise to any conflict with any Train Slot already scheduled in:
  - (i) the New Working Timetable after it is published at D-26 or the relevant Working Timetable, unless it is a Strategic Train Slot or an International Freight Train Slot for which the criteria for use in Condition D2.4.8 are met and which has not already been allocated to a Timetable Participant; or
  - (ii) the Rules;
- (c) where the Decision Criteria have been applied as set out in sub-paragraph D4.3.1(b) immediately above but two or more such requests would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were received or deemed to have been received by the CVL IM and any conflict resolved accordingly.

4.3.2 Where a Train Operator Variation Request:

- (a) pertains to a Train Slot to be used for the carriage of passengers in connection with any sporting or other public event; and
- (b) would, if accepted, conflict with any Train Slot already scheduled in the New Working Timetable or Working Timetable, unless it is a Strategic Train Slot; and
- (c) would in the absence of such conflict be accepted (or accepted on varied terms) by the CVL IM,

the CVL IM shall consult with the Timetable Participant entitled to the Train Slot and shall seek its consent to effect a variation of the scheduled Train Slot to the extent necessary to accommodate the relevant request (or that request as may be varied). Any Timetable Participant so consulted shall not unreasonably withhold or delay its consent to the proposed variation where the relevant request proposes the use of a Train Slot for the carriage of passengers in materially greater numbers than are usually carried on the relevant part of the CVL on the days and times in question.

4.3.3 Where any Timetable Participant consulted by the CVL IM in accordance with Condition D4.3.2:

- (a) consents to the proposed variation of its Train Slot; or
- (b) unreasonably withholds or delays its consent in breach of Condition D4.3.2,

the CVL IM shall be entitled to make a variation in respect of that Train Slot (including the removal of that Train Slot) to the extent necessary to facilitate the relevant request. Where, consequent upon such variation, the CVL IM is required by the terms of an Access Agreement to pay any compensation to the affected Timetable Participant, the Timetable Participant which made the relevant Train Operator Variation Request shall reimburse the amount of that payment to the CVL IM.

4.3.4 Notwithstanding anything stated elsewhere in this Part D, the CVL IM shall be entitled to reject any Train Operator Variation Request if it:

- (a) pertains to a Timetable Variation which has in substance been made previously pursuant to Condition D3 and has been rejected; or
- (b) is substantially the same as any part of an Access Proposal made and rejected during the course of the bi-annual timetable revision process described in Condition D2,

unless there has been a material change in circumstances which would affect the CVL IM's application of the Decision Criteria in Condition D4.6 when deciding whether or not to accept the Train Operator Variation Request.

#### 4.4 ***Decisions concerning CVL IM Variations***

4.4.1 In making any decision in the course of implementing the procedures set out in Conditions D3.4 or D3.5, the CVL IM:

- (a) is entitled to exercise its Flexing Right when responding to an Access Proposal submitted under Condition D3.4.10;
- (b) may not effect any CVL IM Variation to the extent that the variation is inconsistent with the Rules;
- (c) shall, subject to the over-riding principles set out in subparagraphs D4.4.1(a) and D4.4.1(b) above, apply the Decision Criteria in accordance with Condition D4.6.

#### 4.5 ***Decisions concerning Possessions Strategy Notices***

4.5.1 In making any decision concerning the content of a Possessions Strategy Notice, the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6.

#### 4.6 ***The Decision Criteria***

4.6.1 Where the CVL IM is required to decide any matter in this Part D its objective shall be to share capacity on the CVL for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").

4.6.2 In achieving the Objective, the CVL IM shall apply any or all of the considerations in paragraphs (a)-(l) below ("the Considerations") in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the CVL;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers and goods;
- (f) the commercial interests of the CVL IM (apart from the terms of any maintenance contract entered into or proposed by the CVL IM) or any Timetable Participant of which the CVL IM is aware;
- (g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;
- (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
- (i) mitigating the effect on the environment;
- (j) enabling operators of trains to utilise their assets efficiently; and
- (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended

purpose of the Strategic Capacity to which the Strategic Train Slot relates; and

- (l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

4.6.3 When applying the Considerations, the CVL IM must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and the CVL IM. Where, in light of the particular circumstances, the CVL IM considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.6.4 The Objective and the Considerations together form the Decision Criteria.

#### 4.7 ***Finality of decisions***

4.7.1 Save where expressly otherwise stated in this Part D, where the CVL IM has announced a final decision in respect of any process regulated by this Part D, that decision shall be:

- (a) binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D;
- (b) binding on the CVL IM save to the extent that:
  - (i) the CVL IM is expressly permitted by any provision of this Part D to deviate from or amend that decision; or
  - (ii) a decision is changed by an appeal authorised by this Part D.

### **Condition D5 - APPEALS**

#### 5.1 ***Appeal in accordance with the CVL ADRR***

5.1.1 Where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the CVL ADRR.

5.1.2 Where a deadline for bringing an appeal is expressly stated in this Part D, an appeal in respect of such a decision must be made by

the stated deadline. Otherwise, an appeal brought pursuant to this Part D must be made:

- (a) within five Working Days of receipt of the decision to which objection is made; or
- (b) where the period referred to in D5.1.2(a) includes Christmas Day, within 10 Working Days of that decision.

5.1.3 Where an appeal is made against a New Working Timetable as envisaged by Condition D2.7.4 the appeal shall be determined by the Timetabling Panel within 10 Working Days of final submission to it of all relevant information.

## 5.2 ***Appeal to ORR***

5.2.1 Where either the CVL IM or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to ORR for determination under the CVL ADRR, provided that any such referral must be made:

- (a) within five Working Days of receipt of the Timetabling Panel's written reasoned determination to which objection is made; or
- (b) where the period referred to in D5.2.1(a) above includes Christmas Day, within 10 Working Days of receipt of such receipt.

## 5.3 ***Powers of dispute resolution bodies***

5.3.1 In determining any appeal pursuant to this Part D, any Timetabling Panel or ORR (as the case may be) may exercise one or more of the following powers:

- (a) it may give general directions to the CVL IM specifying the result to be achieved but not the means by which it shall be achieved;
- (b) it may direct that a challenged decision of the CVL IM shall stand;
- (c) it may substitute an alternative decision in place of a challenged decision of the CVL IM,

provided that the power described in D5.3.1(c) above shall only be exercised in exceptional circumstances.

5.3.2 Where general directions have been given in accordance with Condition D5.3.1, the relevant appeal body may, on the application

of the CVL IM brought in accordance with Condition D5.3.3, make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

- 5.3.3 Any application made by the CVL IM pursuant to Condition D5.3.2 must be made within:
- (a) five Working Days of the relevant decision; or
  - (b) where the said period of five Working Days would include Christmas Day, 10 Working Days.

#### 5.4 ***Status of Decisions***

5.4.1 Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of the CVL IM shall remain binding until such time as the Timetabling Panel determines otherwise.

5.4.2 Save where expressly stated otherwise in this Part D, where an appeal to ORR pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as ORR determines or orders otherwise.

#### 5.5 ***Binding effect of appeal rulings***

- 5.5.1 Where an appeal is brought pursuant to this Part D, the parties to the appeal shall be bound by:
- (a) the ruling of the Timetabling Panel, unless or until ordered or determined otherwise by ORR;
  - (b) the ruling of ORR.

#### 5.6 ***Implementing an appeal ruling***

The CVL IM shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or ORR pursuant to this Condition D5. All such steps shall be taken promptly.

#### 5.7 ***Liability of the CVL IM***

Where a decision of the CVL IM is overturned on appeal, the CVL IM shall only be liable to any Timetable Participant in damages in respect of that decision where it was made in bad faith or was unreasonable.

### **Condition D6 - POSSESSIONS STRATEGY NOTICES**

#### 6.1 ***Possessions Strategy Proposal***

6.1.1 Where the CVL IM proposes implementing any Works which require a programme of CVL Restrictions of Use extending over:

- (a) a period of more than one calendar year; or
- (b) a period which contains two or more Timetable Change Dates;

it may at its discretion elect to implement the procedure set out in this Condition D6. Where it so elects, the procedure must be implemented by the CVL IM issuing a Possession Strategy Proposal not later than D-90 and shall be concluded by the CVL IM issuing a Possession Strategy Notice not later than D-64. References in this Condition D6 to "**D-X**" refer to X number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed CVL Restriction of Use will come into effect. The parties entitled to participate in that procedure shall be all Timetable Participants who may be affected by the proposed CVL Restrictions of Use (who shall be referred to as "**Possessions Strategy Participants**").

6.1.2 Where the CVL IM elects to implement the procedure set out in this Condition D6, it shall do so by serving written notice on all Possessions Strategy Participants, a "**Possessions Strategy Proposal**", not later than D-90, which shall:

- (a) provide sufficient particulars of:
  - (i) the proposed Works; and
  - (ii) the proposed strategy for CVL Restrictions of Use pertaining to the Works;

as will enable each recipient to understand the likely effect of the proposed Works on its Services;

- (b) provide an explanation of the CVL IM's reasons for the proposed CVL Restrictions of Use strategy.

## 6.2 **Consultation**

Following service of a Possessions Strategy Proposal, the CVL IM shall consult with all parties on whom it has been served. Each recipient shall be afforded a reasonable period (to be specified by the CVL IM, having regard to the likely effect of the Possessions Strategy Proposal on each recipient's Services) in which to make submissions and counter-proposals to the CVL IM in respect of the proposed strategy for CVL Restrictions of Use pertaining to the Works.

### 6.3 ***Finalisation of Possessions Strategy – Possessions Strategy Notice***

6.3.1 Following the consultation process described in Condition D6.2, the CVL IM shall make its final decision concerning the strategy for CVL Restrictions of Use that will be adopted in order to effect the Works, and will notify its decision to all Possessions Strategy Participants not later than D-64, by means of a formal notice detailing the strategy (to be referred to as a "**Possessions Strategy Notice**").

6.3.2 Where, in finalising a Possessions Strategy Notice, the CVL IM has rejected counter-proposals put to it by a Possessions Strategy Participant, it shall give to that party written reasons for that rejection when it serves its Possession Strategy Notice.

### 6.4 ***Appeal***

Where any Possessions Strategy Participant is dissatisfied with any aspect of any Possessions Strategy Notice, it may appeal in accordance with Condition D5. Any such appeal must be made within 20 Working Days of the Possessions Strategy Notice being served on it.

### 6.5 ***Relationship with the Rules***

6.5.1 The fact that the process under this Condition D6 has been followed and a Possession Strategy Notice issued does not in any way affect the applicability of the process set out in Condition **DError! Reference source not found.** which, in those circumstances, still must be followed. However, where any part of the Rules conform with a Possession Strategy Notice then a decision of the CVL IM regarding that part of the Rules cannot be appealed in the circumstances set out in Condition **DError! Reference source not found.**.

6.5.2 In the event of any inconsistency between any Possessions Strategy Notice and the Rules, once they have been finalised in accordance with the process set out in Condition **DError! Reference source not found.**, the Rules shall prevail.

### 6.6 ***Relationship with Part G***

This Condition D6 is without prejudice to Part G of the CVL Network Code.

### 6.7 ***Amendment of Possessions Strategy Notice***

6.7.1 The CVL IM shall include within the Timetable Planning Rules a procedure to enable amendment or withdrawal of a Possessions Strategy Notice. That procedure shall provide that:

- (a) no such change shall be made unless the CVL IM has consulted, to the extent reasonably practicable, with any Possessions Strategy Participant likely to be affected by that change;
- (b) that all decisions of the CVL IM made pursuant to that procedure shall be made by application of the Decision Criteria in accordance with Condition D4.6.

6.7.2 All amendments to a Possessions Strategy Notice made pursuant to the procedure referred to in Condition D6.7.1 shall be subject to the appeal procedures in Condition D5.

## **Condition D7 - MANAGING CHANGE**

### **7.1 *Calendar of Events***

7.1.1 The CVL IM shall provide Network Rail with relevant details of any **CVL IM Events** that the CVL IM wishes to be included in Network Rail's Draft Calendar of Events. The CVL IM shall use its reasonable endeavours to procure that Network Rail incorporates such CVL IM Events into the Draft Calendar of Events published by Network Rail pursuant to the Network Rail Network Code.

7.1.2 Timetable Participants and funders may make representations to the CVL IM in respect of any changes they propose to CVL IM Events within the Draft Calendar of Events no later than 3 weeks after the date on which Network Rail issued the Draft Calendar of Events.

7.1.3 No later than 2 weeks after the deadline specified in Condition D7.1.2, the CVL IM shall consider the representations made to it by Timetable Participants, other infrastructure managers and funders pursuant to Condition D7.1.2 and shall pass on such representations to Network Rail (copying in relevant Timetable Participants and funders) (which may result in Network Rail amending the Draft Calendar of Events).

7.1.4 Where Network Rail has not accepted any changes proposed under Condition D7.1.3, the CVL IM shall use its reasonable endeavours to procure that Network Rail explains to the relevant Timetable Participant or funder why this is the case.

### **7.2 *Event Steering Group***

7.2.1 The CVL IM shall use its reasonable endeavours to procure that each CVL IM Event is included on the agenda of an appropriate

Event Steering Group held by Network Rail under the Network Rail Network Code.

7.2.2 Where an Event Steering Group is considering any matter relating to or having an impact on a CVL IM Event or any Event having an impact on the CVL, the CVL IM shall use its reasonable endeavours to procure that it is represented on that Event Steering Group.

7.2.3 The CVL IM shall use its reasonable endeavours to procure that the objectives of an Event Steering Group in respect of CVL IM Events shall be to:

- (a) agree a project plan to achieve a smooth transition for the necessary timetable changes, arising from the CVL IM Event, through Condition D2 by way of timely industry input into the process (the "**Project**");
- (b) oversee and facilitate delivery of the Project;
- (c) carry out appropriate consultation with Transport Focus, Rail Freight Group and Freight Transport Association, during the course of the Project.

7.3 ***Not used***

7.4 ***Legal Requirements***

7.4.1 Where compliance by the CVL IM with this 0 would be inconsistent with any Legal Requirement (including the Act or the Access Regulations) the CVL IM shall:

- (a) comply with such Legal Requirement and shall be relieved from its failure to comply with this 0 but only to the extent that it could not act in a manner compliant with this 0 in complying with such Legal Requirement; and
- (b) as soon as reasonably practicable develop and submit a CVL Proposal for Change in accordance with Part C of the CVL Network Code, which would modify this 0 so that it is compliant with all Legal Requirements.

## **Condition D8 - MISCELLANEOUS**

8.1 ***Directions issued by ORR***

Notwithstanding anything else stated in this 0, the CVL IM shall be bound and entitled to make or give effect to such amendments or changes to a Working Timetable as may be directed from time to time by ORR in the exercise of its

statutory powers, except in relation to any amendment or change which would be impossible to make without infringing the Firm Rights of another.

## 8.2 **Confidentiality**

The CVL IM shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant.

## 8.3 **Not used.**

## 8.4 **Removal of Train Slots, other than Strategic Train Slots and International Freight Train Slots, from Working Timetable where no Access Rights exist**

8.4.1 Any movements of trains operated by any person must be made pursuant to permission to use the track for the purpose of or in connection with the operation of those trains under an Access Agreement ("**Access Rights**"). If, by 2200 hours on the day before a Timetable Change Date and after consultation with the person proposing to move the trains, the CVL IM reasonably considers that the person proposing to move the trains will not have the necessary Access Rights by the intended date of operation of the Train Slots, then it may remove the Train Slot(s) for the movement of those trains from the Working Timetable due to commence the following day.

8.4.2 Condition D8.4.1 shall not apply to Strategic Train Slots nor to International Freight Train Slots.

## 8.5 **Removal of Train Slots obtained by a Train Operator that are not being used**

8.5.1 Where:

- (a) a Train Operator has obtained Train Slots in the Working Timetable; and
- (b) the Train Slots are not underpinned by a Quantum, Access Right; and
- (c) the CVL IM acting reasonably, considers that the Train Slots are not being used;

then the CVL IM shall notify the Train Operator of its intention to remove the Train Slots from the Working Timetable.

8.5.2 Upon receipt of a notice under Condition D8.5.1, the Train Operator shall respond to the CVL IM in writing within 10 Working Days stating that it either accepts or disagrees with the CVL IM's decision.

- 8.5.3 If the Train Operator disagrees with the CVL IM's decision under Condition D8.5.1, then in addition to its response under Condition D8.5.2, it shall also at the same time refer the matter for determination in accordance with the CVL ADRR.
- 8.5.4 If the Train Operator fails to respond to the CVL IM in writing within 10 Working Days of receiving a notice under Condition D8.5.1, it will be deemed to have accepted the CVL IM's decision.
- 8.5.5 Where a Timetable Participant reasonably believes that sub Conditions D8.5.1(a) and (b) apply, then it may report this to the CVL IM who shall consider whether to remove the Train Slots from the Working Timetable in accordance with Condition D8.5.1.
- 8.5.6 Within 10 Working Days of making its decision following the process set out in Condition D8.5.5, the CVL IM shall advise the Timetable Participant who made the relevant report of the outcome.
- 8.5.7 Conditions D8.5.1 and D8.5.5 shall not apply to International Freight Train Slots.

## 8.6 **Consultation**

Where in this 0, any party is under an obligation to consult with another, the party obliged to initiate the consultation shall provide the consultee with:

- 8.6.1 sufficient information for the consultee to be able to comment on the subject matter of the consultation; and
- 8.6.2 a reasonable time in which to respond to the information provided.

## **Condition D9 – INTERNATIONAL FREIGHT CAPACITY NOTICE**

### 9.1 **Overview**

- 9.1.1 Not later than D-70 in relation to the Principal Change Date, the CVL IM shall publish an initial International Freight Capacity Notice (“Initial International Freight Capacity Notice”) setting out the International Freight Train Slots to be in the timetable for two Timetable Periods from the next Principal Change Date.
- 9.1.2 During the period from D-70 to D-65, the CVL IM shall consult with Timetable Participants in respect of the International Freight Train Slots included in the Initial International Freight Capacity Notice and Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have in relation to those International Freight Train Slots.

- 9.1.3 The CVL IM shall consider representations made to it by Timetable Participants pursuant to D9.1.2. The CVL IM may revise the International Freight Train Slots included in the Initial International Freight Capacity Notice and not later than D-60 shall provide to all Timetable Participants an updated International Freight Capacity Notice.
- 9.1.4 Any Timetable Participant dissatisfied with the International Freight Train Slots included in the updated International Freight Capacity Notice provided under Condition D9.3 is entitled to appeal, provided that an appeal is lodged within five Working Days of receipt of that updated International Freight Train Capacity Notice. Any such appeal shall be conducted in accordance with Condition D5.

## Annex 1 - Timeline for the timetable development process

Milestone	What happens
D-73	The CVL IM issues the timetable process dates for both the Principal Change Date and the Subsidiary Change Date 73 weeks before the Principal Change Date
D-70	The CVL IM issues draft International Freight Capacity Notice (in relation to Principal Change Date only)
D-70 to D-65	The CVL IM consults Timetable Participants on its proposed International Freight Train Slots
<b>Revision of the Timetable Planning Rules and CVL Engineering Access Statement (collectively known as the Rules) This process does not apply to the Advanced Register of Possessions which is detailed separately below.</b>	
D-90	If the CVL IM wants to rely on a Possessions Strategy Notice it must issue a Possessions Strategy Proposal to all Possessions Strategy Participants for consultation
D-64	The CVL IM issues its decision in a Possessions Strategy Notice which Possessions Strategy Participants may appeal within 20 Working Days of receipt
D-64 to D-60	The CVL IM consults Timetable Participants on its proposed changes to the Engineering Access Statement (excluding the Advanced register of Possessions).
D-64 to D-54	CVL IM consults Timetable Participants on its proposed changes to the Timetable Planning Rules and its anticipated Restrictions of Use
D-60	The CVL IM considers representations made by Timetable Participants and provides a final version of the International Freight Capacity Notice. Timetable Participants may appeal the determinations in the final International Freight Capacity Notice within 5 Working Days of receipt
D-59	The CVL IM issues the draft Engineering Access Statement (excluding the Advanced register of Possessions) for consultation.
D-59 to D-54	Timetable Participants may make representations or objections to the draft Engineering Access Statement (excluding the Advanced register of Possessions)
D-54 to D-44	The CVL IM considers all representations or objections and prepares revised Engineering Access Statement
D-53	The CVL IM issues the draft Timetable Planning Rules for consultation.
D-53 to D-49	Timetable Participants may make representations or objections to the draft Timetable Planning Rules
D-49 to D-46	The CVL IM considers all representations or objections and prepares revised Timetable Planning Rules
D-46	The CVL IM issues revised Timetable Planning Rules which Timetable Participants may appeal within 15 Working Days of receipt
D-44	The CVL IM issues revised Engineering Access Statement (excluding the Advanced register of Possessions) which Timetable Participants may appeal within 15 Working Days of receipt
D-44 to D-26	After consultation with any affected Timetable Participants the CVL IM may make minor revisions to the Rules (excluding the Advanced register of Possessions) in order to optimise the New Working Timetable. Timetable Participants may appeal these revisions within five Working Days of receipt
<b>Revision of the Advanced Register of Possessions</b>	
F-64 to F-60	The CVL IM consults Timetable Participants on its proposed changes to the Advanced Register of Possessions and its anticipated Restrictions of Use.
F-59	The CVL IM issues the draft Advanced Register of Possessions for consultation
F-59 to F-54	Timetable Participants may make representations or objections to the draft Advanced Register of Possessions

F-54 to F-46	The CVL IM considers all representations or objections and prepares revised Advanced Register of Possessions
F-46	The CVL IM issues revised Advanced Register of Possessions which Timetable Participants may appeal within 15 Working Days of receipt
<b>Timetable consultation, preparation and publication</b>	
D-66	The CVL IM provides Network Rail with relevant details of CVL IM Events that the CVL IM wishes to be included in Network Rail's Draft Calendar of Events
Up to D- 64	Timetable Participants and funders inform the CVL IM of any events they think should be included in Network Rail's Draft Calendar of Events
D-64	Network Rail issues Draft Calendar of Events
D-64-59	Timetable Participants and funders make any representations or objections to the Draft Calendar of Events
D-55	Timetable Participants planning significant new services or significant amendments to their services must notify the CVL IM as soon as possible and before D-55 if possible.  Each Timetable Participant shall provide to the CVL IM at the earliest opportunity, but no later than D-55, an Advance Notice of Timetable Change.
D-54	Network Rail issues Calendar of Events
D-55 to D-40	Initial Consultation Period. Timetable Participants discuss their proposals with the CVL IM which carries out a consultation and facilitation process with other Timetable Participants
By D-48	The CVL IM uses its reasonable endeavours to ensure that provisional paths connecting into and from the NR Network have been established in cooperation with Network Rail (taking into account paths which may be available on the NR Network) and included on a provisional basis in the New Working Timetable.
D-48	The CVL IM consults International Operators and includes provisional paths in the New Working Timetable
D-45	The CVL IM issues the Prior Working Timetable which will be the starting point for the New Working Timetable  No later than D-45, the CVL IM shall publish the Strategic Capacity Statement which is relevant to the preparation of the New Working Timetable
D-40	Priority Date
D-40 to D-26	Timetable Preparation Period Throughout this period a draft of the emerging New Working Timetable is available online. Timetable Participants may submit Access Proposals at any time and the CVL IM will, as far as reasonably practical, incorporate these in the New Working Timetable
D-26	The CVL IM publishes the New Working Timetable (subject to the result of any appeals which must be made with 20 Working Days of its publication)

## Annex 2 - Timeline for Timetable Variations under Condition D3

### Train Operator Variations

Milestone	What happens
n/a	A Timetable Participant can request variations to its Train Slots at any time between D-26 and the end of the relevant Timetable Period
n/a	If the request is to vary a Train Slot which is due to operate within seven days, the CVL IM must respond within the timescales set out in Condition D3.3.6 which increase incrementally with the number of days' notice given by the Timetable Participant. If the request is to vary a Train Slot with more than seven days' notice, the CVL IM must respond to the request within five Working Days
n/a	If the CVL IM fails to notify its response within the specified time and the requested variation, if accepted, would not conflict with the Rules or any Train Slots already scheduled in the timetable, the CVL IM will be deemed to have accepted the request
n/a	If the CVL IM rejects or modifies a Train Operator Variation Request it must give its reasons
n/a	A Timetable Participant may appeal the CVL IM's decision as soon as reasonably practicable but not later than five Working Days after being notified of the decision

### CVL IM Variations with at least 12 weeks' notice

Milestone	What happens
TW-30	The CVL IM provides to Timetable Participants its proposals for Restrictions of Use in respect of the Corresponding Week
TW-30 to TW-26	The CVL IM consults with each Timetable Participant likely to be affected and seeks to agree all the CVL IM Variations. During this time the CVL IM may amend or supplement its proposals as long as they are provided to Timetable Participants by TW-30
TW-22	The CVL IM may require a Timetable Participant to submit a revised Access Proposal in respect of any Train Slot within a reasonable timeframe and by no later than TW-16
TW-16	The latest date by which a Timetable Participant can be required to submit a revised Access Proposal. If a Timetable Participant does not submit one in the required timeframe, the CVL IM may vary the Train Slot and the Timetable Participant may not appeal
TW-14	The CVL IM notifies Timetable Participants of its decision
TW-13	Timetable Participant to notify the CVL IM whether it accepts or disputes the decision
TW-12	The CVL IM records the Timetable Variation in the Short Term Plan

### **CVL IM Variations with less than 12 weeks' notice**

<b>Milestone</b>	<b>What happens</b>
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n/a	In such cases the CVL IM must follow the procedure in Condition D3.4 but with timescales for each step as are reasonable in the circumstances
n/a	Timetable Participant may appeal in accordance with Condition D5

### **Timetable Variations by Consent**

<b>Milestone</b>	<b>What happens</b>
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n/a	With the written consent of the CVL IM and all affected Timetable Participants a timetable variation may be made without having to comply with Condition D3
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# Part E – Environmental Protection

## Explanatory Note

- A. *Part E is concerned with environmental protection.*
- B. *Train Operators are required to notify the CVL IM of any materials they propose to transport which would, by virtue of their nature or the quantity transported, be likely to give rise to Environmental Damage if they were to escape, and are required to provide the CVL IM with a copy of any relevant authority for their carriage (such as a licence or certificate of registration).*
- C. *The CVL IM and Train Operators must promptly notify each other of any circumstances which are reasonably foreseeable as likely to give rise to Environmental Damage.*
- D. *Where the CVL IM becomes aware or is given a direction by a competent authority that, as a direct or indirect result of the activities of a Train Operator, Environmental Damage has occurred or is likely to occur and action is required to prevent, mitigate or remedy that damage, it must make an assessment on the best information available to it at that time as to which of the CVL IM and the Train Operators using that part of the CVL is or are the most appropriate persons to take such action.*
- E. *In making its assessment, the CVL IM is obliged to have due regard to certain specified criteria. The CVL IM is further obliged to give notice to affected Train Operators within specified time limits of its decision and the reasons therefor. If an affected Train Operator disagrees with the CVL IM's assessment, it may appeal in accordance with the CVL ADRR.*
- F. *If a Train Operator fails to take any action required of it to prevent, remedy or mitigate Environmental Damage within a reasonable time or to the reasonable satisfaction of the CVL IM or otherwise in cases of urgency, provisions exist for the CVL IM to take the necessary action.*
- G. *Subject to the CVL IM having complied with the conditions relating to CVL Vehicle Change and CVL Network Change imposed by competent authorities and to having given to all affected Train Operators as much notice as shall be reasonably practicable, the CVL IM has the right to restrict track access on a temporary basis where necessary to deal with Environmental Damage but must use its reasonable endeavours to minimise those restrictions.*
- H. *This Explanatory Note does not form part of the CVL Network Code.*

## DEFINITIONS

In this Part E, unless the context otherwise requires:

- "Environmental Condition"** means:
- (a) any Environmental Damage; or
  - (b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage,
- which (in either case) in the CVL IM's reasonable opinion could result in the CVL IM incurring any material liability or being subject to the Direction of any Competent Authority;
- "Environmental Damage"** means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;
- "relevant liability"** means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in Condition E2.1.1(b); and
- "relevant steps"** in relation to a Train Operator, means the steps of the kind referred to in Condition E2.1.3(e).

## **Condition E1 - ENVIRONMENTAL INFORMATION REQUIREMENTS**

### **1.1 *Train Operator's licence compliance***

Each Train Operator shall provide the CVL IM with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail and Road pursuant to its licence authorising it to be the operator of trains.

### **1.2 *CVL IM's licence compliance***

The CVL IM shall Publish on its Website a copy of its environmental protection policy and a general description of the operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail and Road pursuant to its network licence.

### 1.3 ***Information as to materials to be transported***

Each Train Operator shall from time to time, and within a reasonable time of being requested to do so by the CVL IM, provide the CVL IM with:

- (a) information as to any materials it proposes to transport on the CVL which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;
- (b) in relation to such materials as are referred to in Condition E1.3(a) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

### 1.4 ***General information - Train Operator***

Each Train Operator shall promptly notify the CVL IM (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which the Train Operator is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of or affecting the activities of the Train Operator. Each Train Operator shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

### 1.5 ***General information – the CVL IM***

The CVL IM shall promptly notify a Train Operator (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which the CVL IM is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect the Train Operator. The CVL IM shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

## **Condition E2 - REMEDIAL ACTION**

### 2.1 ***Assessment as to appropriate persons to take relevant steps***

#### 2.1.1 *The CVL IM's assessment*

Where:

- (a) the CVL IM becomes aware that, as a direct or indirect result of the activities of a Train Operator, an Environmental Condition exists or has occurred and the CVL IM reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) the CVL IM is given a Direction by a Competent Authority that some action is required to prevent, mitigate or remedy an Environmental

Condition resulting directly or indirectly from the activities of a Train Operator,

the CVL IM shall make an assessment, on the best information available to it at the relevant time, as to which of the CVL IM and the Train Operators with permission to use the relevant part of the CVL is or are the persons who would be the most appropriate to take any relevant steps, and, if more than one is appropriate, in what proportions.

### 2.1.2 *Relevant criteria*

In making an assessment under Condition E2.1.1, the CVL IM shall have due regard:

- (a) to the likelihood that the person in question may be liable (other than pursuant to this Part E) to make any payment or to take or omit to take any action in relation to the Environmental Condition or Direction in question, whether under any Access Agreement to which it is a party or otherwise;
- (b) in relation to the steps to be taken and the objectives of those steps, to the efficiency and economy with which the steps may be taken, and the effectiveness of those steps, if that person takes those steps, irrespective of the matters referred to in Condition E2.1.2(a) above; and
- (c) all other relevant circumstances of the case.

### 2.1.3 *Notice of the CVL IM's assessment*

Within 60 days of making its assessment, the CVL IM shall give notice to each affected Train Operator of:

- (a) the Environmental Condition or Direction of Competent Authority in question;
- (b) the assessment;
- (c) its reasons for reaching the assessment;
- (d) the availability for inspection by the Train Operator of such information as the CVL IM shall have used in making the assessment; and
- (e) the steps which the CVL IM reasonably considers:
  - (i) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction of the Competent Authority in question, or to comply with the Direction in question; and

(ii) which should be taken by the Train Operator in question.

#### 2.1.4 *Compliance with Train Operator's request for information*

The CVL IM shall comply with any reasonable request of an affected Train Operator for additional information in relation to the relevant liability or the CVL IM's assessment, within a reasonable time of the request.

#### 2.1.5 *Disagreement with the CVL IM's assessment*

If an affected Train Operator shall be dissatisfied with the CVL IM's assessment or with any other statement or information provided by the CVL IM pursuant to Condition E2.1.3, it shall be entitled to refer the matter for resolution in accordance with the CVL ADRR. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (a) the date of its receipt of the CVL IM's assessment; and
- (b) the date upon which it receives any further information to which it is entitled pursuant to this Condition E2.1.

### 2.2 ***Requirement to take relevant steps***

#### 2.2.1 *Obligation*

Subject to Conditions E2.1.5, E2.7 and E2.8, the Train Operator shall:

- (a) take the steps of which the CVL IM gives it notice pursuant to Condition E2.1.3(e), provided the CVL IM shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

#### 2.2.2 *CVL IM assistance and supervision*

In cases where the Train Operator reasonably requires access to any part of the CVL in order to take any relevant steps, the CVL IM shall provide the Train Operator with such assistance and co-operation as shall be reasonable in that respect.

### 2.3 ***CVL IM's right to take relevant steps***

If:

- (a) the Train Operator fails to take any relevant step within a reasonable time or to the reasonable satisfaction of the CVL IM; or
- (b) in the CVL IM's reasonable opinion, either:
  - (i) it is necessary to take any relevant step urgently; or

- (ii) it is not reasonably practicable in the circumstances for the Train Operator to take any relevant step,

the CVL IM shall be entitled to take the step in question and to be reimbursed by the Train Operator for a fair proportion of the reasonable costs of doing so. The CVL IM shall give notice to the Train Operator in question of any step taken pursuant to this Condition E2.3.

#### **2.4 *Liability of the CVL IM***

Where the CVL IM takes any steps in accordance with Condition E2.3, it shall not be liable to the Train Operator for any direct physical damage which is caused as a result of the taking of such steps except to the extent that the CVL IM, or any person acting on behalf of or on the instructions of the CVL IM, has been negligent or has failed to perform any obligation.

#### **2.5 *Access to land***

Each Train Operator shall use all reasonable endeavours to procure that the CVL IM shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery of the Train Operator is located as may be reasonably necessary to enable the CVL IM to take any relevant steps.

#### **2.6 *General right to restrict access to the CVL***

2.6.1 Subject to having complied with Condition F4 and Condition G5 and to having given to all affected Train Operators as much notice as shall be reasonably practicable, the CVL IM shall have the right to restrict permission to use the CVL to the extent and for such period as is reasonably necessary to prevent, mitigate or remedy an Environmental Condition or to comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.

2.6.2 Where permission to use the CVL is restricted pursuant to Condition E2.6.1, the CVL IM shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep all affected Train Operators reasonably and regularly informed of the steps being taken by the CVL IM to remove the restriction.

#### **2.7 *Payments to be made on without prejudice basis***

Payments by a Train Operator under this Condition E2 shall be made without prejudice to the right of the Train Operator's right to recover the whole or any part of the amounts in question from the CVL IM or any other person, whether under an Access Agreement or in any other way.

#### **2.8 *Action taken will not prejudice later claim***

No action taken by a Train Operator in compliance with its obligations under this Condition E2 shall prejudice the right of the Train Operator at a later date to claim that any other person has the relevant liability.

## Part F – CVL Vehicle Change

### Explanatory Note

- A. *Part F provides a procedure through which changes to railway vehicles, the use of which is permitted in the access contract and related safety documentation, may be assessed and implemented. CVL Vehicle Change includes any alteration to the physical characteristics of vehicles, including but not limited to, any increase in the length of any trains beyond that permitted by the relevant access contract and supporting operational documentation and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance or operation of the CVL or the operation of trains on the CVL.*
- B. *CVL Vehicle Changes may be initiated by an Access Beneficiary, who is termed the 'Sponsor' for that CVL Vehicle Change, through either the normal CVL Vehicle Change procedure or the Expedited Procedure.*
- C. *An Access Beneficiary wishing to make a CVL Vehicle Change through the normal procedure must submit a proposal to the CVL IM and to each Access Beneficiary that may be affected by the implementation of the proposed CVL Vehicle Change. The CVL IM must then consult with the affected parties. In some circumstances, the CVL IM must give the Access Beneficiary proposing the CVL Vehicle Change a preliminary response within 20 Working Days. Although there is no charge for such a preliminary response, the CVL IM is entitled to reimbursement of 75% of its costs necessary for the CVL IM to carry out the investigation. If the Access Beneficiary elects to use the Expedited Procedure, consultees have 14 days within which to raise initial comments or concerns.*
- D. *A Sponsor is entitled to implement a proposed CVL Vehicle Change except in certain specified circumstances, including where compensation is an inadequate remedy or where it would result in the CVL IM breaching any other Access Agreement.*
- E. *A Sponsor may have to pay compensation to the CVL IM or one or more Access Beneficiaries in respect of any costs, losses or expenses incurred by the CVL IM or any Access Beneficiary as a result of a CVL Vehicle Change. The benefit of the CVL Vehicle Change and the chances of recouping costs will be taken into account in determining the amount of such compensation.*
- F. *It is expected that the normal means of resolving differences between the CVL IM and an Access Beneficiary regarding proposed CVL Vehicle Changes will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for a matter to be referred to the CVL ADRR.*
- G. *This Explanatory Note does not form part of the CVL Network Code.*

## DEFINITIONS

In this Part F, unless the context otherwise requires:

- "Authorised Variation"** means a variation to an Established CVL Vehicle Change, where:
- (a) the terms and conditions on which the CVL Vehicle Change in question was Established contain a Variation Procedure;
  - (b) that Variation Procedure has been followed in accordance with its terms; and
  - (c) the result of the operation of that Variation Procedure is that the Established CVL Vehicle Change has been varied;
- "Compatibility Review Forum"** means a meeting convened by the Sponsor with affected parties to exchange information and review the proposal for CVL Vehicle Change;
- "CVL Vehicle Change"** means, in relation to an Access Beneficiary:
- (a) any change to Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option) including by way of:
    - (i) any alteration (not being a change within paragraph (b) or (c) below) to the physical characteristics of the Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option); or
    - (ii) any increase in the length of any trains beyond that permitted by that Access Beneficiary's Access Agreement; or
    - (iii) the inclusion in the Specified Equipment of any railway vehicle which is not so included; or

- (iv) the inclusion in an access option of any vehicle which is not so included; or
- (b) any change to the Specified Equipment (not being a change within paragraph (c) below) which is likely to materially affect the operation of trains operated or anticipated as being operated in accordance with the terms of any Access Agreement; or
- (c) any material variation to an Established CVL Vehicle Change which has not yet been implemented, other than an Authorised Variation,

which, in respect of any of the preceding paragraphs, is likely materially to affect the maintenance or operation of the CVL or the operation of trains on the CVL, but excluding any Authorised Variation;

**"Established CVL Vehicle Change"** means a change which the Sponsor is entitled by this Part F to carry out, and **"establish"** and **"establishment"** of a CVL Vehicle Change shall be construed accordingly;

**"Expedited Procedure"** means the procedure set out in Condition F3.4;

**"modification"** includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

**"Relevant Response Date"** means, in relation to a proposal for a CVL Vehicle Change, the later of such dates as are reasonably specified by the CVL IM under either Condition F2.5.1(b)(i) or Condition F2.6.3 (as the case may be) as the date on or before which the CVL IM is to give notice of its response to that proposal under Condition F3.1, having regard to:

- (a) the size and complexity of the CVL Vehicle Change; and
- (b) the likely impact of the CVL Vehicle Change on the operation of the CVL, other Access Beneficiaries and the operators of other railway assets,

and which shall not be less than 60 days or, unless the CVL IM and the Sponsor agree otherwise in writing, more than 90 days, from the date on which:

- (x) the CVL IM's notice under Condition F2.5.1(b) is given; or
- (y) notice is given by the CVL IM, the affected Access Beneficiary or the affected operator of railway assets (as the case may be) under Condition F2.3.2,

whichever is the later;

**"Sponsor"**

means, in relation to a proposal for a CVL Vehicle Change under Condition F2.1, the Access Beneficiary which has made the proposal;

**"variation"**

means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an Established CVL Vehicle Change is to be carried out, and **"varied"** and any other cognate words shall be construed accordingly; and

**"Variation Procedure"**

means, in relation to an Established CVL Vehicle Change, a procedure which:

- (a) forms part of the terms and conditions on which the CVL Vehicle Change is Established; and
- (b) provides for the Established CVL Vehicle Change itself to be varied after it has been first Established.

**Condition F1 - FACILITATION OF CVL VEHICLE CHANGE**

**1.1 *Railway Group Standards***

The obligation to comply with the requirements of this Part F shall be without prejudice to the obligations of the CVL IM and all Access Beneficiaries to comply with the Railway Group Standards.

**1.2 *Legislation Requirements***

The obligation to comply with the requirements of this Part F shall be without prejudice to the obligations of the CVL IM and all Access Beneficiaries to comply with all Legislation Requirements, including:

- (a) the ROGS;
- (b) the RIRS; and
- (c) to the extent applicable, Technical Specifications for Interoperability.

### 1.3 ***Obligation to facilitate CVL Vehicle Change***

The CVL IM shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for CVL Vehicle Change by an Access Beneficiary.

### 1.4 ***Limit of obligation***

Condition F1.3 does not oblige the CVL IM to do anything which it is not required to do under its network licence.

### 1.5 ***Facilitation***

The obligation of the CVL IM under Condition F1.3 means:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the CVL as:
  - (i) the CVL IM possesses in a reasonably accessible form; and
  - (ii) that an Access Beneficiary may reasonably request in connection with the development of a proposal for CVL Vehicle Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) where the CVL IM considers it appropriate, the Publication on its Website (subject to Condition A3 of the CVL Network Code) of:
  - (i) every proposal for CVL Vehicle Change made by an Access Beneficiary under Condition F2.1;
  - (ii) every response to a proposal for CVL Vehicle Change made by the CVL IM under Condition F3.1;
  - (iii) every determination of matters which have been referred in accordance with the CVL ADRR under Condition F5.1; and
  - (iv) every Authorised Variation;

- (c) the provision of a preliminary response to an Access Beneficiary's proposal for CVL Vehicle Change under Condition F2.6;
- (d) such consultation before a notice of a proposal for a CVL Vehicle Change is submitted by an Access Beneficiary as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) if requested, provision of the names and contact details of each Access Beneficiary which the CVL IM considers may be affected by the implementation of the proposed CVL Vehicle Change.

## **Condition F2 - INITIATION OF CVL VEHICLE CHANGE PROCEDURE**

### **2.1 *Submission of proposal***

If an Access Beneficiary wishes to make a CVL Vehicle Change, that Access Beneficiary shall as soon as reasonably possible:

- (a) submit to the CVL IM and each Access Beneficiary that may be affected by the implementation of the proposed CVL Vehicle Change, a proposal for such CVL Vehicle Change;
- (b) indicate to the CVL IM and each Access Beneficiary referred to under Condition F2.1(a) whether it wishes to implement the proposed change using the Expedited Procedure;
- (c) provide details to the CVL IM of all Access Beneficiaries to which the proposal for CVL Vehicle Change has been submitted under Condition F2.1(a);
- (d) notify ORR, Network Rail, Transport for Wales and the Welsh Ministers that it has submitted a proposal for CVL Vehicle Change in accordance with this Condition F2.1; and
- (e) permit the CVL IM to consult with the persons specified in Condition F2.1(a) to the extent provided for under Condition F2.5 subject to such requirements as to confidentiality as are reasonable.

### **2.2 *Content of Sponsor's notice of proposal***

A notice of proposal for CVL Vehicle Change given by a Sponsor under Condition F2.1 shall:

- (a) state:
  - (i) the reasons why it is proposed to make the CVL Vehicle Change;

- (ii) the nature of the CVL Vehicle Change, including:
    - (C) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and
    - (D) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;
  - (iii) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(C):
    - (A) whether it is proposed to operate such vehicle on any part of the CVL on which it does not already operate; and
    - (B) whether it is proposed to operate such vehicle at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of the CVL on which such a vehicle already operates;
  - (iv) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(D), over what parts of the CVL, and at what speeds, it proposes to operate such vehicle;
  - (v) the proposed timetable for the implementation of the CVL Vehicle Change, including whether it intends to implement the change using the Expedited Procedure;
  - (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the CVL Vehicle Change, including any proposals in relation to the calculation or payment of compensation to any Access Party in respect of the CVL Vehicle Change;
  - (vii) any additional terms and conditions which the Sponsor proposes should apply to the CVL Vehicle Change, including any proposed Variation Procedure; and
  - (viii) whether the Sponsor intends to convene a Compatibility Review Forum in accordance with Condition F2.3.1; and
- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition F2.1(c), to enable:

- (i) the CVL IM; and
- (ii) any persons specified in Condition F2.1(c),

to assess the likely effect of the proposed CVL Vehicle Change on its business, its assets and its performance of any obligations or the exercise of any rights or discretions which it has in relation to railway services.

## 2.3 **Compatibility Review Forum**

- 2.3.1 A Sponsor shall be entitled to convene a Compatibility Review Forum if it reasonably considers that such forum would be an appropriate means of assisting the CVL IM, the affected Access Beneficiaries and/or affected operators of railway assets in understanding and assessing a proposal for CVL Vehicle Change, by notifying each of the affected parties described in Condition F2.1(a) of the date and location of the Compatibility Review Forum no later than 10 Working Days from the date on which the CVL IM's notice under Condition F2.5.1(b) is given.
- 2.3.2 If the Sponsor does not propose to convene a Compatibility Review Forum but the CVL IM, an affected Access Beneficiary and/or an affected operator of railway assets reasonably considers that such a forum is the most appropriate forum to understand a proposal for CVL Vehicle Change, the CVL IM, the affected Access Beneficiary or the affected operator of railway assets (as the case may be) shall be entitled to request, by giving written notice to the Sponsor and the CVL IM (unless the CVL IM is giving the notice) no later than 5 Working Days from the date on which the CVL IM's notice under Condition F2.5.1(b) is given, that a Compatibility Review Forum be convened.
- 2.3.3 Where the CVL IM, an affected Access Beneficiary or the affected operator of railway assets gives notice to a Sponsor in accordance with Condition F2.3.2, the Sponsor shall no later than 5 Working Days from receipt of such notice, notify each of the affected parties described in Condition F2.1 of the date and location of the Compatibility Review Forum.
- 2.3.4 The date of any Compatibility Review Forum notified pursuant to this Condition F2.3 shall not be earlier than 25 Working Days or later than 30 Working Days before the date specified in the CVL IM's notice under Condition F2.5.1(b) for submission of comments to the CVL IM.
- 2.3.5 A Compatibility Review Forum convened in accordance with this Condition F2.3 shall be chaired by the CVL IM. The Sponsor shall assist all participants in understanding the proposed CVL Vehicle Change. The CVL IM shall produce formal minutes of the Compatibility Review Forum and, subject to Condition A3, shall Publish on its Website such minutes.

## 2.4 **CVL Compatibility Information**

In assessing a proposal for CVL Vehicle Change, the CVL IM and/or an affected Access Beneficiary shall be entitled to request a copy of the Statement of Compatibility and/or any information comprised in the Compatibility File prepared by the Sponsor in accordance with the applicable Railway Group Standards. The Sponsor shall provide any requested information within three Working Days of such information having been prepared by the Sponsor.

## 2.5 ***Evaluation of proposal and consultation***

2.5.1 If the CVL IM receives a proposal for CVL Vehicle Change under Condition F2.1, it shall:

- (a) evaluate and discuss that proposal with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed CVL Vehicle Change on the CVL IM and Access Beneficiaries;
- (b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Condition F2.1(a) (with the exception of the CVL IM), with a copy to the Sponsor, inviting them to submit comments on the proposed CVL Vehicle Change by a specified date, which shall not be earlier than 10 days or later than seven days before the Relevant Response Date. The notice given by the CVL IM pursuant to this Condition F2.5.1(b) shall state:
  - (i) the Relevant Response Date and the obligations of Access Parties under Condition F2 and Condition F3;
  - (ii) so far as reasonably practicable the CVL IM's estimate of the likely impact of the CVL Vehicle Change on the operation and performance of the CVL including the operation of trains on the CVL; and
  - (iii) the CVL IM's own proposals as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the CVL Vehicle Change;
    - (B) the arrangements for determining and paying any compensation in respect of the CVL Vehicle Change;
    - (C) the timetable for implementation of the CVL Vehicle Change;
    - (D) the division of the costs of carrying out the CVL Vehicle Change;

- (E) the additional terms and conditions (if any) which should apply to the CVL Vehicle Change, including any Variation Procedure; and
  - (F) any changes which will need to be made to any Access Agreements as a consequence of the implementation of the CVL Vehicle Change;
- (c) send the proposal for CVL Vehicle Change to any Access Beneficiary that may be affected by the implementation of the proposed CVL Vehicle Change if the Sponsor has not already done so in accordance with Condition F2.1(a); and
  - (d) provide details to the Sponsor of all Access Beneficiaries to which the CVL IM has sent the proposal for CVL Vehicle Change under Condition F2.5.1(c).

2.5.2 In preparing a notice under Condition F2.5.1(b), the CVL IM:

- (a) shall comply with the standards specified in Condition F2.2(b); and
- (b) in respect of each of the matters specified in Condition F2.5.1(b)(iii):
  - (i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition F2.1;
  - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.5.1(b)(iii); and
  - (iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition F2.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

2.5.3 If an Access Beneficiary receives a proposal for CVL Vehicle Change under Condition F2.1 or Condition F2.5.1(c), without prejudice to its rights to request the convening of, and to participate in, a Compatibility Review Forum in accordance with F2.3.2, it shall:

- (a) evaluate and discuss the proposal with the CVL IM for such period as is reasonable having due regard to the likely impact of the proposed CVL Vehicle Change on that Access Beneficiary; and
- (b) within 8 Working Days of receipt of a request from the CVL IM, notify the CVL IM of whether it considers that it is entitled to compensation from the Sponsor in relation to the implementation of the CVL Vehicle Change and an estimate (which shall be binding on that Access Beneficiary unless stated to the contrary by such party) of the amount

of such compensation determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated.

## 2.6 ***Preliminary response and estimate***

2.6.1 The CVL IM shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor and within 20 Working Days commencing on the date of the request for a preliminary response:

- (a) a preliminary estimate (which, unless the CVL IM indicates otherwise, shall be binding on the CVL IM) of any compensation which the CVL IM considers that it is entitled to in relation to the implementation of the proposed CVL Vehicle Change, determined in accordance with Condition F3.2, together with all information reasonably necessary to show how such estimate has been calculated; and
- (b) a preliminary written response in respect of the proposed CVL Vehicle Change (which, unless the CVL IM indicates otherwise, shall be binding on the CVL IM) and if such response is negative, include reasons therefor.

2.6.2 The CVL IM shall not be obliged to comply with a request from the Sponsor under Condition F2.6.1:

- (a) unless:
  - (i) the Relevant Response Date is 90 or more days after the date on which the CVL IM's notice under Condition F2.5.1(b) was given; and
  - (ii) the request is made within seven days of the Sponsor receiving the CVL IM's notice under Condition F2.5.1(b); or
- (b) to the extent that the CVL IM is unable to comply with such a request, having regard to the information reasonably available to it.

2.6.3 After consultation with the Sponsor the CVL IM may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition F2.5.1(b).

## 2.7 ***Reimbursement of costs***

Subject to Condition F2.6 and Condition F3, the CVL IM and all Access Beneficiaries who received a proposal for CVL Vehicle Change under Condition F2.1 or F2.5.1(c) shall be entitled to reimbursement by the Sponsor of 75% of their respective costs incurred in assessing and responding to any CVL Vehicle Change proposed by the Sponsor in accordance with Condition F2.1. Those costs shall be the minimum reasonably necessary for the CVL IM

or the affected Access Beneficiary (as the case may be) to carry out that assessment and response.

## 2.8 ***Provision of estimate of costs***

The CVL IM and each Access Beneficiary who would be entitled to receive or who has received a proposal for CVL Vehicle Change under Condition F2.1 or Condition F2.5.1(c) shall:

- (a) upon request from the Sponsor, provide the Sponsor and the CVL IM (save where the CVL IM is providing the written estimate) with a written estimate of the costs it would incur in assessing and responding to a proposal for CVL Vehicle Change submitted by the Sponsor (as referred to in Condition F2.7) including its estimated costs of the work to be carried out;
- (b) be entitled to require from the Sponsor reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (c) upon request from the Sponsor from time to time, provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

## 2.9 ***Accuracy of estimates***

The CVL IM and/or each affected Access Beneficiary requested by a Sponsor to provide a written estimate of costs in accordance with Condition F2.8 shall ensure that so far as reasonably practicable:

- (a) any estimates given by it are accurate on the basis of the information reasonably available to it; and
- (b) each type of cost comprised in the estimate is separately identified.

## 2.10 ***Obligation to incur no further costs***

The CVL IM and/or each affected Access Beneficiary requested by a Sponsor to provide a written estimate of costs in accordance with Condition F2.8 shall:

- (a) if requested at any time by the Sponsor, incur no further costs (except any costs that cannot reasonably be avoided); and
- (b) unless otherwise agreed by the Sponsor, incur no costs in excess of the estimate provided pursuant to Condition F2.8,

in respect of any proposal for CVL Vehicle Change made by the Sponsor.

## 2.11 ***Relationship with CVL Network Change***

If the implementation of a CVL Vehicle Change proposed by the Sponsor also requires the implementation of a CVL Network Change, the Sponsor shall follow the procedures and satisfy the requirements of both this Part F and Part G and the requirement for a CVL Network Change shall not preclude the right of the Sponsor to follow the procedure in this Part F for a CVL Vehicle Change or vice versa.

## 2.12 ***CVL Vehicle Change for safety reasons***

To the extent that a CVL Vehicle Change is required to be made by an Access Beneficiary for safety reasons, the Access Beneficiary shall be obliged to submit a proposal for CVL Vehicle Change in accordance with the procedure set out in this Part F within three Working Days of being notified by the CVL IM or the relevant Competent Authority that the requirement has come into full force and effect.

## **Condition F3 - RESPONSE TO CVL VEHICLE CHANGE PROPOSAL**

### 3.1 ***Obligation to give notice of response***

The CVL IM shall give notice to the Sponsor of a CVL Vehicle Change on or before the Relevant Response Date if:

- (a) it considers that one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed CVL Vehicle Change would necessarily result in the CVL IM breaching any Access Agreement or access option;
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that the CVL IM shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of the proposed CVL Vehicle Change would result in a material adverse effect on the maintenance or operation of the CVL or operation of trains on the CVL, which in any such case cannot adequately be compensated under this Condition F3;
- (b) any Access Beneficiary shall have given notice to the CVL IM that it considers that any of the conditions specified in Condition F3.1(a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the proposed CVL Vehicle Change either:

- (i) in accordance with compensation terms proposed under Condition F2;
  - (ii) in the absence of any compensation terms proposed under Condition F2; or
  - (iii) on compensation terms other than those proposed under Condition F2; and/or
- (d) any other operator of railway assets shall have given notice to the CVL IM that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either:
- (i) in accordance with compensation terms proposed under Condition F2;
  - (ii) in the absence of any compensation terms proposed under Condition F2; or
  - (iii) on compensation terms other than those proposed under Condition F2.

Any notice of the kind referred to in Conditions F3.1(a) or F3.1(b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions F3.1(c) or F3.1(d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which the Sponsor should provide. Any such statement shall contain such detail as is reasonable to enable the Sponsor to assess the merits of the statement.

### 3.2 ***Amount of compensation***

Subject to Condition F3.3, the amount of the compensation referred to in Conditions F2.5.3(b) and F3.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by the CVL IM or the operator in question as a consequence of the implementation of the proposed CVL Vehicle Change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other operators of railway assets.

### 3.3 ***Benefits to be taken into account***

There shall be taken into account in determining the amount of compensation referred to in Conditions F2.5.3(b) and F3.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the CVL IM or any other operator of trains as a result of the proposed CVL Vehicle Change; and
- (b) the ability or likely future ability of the CVL IM or any other operator of trains to recoup any costs, losses and expenses from third parties including passengers and customers.

**3.4 *Rights in relation to implementation of CVL Vehicle Change using the Expedited Procedure***

**3.4.1 If**

- (a) the Sponsor has elected under Condition F2.1(b) to use the Expedited Procedure; and
- (b) within 14 days of:
  - (i) the Sponsor's notice under Condition F2.1; or, if later,
  - (ii) within 14 days of the CVL IM sending the Sponsor's proposal to any Access Beneficiary that may be affected by the implementation of the proposed CVL Vehicle Change in accordance with Condition F2.5.1(c),

an Access Party gives notice to the Sponsor that it considers that any of the conditions specified in Condition F3.1(a) may be satisfied and such notice has not been withdrawn, the proposed CVL Vehicle Change shall not be implemented using the Expedited Procedure.

In any other case and subject to the other provisions of the CVL Network Code and the remainder of this Condition F3.4, the Sponsor shall be entitled for the purposes of the CVL Network Code (but subject to any such other authorisations, approvals, consents and certifications as may be required) to implement the proposed change.

3.4.2 The Sponsor shall be liable to pay compensation (if any) to each person specified in Condition F2.1(b) calculated in accordance with the relevant provisions of Condition F3.

3.4.3 If, at any time between the implementation of the change and the relevant response date, an Access Beneficiary gives notice to the Sponsor and the CVL IM as appropriate that it considers that any of the conditions specified in Condition F3.1(a) have been satisfied, the Sponsor shall, as soon as reasonably practicable, take all action necessary to reverse the implementation of the CVL Vehicle Change.

- 3.4.4 All notices served by an Access Party under Conditions F3.4.1 and F3.4.3 shall specify the reasons why that Access Party believes that any of the conditions specified in Conditions F3.1(a) have been satisfied.
- 3.4.5 If a CVL Vehicle Change is not implemented in accordance with the Expedited Procedure or the implementation of the CVL Vehicle Change is reversed in accordance with Condition F3.4.3, unless the change proposal is withdrawn by the Sponsor, the change proposal shall be treated as a proposal for change where the Sponsor has not elected under Condition F2.1(b) to use the Expedited Procedure.

#### **Condition F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

Where an Access Beneficiary is required (other than at the request or instigation of the Access Beneficiary) to implement a CVL Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than ORR exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- 4.1 each Access Beneficiary shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.5 (other than Conditions F2.2(a)(vi) and F2.5.1(b)(iii)(B) and F2.5.1(b)(iii)(D)) in respect of that CVL Vehicle Change;
- 4.2 the CVL IM shall discuss with Transport for Wales such alterations (if any) to the CVL as are reasonably necessary to accommodate that CVL Vehicle Change and each Access Beneficiary or operator of railway assets (as the case may be) shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(e)(iv)); and
- 4.3 each Access Beneficiary or operator of railway assets (as the case may be) shall bear its own costs and losses arising out of the implementation of the CVL Vehicle Change and the consequences thereof.

#### **Condition F5 - APPEAL PROCEDURE**

##### **5.1 *Right of appeal in accordance with the CVL ADRR***

If the CVL IM or any Access Beneficiary is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part F;
- (b) the contents of any notice given by the CVL IM under Condition F3.1 (and, in particular, the amount of any compensation referred to in that Condition); or
- (c) any estimate referred to in Condition F2.6; or

- (d) in relation to an Access Beneficiary, that its comments have not been taken into account by the CVL IM in its response to the Sponsor making the proposal for CVL Vehicle Change,

it may refer the matter for determination in accordance with the CVL ADRR.

## **Condition F6 - ESTABLISHMENT AND IMPLEMENTATION**

### **6.1 *Implementation of a proposed CVL Vehicle Change***

6.1.1 With the exception of any CVL Vehicle Change implemented under Condition F2.12, the Sponsor shall be entitled to implement a proposed CVL Vehicle Change if:

- (a) the CVL IM has not given notice under Condition F3.1 by the Relevant Response Date and the CVL IM has not received any notice from an Access Beneficiary in accordance with Condition F3.1(b); or
- (b) the CVL IM has given notice by the Relevant Response Date under Condition F3.1(c) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; or
- (c) the CVL IM has received notice from an Access Beneficiary under Condition F3.1(d) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; and
- (d) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed CVL Vehicle Change between the Sponsor, the CVL IM and/or any Access Beneficiary and/or operator of railway assets; and
- (e) the continuing compatibility of the Specified Equipment the subject of the proposed CVL Vehicle Change and the CVL, if the CVL Vehicle Change was implemented, has been confirmed in accordance with the relevant Railway Group Standards and, where applicable, has been approved by a Notified Body as defined under the RIRS and/or a Competent Person (as defined under the ROGS).

6.1.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition F6.1.1 has been satisfied, instruct the CVL IM to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to implement a proposed CVL Vehicle Change and the CVL IM shall then serve such a notice within seven days of the instruction.

- 6.1.3 The Sponsor's entitlement to implement a proposed CVL Vehicle Change shall be treated as confirmed 35 days after the CVL IM has served a notice in respect of that CVL Vehicle Change in accordance with Condition F6.1.2 unless:
- (a) the CVL IM gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to implement that CVL Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
  - (b) the CVL IM receives notice from an Access Beneficiary within 21 days of the notice served by the CVL IM disputing the Sponsor's entitlement to implement that CVL Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons.
- 6.1.4 If the Sponsor does not agree with the contents of a notice served by the CVL IM or an affected Access Beneficiary in accordance with Condition F6.1.3, the Sponsor may:
- (a) refer the matter for determination in accordance with the CVL ADRR and Condition F5 shall apply; or
  - (b) withdraw the proposed CVL Vehicle Change.
- 6.1.5 Where as a consequence of a CVL Vehicle Change it is necessary to amend an Access Agreement to reflect that CVL Vehicle Change, the CVL IM shall provide to the other party to such Access Agreement and to ORR written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by ORR.

## 6.2 ***When a CVL Vehicle Change may not be Implemented***

- 6.2.1 The Sponsor shall not be entitled to implement a proposed CVL Vehicle Change unless it is so entitled to do so under Condition F6.1.1.
- 6.2.2 For the purposes of the Condition F6.1.1, unresolved disputes shall include:
- (a) a notice has been served under Condition F3.1(a) or F3.1(b) which has not been withdrawn, resolved under Condition F5 or agreed not to apply; and
  - (b) a notice has been served under Condition F3.1(c) or F3.1(d) which has not been agreed or resolved as referred to in Condition F6.1.1(b) or F6.1.1(c) or otherwise agreed, resolved or withdrawn.

## **Condition F7 - ACCESS BENEFICIARY'S DUTIES**

### 7.1 ***Compliance with other Requirements***

Nothing in this Part F releases the Sponsor from the duty to comply with any requirements of any other infrastructure manager affected by a proposed CVL Vehicle Change. The Sponsor has sole responsibility for achieving approval of the proposed CVL Vehicle Change from each affected infrastructure manager.

## Part G – CVL Network Change

### Explanatory Note

- A. *Part G is concerned with the procedures which Access Parties must go through when certain types of Change to the CVL (defined as "CVL Network Change") occur or are proposed.*
- B. *The definition of "CVL Network Change" is broad, and much of it is expressed in non-exhaustive terms (i.e. after some general words of definition, CVL Network Change is said to "include" certain specific things by way of illustration or example, but that does not necessarily mean that other things are excluded). The following specific points should also be noted:*
- (i) only changes which are likely to have a material effect on the operation of the CVL or of trains operated on the CVL are CVL Network Changes;*
  - (ii) CVL Network Changes can either be physical (e.g. changes to the layout, configuration or condition of the CVL) or operational (e.g. the introduction of a speed restriction on a section of track, a change to the way the CVL IM maintains track or a change to the monitoring points used in the application of Schedule 8 of the Track Access Agreements), but operational changes are only CVL Network Changes if they last, or are likely to last, for more than six months; and*
  - (iii) the definition of CVL Network Change includes Changes which will generally be seen in a positive light, as well as Changes which are more likely to be characterised as having a negative impact.*
- In addition, a Variation to any previously agreed CVL Network Change is subject to the CVL Network Change procedure.*
- C. *Part G provides a procedure by which Changes may be made to the CVL, either by the CVL IM or an Access Beneficiary. Part G divides CVL Network Changes into two categories: those proposed by the CVL IM and those proposed by an Access Beneficiary. All CVL Network Changes, whether proposed by the CVL IM or by an Access Beneficiary, are implemented by the CVL IM.*
- D. *The general principle is that before any CVL Network Change can be implemented:*
- (i) it must be formally proposed under Part G; and*
  - (ii) it must be accepted by those Access Beneficiaries whom it will affect (and, where the CVL Network Change is proposed by an Access Beneficiary, by the CVL IM); or*

- (iii) *to the extent that there is any dispute as to whether the CVL Network Change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the CVL ADRR) in favour of the CVL Network Change being implemented.*

*A slightly different process applies where the CVL IM proposes a CVL Network Change using the Complex Projects Procedure.*

- E. *The CVL IM, in proposing a CVL Network Change (and where an Access Beneficiary proposes a CVL Network Change), has a duty to consult with all affected Access Beneficiaries on any proposed CVL Network Change. Part G also imposes a general obligation on the CVL IM to facilitate CVL Network Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to Publish on its Website documents generated under Part G.*
- F. *In some circumstances, the CVL IM must give an Access Beneficiary proposing a CVL Network Change a preliminary response within 20 Working Days. Although there is no charge for such a preliminary response, the CVL IM is entitled to reimbursement of 75% of all costs of any further investigation of a CVL Network Change proposal put forward by an Access Beneficiary after the 20 Working Day period. Any such costs are restricted to the minimum reasonably necessary for the CVL IM to carry out an assessment. A similar provision applies in relation to costs incurred by an Access Beneficiary assessing a CVL Network Change proposed by the CVL IM.*
- G. *However, it is recognised that:*
  - (i) *safety considerations will sometimes dictate that the CVL IM must make a CVL Network Change very quickly, without recourse to all the procedures under Part G. In such cases, the CVL IM's obligations under Part G may be subordinated to the interests of safety to a greater or lesser extent, depending on the circumstances; and*
  - (ii) *where a CVL Network Change is required to be made as a result of a Change of Law or a Direction of a Competent Authority, most of the normal obligations of Access Parties under Part G do not apply.*
- H. *The CVL IM may implement a proposed CVL Network Change (whether proposed by the CVL IM or an Access Beneficiary) except in certain circumstances, including where any such CVL Network Change cannot be adequately compensated. The CVL IM can also implement a CVL Network Change for safety reasons without following the CVL Network Change procedure for up to three months but upon the expiry of three months the CVL IM is obliged to implement the CVL Network Change procedure.*

- I. *The proposer of the CVL Network Change may have to pay compensation in respect of any costs, losses or expenses incurred by (if an Access Beneficiary is the proposer) the CVL IM or any Access Beneficiary and (if the CVL IM is the proposer) by Access Beneficiaries, as a result of a CVL Network Change. The benefit of the CVL Network Change to the CVL IM or an Access Beneficiary and their chances of recouping their costs or losses from third parties shall be taken into account in determining the amount of that compensation. Compensation may also become payable to the infrastructure manager of an adjoining network if the CVL Network Change in question also has an impact on that adjoining network.*
- J. *The Short Term CVL Network Change process allows the CVL IM to propose to maintain any part of the CVL at less than the published capability for a specified period. Condition G8 provides Access Beneficiaries with the ability to request, at the CVL IM's cost, the reversal of any such Short Term CVL Network Change should they have a reasonable expectation as to the future use of the relevant part of the CVL before the expiry of the specified period.*
- K. *Where the CVL IM wishes to make a CVL Network Change proposal using the Complex Projects Procedure:*
- (i) prior to issuing the CVL Network Change notice, the CVL IM must consult with Access Beneficiaries on its proposal to use the Complex Projects Procedure and take into account representations from and information provided by Access Beneficiaries on the proposal;*
  - (ii) the CVL IM must then issue a notice of intended Scope to each Access Beneficiary. Each Access Beneficiary has 30 days to respond to the notice of intended Scope and may only refuse to agree to the Scope on one of the "normal" grounds for rejecting a CVL Network Change. At any point prior to issuing the CVL Network Change notice, the CVL IM may issue further notices of intended Scope to consult on the inclusion of further elements within the Scope;*
  - (iii) if the Scope cannot be agreed by the CVL IM and an affected Access Beneficiary, either party can refer the matter to dispute and such dispute must be resolved (whether by agreement or in accordance with the CVL ADRR) in favour of the CVL Network Change being implemented;*
  - (iv) if the project in question requires Preparatory Works to be undertaken, the CVL IM may issue a CVL Network Change notice in accordance with the "normal" CVL Network Change procedure, with Access Beneficiaries having the same acceptance or rejection rights; and*
  - (v) once the Scope has been agreed by an Access Beneficiary, the CVL IM may issue a CVL Network Change notice to consult on the implementation of the proposed CVL Network Change. An Access Beneficiary cannot*

*reject elements of the Scope which are included in such a proposal for CVL Network Change, unless the Scope has changed from that which was agreed such that it is likely to materially affect that Access Beneficiary.*

*L. It is expected that the normal means of resolving differences between the CVL IM and each Access Beneficiary regarding proposed CVL Network Changes will be by negotiation and agreement. However, in order to deal with those cases where agreement cannot be reached, provision is made for disputes to be referred for determination in accordance with the CVL ADRR.*

*M. This Explanatory Note does not form part of the CVL Network Code.*

## **DEFINITIONS**

In this Part G, unless the context otherwise requires:

**"Authorised Variation"** means a Variation to an Established CVL Network Change, where:

- (a) the terms and conditions on which the CVL Network Change in question was established contain a Variation Procedure;
- (b) that Variation Procedure has been followed in accordance with its terms; and
- (c) the result of the operation of that Variation Procedure is that the Established CVL Network Change has been varied;

**"Change"** includes:

- (a) improvement or deterioration, enlargement or reduction; and
- (b) for the purposes of paragraph (b) of the definition of CVL Network Change, a series of changes;

**"Complex Projects Procedure"** means the procedure set out in Condition G5 to Condition G7;

**"CVL Network Change"** means, in relation to an Access Beneficiary:

- (a) any Change in or to any part of the CVL (including its layout, configuration or condition) which is likely materially to affect the operation of:
  - (i) the CVL; or

- (ii) trains operated, or anticipated as being operated, in accordance with the terms of an Access Agreement or any access option, by or on behalf of an Access Beneficiary on the CVL;
- (b) any Change to the operation of the CVL (being a Change which does not fall within paragraph (a) above) which:
- (i) is likely materially to affect the operation of trains operated, or anticipated as being operated in accordance with the terms of an Access Agreement or any access option, by or on behalf of that Access Beneficiary on the CVL; and
  - (ii) has lasted or is likely to last for more than six months,
- including:
- (x) a temporary speed restriction;
  - (y) a material change to the location of any of the specified points referred to in Condition B1.1(a); or
  - (z) a change to the Method of Delivery of any operational documentation (other than the Railway Group Standards) owned or used by an Access Party; or
- (c) any material Variation to an Established CVL Network Change, other than an Authorised Variation,

but does not include a closure (as defined in the Railways Act 2005) or a change made under the Systems Code;

**"Effective Date"**

means the date specified in a notice of proposal of a Short Term CVL Network Change upon which the Short Term CVL Network Change is proposed to become effective;

**"Established CVL Network Change"**

means a change falling within the definition of "CVL Network Change" and which:

- (a) in the case of a CVL Network Change proposed by the CVL IM, the CVL IM is entitled to carry out having

complied with the procedural and other requirements of this Part G; and

- (b) in the case of a CVL Network Change proposed by an Access Beneficiary, the CVL IM is required by this Part G to carry out,

and "**establish**" and "**establishment**" of a CVL Network Change shall be construed accordingly;

**"Established Date"** means the first date upon which a Short Term CVL Network Change can be implemented in accordance with Condition G10, whether or not the Short Term CVL Network Change is implemented on that day;

**"Expiry Date"** means the date specified in a notice of proposal in relation to a Short Term CVL Network Change which shall not be more than two years, or such longer period as is agreed between the CVL IM and each Access Beneficiary that may be affected by the implementation of the proposed Short Term CVL Network Change or determined in accordance with Condition G11, from the later of the Effective Date and the Established Date;

**"Governmental Body"** means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including ORR);

**"Method of Delivery"** includes the means of securing access to an operational document and the ability to make use of the data contained in an operational document;

**"Modification"** includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

**"Preparatory Works"** means testing, trials, pilot activities, surveys and all other activities reasonably necessary to develop the proposed CVL Network Change;

**"Relevant Costs"** means, in respect of any CVL Network Change implemented in accordance with Condition G9, all costs, expenses and losses (including loss of profit, loss of revenue and consequential losses) incurred by the CVL IM and/or any train operator using the CVL (including the Train Operator) as a consequence of that CVL Network Change

implemented in accordance with Condition G9 (but without double counting);

**"Relevant Response Date"** means:

(a) in relation to a proposal for a CVL Network Change under Condition G1, the later of such dates as are reasonably specified by the CVL IM under Condition G1.2(a) and Condition G1.4.2 as the date on or before which an Access Beneficiary is to give notice of its response to that proposal under Condition G2.1, having regard to:

- (i) the size and complexity of the CVL Network Change; and
- (ii) the likely impact of the CVL Network Change on the Access Beneficiary,

and which shall not be less than 30 days from the date on which the notice of the proposal for change is given; and

(b) in relation to a proposal for a CVL Network Change under Condition G3, the later of such dates as are reasonably specified by the CVL IM under Condition G3.3.1(c)(i) and Condition G3.4.3 as the date on or before which it is to give notice of its response to that proposal under Condition G4.1, having regard to:

- (i) the size and complexity of the CVL Network Change; and
- (ii) the likely impact of the CVL Network Change on Access Beneficiaries,

and which shall not be:

- (A) less than 60 days; or
- (B) unless the CVL IM and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which the CVL IM's notice under Condition G3.3.1(c) is given;

**"Scope"** means those elements of the scope of a proposed CVL Network Change that are set out in a notice issued by the CVL IM under Condition G5.4;

**"Short Term CVL Network Change"** means

- (a) a CVL Network Change which the CVL IM specifies as such in any proposal made under Condition G1, being a CVL Network Change which involves only a temporary reduction in the capability of the CVL for a defined period of time during which there is no reasonable expectation of a requirement for the capability being temporarily withdrawn; and
- (b) the Network Change (as defined in the Network Rail Network Code) made under the Network Rail Network Code relating to Hirwaun as more particularly described in a notice entitled "Establishment of proposed G1 Short Term Network Change: Hirwaun Branch Temporarily Out of Use" with document reference STNC/G1/2018/WALES/060 (the **"Hirwaun Short Term CVL Network Change"**);

**"Sponsor"** means, in relation to a proposal for a CVL Network Change under Condition G3.1, the Access Beneficiary which has made the proposal;

**"Variation"** means any Modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an Established CVL Network Change is to be carried out, and **"varied"** and any other cognate words shall be construed accordingly; and

**"Variation Procedure"** means, in relation to an established CVL Network Change, a procedure which:

- (a) forms part of the terms and conditions on which the CVL Network Change is established; and
- (b) provides for the Established CVL Network Change itself to be varied after it has been first established.

## **Condition GA - FACILITATION OF CVL NETWORK CHANGE**

### **1.1 *Railway Group Standards***

The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of the CVL IM and all Access Beneficiaries to comply with the Railway Group Standards and, to the extent applicable, Technical Specifications for Interoperability.

## 1.2 **Legislation Requirements**

The obligation to comply with the requirements of this Part G shall be without prejudice to the obligations of the CVL IM and all Access Beneficiaries to comply with all Legislation Requirements, including:

- (a) the ROGS; and
- (b) the RIRS.

## 1.3 **Obligation to facilitate CVL Network Change**

The CVL IM shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for CVL Network Change.

## 1.4 **Not used.**

## 1.5 **Facilitation**

The obligation of the CVL IM under Condition GA1.3 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the CVL as:
  - (i) the CVL IM possesses in a reasonably accessible form; and
  - (ii) that Access Beneficiary may reasonably request in connection with the development of a proposal for CVL Network Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) the Publication on its Website (subject to Condition A3 of the CVL Network Code) of:
  - (i) every proposal for CVL Network Change made by the CVL IM under Condition G1.1 or by an Access Beneficiary under Condition G3.1;
  - (ii) every response to a proposal for CVL Network Change made by an Access Beneficiary under Condition G2.1 or by the CVL IM under Condition G4.1;
  - (iii) the determinations of matters which have been referred for determination in accordance with the CVL ADRR under

Condition G11.1 and which fall to be published in accordance with the CVL ADRR;

- (iv) every Authorised Variation;
- (v) standard forms, published no later than the date falling six months after the date on which the CVL IM becomes infrastructure manager of the CVL, produced after consultation with every other Access Beneficiary and approved by ORR, for the notification under this Part G of proposals of CVL Network Change, and of responses to such proposals, which:
  - (A) may include different forms for different types of CVL Network Change having regard to the size, complexity and value of the change in question; and
  - (B) shall be used by any person notifying or responding to a proposal for CVL Network Change under this Part G unless it is not reasonably practicable for it to do so; and
- (vi) model terms and conditions published no later than the date falling six months after the date on which the CVL IM becomes infrastructure manager of the CVL, produced after consultation with every other Access Beneficiary and approved by ORR, by way of supplement to the terms of this Part G and on which the CVL IM is prepared to contract for or in connection with the implementation of a CVL Network Change which:
  - (A) shall provide appropriate and proportionate forms of contract for different types of CVL Network Change having regard to the size, complexity and value of the change in question;
  - (B) may include variation procedures; and
  - (C) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a CVL Network Change which are proposed by the CVL IM under Condition G1 or by an Access Beneficiary under Condition G3;
- (c) the provision of a preliminary response to a proposal for CVL Network Change by an Access Beneficiary under Condition G3.5;
- (d) such consultation before a notice of a proposal for a CVL Network Change is submitted by an Access Beneficiary as may reasonably be expected to enable that Access Beneficiary to assess the feasibility and affordability of the proposed CVL Network Change;

- (e) such consultation with the persons specified in Condition G1.1(a) and G3.1(c) before a notice of a proposal for a CVL Network Change is given by the CVL IM or submitted by an Access Beneficiary as:
  - (i) the CVL IM considers reasonably necessary; and
  - (ii) any person specified in Condition G1.1(a) and G3.1(c) may reasonably request,

to enable the proposal to be developed in an efficient and economical manner; and
- (f) if requested, provision of the names and contact details of each Access Beneficiary which the CVL IM considers may be affected by the implementation of a proposed CVL Network Change.

## 1.6 ***CVL Network Changes affecting multiple networks***

If any proposed CVL Network Change will or is reasonably likely to affect an adjoining railway network operated by another infrastructure manager:

- (a) it is acknowledged that the party proposing a CVL Network Change may also be required to propose a separate network change to that other infrastructure manager under the terms of its access agreement with such other infrastructure manager;
- (b) any separate network change which may be required to the NR Network as a consequence of the CVL Network Change shall be made to Network Rail by the party proposing the CVL Network Change;
- (c) the CVL IM and each Access Beneficiary shall cooperate with such other infrastructure manager in order to understand the impact of the proposed CVL Network Change on both the CVL and the adjoining railway network;
- (d) the notices and responses described in this Part G may also refer to the impact on the adjoining railway network wherever appropriate; and
- (e) in calculating the amounts payable under Conditions G2.2, G3.6 and G4.2, the CVL IM and (where applicable) each Access Beneficiary shall be entitled to take into account any reasonable costs of cooperating with or required to be paid to such other infrastructure manager.

## **Condition G1 - CVL NETWORK CHANGE PROPOSAL BY THE CVL IM**

### 1.1 ***Notice of proposal***

Subject to Conditions G1.9 and G1.10, if the CVL IM wishes to make a CVL Network Change, it shall:

- (a) give notice of its proposal for CVL Network Change to:
  - (i) each Access Beneficiary that may be affected by the implementation of the proposed CVL Network Change;
  - (ii) the Welsh Ministers and Transport for Wales;
  - (iii) any infrastructure manager of a network adjoining the CVL; and
  - (iv) ORR,together with particulars of the proposed CVL Network Change which are reasonably necessary to enable that person to assess the effect of the proposed CVL Network Change and to enable each Access Beneficiary to assess the effect of the proposed CVL Network Change on the operation of its trains, in each case without prejudice to any other rights the CVL IM has to notify such parties of a proposed CVL Network Change;
- (b) Publish on its Website a summary of its proposal for CVL Network Change; and
- (c) invite the submission of comments from the persons specified in Condition G1.1(a)(i) and (iii) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed CVL Network Change on those persons.

## 1.2 ***Content of notice of proposed CVL Network Change***

A notice of a proposed CVL Network Change given by the CVL IM under Condition G1.1 shall:

- (a) state the Relevant Response Date and the obligations of Access Parties under Condition G1 and Condition G2;
- (b) indicate whether and to what extent the proposed CVL Network Change has been progressed using the Complex Projects Procedure;
- (c) indicate whether the proposed CVL Network Change is a Short Term CVL Network Change;
- (d) invite the persons specified in Condition G1.1(a)(i) and (iii) to submit comments by the Relevant Response Date;
- (e) contain:

- (i) the reasons why it is proposed to make the CVL Network Change, including the effects it is intended or may reasonably be expected to have on the operation of the CVL or on trains operated on the CVL;
  - (ii) a specification of the works to be done (including a plan showing where the work is to be done and the parts of the CVL and associated railway assets likely to be affected);
  - (iii) the proposed times within which the works are to be done and when they are intended or may reasonably be expected to be begun and completed;
  - (iv) the CVL IM's proposals (if any) for the division of the costs of carrying out the CVL Network Change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the CVL Network Change;
  - (v) in the case of a Short Term CVL Network Change:
    - (A) the CVL IM's proposals as to the Effective Date;
    - (B) the CVL IM's proposals as to the Expiry Date;
    - (C) the estimated timescale in which the CVL Network Change could reasonably be reversed if so requested by an Access Beneficiary based on its reasonable expectations as to future use of the CVL; and
    - (D) the capability of the relevant section of the CVL before the proposed Short Term CVL Network Change (and any Short Term CVL Network Change which it succeeds) and the proposed reduction to that capability;
  - (vi) any additional terms and conditions which the CVL IM proposes should apply to the CVL Network Change, including any proposed Variation Procedure;
  - (vii) the results of any consultation undertaken in accordance with Condition G5; and
  - (viii) the results of any Preparatory Works undertaken in accordance with Condition G6;
- (f) describe any modifications which will need to be made to any Access Agreement as a consequence of the implementation of the CVL Network Change; and

- (g) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G1.1(a)(i) and (iii), to enable any such person to assess the likely effect of the proposed CVL Network Change on its business and its performance of any obligations or the exercise of any discretions which it has in relation to railway services.

### 1.3 ***Obligation to provide preliminary response***

An Access Beneficiary shall, if requested to do so in writing by the CVL IM, provide at no cost to the CVL IM, within a period of 20 Working Days commencing on the date of the request for a preliminary response, a preliminary written response in respect of the proposed CVL Network Change (which, unless an Access Beneficiary indicates otherwise, shall be binding on it) and if such response is negative, include reasons therefore.

### 1.4 ***Consultation and provision of estimate of costs***

1.4.1 The CVL IM shall, after giving notice of any proposal for CVL Network Change under Condition G1.1, consult with each operator of railway assets likely to be materially affected by the proposed CVL Network Change to the extent reasonably necessary so as properly to inform that operator of the CVL Network Change and to enable that operator to assess the consequences for it of the proposed CVL Network Change.

1.4.2 After consultation under this Condition G1.4, the CVL IM may notify a later Relevant Response Date to the persons to whom the notice of proposal for CVL Network Change was given.

1.4.3 Any Access Beneficiary consulted by the CVL IM in accordance with Condition G1.4.1 shall, as soon as and so far as reasonably practicable, provide to the CVL IM an estimate of the costs, direct losses and expenses which can reasonably be expected to be incurred by that Access Beneficiary as a consequence of the implementation of the proposed CVL Network Change by the CVL IM.

### 1.5 ***Reimbursement of costs***

Subject to Conditions G1.4, Condition G2 and Condition G5, each Access Beneficiary shall be entitled to reimbursement by the CVL IM of 75% of all costs incurred by it in assessing and responding to any CVL Network Change proposed by the CVL IM in accordance with Condition G2.1. Those costs shall be the minimum reasonably necessary for the Access Beneficiary to carry out that assessment and response.

### 1.6 ***Further information regarding costs***

Each Access Beneficiary shall, upon request from the CVL IM from time to time, provide the CVL IM with written estimates of the costs of assessing and responding to a proposal for CVL Network Change proposed by the CVL IM (as referred to in Condition G1.5) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (b) upon request from the CVL IM from time to time, provide the CVL IM with such information as may be reasonably necessary to enable the CVL IM to assess the reasonableness of any estimate.

#### **1.7 Accuracy of estimates**

Each Access Beneficiary shall ensure that, so far as reasonably practicable:

- (a) any estimates given by it are accurate on the basis of the information reasonably available to it; and
- (b) each type of cost comprised in the estimate provided pursuant to Condition G1.4.3 is separately identified.

#### **1.8 Obligation to incur no further costs**

An Access Beneficiary shall:

- (a) if requested by the CVL IM at any time, incur no further costs (except any costs which cannot reasonably be avoided); and
- (b) unless otherwise agreed by the CVL IM, incur no costs in excess of the estimate provided pursuant to Condition G1.4.3,

in respect of any proposal for CVL Network Change made by the CVL IM.

#### **1.9 Changes to the operation of the CVL**

In the case of a CVL Network Change within the meaning of paragraph (b) of that term's definition, the CVL IM may commence implementing the procedure set out in this Part G and shall, upon notice being given by the relevant Access Beneficiary to the CVL IM at any time after the expiry of the relevant period, promptly commence implementing and thereafter comply with that procedure as if that change were a CVL Network Change proposed by the CVL IM.

#### **1.10 CVL Network Change for safety reasons**

Subject to Condition G9, to the extent that a CVL Network Change within the meaning of paragraph (a) of that term's definition is required to be made by the

CVL IM for safety reasons, the CVL IM shall not be obliged to implement the procedure set out in this Part G in relation to that CVL Network Change until the CVL Network Change has lasted for three months. Upon expiry of the relevant period, the CVL IM shall promptly commence implementing and thereafter comply with the procedure set out in this Part G as if the relevant CVL Network Change were a CVL Network Change proposed by the CVL IM.

## **Condition G2 - RESPONSE BY ACCESS BENEFICIARY TO CVL NETWORK CHANGE PROPOSAL**

### **2.1 *Obligation to give notice of response***

2.1.1 The Access Beneficiary shall give notice to the CVL IM by the Relevant Response Date if it considers that:

- (a) one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed CVL Network Change would necessarily result in the CVL IM breaching an access contract to which that Access Beneficiary is a party; or
  - (ii) the CVL IM has failed, in respect of the proposed CVL Network Change, to provide sufficient particulars to that Access Beneficiary under Condition G1.2, provided that the CVL IM shall first have been given a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of the proposed CVL Network Change would result in a material deterioration in the performance of that Access Beneficiary's trains which cannot adequately be compensated under this Condition G2 or (where that Access Beneficiary is a Train Operator) in respect of a CVL Restriction of Use in connection with the implementation of the proposed CVL Network Change under that Train Operator's Access Agreement save where the scale of the consequences which cannot adequately be compensated under this Condition G2 or under the Train Operator's Access Agreement are outweighed by the benefits to the Train Operator which would arise or are likely to arise from the implementation of the CVL Network Change; or
  - (iv) the proposed change does not adequately take account of the reasonable expectations of the Access Beneficiary as to the future use of the relevant part of the CVL Network; and/or
- (b) one or more of the conditions set out in Condition G2.1.1(a) has been satisfied but it is prevented by Condition G5.7 from objecting to the proposed CVL Network Change and the proposed CVL Network

Change is not, on the basis of the available evidence and taking account of the alternative solutions available and the progress made with the proposed CVL Network Change, to the benefit of the industry as a whole; and/or

- (c) it should be entitled to compensation from the CVL IM for the consequences of the implementation of the CVL Network Change either:
  - (i) in accordance with compensation terms proposed under Condition G1.2(e)(iv); or
  - (ii) on terms other than those proposed (if any) under Condition G1.2(e)(iv).

2.1.2 Any notice of the kind referred to in Condition G2.1.1(a) above shall include the reasons for the Access Beneficiary's opinion. Any notice of the kind mentioned in Condition G2.1.1(c)(ii) above shall include the reasons why the Access Beneficiary considers that any compensation terms proposed under Condition G1.2(e)(iv) are inappropriate and shall detail:

- (a) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
- (b) if the Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
- (c) the means by which the compensation should be paid, including any security or other assurances of payment which the CVL IM should provide.

The notice referred to above shall contain such detail as is reasonable to enable the CVL IM to assess the merits of the Access Beneficiary's decision.

## 2.2 ***Amount of compensation***

Subject to Condition G2.3 and Condition G2.4.1, the amount of the compensation referred to in Condition G2.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Access Beneficiary as a consequence of the implementation of the proposed CVL Network Change (provided that an Access Beneficiary shall not be entitled to compensation in connection with a CVL Network Change to the extent such Access Beneficiary is entitled to compensation in relation to the same costs, direct losses or expenses (including loss of revenue) under the Network Rail Network Code).

### 2.3 ***Benefits to be taken into account***

There shall be taken into account in determining the amount of compensation referred to in Condition G2.2:

- (a) subject to Condition G2.4.2, the benefit (if any) to be obtained or likely in the future to be obtained by the Access Beneficiary as a consequence of the proposed CVL Network Change; and
- (b) the ability or likely future ability of the Access Beneficiary to recoup any costs, losses and expenses from third parties including passengers and customers.

### 2.4 ***Restrictions of Use***

2.4.1 The amount of the compensation referred to in Condition G2.2 shall exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Train Operator as a consequence of any CVL Restriction of Use in connection with the implementation of the proposed CVL Network Change.

2.4.2 The benefits taken into account in determining the amount of the compensation for the proposed CVL Network Change under Condition G2.3 shall exclude the benefit (if any) to be obtained or likely in the future to be obtained by the Train Operator as a consequence of any CVL Restriction of Use in connection with the implementation of the proposed CVL Network Change (with that exclusion including any compensation payable to that Train Operator in respect of that CVL Restriction of Use under its Access Agreement).

## **Condition G3 - CVL NETWORK CHANGE PROPOSAL BY ACCESS BENEFICIARY**

### 3.1 ***Notice of proposal***

An Access Beneficiary shall, if it wishes the CVL IM to make a CVL Network Change:

- (a) submit to the CVL IM a proposal for such change;
- (b) permit the CVL IM to notify the ORR, Transport for Wales and/or the Welsh Ministers of the proposed CVL Network Change; and
- (c) permit the CVL IM to consult with:
  - (i) each Access Beneficiary that may be affected by the implementation of the proposed CVL Network Change; and
  - (ii) any infrastructure manager of and/or any operator on a network adjoining the CVL,

to the extent provided for under Condition G3.3.1(b), subject to such requirements as to confidentiality as are reasonable.

### 3.2 ***Content of Sponsor's notice of proposal***

A notice of a proposed CVL Network Change given by the Sponsor under Condition G3.1 shall:

- (a) contain:
  - (i) the reasons why it is proposed to make the CVL Network Change, including the effects it is intended or expected to have on the operation of the CVL or on trains operated on the CVL;
  - (ii) a specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the CVL and associated railway assets likely to be affected);
  - (iii) the proposed times within which the works are to be done and when they are intended or expected to be begun and completed;
  - (iv) the Sponsor's proposals (if any) for the division of the costs of carrying out the CVL Network Change including any proposals in relation to the calculation or payment of compensation to the CVL IM or any Access Beneficiary in respect of the CVL Network Change; and
  - (v) the additional terms and conditions (if any) which the Sponsor proposes should apply to the CVL Network Change, including any Variation Procedure; and
- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition G3.1(c), to enable:
  - (i) the CVL IM; and
  - (ii) any person specified in Condition G3.1(c),to assess the likely effect of the proposed CVL Network Change on its business and its performance of any obligations or exercise of any discretions which it has in relation to railway services.

### 3.3 ***Evaluation of proposal and consultation***

3.3.1 If the CVL IM receives a proposal for CVL Network Change under Condition G3.1, it shall:

- (a) evaluate and discuss the proposal for change with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed CVL Network Change on either or both of the CVL IM and Access Beneficiaries;
- (b) consult with each person specified in Condition G3.1(c) likely to be materially affected by the proposed CVL Network Change to the extent reasonably necessary so as properly to inform them of the proposed CVL Network Change and to enable them to assess the consequences for them of the proposed CVL Network Change;
- (c) for the purpose of the consultation under Condition G3.1(c), within 30 days of the date on which the Sponsor's notice under Condition G3.1 was given, give a notice to the persons specified in Condition G3.1(c), with a copy to the Sponsor, inviting them to submit comments by the Relevant Response Date and stating:
  - (i) the Relevant Response Date and the obligations of Access Parties under Condition G3 and Condition G4;
  - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the CVL Network Change;
  - (iii) so far as reasonably practicable, the CVL IM's estimate of the likely impact of the CVL Network Change on the operation and performance of the CVL (such estimate not to be binding on the CVL IM); and
  - (iv) the CVL IM's own proposals as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the CVL Network Change;
    - (B) the specification of the works to be done (including a plan or plans showing where the work is to be done and the parts of the CVL and associated railway assets likely to be affected);
    - (C) the times within which the works are to be done and when they are intended or expected to be begun and completed;
    - (D) the division of the costs of carrying out the CVL Network Change, including any proposals in relation to the calculation or payment of compensation to Access Beneficiaries in respect of the CVL Network Change and/or any proposals

for providing security of payment in relation to the proposed CVL Network Change and/or associated compensation;

(E) any additional terms and conditions which should apply to the CVL Network Change, including any proposed Variation Procedure; and

(F) any modifications which will need to be made to any Access Agreement or access option as a consequence of the implementation of the CVL Network Change; and

(d) be permitted to notify the ORR, Transport for Wales and the Welsh Ministers of the proposed CVL Network Change.

3.3.2 In preparing a notice under Condition G3.3.1(c), the CVL IM:

(a) shall comply with the standard specified in Condition G3.2(b); and

(b) in respect of each of the matters specified in Condition G3.3.1(c)(iv):

(i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition G3.1;

(ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition G3.3.1(c)(iv); and

(iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition G3.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

3.3.3 The Sponsor shall use all reasonable endeavours to facilitate the consultation referred to in Condition G3.3.1(a) and G3.3.1(b).

#### 3.4 ***Obligation to provide preliminary response***

3.4.1 The CVL IM shall, if requested to do so in writing by the Sponsor, provide at no cost to the Sponsor as soon as practicable and in any event within a period of 20 Working Days commencing on the date of the request for a preliminary response, a preliminary written response in respect of the proposed CVL Network Change, which shall:

(a) be binding on the CVL IM, unless the CVL IM indicates otherwise; and

(b) if it is negative, include reasons.

3.4.2 The CVL IM shall not be obliged to comply with a request from the Sponsor under Condition G3.4.2 or G3.5.1:

(a) unless:

- (i) the Relevant Response Date is 90 or more days after the date on which the CVL IM's notice under Condition G3.3.1(c) was given; and
- (ii) the request is made within seven days of the Sponsor receiving the CVL IM's notice under Condition G3.3.1(c); or

(b) to the extent that the CVL IM is unable to comply with such a request, having regard to the information reasonably available to it.

3.4.3 After consultation with the Sponsor and under Condition G3.3.1(b), the CVL IM may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition G3.3.1(c).

### 3.5 ***Provision of Estimate of Compensation by Access Beneficiaries***

3.5.1 Any Access Beneficiary consulted by the CVL IM in accordance with Condition G3.3.1(b) shall, as soon as and so far as reasonably practicable, provide to the CVL IM an estimate of the costs, direct losses and expenses which can reasonably be expected to be incurred by such Access Beneficiary as a consequence of the implementation of the proposed CVL Network Change by the Sponsor (which shall be binding on that Access Beneficiary unless stated to the contrary by such party).

3.5.2 The CVL IM shall, as and when requested by the Sponsor, as soon as and so far as reasonably practicable, provide to the Sponsor, at no cost to the Sponsor, an estimate of the costs, direct losses and expenses which can reasonably be expected to be incurred by the CVL IM or other Access Beneficiaries as a consequence of the implementation of the proposed CVL Network Change by the Sponsor. Unless the CVL IM indicates otherwise, such estimate shall not be binding on it.

3.5.3 After consultation with the Sponsor and under Condition G3.3.1(b), the CVL IM may notify a later Relevant Response Date to the Sponsor and the persons to whom it gave its notice under Condition G3.3.1(c).

### 3.6 ***Reimbursement of costs***

Subject to Conditions G3.4, G3.5 and Condition G4, the CVL IM shall be entitled to reimbursement by the Sponsor of 75% of the amount of the costs, direct losses and expenses (including loss of revenue) incurred by the CVL IM in assessing any CVL Network Change proposed by the Sponsor. Those costs

shall be the minimum reasonably necessary for the CVL IM to carry out that assessment and response.

### 3.7 ***Provision of estimate of costs by the CVL IM***

The CVL IM shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for CVL Network Change submitted by the Sponsor (as referred to in Condition G3.6) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that assessment before commencing such work; and
- (b) upon request from the Sponsor from time to time provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

### 3.8 ***Accuracy of estimates***

The CVL IM shall ensure that:

- (a) any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it; and
- (b) so far as reasonably practicable each type of cost can be priced in the estimate provided pursuant to Condition G3.7 is separately identified.

### 3.9 ***Obligation to incur no further costs***

The CVL IM shall:

- (a) if requested by the Sponsor at any time, incur no further costs (except any costs that cannot reasonably be avoided); and
- (b) unless otherwise agreed by the Sponsor, incur no costs in excess of the estimate provided pursuant to Condition G3.7,

in respect of any proposal for CVL Network Change made by the Sponsor.

## **Condition G4 - RESPONSE BY THE CVL IM TO CVL NETWORK CHANGE PROPOSAL**

### 4.1 ***Obligation to give notice of response***

4.1.1 The CVL IM shall give notice to the Sponsor if:

- (a) it considers that one or more of the following conditions has been satisfied:

- (i) the implementation of the proposed CVL Network Change would necessarily result in the CVL IM breaching any Access Agreement or access option;
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3.2 provided that the CVL IM shall first have given the Sponsor a reasonable opportunity to remedy that failure;
  - (iii) the implementation of the proposed CVL Network Change would result in a material adverse effect on the maintenance or operation of the CVL or the operation of any train on the CVL which in any such case cannot adequately be compensated under this Condition G4 or in respect of a CVL Restriction of Use in connection with the implementation of the proposed CVL Network Change under the relevant Train Operator's Access Agreement; or
  - (iv) the proposed CVL Network Change does not adequately take account of the reasonable expectations of an Access Party (other than the Sponsor) as to the future use of the relevant part of the CVL;
- (b) any Access Beneficiary shall have given notice to the CVL IM that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the CVL Network Change proposed by the Sponsor either:
- (i) in accordance with compensation terms proposed under Condition G3; or
  - (ii) on terms other than those proposed (if any) under Condition G3; and/or
- (d) any Access Beneficiary shall have given notice to the CVL IM that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the CVL Network Change proposed by the Sponsor either:
- (i) in accordance with compensation terms proposed under Condition G3; or
  - (ii) on terms other than those proposed (if any) under Condition G3.

4.1.2 Any notice of the kind referred to in Conditions G4.1.1(a) and G4.1.1(b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in Conditions G4.1.1(c)(ii) and G4.1.1(d)(ii) above shall include the reasons why the CVL IM or the relevant Access Beneficiary considers that any compensation terms proposed under Condition G3 are inappropriate and shall detail:

- (a) the amount of compensation required and the methodology used to calculate the amount of compensation required; or
- (b) if the CVL IM or the relevant Access Beneficiary is not reasonably able to provide details of the amount of compensation required, the methodology to be used to calculate the amount of compensation required; and in either case
- (c) the means by which the compensation should be paid, including any security or other assurances of payment which the Sponsor should provide.

The notice referred to above shall contain such detail as is reasonable to enable the Sponsor to assess the merits of the CVL IM or the relevant Access Beneficiary's decision.

#### 4.2 ***Amount of compensation***

Subject to Condition G4.3, the aggregate of the amount of the compensation referred to in Condition G4.1 shall be:

- (a) subject to Condition G4.4.1, an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the CVL IM or the relevant Access Beneficiary in question as a consequence of the implementation of the proposed CVL Network Change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other operators of railway assets; and
- (b) an amount equal to the amount of costs, direct losses or expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the CVL IM as consequence of implementing a CVL Network Change including the recovery of any payments made by the CVL IM to the relevant Train Operator under that Train Operator's Access Agreement for the relevant Restriction(s) of Use.

#### 4.3 ***Benefits to be taken into account***

There shall be taken into account in determining the amount of compensation referred to in Condition G4.2:

- (a) subject to Condition G4.4.2, the benefit (if any) to be obtained or likely in the future to be obtained by the CVL IM or other Access Beneficiaries as a consequence of the implementation of the proposed CVL Network Change; and
- (b) the ability or likely future ability of the CVL IM or other Access Beneficiaries to recoup any costs, losses and expenses from third parties including passengers and customers.

#### 4.4 ***Restrictions of Use***

4.4.1 The amount of the compensation referred to in Condition G4.2 shall, in respect of any Train Operator, exclude the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by that Train Operator as a consequence of any CVL Restriction of Use in connection with the implementation of the proposed CVL Network Change.

4.4.2 The benefits taken into account in determining the amount of the compensation for the proposed CVL Network Change under Condition G4.3 shall in respect of any Train Operator exclude the benefit (if any) to be obtained or likely in the future to be obtained by that Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed CVL Network Change (with that exclusion including any compensation payable to that Train Operator in respect of that CVL Restriction of Use under its Access Agreement).

### **Condition G5 - SCOPE OF COMPLEX PROJECTS**

#### 5.1 ***Consultation prior to making a proposal for CVL Network Change using the Complex Projects Procedure***

Before submitting a proposal for CVL Network Change which the CVL IM intends to establish using the Complex Projects Procedure, the CVL IM shall provide the following information to each Access Beneficiary which it considers may be affected by the implementation of the proposed CVL Network Change:

- (a) that the CVL IM intends to initiate the Complex Projects Procedure in respect of the proposed CVL Network Change;
- (b) the details of the proposed CVL Network Change which the CVL IM can reasonably make available;
- (c) the reasons why the CVL IM believes that the proposed CVL Network Change is required including the effects it is intended or may

reasonably be expected to have on the operation of the CVL or on trains operated on the CVL;

- (d) the reasons why the CVL IM believes that the proposed CVL Network Change should be established in accordance with the Complex Projects Procedure;
- (e) any other information the CVL IM reasonably believes an affected Access Beneficiary may reasonably require to understand the proposed CVL Network Change;
- (f) a draft plan setting out the intended stages and timetable for the Complex Projects Procedure; and
- (g) the Scope that the CVL IM intends to propose under Condition G5.4.

## 5.2 ***Consultation with affected Access Beneficiaries***

The CVL IM shall, having provided the information set out in Condition G5.1, consult with each Access Beneficiary which it considers may be affected by the proposed CVL Network Change. During the consultation process the CVL IM shall give due consideration to the views of each Access Beneficiary and, where the CVL IM disagrees with the views of an Access Beneficiary, shall provide that Access Beneficiary with a written response setting out the reasons why the CVL IM disagrees with the views of that Access Beneficiary.

## 5.3 ***Facilitation by Access Beneficiaries***

Access Beneficiaries consulted under Condition G5.2 shall take all reasonable steps to make the consultation process effective, including:

- (a) the taking of all reasonable steps to provide the CVL IM with such information as the CVL IM reasonably requests in connection with the development of the proposal for CVL Network Change under Condition G5.1; and
- (b) the provision to the CVL IM of a response to the CVL IM's consultation under Condition G5.2 in relation to the proposed CVL Network Change within 30 days of being consulted by the CVL IM, or such longer period as the CVL IM may specify.

## 5.4 ***Notice of intended Scope***

Once the consultation procedure set out in Conditions G5.2 and G5.3 has concluded, the CVL IM may, if it wishes to proceed with the proposed CVL Network Change using the Complex Projects Procedure, issue a notice of intended Scope to each Access Beneficiary which it considers may be affected.

## 5.5 ***Response to notice of intended Scope***

Each Access Beneficiary that receives a notice of intended Scope from the CVL IM under Condition G5.4 shall, within 30 days, or such longer period as the CVL IM specifies, of the receipt of such notice, respond to the CVL IM in writing stating either that it:

- (a) agrees to the Scope set out in the notice; or
- (b) does not agree to the Scope set out in the notice and it considers that there is a reasonable likelihood that, if the Scope were to be proposed as part of a CVL Network Change under Condition G1, the Access Beneficiary would be likely to succeed in preventing the CVL Network Change being established solely due to it being entitled to give notice under Condition G2.1.1(a).

Any notice under (b) above that an affected Access Beneficiary does not agree to the Scope set out by the CVL IM in the notice of intended Scope shall include the reasons why the affected Access Beneficiary does not so agree.

If an Access Beneficiary receives a notice of intended Scope from the CVL IM under Condition G5.4 and fails to respond to the CVL IM in writing within 30 days, or such longer period as the CVL IM specifies, of the receipt of such notice, the affected Access Beneficiary shall be deemed to have agreed to the Scope as if the affected Access Beneficiary had given notice to the CVL IM under Condition G5.5(a).

#### **5.6 *Failure to agree Scope***

If an Access Beneficiary does not agree to the Scope under Condition G5.5(b), then the CVL IM and the Access Beneficiary may enter into discussions with a view to agreeing the Scope, including any changes to the Scope which may be appropriate. At any time after an Access Beneficiary serves a notice under Condition G5.5(b) any Access Party may refer the issue in accordance with the CVL ADRR for determination in accordance with Condition G11.

#### **5.7 *Effect of agreement of Scope***

Once the relevant Scope of the proposed CVL Network Change has been agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6 with an Access Beneficiary, that Access Beneficiary shall not be entitled to give notice to the CVL IM subsequently under Condition G2.1.1(a) to challenge any elements of the CVL Network Change to the extent included in the Scope except where there is a change to the Scope which is likely materially to affect the Access Beneficiary since the Scope was agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6.

#### **5.8 *Costs incurred by Access Beneficiaries due to the consultation process***

An Access Beneficiary shall be entitled to reimbursement by the CVL IM of 100% of all costs reasonably incurred by that Access Beneficiary in complying with its obligations under Conditions G5.3 and G5.5. The costs shall be the minimum reasonably necessary for that Access Beneficiary to carry out the assessment and response.

**5.9 Further information regarding costs**

Each Access Beneficiary shall, upon request from the CVL IM from time to time, provide the CVL IM with written estimates of the costs of complying with its obligations under Conditions G5.3 and G5.5 including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and
- (b) upon request from the CVL IM from time to time, provide the CVL IM with such information as may be reasonably necessary to enable the CVL IM to assess the reasonableness of any estimate.

**5.10 Accuracy of estimates**

Each Access Beneficiary shall ensure that, so far as reasonably practicable:

- (a) any estimates given by it are accurate on the basis of the information reasonably available to it; and
- (b) each type of cost comprised in the estimate provided pursuant to Condition G5.9 is separately identified.

**5.11 Obligation to incur no further costs**

An Access Beneficiary shall, if requested by the CVL IM at any time:

- (a) incur no further costs (except any costs which cannot reasonably be avoided); and
- (b) unless otherwise agreed with the CVL IM, incur no costs in excess of the estimate provided pursuant to Condition G5.9,

in respect of any consultation in respect of a proposed CVL Network Change to which this Condition G5 applies.

**5.12 Further agreement of Scope**

If, at any time before the CVL IM issues a notice of proposed change under Condition G1.1, the CVL IM wishes to agree further elements of the proposed CVL Network Change to be included in the Scope, the CVL IM may issue

further notices of intended Scope in respect of such further elements in accordance with Conditions G5.1 to G5.11 and once agreed or determined in accordance with Conditions G5.5 or G5.6 such further elements will be included in and form part of the Scope.

## **Condition G6 - PREPARATORY WORKS**

### **6.1 *The CVL IM's obligations in relation to Preparatory Works***

The CVL IM may, if it wishes to proceed with a proposed CVL Network Change using the Complex Projects Procedure, make proposals for the implementation of Preparatory Works under Condition G1, and except as provided in this Condition G6, Access Beneficiaries shall have the same rights in respect of such proposals as if each proposal of Preparatory Works was a separate CVL Network Change proposal.

### **6.2 *Obligations of Access Beneficiaries in relation to Preparatory Works***

Each Access Beneficiary which is likely to be affected by the Preparatory Works shall take all reasonable steps to facilitate the Preparatory Works which are undertaken by the CVL IM including by the taking of all reasonable steps to provide the CVL IM with such information as the CVL IM reasonably requests in connection with the development of the Preparatory Works.

### **6.3 *Further Preparatory Works***

If at any time the CVL IM is reasonably of the view that further Preparatory Works are required, the CVL IM shall propose such further Preparatory Works in accordance with this Condition G6.

## **Condition G7 - COMPLEX PROJECTS CVL NETWORK CHANGE**

If, having previously agreed or determined the Scope in accordance with Conditions G5.5 or G5.6, the CVL IM wishes to implement a CVL Network Change which it has progressed using the Complex Projects Procedure, it shall propose the CVL Network Change in accordance with Condition G1.

## **Condition G8 - SHORT TERM CVL NETWORK CHANGE**

### **8.1 *Reversal of a Short Term CVL Network Change***

8.1.1 An Access Beneficiary may request in writing that the CVL IM reverse the effect of a Short Term CVL Network Change before its Expiry Date if the effect of the Short Term CVL Network Change would prevent the Access Beneficiary using the CVL in a manner consistent with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the CVL.

8.1.2 The Access Beneficiary shall include with any notice requesting the reversal of the effect of a Short Term CVL Network Change served under Condition

G8.1.1 evidence to support the Access Beneficiary's claim of reasonable expectations as to the future use of the relevant part of the CVL which requires that reversal.

8.1.3 The Access Beneficiary shall provide the CVL IM with such further information as the CVL IM may reasonably require to enable the CVL IM to assess the reasonableness of the Access Beneficiary's request to reverse the effect of a Short Term CVL Network Change.

8.1.4 Upon receipt of a notice to reverse the effect of a Short Term CVL Network Change served under Condition G8.1.1, the CVL IM shall:

(a) reverse the effect of the Short Term CVL Network Change at its own cost by the later of the following:

(i) the earlier of:

(A) the estimated timescale for reversal set out in the notice of proposed CVL Network Change served under Condition G1.1; and

(B) the timescale within which the CVL IM can complete the reversal without incurring any greater cost than would have reasonably been incurred by the CVL IM had the effect of the Short Term CVL Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed CVL Network Change served under Condition G1.1; or

(ii) the earliest date for which the Access Beneficiary can demonstrate a reasonable expectation as to future use; or

(b) respond to the Access Beneficiary in writing within 30 days stating that the CVL IM does not believe that the effect of the Short Term CVL Network Change is preventing the Access Beneficiary using the CVL in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the CVL and giving reasons for its decision.

The CVL IM shall not be liable to any Access Beneficiary if and to the extent that the date of the requested reversal is earlier than the date by which the CVL IM must reverse the effect of the Short Term CVL Network Change as calculated under Condition G8.1.4(a).

## 8.2 ***Expiry of a Short Term CVL Network Change***

The CVL IM shall restore at its own cost any part of the CVL which has been subject to a Short Term CVL Network Change to its original capability as set

out in the notice of proposal for the Short Term CVL Network Change by the Expiry Date unless and to the extent that:

- (a) a CVL Network Change has been implemented in place of the Short Term CVL Network Change; or
- (b) a further Short Term CVL Network Change has been implemented.

**8.3 *Notification of reversal of a Short Term CVL Network Change prior to the Expiry Date***

The CVL IM shall publish details of each Short Term CVL Network Change which is reversed prior to the Expiry Date.

**Condition G9 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

9.1 Where the CVL IM is required (other than at its own request or instigation) to implement a CVL Network Change as a result of any Change of Law or any Direction of any Competent Authority other than ORR exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) the CVL IM shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(e)(iv)) in respect of that CVL Network Change;
- (b) each Access Beneficiary shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that CVL Network Change and shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.5.1(b)(iii)(B) and (D));
- (c) subject to Condition G9.1(d), each Access Party shall bear its own costs or losses arising out of the implementation of the CVL Network Change or the consequences thereof;
- (d) where the CVL IM recovers compensation in respect of that CVL Network Change from a Competent Authority or some other Governmental Body, it shall pay to Access Beneficiaries:
  - (i) where any compensation paid to the CVL IM in relation to that CVL Network Change is sufficient to cover the Relevant Costs of the Access Beneficiary and of the CVL IM, the Relevant Costs of the Access Beneficiary; and
  - (ii) where such compensation is not so sufficient, such proportion of that compensation as the Access Beneficiary's Relevant Costs bears to the sum of the CVL IM's Relevant Costs and all the Access

Beneficiaries' Relevant Costs in respect of that CVL Network Change; and

- (e) the CVL IM shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that CVL Network Change which is sufficient to ensure that the Access Beneficiaries receive compensation for all of their Relevant Costs. The CVL IM shall from time to time consult with the Access Beneficiaries and keep the Access Beneficiaries informed in reasonable detail of the progress of such negotiations.

## **Condition G10 - ESTABLISHMENT AND IMPLEMENTATION**

### **10.1 *Implementation of a CVL Network Change proposed by the CVL IM***

10.1.1 The CVL IM shall be entitled to implement a proposed CVL Network Change if:

- (a) it has not received a notice from any Access Beneficiary under Condition G2.1 by the Relevant Response Date or it has received notice under Condition G2.1.1 by the Relevant Response Date but the matter has been agreed or resolved; and
- (b) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed CVL Network Change between the CVL IM and any affected Access Beneficiary.

10.1.2 The CVL IM may, if it considers it expedient to do so in order to confirm whether or not Condition G10.1.1 has been satisfied, issue a notice to all affected Access Beneficiaries when it reasonably believes it is entitled to implement a proposed CVL Network Change.

10.1.3 The CVL IM's entitlement to implement a proposed CVL Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that CVL Network Change in accordance with Condition G10.1.2 unless it receives notice from an Access Beneficiary within those 21 days disputing the CVL IM's entitlement to implement that proposed CVL Network Change under Condition G10.1.1 and giving full particulars of its reasons.

10.1.4 If The CVL IM does not agree with the contents of a notice served by an affected Access Beneficiary in accordance with Condition G10.1.3, the CVL IM may:

- (a) refer the matter for determination in accordance with the CVL ADRR and Condition G11 shall apply; or
- (b) withdraw the proposed CVL Network Change.

10.1.5 The CVL IM shall not be entitled to implement a proposed CVL Network Change unless it is so entitled to implement that CVL Network Change under Condition G10.1.1.

10.1.6 For the purposes of Condition G10.1.1, unresolved disputes shall include:

- (a) a notice has been served under Condition G2.1(a) which has not been withdrawn, resolved under Condition G11 or agreed not to apply; and
- (b) a notice has been served under Condition G2.1.1(c) which has not been agreed, resolved or withdrawn.

10.1.7 Where as a consequence of a CVL Network Change proposed by the CVL IM, it is necessary to amend an Access Agreement to reflect that CVL Network Change, the CVL IM shall provide to the other party to such Access Agreement and ORR written notice of such amendment, and such amendment shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by ORR.

## 10.2 ***Implementation of a Sponsor proposed CVL Network Change***

10.2.1 The Sponsor shall be entitled to instruct the CVL IM to implement a proposed CVL Network Change if:

- (a) the CVL IM does not consider that any of the conditions specified in Condition G4.1.1(a) have been satisfied and the CVL IM has not received any notice from an Access Beneficiary in accordance with Condition G4.1.1(b) (or, in either case, the matter has been agreed or resolved);
- (b) the CVL IM has not given notice to the Sponsor pursuant to Condition G4.1.1(c) or the CVL IM has given notice to the Sponsor that Condition G4.1.1(c) applies and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11;
- (c) the CVL IM has not received notice from an Access Beneficiary under Condition G4.1.1(d) or the CVL IM has received notice from an Access Beneficiary under Condition G4.1.1(d) and either the amount of any compensation referred to in Condition G4.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11;
- (d) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed CVL Network Change between the Sponsor and any Access Party; and

- (e) the continuing compatibility of the Specified Equipment operated on the CVL if the CVL Network Change was implemented has been confirmed in accordance with the relevant Railway Group Standards and, where applicable, has been approved by a Notified Body as defined under the RIRS and/or a Competent Person (as defined under the ROGS).

10.2.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G10.2.1 has been satisfied, instruct the CVL IM to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to instruct the CVL IM to implement a proposed CVL Network Change and the CVL IM shall then serve such a notice within seven days of the instruction.

10.2.3 The Sponsor's entitlement to instruct the CVL IM to implement a proposed CVL Network Change shall be treated as confirmed 35 days after the CVL IM has served a notice in respect of that CVL Network Change in accordance with Condition G10.2.2 unless:

- (a) the CVL IM gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that CVL Network Change under Condition G10.2.1 and giving full particulars of its reasons; or
- (b) the CVL IM receives notice from an Access Beneficiary within 21 days of the notice served by the CVL IM disputing the Sponsor's entitlement to require the implementation of that CVL Network Change under Condition G10.2.1 and giving full particulars of its reasons.

10.2.4 If the Sponsor does not agree with the contents of a notice served by the CVL IM or an affected Access Beneficiary in accordance with Condition G10.2.3, the Sponsor may:

- (a) refer the matter for determination in accordance with the CVL ADRR and Condition G11 shall apply; or
- (b) withdraw the proposed CVL Network Change.

10.2.5 A Sponsor shall not be entitled to require the CVL IM to implement a proposed CVL Network Change unless it is so entitled to require the implementation of that CVL Network Change under Condition G10.2.1.

10.2.6 For the purposes of the Condition G10.2.1, unresolved disputes shall include:

- (a) a notice has been served under Condition G4.1.1(a) or G4.1.1(b) which has not been withdrawn, resolved under Condition G6 or agreed not to apply; and

- (b) a notice has been served under Condition G4.1.1(c) or G4.1.1(d) which has not been agreed or resolved as referred to in Condition G10.2.1(b) or G10.2.1(c) or otherwise agreed, resolved or withdrawn.

10.2.7 Where as a consequence of a CVL Network Change proposed by an Access Beneficiary it is necessary to amend an Access Agreement to reflect that CVL Network Change, the CVL IM shall provide to the other party to such Access Agreement and ORR written notice of such change, and such change shall be deemed to have been made to such Access Agreement from the date of approval of such amendment by ORR.

### 10.3 ***When a CVL Network Change may not be implemented***

10.3.1 The CVL IM shall not be entitled, and a Sponsor shall not be entitled to require the CVL IM, to implement a proposed CVL Network Change unless it is so entitled to implement that CVL Network Change under Condition G10.1.1 or Condition G10.2.1.

10.3.2 For the purposes of the Condition G10.1.1 and Condition G10.2.1, unresolved disputes shall include:

- (a) a notice has been served under Condition G2.1.1(a) or (b) or Condition G4.1.1(a) or G4.1.1(b) which has not been withdrawn, resolved under Condition G11 or agreed not to apply; and
- (b) a notice has been served under Condition G2.1.1(c) or Condition G4.1.1(c) or G4.1.1(d) which has not been agreed or resolved as referred to in Condition G10.1.1(a), G10.2.1(a), G10.2.1(b) or G10.2.1(c) otherwise agreed, resolved or withdrawn.

## **Condition G11 - APPEAL PROCEDURE**

### 11.1 ***Right of referral in accordance with the CVL ADRR***

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Part G;
- (b) the contents of any notice given under Condition G2.1, G4.1, G5.5, G8.1.1 or Condition G10 (and, in particular, the amount of any compensation referred to in those Conditions);
- (c) any estimate referred to in Condition G1.6 or G3.7;
- (d) the:
  - (i) proposed Expiry Date; or

- (ii) estimated timescale in which a Short Term CVL Network Change can be reasonably reversed,

in a notice of proposed CVL Network Change given under Condition G1.1; or

- (e) the reasons given by the CVL IM as to why it does not believe that the effect of the Short Term CVL Network Change is preventing the Access Beneficiary using the CVL in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the CVL under Condition G8.1.4(b),

that Access Party may refer the matter for determination in accordance with the CVL ADRR.

## **Condition G12 - CVL NETWORK CHANGE**

### **12.1 *Relationship with Vehicle Change***

If the implementation of a CVL Network Change proposed by the CVL IM or an Access Beneficiary also requires the implementation of a CVL Vehicle Change in respect of the trains operated by an Access Beneficiary, the CVL IM or the Access Beneficiary shall follow the procedures in Part F and satisfy the requirements of both this Part G and Part F and the requirement for a CVL Vehicle Change shall not preclude the right of the Sponsor to follow the procedure in this Part G for a CVL Network Change or vice versa.

### **12.2 *Compatibility Information***

In assessing a proposal for CVL Network Change notified under Condition G1.1(a) or G3.1(a) the CVL IM and/or an affected Access Beneficiary shall be entitled to request a copy of the Statement of Compatibility and/or any information comprised in the Compatibility File prepared by the CVL IM (where the CVL IM has proposed the CVL Network Change) or by the Sponsor (where the Sponsor has proposed the CVL Network Change) in accordance with the applicable Railway Group Standards. The CVL IM or the Sponsor (as the case may be) shall provide the requested information within five Working Days of such information having been prepared.

# Part H – CVL Railway Operational Code

## Explanatory Note

- A. *Part H of the CVL Network Code sets out a requirement for the CVL IM, in consultation with the industry, to establish a CVL Railway Operational Code for the CVL. The purpose of the CVL Railway Operational Code is to sustain the operation of the train services on the CVL and to restore the operation of the CVL following disruption, in accordance with the Working Timetable. The CVL Railway Operational Code will have regard to the needs of passengers and freight customers, the interests of safety and security, and the efficient and economical operation of the CVL.*
- B. *The CVL Railway Operational Code, once it has been established, will be concerned with notification of disruptive events, contingency plans, clearance of track blockages and assistance to failed trains, emergency timetabling procedures, control arrangements, train regulation, seasonal-preparedness, and other matters required to achieve the Objective.*
- C. *The CVL IM shall regularly review the CVL Railway Operational Code, once it has been established, to ensure that it continues to meet the Objective.*
- D. *Part H also provides for a process by which the CVL Railway Operational Code, including all CVL ROC Sections and Subsidiary Documentation, may be modified. A CVL ROC Section may set out its own procedure for varying that CVL ROC Section or any Subsidiary Documentation produced under that CVL ROC Section. Subsidiary Documentation may contain procedures governing its own variation which may supplement the procedures set out in Part H.*
- E. *This Explanatory Note does not form part of the CVL Network Code.*

## DEFINITIONS

In this Part H, unless the context otherwise requires:

**"appeal"** means, in relation to a CVL ROC Section, the exercise by a person of a right under this Part H to make a reference in that respect in accordance with the CVL ADRR;

**"Appeal Body"** means the dispute resolution forum from time to time constituted under or appointed to decide the outcome of the relevant appeal in accordance with the CVL ADRR;

**"CVL Railway Operational Code"** has the meaning ascribed to it in Condition H1.1;

**"CVL ROC Plan"** means a plan for the establishment of the CVL Railway Operational Code which shall:

- (a) comply in all respects with this Part H;
- (b) specify a clear and achievable timetable for the establishment of each CVL ROC Section and the full CVL Railway Operational Code; and
- (c) show in reasonable detail the proposed organisation of the CVL Railway Operational Code,

and which shall be prepared by the CVL IM in the following four phases:

- (i) initial development;
  - (ii) partial completion;
  - (iii) substantial completion;
- and
- (iv) verification and validation;

**"CVL ROC Section"** means a section of the CVL Railway Operational Code covering one or more of the matters specified in Condition H3 or any part of them;

**"Disruptive Event"** means any event or circumstance which materially prevents or materially disrupts the operation of

trains or any part of the CVL in accordance with the Working Timetable;

**"established"**

means, in relation to a CVL ROC Section, or a variation to a CVL ROC Section, as the case may be, that the CVL ROC Section or the variation has come into effect whether:

- (a) following publication of the CVL ROC Section or the variation (or if publication is not required, notification of the CVL ROC Section or the variation to affected Train Operators and Freight Customer Access Option Holders) with no appeal being lodged within the time limit for such appeal or, if such an appeal has been lodged, it has not been proceeded with; or
- (b) following any interim or final determination of an appeal in that respect if an appeal is lodged and proceeded with,

and subject always to:

- (i) adjustment following final determination of an appeal under Condition H4; or
- (ii) variation under Condition H5,

and **"establish"** and **"establishment"** shall be construed accordingly;

**"Extended Disruption"**

means a Disruptive Event which is likely to be of sufficient duration as to make it practicable to adopt a revised timetable;

**"Network Rail Railway Operational Code"**

has the meaning ascribed to it in Condition H1.1 of the Network Rail Network Code;

**"Objective"**

means the objective of the CVL Railway Operational Code specified in Condition H1.2; and

**"Subsidiary Documentation"**

means all plans, procedures and documents which are required to be produced under one or more CVL ROC Sections and designated as Subsidiary Documentation under them.

## **Condition H1 - CVL RAILWAY OPERATIONAL CODE AND ITS OBJECTIVE**

### **1.1 *CVL Railway Operational Code***

The CVL Railway Operational Code is a code to be established under this Part H in accordance with the CVL ROC Plan and references to the CVL Railway Operational Code, once established, shall include each CVL ROC Section when it is established and all Subsidiary Documentation.

### **1.2 *Objective***

The objective of the CVL Railway Operational Code is to sustain and, where necessary, restore expeditiously the operation of Services in accordance with the Working Timetable, having regard to:

- (a) the needs of passengers and freight customers;
- (b) the interests of safety and security; and
- (c) the efficient and economical operation of the network.

### **1.3 *Relationship to the CVL Network Code***

The CVL Railway Operational Code:

- (a) may only be varied under Part H of the CVL Network Code; and
- (b) does not form part of the CVL Network Code.

## **Condition H2 - OBLIGATION TO OBSERVE THE CVL RAILWAY OPERATIONAL CODE**

### **2.1 Subject to Condition H2.2:**

- (a) the CVL IM and each Train Operator shall comply with the CVL Railway Operational Code, once established; and
- (b) each Freight Customer Access Option Holder shall comply with those CVL ROC Sections that are expressed in the CVL Railway Operational Code to apply to Freight Customer Access Option Holders.

### **2.2 Until the CVL Railway Operational Code is established, the CVL IM, each Train Operator and each Freight Customer Access Option Holder shall comply with the Network Rail Railway Operational Code as if the Network Rail Operational Code applies, mutatis mutandis, to the CVL.**

## **Condition H3 - SCOPE OF CVL RAILWAY OPERATIONAL CODE**

### 3.1 The CVL Railway Operational Code shall contain:

- (a) a specification of the procedures and policies by which the CVL IM, in cooperation with Train Operators and Freight Customer Access Option Holders, will promote achievement of the Objective, including:
  - (i) a procedure for notification of, and communication in relation to, Disruptive Events or reasonably foreseeable Disruptive Events;
  - (ii) train regulation policies;
  - (iii) an emergency timetable procedure in the event of Extended Disruption;
  - (iv) arrangements for clearance of track blockages and assistance for failed trains;
  - (v) arrangements for:
    - (A) the provision of equipment to deal with adverse weather conditions; and
    - (B) the preparation for and response to seasonal disruptions;
  - (vi) control arrangements; and
  - (vii) other matters which it is necessary or expedient should be covered in order to promote achievement of the Objective;
- (b) procedures for reviewing and monitoring the effectiveness of the CVL Railway Operational Code; and
- (c) procedures for the production, review, approval and publication of Subsidiary Documentation.

### 3.2 **Publication**

The CVL Railway Operational Code, once established, shall be Published on its Website by the CVL IM subject to Condition A3 of the CVL Network Code.

### 3.3 **Subsidiary Documentation**

All Subsidiary Documentation shall:

- (a) be of a standard which is consistent with promoting the achievement of the Objective and the requirement for compliance under Condition H2; and

- (b) be subject to procedures for review and (where applicable) approval.

## **Condition H4 - APPEALS**

### **4.1 *Right of appeal in accordance with the CVL ADRR***

Subject to Condition H4.3, if any Train Operator or Freight Customer Access Option Holder is dissatisfied as to any matter concerning or in connection with:

- (a) any variation of a CVL ROC Section issued under Condition H5; or
- (b) any decision by the CVL IM not to implement a variation proposed by a Train Operator or Freight Customer Access Option Holder under Condition H5.2,

the Train Operator or Freight Customer Access Option Holder may refer the matter for determination in accordance with the CVL ADRR (as supplemented or varied by this Condition H4).

### **4.2 *Time limits for appeal***

A Train Operator's or Freight Customer Access Option Holder's right of appeal under Condition H4.1 shall lapse if the relevant matter is not referred in accordance with the CVL ADRR in the case of a variation under Condition H5:

- (a) if Condition H5.5(a) applies, within 30 days of the later of the date on which it is published and the date on which it is notified to that Train Operator or Freight Customer Access Option Holder under Condition H5.9, or
- (b) if Condition H5.5(b) applies, within the period specified for such appeal in the relevant CVL ROC Section.

### **4.3 *Information to be sent in relation to the appeal***

Without prejudice to Condition H4.5, if there has been a reference for determination in accordance with the CVL ADRR under Condition H4.1:

- (a) in the case of a referral under Condition H4.1, the CVL IM shall provide the Train Operator, Freight Customer Access Option Holder and the Appeal Body with the contact details of every other Train Operator and Freight Customer Access Option Holder who the CVL IM reasonably considers may be affected by the CVL ROC Section variation within seven days of the making of the reference; and
- (b) the person making the reference shall:

- (i) include with his reference a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
- (ii) within 14 days of the reference the CVL IM shall publish a copy of the reference and the statement specified in Condition H4.3(b)(i).

#### 4.4 **Criteria for appeal**

Any matter referred under Condition H4.1 or H4.2 shall be determined by reference to the most effective manner of promoting the achievement of the Objective.

#### 4.5 **Publication of adjusted CVL ROC Section**

If the outcome of any appeal brought under this Condition H4 is the adjustment of the CVL ROC Section, the CVL IM shall:

- (a) promptly Publish on its Website the CVL ROC Section as adjusted by the outcome of such appeal; and
- (b) notify each affected Train Operator or Freight Customer Access Option Holder, ORR and any other person who notified the CVL IM that it wished to be consulted under Condition H5.6(c) that the adjusted CVL ROC Section is available on the CVL IM Website.

### **Condition H5 - VARIATIONS TO CVL RAILWAY OPERATIONAL CODE**

Conditions H5.1 to Conditions H5.4 inclusive apply to all variations to the CVL Railway Operational Code (once established) including all Subsidiary Documentation. Notwithstanding the provisions of Conditions H5.1 to H5.4 inclusive:

- (a) additional procedures for varying Subsidiary Documentation may be contained in and required by a CVL ROC Section or the Subsidiary Documentation itself, and
- (b) procedures for varying Subsidiary Documentation in substitution for those under all or any of Conditions H5.1 to H5.4 inclusive may also be contained in and required by the relevant Subsidiary Documentation itself.

Conditions H5.5 and H5.9 apply only to variations to CVL ROC Sections.

#### 5.1 **Mandatory Variations**

the CVL IM shall propose variations to the CVL Railway Operational Code (once established):

- (a) at any time if it reasonably considers that this is necessary in order better to promote the achievement of the Objective, striking a balance between:
  - (i) the need for the CVL IM and Train Operators and Freight Customer Access Option Holders to be able to plan their businesses with a reasonable degree of assurance; and
  - (ii) the need for flexibility to address new requirements, including new timetables, introduction of new rolling stock and changes to the infrastructure and traffic patterns; and
- (b) at any time, whether or not paragraph (a) above applies, if required to do so by notice from ORR.

**5.2 *Variations proposed by a Train Operator or Freight Customer Access Option Holder***

A Train Operator or Freight Customer Access Option Holder may propose to the CVL IM variations to the CVL Railway Operational Code (once established) if it reasonably considers that this is necessary in order better to promote the achievement of the Objective and any such proposal shall include:

- (a) the reasons why it is proposed to make the variation; and
- (b) details of the proposed variation.

**5.3 *Procedure for variations proposed by a Train Operator or Freight Customer Access Option Holder***

Following receipt of a proposed variation to the CVL Railway Operational Code (once established) from a Train Operator or Freight Customer Access Option Holder under Condition H5.2, the CVL IM shall:

- (a) evaluate and discuss the proposed variation with that Train Operator or Freight Customer Access Option Holder for such period as is reasonable having due regard to the likely impact of the proposed variation on any of the CVL IM and other operators of trains; and
- (b) following the evaluation and discussion:
  - (i) implement the variation under Condition H5.4; or
  - (ii) propose a variation under Condition H5.1 to implement the proposed variation; or
  - (iii) inform the Train Operator or Freight Customer Access Option Holder that the CVL IM does not propose to implement the proposed variation, giving reasons for its decision.

#### 5.4 **Variations by agreement**

- (a) Subject to the provisions of Condition H5.4(b), if the CVL IM and any relevant Train Operator or Freight Customer Access Option Holder agree a variation to the CVL Railway Operational Code (once established) which affects only that Train Operator or Freight Customer Access Option Holder:
  - (i) the CVL IM shall notify ORR of the proposed variation; and
  - (ii) the variation shall become effective on the date agreed for its implementation (which shall be not less than seven days from the date of the CVL IM's notice under Condition H5.4(a)(i));
- (b) If the CVL IM and any relevant Train Operator and Freight Customer Access Option Holder agree a variation to the CVL Railway Operational Code (once established) which affects only that Train Operator or Freight Customer Access Option Holder and is a variation to Subsidiary Documentation only, the variation shall become effective on the date agreed for its implementation and Condition H5.4(a)(i) and (ii) shall not apply.

#### 5.5 **Variations proposed by the CVL IM**

Where any change to the CVL Railway Operational Code (once established) under Condition H5.1 is a change to a CVL ROC Section, the CVL IM shall:

- (a) follow the procedure for establishing the variation under Conditions H5.6, H5.7 and H5.8; or
- (b) if the proposed variation falls within any modification procedure contained in the relevant CVL ROC Section as established, the CVL IM shall follow that procedure provided that such modification procedure contains:
  - (i) a right of appeal for any Train Operator or Freight Customer Access Option Holder who is dissatisfied as to any matter concerning or in connection with the variation and a time limit for bringing that appeal; and
  - (ii) a mechanism for establishing the variation,

and in either case, the CVL IM shall specify the reason for the variation and the timing for implementing the variation (which shall not be less than 30 days from the date of notification of the proposed variation in accordance with the relevant procedure).

## 5.6 **Consultation on a CVL ROC Section variation**

Where Condition H5.5(a) applies, the CVL IM shall:

- (a) publish and send details of the proposed variation to each affected Train Operator, Freight Customer Access Option Holder, the Welsh Ministers, Transport for Wales and ORR; and
- (b) consult each Train Operator and Freight Customer Access Option Holder likely to be affected by the proposed variation, and invite the submission to it of representations or objections within a period or not less than 30 Working Days from the date of notification.

5.7 Each Train Operator and Freight Customer Access Option Holder consulted under H5.6 shall:

- (a) consider the matters on which the CVL IM has consulted it; and
- (b) give notice to the CVL IM of any representations or objections it wishes to make in relation to the consultation no later than the date for concluding the consultation specified under Condition H5.6(b).

5.8 Following consideration of all representations and objections received under Condition H5.7, the CVL IM shall consider whether the proposed variation should be implemented and if it concludes that it should, then the CVL IM shall act in accordance with Condition H5.9 and thereby, subject to Condition H4, establish the variation.

## 5.9 **Publication of varied CVL ROC Section**

The CVL IM shall:

- (a) Publish on its Website in accordance with Condition H3.2 any variation to a CVL ROC Section; and
- (b) notify each affected Train Operator and Freight Customer Access Option Holder that the varied CVL ROC Section is available on the CVL IM Website.

## 5.10 **Consequential changes to CVL ROC Sections**

Where any changes are made to this Part H that require consequential changes to be made to any CVL ROC Section, those consequential changes shall be made and be effective from the date on which the relevant change to Part H is established. The CVL IM shall, within 30 Working Days of the establishment of the revised Part H, make any necessary changes to the CVL Railway Operational Code and publish any revised CVL ROC Sections in accordance with Condition H5.9.



# Part I

Not used.

# Part J – Changes to Access Rights

## Condition J1

### INTRODUCTION

#### 1.1 *Overview*

1.1.1 Part J provides mechanisms where, if a Train Operator or a Freight Customer Access Option Holder, together referred to as "Part J Access Beneficiaries", is not using Access Rights they can be removed from the Part J Access Beneficiary's contract. The mechanisms can be instigated by:

- (a) the Part J Access Beneficiary itself as set out in Condition J2;
- (b) the CVL IM as set out in Condition J4; or
- (c) by a third party Part J Access Beneficiary who wishes to use the rights in question. Condition J5 sets out a process where a Part J Access Beneficiary can apply for rights held by another Part J Access Beneficiary where that Part J Access Beneficiary has not used them and the Applicant has a commercial need for them. Condition J7 sets out a process whereby a freight operator can apply for rights held by another freight operator if it wins the existing freight traffic. In addition, Condition J7 provides that a Freight Customer Access Option Holder can apply for the rights held by a freight operator provided those rights are used for the provision of transport services on behalf of that Freight Customer Access Option Holder who wishes to draw down those rights to another freight operator of its choice.

1.1.2 Where there has been a change of Access Rights' holder, Part J also sets out mechanisms for calculating any necessary corresponding change to cordon caps held by the Part J Access Beneficiary losing the rights. This process is detailed in Condition J6 in relation to Level Two Rights that have been transferred pursuant to Condition J4 and in Condition J8 where Level Two Rights have been transferred under the process set out in Condition J7.

1.1.3 Condition J9 provides that the CVL IM should hold regular meetings with each Part J Access Beneficiary for the purpose of reviewing the Access Rights held by that Part J Access Beneficiary and its use of them. Where the CVL IM does not do this, the Office of Rail and Road can direct the CVL IM to hold such a meeting.

1.1.4 Subject to certain criteria, Condition J10 allows the CVL IM to amend Access Rights in order to achieve Better Use, or where Network Rail has amended an

access route which impacts on the CVL. An Access Right Change is subject to ORR approval.

- 1.1.5 Condition J11 obliges the CVL IM to publish a copy or statement of every notice or notification given or received pursuant to this Part J in order to inform persons holding or contemplating holding or surrendering Access Rights about how the allocation of capacity on any part of the CVL may change over time. Where the CVL IM does not do this, the Office of Rail and Road can direct the CVL IM to do so.
- 1.1.6 Condition J12 sets out a dispute resolution process whereby any dispute arising under Part J is first of all referred for determination in accordance with the CVL ADRR and any appeal is referred to the Office of Rail and Road.

## 1.2 ***Interpretation***

Where the following definitions are used in this Part J, they shall have the meanings shown below:

**"Access Proposal"** has the meaning shown in 0 of the CVL Network Code;

**"Access Right"** means, in relation to an Access Agreement, permission to use track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the Access Agreement in question;

**"Access Right Change"** means an amendment or limitation of a Part J Access Beneficiary's Firm Right;

**"Affected Person"** means, in relation to Qualifying Information, the person to whose affairs the information relates;

**"Allocation Chair"** has the meaning shown in the CVL ADRR;

**"Ancillary Movements"** has the meaning shown in 0 of the CVL Network Code;

**"Applicant"** has the meaning shown in:

- (a) Condition J5.1(a); or
- (b) Condition J7.2,

as applicable;

**"Appointed Operator"** means a Train Operator into whose Access Agreement a Freight Customer Access Option Holder has drawn down some

or all of its Access Rights in accordance with that Freight Customer Access Option Holder's Access Agreement;

**"beneficiary"** has the meaning shown in section 17(7) of the Act;

**"Better Use"** means a positive significant impact on the ability of the CVL IM to achieve the objective set out in Condition D4.6.1, that is, to share capacity on the CVL for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services;

**"Commencement Date"** means the date on which the relevant Quantum Access Right takes effect in accordance with the Part J Access Beneficiary's Access Agreement;

**"Confidentiality Direction"** has the meaning shown in Condition J3.8.1;

**"Confidentiality Undertaking"** has the meaning shown in Condition J3.15.1;

**"Contingent Right"** has the meaning shown in the relevant Access Agreement;

**"Counter Notice"** means a notice given by the Part J Access Beneficiary to the CVL IM under Condition J4.8.1 or J5.3.1(b);

**"CVL ADRR Determination"** means a determination made in accordance with the CVL ADRR, where such determination has not been referred to the Office of Rail and Road under either Condition J11.1 within the time limit for such referral;

**"CVL Freight Track Access Contract"** means the template CVL freight track access contract as may be amended from time to time;

**"CVL Passenger Track Access Contract"** means the template CVL passenger track access contract as may be amended from time to time;

**"Determination"** means a CVL ADRR Determination or an Office of Rail and Road Determination, as the case may be and **"Determined"** (and cognate expressions) shall be construed accordingly;

**"Failure to Use"** has the meaning shown in Condition J4.1.1;

**"Failure to Use Notice"** means a notice given by the CVL IM to a Part J Access Beneficiary under Condition J4.4;

**"Funder"** means the appropriate franchising authority and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person which provides money by way of grant or

loan with the primary purpose of securing the provision of services relating to railways;

**"Grounds for Objection"** means the grounds set out in Condition J4.9 or Condition J7.5.1, as applicable;

**"Incumbent"** has the meaning shown in:

- (a) Condition Part J5.1(b)(ii);
- (b) Condition J7.2; or
- (c) Condition J10.1.2(b);

**"J9 Direction"** has the meaning shown in Condition J9.2.1;

**"J11 Direction"** has the meaning shown in Condition J11.2.1;

**"Level Two Right"** has the meaning shown in the relevant Access Agreement;

**"New Working Timetable"** has the meaning shown in 0 of the CVL Network Code;

**"Notice of Objection"** means a notice given by an Affected Person to the CVL IM of the kind referred to in Condition J3.5.1(b);

**"Office of Rail and Road Determination"** means a determination made by the Office of Rail and Road following a reference made under Condition J11.1;

**"Part J Access Beneficiary"** means a Train Operator or a Freight Customer Access Option Holder;

**"Period for Objections"** means the period specified in Condition J3.5.1(b);

**"Primary Purpose"** means conveying 50% or more of the gross tonnage transported using the Rights Subject to Surrender, over the 12 month period immediately preceding the date of service of the Third Party Notice, for a Primary Purpose Customer;

**"Primary Purpose Customer"** means a customer or customers other than the third party referred to in Condition J7.1.2(a);

**"Qualifying Information"** means information which the CVL IM has acquired in relation to the affairs of:

- (a) any Affected Person; or
- (b) an Incumbent

under an Access Agreement between the CVL IM and that person;

**"Quality Adjustment"** means the alteration of any aspect of the Access Rights of the Part J Access Beneficiary (whether in relation to performance, the quality or condition of the CVL, the liability of any person to any other person, or in any other respect) other than a Quantum Adjustment in a manner which is not inconsistent with the CVL Network Code;

**"Quantum Access Right"** means any right under an Access Agreement in respect of a number (or quantum) of Train Slots in any specified period (including rights to Train Slots in respect of additional trains or relief services), and includes part of such a right;

**"Quantum Adjustment"** means the surrender of any Access Right of the Part J Access Beneficiary in question;

**"relate"** and **"in respect of"** in relation to a Train Slot and a Quantum Access Right where these terms are used together, means that the Train Slot in question has been secured by the Part J Access Beneficiary in accordance with 0 in the exercise of that Quantum Access Right;

**"Released Capacity"** means track capacity made available to the CVL IM as a consequence of the making of a Specified Relevant Surrender or a Specified Relevant Adjustment, and **"release of capacity"** shall be construed accordingly;

**"Relevant Adjustment"** means a Quality Adjustment or a Quantum Adjustment, and **"adjust"** shall be construed accordingly;

**"Relevant Consultation"** means a consultation carried out by the CVL IM with a Third Party during negotiation under Condition J10.4 or before an offer of compensation is made under J10.6;

**"Relevant Enquiry"** means an enquiry made of the CVL IM by the Part J Access Beneficiary under Condition J2;

**"Relevant Financial Consequences"** means the cost savings or costs incurred referred to in Condition J2.4.1(a);

**"Relevant Information"** means information which complies with the provisions of Condition J2.4;

**"Relevant Response"** means the CVL IM's answer to a Relevant Enquiry under Condition J2;

**"Relevant Surrender"** means the surrender to the CVL IM of Access Rights possessed by the Part J Access Beneficiary;

**"Relevant Undertaking"** means a deed of undertaking from the Third Party to pay the Incumbent:

- (a) the agreed reasonable costs of providing an estimate of compensation, in advance of those costs being incurred, pursuant to Condition J10.10; and
- (b) compensation under Condition J10.7, where the Third Party has requested that the CVL IM withdraws the notice of a proposed Access Right Change under Condition J10.16 but the Incumbent has nonetheless suffered costs, direct losses and expenses (including loss of revenue);

**"Restrictive Provisions"** means any provisions in the Incumbent's Access Agreement that restrict the operation of the transferring Access Right, and specific timings relating to the transferring Access Right;

**"Rights Review Meeting"** means a meeting held between the CVL IM and a Part J Access Beneficiary for the purpose of reviewing the Quantum Access Rights held by that Part J Access Beneficiary and its use of them;

**"Rights Review Notice"** has the meaning shown in Condition J9.1.2;

**"Rights Subject to Surrender"** means, in relation to:

- (a) a Failure to Use Notice; or
- (b) a Third Party Notice,

as applicable, the Quantum Access Right to which such notice refers and:

- (i) any Train Slot, including any Y-Path, or part of it in the Working Timetable which relates to that Quantum Access Right;
- (ii) any Ancillary Movements or Stabling that the CVL IM (or the Applicant in relation to Condition J7.3) considers:
  - (A) are directly associated with the relevant Quantum Access Right; and
  - (B) will no longer be required by the relevant Part J Access Beneficiary following the surrender or reduction of the Quantum Access Right, as applicable; and
- (iii) any Access Proposal relating to any such Quantum Access Right;

**"Rights under Review"** shall have the meaning shown in Condition J9.1.2;

**"Secretary"** has the meaning given to it in the CVL ADRR;

**"Service Characteristics"** for the purposes of a right surrendered under Condition J7.8, has the meaning shown in the Incumbent's Access Agreement;

**"Specified Relevant Adjustment"** means a Relevant Adjustment specified in a Relevant Enquiry;

**"Specified Relevant Surrender"** means a Relevant Surrender specified in a Relevant Enquiry;

**"Stabling"** has the meaning shown in the relevant Access Agreement;

**"Third Party"** means an Access Beneficiary or a Potential Access Party who has submitted an Access Right Change proposal to the CVL IM;

**"Third Party Counter Notice"** means a notice given by the Incumbent to the CVL IM under Condition J7.5.1;

**"Third Party Notice"** means a notice given under Condition J7.2;

**"Train Operator Variation Request"** has the meaning shown in 0 of the CVL Network Code;

**"Train Slot"** has the meaning shown in 0 of the CVL Network Code;

**"Use Period"** has the meaning shown in Condition J4.2.3;

**"Use Quota"** has the meaning shown in Condition J4.2.2; and

**"Y-Path"** means a Train Slot incorporated in the Working Timetable which

- (a) departs from one or more origins to the same destination; and/or
- (b) arrives at one of more destinations from the same origin,

that is identified as such by the incorporation of the letter "Y" in the operating characteristics part of the Train Slot's heading.

### 1.3 ***Freight Customer Access Option Holders***

#### 1.3.1 Where there is any reference in this Part J:

- (a) to any Access Right of a Part J Access Beneficiary (including any reference to any Access Right of an Incumbent in Condition J5 or J7) which is an Access Right of a Freight Customer Access Option Holder that has been drawn down by that Freight Customer Access Option Holder into an Access Agreement of an Appointed Operator, then any alteration, adjustment, surrender, agreement, determination

or other decision to be made pursuant to this Part J in respect of that Access Right shall be made with reference to and, where required by this Part J, in consultation with, that Freight Customer Access Option Holder, and not that Appointed Operator; and

- (b) to any notice or other document being served on a Part J Access Beneficiary (including any notice to be served on an Incumbent pursuant to Condition J5 or Condition J7), or a Part J Access Beneficiary being required to serve any notice or other document on any other party, and the notice or other document in question relates to, or otherwise affects, any Access Right of a Freight Customer Access Option Holder that has been drawn down into an Access Agreement of an Appointed Operator, then (save in respect of Condition J3):
  - (i) any notice or other document to be served on that Part J Access Beneficiary (including any notice to be served on an Incumbent pursuant to Condition J5 or Condition J7 ) shall be served on that Freight Customer Access Option Holder (with a copy to the Appointed Operator for information purposes only); and
  - (ii) any notice or other document to be served by that Part J Access Beneficiary shall be served by that Freight Customer Access Option Holder (with a copy to the Appointed Operator for information purposes only).

1.3.2 Non-receipt by an Appointed Operator of a copy notice or document pursuant to Condition J1.3.1(b) shall not affect the validity of a notice or document validly served on the CVL IM or the relevant Freight Customer Access Option Holder (as the case may be).

#### 1.4 ***Response Timescales***

1.4.1 Unless otherwise stated in this Part J, where one party is required to respond to another, the timescale for such response is 10 Working Days

### **Condition J2 - ADJUSTMENT OF ACCESS RIGHTS**

#### 2.1 ***Obligation of Part J Access Beneficiaries to surrender Access Rights***

2.1.1 Without prejudice to the rest of this Part J, a Part J Access Beneficiary shall voluntarily and in good faith surrender those Access Rights or part or parts of such Access Rights in respect of which it has no current or foreseeable reasonable on-going commercial need, provided that an Appointed Operator may not surrender on behalf of a Freight Customer Access Option Holder any Access Right which has been drawn down by that Freight Customer Access

Option Holder into the Access Agreement of that Appointed Operator without the written consent of that Freight Customer Access Option Holder.

2.1.2 If a Part J Access Beneficiary wishes to make a Relevant Surrender pursuant to Condition J2.1.1, it shall give the CVL IM notice to that effect. The Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J2.1.3.

2.1.3 The CVL IM shall notify the Office of Rail and Road of the relevant modification to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date on which the Part J Access Beneficiary gives notice to the CVL IM agreeing to the Relevant Surrender pursuant to Condition J2.1.2.

## 2.2 ***Obligation of the CVL IM to answer Part J Access Beneficiary's Relevant Enquiries***

2.2.1 The CVL IM shall provide the Part J Access Beneficiary with a Relevant Response within 30 Working Days of the making of a Relevant Enquiry.

## 2.3 ***Contents of Relevant Enquiries***

2.3.1 Each Relevant Enquiry shall contain:

- (a) a specification of the Access Rights (if any) which the Part J Access Beneficiary, at that time, is aware that it may be willing to surrender to the CVL IM;
- (b) a specification of the Access Rights (if any) which the Part J Access Beneficiary, at that time, is aware that it may be willing to adjust;
- (c) a request that the CVL IM provides the Part J Access Beneficiary with Relevant Information in relation to:
  - (i) any Specified Relevant Surrender; and
  - (ii) any Specified Relevant Adjustment;
- (d) a specification of the dates with effect from which the Specified Relevant Surrender or Specified Relevant Adjustment may be expected to take place;
- (e) a statement whether or not any Specified Relevant Surrender or Specified Relevant Adjustment is to be temporary; and
- (f) in the case of a temporary Specified Relevant Surrender or Specified Relevant Adjustment, a specification of the date on which the temporary Specified Relevant Surrender or Specified Relevant

Adjustment shall cease to have effect, being no later than the second anniversary of the date when it is to take effect.

## 2.4 ***Information to be provided by the CVL IM***

2.4.1 Subject to Condition J3, the Relevant Information which the CVL IM shall provide in each Relevant Response shall be a statement of:

- (a) the costs which the CVL IM may reasonably expect to save or incur if any Specified Relevant Surrender or Specified Relevant Adjustment is made;
- (b) the times at which and the periods over which the Relevant Financial Consequences will have effect;
- (c) the steps which the CVL IM would expect to take to achieve the Relevant Financial Consequences within the times referred to in Condition J2.4.1(b) and the opportunities which the CVL IM has to accelerate or postpone the effect of the Relevant Financial Consequences;
- (d) the extent to which any Released Capacity may reasonably be expected to be used:
  - (i) by any other operator of trains or Freight Customer Access Option Holder; and
  - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the CVL;
- (e) the reasonably foreseeable financial effects on the CVL IM of the release of capacity;
- (f) the CVL IM's proposals as to the amounts (if any) which should be payable by or to the Part J Access Beneficiary under the Access Agreement as a consequence of the making of any Specified Relevant Surrender or Specified Relevant Adjustment and its reasons for them, including in relation to the sharing between the CVL IM and the Part J Access Beneficiary of the Relevant Financial Consequences; and
- (g) whether any other person has made an enquiry of the CVL IM pursuant to an agreement between that person and the CVL IM in relation to the surrender or adjustment of Access Rights under that agreement which, if made, might reasonably be expected to affect the interests of the Part J Access Beneficiary in relation to the Specified Relevant Surrender or Specified Relevant Adjustment in question,

together with such other information as the Part J Access Beneficiary reasonably requests, in each case in a form and amount of detail which is sufficient to enable the Part J Access Beneficiary to make a proper assessment of the effect of the making of the Specified Relevant Surrender or Specified Relevant Adjustment in question.

## 2.5 ***Pre-existing obligations of confidence***

2.5.1 Nothing in this Condition J2 shall require the CVL IM to break an obligation of confidence which arose before 1 April 1994.

## 2.6 ***Consultation by the CVL IM***

2.6.1 In preparing each Relevant Response, the CVL IM shall:

- (a) except to the extent otherwise requested by the Part J Access Beneficiary and in accordance with such (if any) conditions as the Part J Access Beneficiary shall specify; and
- (b) subject to Condition J3,

carry out such consultation of:

- (i) other operators of trains, other Freight Customer Access Option Holders and other persons whom it has reason to believe intend to become operators of trains or Freight Customer Access Option Holders; and
- (ii) any Funders which may be directly affected and of which the CVL IM is aware, or ought reasonably to have been aware,

as shall be necessary or expedient so as to enable the CVL IM properly to inform itself of the effects on the capacity of the track in question which the Specified Relevant Surrender or Specified Relevant Adjustment in question, if made, is likely to have.

## 2.7 ***Obligation to co-operate***

2.7.1 If:

- (a) the CVL IM has made any enquiry of a Part J Access Beneficiary in relation to a Relevant Enquiry made by that Part J Access Beneficiary or any other Part J Access Beneficiary under this Condition J2; and
- (b) the enquiry is one which the Part J Access Beneficiary may reasonably be expected to answer,

the Part J Access Beneficiary shall provide the CVL IM with a response to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances.

2.7.2 Information provided in any response under Condition J2.7.1 shall be treated as Qualifying Information and Condition J3 shall apply accordingly.

## 2.8 ***Estimated costs of providing Relevant Response***

2.8.1 The CVL IM:

- (a) shall provide the Part J Access Beneficiary, if so requested by it and as soon as reasonably practicable after the request, with:
  - (i) its best estimate of its costs of providing a Relevant Response; and
  - (ii) having provided such an estimate, its best estimate of the costs which it has incurred in preparing the Relevant Response in question up to the date of the request or any other date specified in the request; and
- (b) shall not, in preparing a Relevant Response, exceed the amount of the estimate without first notifying and obtaining the consent of the Part J Access Beneficiary.

## 2.9 ***Payments of costs of Relevant Responses***

2.9.1 The Part J Access Beneficiary shall:

- (a) be entitled to make any request of the kind referred to in Condition J2.8 at the time of making the Relevant Enquiry in question and at any time and from time to time thereafter, and the failure of the Part J Access Beneficiary to make any such request on any occasion shall not prejudice its right to make such a request on a later occasion;
- (b) pay to the CVL IM an amount calculated pursuant to Condition J2.10; and
- (c) be entitled to receive from the CVL IM, on request, a certificate from its auditors verifying that the costs referred to in Condition J2.10 have been incurred in providing the Relevant Response.

## 2.10 ***Division and payments of costs***

2.10.1 The amount referred to in Condition J2.9(b) shall be an amount equal to 75 per cent of the amount of the CVL IM's reasonable costs of providing the Relevant

Response which exceed £1,000 (excluding VAT). Such amount shall be payable not later than 20 Working Days after the later of:

- (a) the date upon which the Relevant Response shall be provided; and
- (b) the date upon which the CVL IM requests payment of the amount in question in an invoice which is sufficient for the purposes of Value Added Tax.

2.10.2 For the purposes of this Condition J2, the CVL IM's costs shall include a fair allocation of its administrative and other regional and national costs of carrying on its business.

## 2.11 ***Right to elect to surrender or adjust Access Rights***

2.11.1 If, following receipt of a Relevant Response, the Part J Access Beneficiary:

- (a) wishes to have a Specified Relevant Adjustment effected; and
- (b) accepts any amounts payable and sharing of any Relevant Financial Consequences proposed by the CVL IM in the Relevant Response,

it shall be entitled to do so after giving to the CVL IM and the Office of Rail and Road a notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Adjustment shall have effect from the date the Office of Rail and Road gives its consent to the making of the Relevant Adjustment in question in accordance with Condition J2.13.

2.11.2 If, following receipt of a Relevant Response, the Part J Access Beneficiary:

- (a) wishes to make a Specified Relevant Surrender; and
- (b) accepts any amounts payable and sharing of any Relevant Financial Consequences proposed by the CVL IM in the Relevant Response,

it shall give the CVL IM notice to that effect within 15 Working Days after the date upon which it receives the Relevant Response in question. The Specified Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J2.11.3.

2.11.3 The CVL IM shall notify the Office of Rail and Road of the relevant modification to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date on which the Part J Access Beneficiary gives notice to the CVL IM agreeing to the Specified Relevant Surrender pursuant to Condition J2.11.2.

## 2.12 ***Right of Part J Access Beneficiary to have Access Rights adjusted***

- 2.12.1 If it is Determined that the Part J Access Beneficiary should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect, the Part J Access Beneficiary shall give notice to the CVL IM as to whether it elects to exercise that entitlement. If the Part J Access Beneficiary does not give notice to the CVL IM within 15 Working Days of the date of the Determination, the Part J Access Beneficiary shall lose the entitlement in question.
- 2.12.2 If the Part J Access Beneficiary gives notice pursuant to Condition J2.12.1 of an election to exercise an entitlement to make a Relevant Surrender, the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date of such notice. The CVL IM shall include a copy of the relevant CVL ADRR Determination, if applicable, with the notification.
- 2.12.3 Any Relevant Surrender shall have effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J2.12.2.

## 2.13 ***Office of Rail and Road's consent to a Quality Adjustment of Access Rights***

- 2.13.1 Subject to Condition J2.13.4, a Quality Adjustment shall have effect only with, and from the date specified in, in the Office of Rail and Road's consent.
- 2.13.2 The CVL IM shall submit the relevant modifications to the Access Agreement or Access Agreements which have the effect of a Quality Adjustment to the Office of Rail and Road for consent within 10 Working Days of:
- (a) The Part J Access Beneficiary's election to have a Specified Relevant Adjustment effected under Condition J2.11; or
  - (b) The Part J Access Beneficiary's election to have a Relevant Adjustment effected under Condition J2.12.
- 2.13.3 The CVL IM and the Part J Access Beneficiary shall use all reasonable endeavours to procure that the Office of Rail and Road is furnished with sufficient information and evidence as it requires to determine:
- (a) whether or not to give its consent to the making of the Quality Adjustment in question or to part only of the modifications submitted to it; and
  - (b) the date from which the Quality Adjustment, or part only, shall have effect.

2.13.4 The Office of Rail and Road's consent is not required in respect of a Quality Adjustment where the Quality Adjustment has been Determined by the Office of Rail and Road in accordance with Condition J11.

### **Condition J3 - CONFIDENTIALITY**

#### **3.1 *Affected Persons and their interests***

3.1.1 If, having received a Relevant Enquiry, the CVL IM has reasonable grounds for believing that, in order to provide the Relevant Response:

- (a) it is necessary for it to disclose to the Part J Access Beneficiary any Qualifying Information; and
- (b) such disclosure would or might, in the CVL IM's reasonable opinion, seriously and prejudicially affect the interests of the Affected Person,

the CVL IM shall give notice to that effect to the Part J Access Beneficiary.

#### **3.2 *Part J Access Beneficiary's right to elect for Relevant Response without Qualifying Information***

3.2.1 Having received a notice from the CVL IM pursuant to Condition J3.1, the Part J Access Beneficiary shall be entitled, by notice given to the CVL IM, to elect either:

- (a) that the Relevant Response be provided to it without the Qualifying Information; or
- (b) that the CVL IM should give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

3.2.2 The CVL IM shall not proceed with its preparation of the Relevant Response until the Part J Access Beneficiary has made its election.

#### **3.3 *Relevant Response without Qualifying Information***

3.3.1 If the Part J Access Beneficiary makes an election pursuant to Condition J3.2.1(a):

- (a) the CVL IM shall proceed to prepare and provide the Relevant Response so as to omit the Qualifying Information; and
- (b) if, having received a Relevant Response of the kind referred to in Condition J3.3.1(a), the Part J Access Beneficiary wishes the CVL IM to revise it so as to include any Qualifying Information, it shall be entitled to do so by notice to the CVL IM.

3.3.2 If the Part J Access Beneficiary gives notice to the CVL IM pursuant to Condition J3.3.1(b), the CVL IM shall proceed to give notice to the Affected Person in question pursuant to Condition J3.4.1 and thereafter comply with the procedures established in this Condition J3.

3.4 ***Relevant Response with Qualifying Information***

3.4.1 If the Part J Access Beneficiary makes an election pursuant to Condition J3.2.1(b), the CVL IM shall give notice to the Affected Person that it has grounds for a belief of the kind referred to in Condition J3.1.

3.5 ***Contents of notice to Affected Person***

3.5.1 The notice given to the Affected Person pursuant to Condition J3.4 shall be accompanied by:

- (a) a statement of the information which the CVL IM considers it necessary to disclose; and
- (b) a statement to the effect that, unless the Affected Person gives notice to the CVL IM within 15 Working Days of his receipt of the notice that they object to the disclosure in question, that person shall have lost the right to object to its disclosure.

3.6 ***Entitlement of the CVL IM to include Qualifying Information if no Notice of Objection***

3.6.1 Subject to Condition J2.5, if no Notice of Objection has been given to the CVL IM within the Period for Objections, the CVL IM shall be entitled to include the Qualifying Information in the Relevant Response.

3.7 ***Discretion of the Allocation Chair to order confidentiality***

3.7.1 If the CVL IM has received a Notice of Objection within the Period for Objections, it shall immediately give notice of that fact to the Part J Access Beneficiary and the Secretary who shall pass that notice to the Allocation Chair.

3.7.2 The notice given to the Part J Access Beneficiary pursuant to Condition J3.7.1 shall not contain any indication as to the identity of the Affected Person, whether by stating its name, the nature of its business or any information which may enable the Part J Access Beneficiary to determine its identity.

3.7.3 The notice given to the Secretary shall be accompanied by:

- (a) a copy of the Notice of Objection;
- (b) an explanation by the CVL IM as to its reasons for the belief referred to in Condition J3.1; and

(c) a request for directions of the kind referred to in Condition J3.7.4.

3.7.4 The parties shall comply with such directions which the Allocation Chair gives them in relation to the preservation of the positions of the parties (including the Affected Person) and the confidentiality of the Qualifying Information pending the determination of the matter. No such directions shall have effect for a period which is longer than 90 days without being renewed by the Allocation Chair.

3.8 ***Allocation Chair's directions as to preservation of confidentiality of Qualifying Information***

3.8.1 In a case to which Condition J3.7 applies, and subject to Condition J2.5, the CVL IM shall be entitled to include Qualifying Information in a Relevant Response except where directed not to do so by the Allocation Chair, to the extent stated and subject to such conditions (if any) as shall be specified in the direction (a "Confidentiality Direction").

3.8.2 No Relevant Response containing Qualifying Information shall be given until after the expiry of the period specified by the Allocation Chair in any directions of the kind referred to in Condition J3.7.4.

3.9 ***Grounds on which the Allocation Chair may order confidentiality***

3.9.1 A Confidentiality Direction shall only have effect if:

(a) it is stated by the Allocation Chair to have been given on the grounds that:

(i) the disclosure to the Part J Access Beneficiary of the Qualifying Information in question would or might seriously and prejudicially affect the interests of the Affected Person; and

(ii) such prejudice outweighs or is likely to outweigh the interests of Freight Customer Access Option Holders, potential Freight Customer Access Option Holders, operators and potential operators of railway assets, in each case on the part of the network in question in its disclosure to the Part J Access Beneficiary, having due regard to the matters about which duties are imposed on the Office of Rail and Road by section 4 of the Act; and

(b) the Allocation Chair has complied with the requirements specified in Conditions J3.11 and J3.12.

### 3.10 ***Opportunity to make representations to the Allocation Chair***

3.10.1 Within 20 Working Days of the Allocation Chair's receipt of a notice pursuant to Condition J3.7.1 (or such longer period as the Office of Rail and Road may allow), each of the CVL IM, the Part J Access Beneficiary and the Affected Person shall be entitled to make representations to the Allocation Chair:

- (a) as to whether it considers that the Allocation Chair should exercise his discretion to give a Confidentiality Direction; and, if so
- (b) the extent and conditions of the Confidentiality Direction.

3.10.2 Any such representations shall be accompanied by the reasons why the person in question believes the Allocation Chair should or should not (as the case may be) give a Confidentiality Direction.

### 3.11 ***Hearing on confidentiality representations***

3.11.1 If the Allocation Chair has received any representations of the kind contemplated by Condition J3.10, the Allocation Chair shall be entitled to hear the parties on the matter. The Allocation Chair has an absolute discretion as to the procedure to be followed in any such hearing, and may at any time amend it if the Allocation Chair considers it necessary to do so for the fair resolution of the matter.

### 3.12 ***Written reasons for decision***

3.12.1 If any representations have been made to him pursuant to Condition J3.10, unless the parties concerned otherwise agree, the Allocation Chair shall provide them with his reasons for his determination. Such reasons shall be given in writing.

### 3.13 ***Immunity of the Allocation Chair***

3.13.1 The Allocation Chair shall not be liable in damages or otherwise for any act or omission to act on their part (including negligence) in relation to any reference to them under this Condition J3.

3.13.2 Each of the Part J Access Beneficiary and the CVL IM shall:

- (a) indemnify and hold harmless the Allocation Chair, against every claim which may be made against any of them in relation to any of the matters referred to in Condition J3.13.1; and
- (b) to the extent that it is the creditor in the indemnity in Condition J3.13.2(a), hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Allocation Chair.

3.13.3 No provision of the Access Agreement which operates so as to exclude or restrict the liability of either party shall apply to the obligations of the parties under this Condition J3.13.

3.14 ***Preservation of confidentiality of Qualifying Information pending determination***

3.14.1 In making any determination of the kind contemplated by this Condition J3, the remit of the Allocation Chair shall include a requirement that:

- (a) any hearing of the kind contemplated by Condition J3.11 shall be conducted in such a way as not to disclose any part of the Qualifying Information; and
- (b) the reasons for the Allocation Chair's determination shall, if given to the parties, not disclose to the Part J Access Beneficiary any part of the Qualifying Information.

3.15 ***Obligation to provide Confidentiality Undertaking***

3.15.1 If:

- (a) an Affected Person has given notice to the CVL IM that it does not propose to give a Notice of Objection within the Period for Objections; or
- (b) the Allocation Chair has determined that no Confidentiality Direction shall be given in relation to Qualifying Information; or
- (c) the Affected Person requires the CVL IM to procure that the Part J Access Beneficiary gives a Confidentiality Undertaking for the benefit of the Affected Person,

the Part J Access Beneficiary shall deliver to the CVL IM an undertaking of strict confidentiality in relation to the Qualifying Information (a "Confidentiality Undertaking").

3.15.2 A Confidentiality Undertaking shall:

- (a) contain an undertaking that the person giving it will hold the Qualifying Information disclosed to it strictly confidential and will not, without the consent of the Affected Person, disclose it to any person except in any of the circumstances referred to in Clause 14.2(a)-(m) (entitlement to divulge) of the CVL Passenger Track Access Contract and the CVL Freight Track Access Contract in each case subject to the conditions which apply to such disclosures under that Clause;

- (b) contain no limitations on the liability of the person who gives it in the case of its breach; and
- (c) in every other respect, be unqualified.

3.15.3 A Confidentiality Undertaking shall be:

- (a) given to the CVL IM by the Part J Access Beneficiary as soon as reasonably practicable after the CVL IM has requested the Part J Access Beneficiary to provide it; and
- (b) held by the CVL IM upon trust for the Affected Person.

3.15.4 If the Part J Access Beneficiary fails to comply with its obligations under this Condition J3.15, the CVL IM shall not include the Qualifying Information in its Relevant Response.

#### **Condition J4 - FAILURE TO USE**

##### **4.1 *Failure to Use***

4.1.1 Subject to Conditions J4.1.2 and J4.3, a Failure to Use in relation to a Quantum Access Right occurs if:

- (a) after the Commencement Date, the Part J Access Beneficiary fails to secure the quantum of Train Slots which the Quantum Access Right permits in a New Working Timetable published by the CVL IM at D-26 or in any subsequent variation of this published in accordance with D2.7.4; or
- (b) the Part J Access Beneficiary fails to make use of a Train Slot which has been included in the Working Timetable and which relates to that Quantum Access Right.

4.1.2 Condition J4.1.1(a) shall not apply:

- (a) where the Part J Access Beneficiary was unable to secure the necessary quantum of Train Slots permitted by the Quantum Access Right because of Restrictions of Use; or
- (b) to Level Two Rights or Contingent Rights where the CVL IM has been unable to accommodate the Part J Access Beneficiary's Access Proposal into the New Working Timetable.

4.1.3 For the purposes of Condition J4.1.1(b), the Part J Access Beneficiary fails to make use of a Train Slot if it uses the Train Slot for less than the Use Quota during the relevant Use Period.

4.1.4 For the purposes of Condition J4.1.1(b) and J4.1.3, a Freight Customer Access Option Holder fails to make use of a Train Slot if either:

- (a) it fails to draw down the Access Rights to use such Train Slot into the Access Agreement of an Appointed Operator resulting in such Train Slot not being used by an Appointed Operator; or
- (b) it draws down the Access Rights to use such Train Slot into the Access Agreement of an Appointed Operator and that Appointed Operator fails to make use of that Train Slot within the meaning of Condition J4.1.3.

#### 4.2 ***Use Quota and Use Period***

4.2.1 The Use Quota and Use Period shall apply to services for the carriage of goods by railway and passengers.

4.2.2 The Use Quota shall be one.

4.2.3 The Use Period shall be 13 consecutive weeks for which a Train Slot is included in the Working Timetable. Where a Train Slot is derived from a Quantum Access Right which permits a Train Slot to be obtained on more than one day of the week, the use of the Train Slot on each relevant day of the week shall be assessed separately.

4.2.4 A train movement shall not count towards the Use Quota if it is made with the primary purpose of achieving the Use Quota for that Train Slot.

#### 4.3 ***Certain periods to be disregarded***

4.3.1 Any period of non-use shall be disregarded for the purpose of determining whether a Failure to Use has occurred under Condition J4.1.1(a) or (b) if, and to the extent that, such non-use is:

- (a) attributable to non-economic reasons beyond the Part J Access Beneficiary's control; and
- (b) is temporary in nature.

#### 4.4 ***Service of Failure to Use Notice***

4.4.1 If the CVL IM considers there has been a Failure to Use by a Part J Access Beneficiary and that Failure to Use is continuing it may serve a Failure to Use Notice on the Part J Access Beneficiary requiring the Part J Access Beneficiary to surrender Rights Subject to Surrender.

#### 4.5 **Cessation of Failure to Use**

4.5.1 Before a Failure to Use Notice has been served in accordance with Condition J4.4, there will be a cessation of a Failure to Use if:

- (a) in relation to a Failure to Use under Condition J4.1.1(a), the Part J Access Beneficiary makes:
  - (i) a Train Operator Variation Request for a Train Slot in respect of the relevant Quantum Access Right in the Working Timetable; or
  - (ii) an Access Proposal for a Train Slot in respect of the relevant Quantum Access Right in any subsequent New Working Timetable; or
- (b) in relation to a Failure to Use under Condition J4.1.1(b), the Part J Access Beneficiary makes use of a relevant Train Slot such that the Use Quota is met.

#### 4.6 **Contents of a Failure to Use Notice**

4.6.1 A Failure to Use Notice shall specify:

- (a) the Failure to Use which the CVL IM considers has occurred;
- (b) the Rights Subject to Surrender which the CVL IM requires the Part J Access Beneficiary to surrender; and
- (c) the date on which the Relevant Surrender is intended to take effect.

#### 4.7 **Acceptance of surrender**

4.7.1 If the Part J Access Beneficiary agrees to the surrender specified in the Failure to Use Notice then:

- (a) it shall, within 10 Working Days, notify the CVL IM and the Office of Rail and Road;
- (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J4.7.1(c); and
- (c) the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date on which the Part J Access Beneficiary agrees to the surrender pursuant to Condition J4.7.1(a).

#### 4.8 **Counter Notice**

4.8.1 The Part J Access Beneficiary may, within 10 Working Days of receipt of a Failure to Use Notice, serve a Counter Notice on the CVL IM stating that:

- (a) it considers the Failure to Use Notice to be invalid;
- (b) there has been no Failure to Use or there has been a cessation of a Failure to Use in accordance with Condition J4.5; and/or
- (c) any Ancillary Movements and/or Stabling specified in the Failure to Use Notice as being Rights Subject to Surrender:
  - (i) are not directly associated with the relevant Quantum Access Right; and/or
  - (ii) would still be required by the Part J Access Beneficiary following the surrender of the relevant Quantum Access Right; and/or
- (d) there is a Ground for Objection to the proposed surrender within Condition J4.9, detailing the Ground for Objection on which it relies, and must provide evidence with the Counter Notice in support of its contentions.

4.8.2 If no Counter Notice is served within 10 Working Days of receipt of a Failure to Use Notice:

- (a) the Part J Access Beneficiary will be deemed to have agreed to the surrender specified in the Failure to Use Notice;
- (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J4.8.2(c); and
- (c) the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's Access Agreement no more than 10 Working Days after the date on which the Part J Access Beneficiary is deemed to have agreed to the surrender pursuant to Condition J4.8.2(a).

#### 4.9 **Grounds for Objection**

4.9.1 An Access Beneficiary may object to a surrender specified in a Failure to Use Notice on the grounds that ("Grounds for Objection"):

- (a) the Rights Subject to Surrender relate to an enhancement of the CVL for which the Part J Access Beneficiary is contracted to pay through access charges; or

- (b) the Rights Subject to Surrender have been partially used by the Part J Access Beneficiary to the extent that:
  - (i) either the origin has been operated from, or the destination has been operated to during the Use Period through the partial use of the associated Train Slot in the Working Timetable; and
  - (ii) the partial use is supported by a relevant contract between the Part J Access Beneficiary and an end customer; and
  - (iii) prior to the receipt of the Failure to Use Notice, the Part J Access Beneficiary has advised the CVL IM in writing that it wishes to amend the relevant Quantum Access Right(s) to reflect the partial use and specifies the particular amendments it is seeking to be made; or
- (c) the Rights Subject to Surrender are required to be retained by the Part J Access Beneficiary for reasons of national security or for the transit of nuclear materials. In such cases, it will be necessary for the Part J Access Beneficiary to provide with its Counter Notice a written statement from the relevant Government department supporting the reasons for the retention of the Rights Subject to Surrender.

#### 4.10 ***The CVL IM agrees with the Part J Access Beneficiary***

##### 4.10.1 If the CVL IM agrees with the Part J Access Beneficiary:

- (a) that the matters set out in Condition J4.8.1(a), (b) or (c) have been substantiated, the Failure to Use Notice shall have failed and the CVL IM shall notify the Part J Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Counter Notice; or
- (b) that the Part J Access Beneficiary's Grounds for Objection has been substantiated in respect of any or all of the Rights Subject to Surrender (or parts thereof in the case of the Ground for Objection specified in Condition J4.9.1(b)) then, subject to Condition J4.10.2 below, the Failure to Use Notice shall have failed and the CVL IM shall notify the Part J Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Counter Notice.

4.10.2 In the case of the Ground for Objection specified in Condition J4.9.1(b), the Failure to Use Notice shall have failed only in respect of those parts of the Rights Subject to Surrender that have been partially used.

#### 4.11 ***The CVL IM does not agree with the Part J Access Beneficiary***

##### 4.11.1 If the CVL IM considers that:

- (a) the matters set out in Condition J4.8.1(a), (b) or (c) have not been substantiated; and
- (b) the Part J Access Beneficiary's Grounds for Objection have not been substantiated in respect of any or all of the Rights Subject to Surrender (or parts thereof in the case of the Ground for Objection specified in Condition J4.9.1(b)),

then it shall notify the Part J Access Beneficiary in writing that this is the case within 10 Working Days of receipt of the Counter Notice.

#### 4.12 ***Part J Access Beneficiary response to the CVL IM's notification under Condition J4.11***

4.12.1 Upon receipt of a notice under Condition J4.11, the Part J Access Beneficiary shall respond to the CVL IM in writing within 10 Working Days stating that it either accepts or disagrees with the CVL IM's decision.

4.12.2 If the Part J Access Beneficiary disagrees with the CVL IM's decision under Condition J4.11, then in addition to its response under Condition J4.12.1, it shall also at the same time refer the matter for determination in accordance with the CVL ADRR.

4.12.3 If the Part J Access Beneficiary fails to respond to the CVL IM in accordance with Condition J4.12.1 it will be deemed to have accepted the CVL IM's decision.

#### 4.13 ***Surrender of Access Rights***

4.13.1 The surrender of the Rights Subject to Surrender will occur:

- (a) where either the Part J Access Beneficiary accepts the CVL IM's decision made pursuant to Condition J4.11 or there is a CVL ADRR Determination, on the date on which such notice is given to the Office of Rail and Road pursuant to Condition J4.12.2; or
- (b) on the date specified in the Office of Rail and Road Determination, if applicable.

4.13.2 In the event of the Part J Access Beneficiary accepting the CVL IM's decision or there is a CVL ADRR Determination in accordance with Condition J4.12.1, the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date of the acceptance or of the relevant CVL ADRR Determination, as applicable and shall include a copy of the relevant CVL ADRR Determination, if applicable, with such notice.

#### 4.14 **Access Proposals**

Where any Rights Subject to Surrender surrendered under this Condition J4 include the surrender of an Access Proposal, the CVL IM's obligations under Condition D**Error! Reference source not found.** shall cease to have effect in respect of that Access Proposal as from the date the surrender takes effect in accordance with this Condition J4.

### **Condition J5 - FAILURE TO USE: THIRD PARTY APPLICATION**

#### 5.1 **Failure to Use Notices**

##### 5.1.1 If:

- (a) the CVL IM receives an application from a Part J Access Beneficiary (the "**Applicant**") for a Quantum Access Right to a Train Slot; and
- (b) the Train Slot:
  - (i) is one in respect of which the Applicant can demonstrate a reasonable commercial need; and
  - (ii) was secured in exercise of a Quantum Access Right of another Part J Access Beneficiary (the "**Incumbent**"); and
  - (iii) is one in respect of which there is a Failure to Use by the Incumbent,

then within 10 Working Days following receipt of the Applicant's application the CVL IM shall serve a Failure to Use Notice under Condition J4.4 on the Incumbent. If the Applicant's application does not comply with this Condition J5.1, then within 10 Working Days following receipt of the Applicant's application the CVL IM shall serve a notice on the Applicant rejecting its application and setting out its reasons for rejecting the application.

#### 5.2 **Cessation of Failure to Use**

5.2.1 For the purposes of Condition J5.1(b)(iii), there will have been a cessation of a Failure to Use if the Train Slot has been used in the 13 consecutive weeks that it has been included in the Working Timetable before the date that the Applicant's Failure to Use Notice was received by the CVL IM.

#### 5.3 **Application of Conditions**

5.3.1 The following Conditions shall apply following service on the Incumbent of a Failure to Use Notice as they apply to a Failure to Use Notice:

- (a) J4.7 (Acceptance of surrender);

- (b) J4.8 (Counter Notice);
- (c) J4.9 (Grounds for Objection)
- (d) J4.10 (the CVL IM agrees with the Part J Access Beneficiary);
- (e) J4.11 (the CVL IM does not agree with the Part J Access Beneficiary);
- (f) J4.12 (Surrender of Access Rights), where in respect of this Condition J5, any relevant Determination is between the CVL IM and the Incumbent, then the Applicant shall accept that the Determination will also dispose of the matter as between the Applicant and the CVL IM; and
- (g) J4.13 (Access Proposals), as if that Condition referred to a surrender under this Condition J5.

#### 5.4 **Counter Notice**

5.4.1 Subject to the redaction of any commercially sensitive information, the Incumbent shall send a copy of any Counter Notice issued under Condition J5.3.1(b) to the Applicant.

#### **Condition J6 - NOT USED**

#### **Condition J7 - FREIGHT TRANSFER MECHANISM**

##### 7.1 **Application of this Condition J7**

7.1.1 This Condition J7 applies only to services for the carriage of goods by railway.

7.1.2 This Condition J7 applies only to an application for a Quantum Access Right from an Applicant which is either:

- (a) a Train Operator, who is replacing the Incumbent in the provision of transport services to a third party, where the Quantum Access Right relates to the provision of those transport services (subject, where applicable, to any competitive tendering process amongst other parties); or
- (b) a Freight Customer Access Option Holder, where the Quantum Access Right sought is:
  - (i) currently held by an Incumbent which is a Train Operator for the provision of transport services to or on behalf of that Freight Customer Access Option Holder; and

- (ii) one which that Freight Customer Access Option Holder intends (subject, where applicable, to any competitive tendering process amongst other parties, including, if applicable, the Incumbent) to draw down into the Access Agreement of a Train Operator (whether or not the Incumbent) so that such Train Operator can become an Appointed Operator to provide those transport services to or on behalf of the Freight Customer Access Option Holder.

## 7.2 **Third Party Notice**

7.2.1 Where a Part J Access Beneficiary wants to hold a Quantum Access Right ("the Applicant") that is substantially similar to an existing Quantum Access Right of another Part J Access Beneficiary (the "**Incumbent**") then it shall serve a Third Party Notice on the Incumbent and send a copy of that notice to the CVL IM.

## 7.3 **Applicant's responsibilities**

7.3.1 When making an application to the Incumbent of the type described in Condition J7.2, the Applicant shall specify in the application:

- (a) the Quantum Access Right sought by the Applicant;
- (b) the Rights Subject to Surrender which the Applicant requires the Incumbent to Surrender in order to accommodate the Applicant's request;
- (c) the date on which the Applicant requests that the Quantum Access Right takes effect in its Access Agreement;
- (d) that it has suitable access to and from any relevant facility to meet its obligations under clause 6.4 of its Access Agreement; and
- (e) that the Quantum Access Right sought has the characteristics described in either Condition J7.1.2(a) or Condition J7.1.2(b) (as the case may be). Where Condition J7.1.2(a) is being relied on, the Applicant must attach a letter from the relevant freight customer confirming the circumstances which mean Condition J7.1.2(a) applies.

## 7.4 **Acceptance of surrender**

7.4.1 If the Incumbent agrees to the surrender specified in the Third Party Notice, then:

- (a) it shall, within 10 Working Days, give notice to that effect to the Applicant and copy this to the CVL IM;
- (b) the Rights Subject to Surrender shall be surrendered and will be removed in their entirety from the Incumbent's (and, if applicable, Appointed Operator's) Access Agreement on the date specified in the notice is given to the Office of Rail and Road pursuant to Condition J7.4.1(c); and
- (c) the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date on which the Part J Access Beneficiary agrees to the surrender pursuant to Condition J7.4.1(a).

## 7.5 **Third Party Counter Notice**

7.5.1 The Incumbent may, within 10 Working Days of receipt of a Third Party Notice, serve a Third Party Counter Notice on the CVL IM specifying that it objects to the surrender because the Incumbent:

- (a) has used the Rights Subject to Surrender for a Primary Purpose; and
- (b) requires to continue to use the Rights Subject to Surrender to convey traffic for the Primary Purpose Customer ("**Grounds for Objection**").

7.5.2 The Incumbent shall provide evidence in support of its Grounds for Objection. The Incumbent shall send a copy of any Counter Notice, subject to the redaction of any commercially sensitive information, to the Applicant.

7.5.3 If the Incumbent disagrees with:

- (a) any Train Slots shown in the Third Party Notice as relating to the Quantum Access Right; or
- (b) any Ancillary Movements or Stabling the Applicant included in the Third Party Notice as being directly related to the Quantum Access Right and no longer required by the Incumbent following the surrender of the Quantum Access Right; or
- (c) any Access Proposal shown in the Third Party Notice as relating to the Quantum Access Right,

it shall include in the Third Party Counter Notice details of why it disagrees with the Applicant.

7.5.4 If the Quantum Access Right sought by the Applicant is the subject of a competitive tendering process amongst other parties including the Incumbent, then the Incumbent:

- (a) may notify the CVL IM of this process; and
- (b) if it has done so, the period of 10 Working Days referred to in Condition J7.5.4 shall be deemed to commence on the date that the third party or Freight Customer Access Option Holder (as the case may be) indicates, at the end of the relevant tendering process, its intention to contract.

7.5.5 If no Third Party Counter Notice is served within 10 Working Days of receipt of a Third Party Notice:

- (a) the Incumbent will be deemed to have agreed to the surrender of the Rights Subject to Surrender specified in the Third Party Notice and the Applicant will notify the CVL IM, copied to the Incumbent, that this is the case;
- (b) the Rights Subject to Surrender shall be surrendered and will be removed in their entirety from the Incumbent's (and, if applicable, Appointed Operator's) Access Agreement with effect from the date on which notice is given to the Office of Rail and Road pursuant to Condition J7.5.5(c); and
- (c) the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Incumbent's, Applicant's and, if applicable, Appointed Operator's Access Agreements no more than 10 Working Days after the date on which the Part J Access Beneficiary is deemed to have agreed the surrender pursuant to Condition J7.5.5(a).

## 7.6 ***The CVL IM agrees with Incumbent***

7.6.1 If the CVL IM considers that the Grounds for Objection in the Third Party Counter Notice have been substantiated then, subject to any appeal under Condition J12, the Applicant's application will have failed. The CVL IM shall notify the Applicant in writing that this is the case, copied to the Incumbent, within five Working Days of receipt of the Third Party Counter Notice and shall set out the reasons for such failure.

## 7.7 ***The CVL IM agrees with Applicant***

7.7.1 If the CVL IM considers that the Incumbent's Grounds for Objection in the Third Party Counter Notice have not been substantiated, then the CVL IM shall notify

the Incumbent in writing that this is the case, copied to the Applicant, within five Working Days of receipt of the Third Party Counter Notice.

7.7.2 Where the Incumbent has disagreed with the Applicant in accordance with Condition J7.5.2, then the CVL IM shall, in the notification referred to in Condition J7.7.1, set out what it determines the Rights Subject to Surrender to be.

**7.8 *Incumbent response to the CVL IM's notification under Condition J7.7***

7.8.1 Upon receipt of a notice under Condition J7.7.1, the Incumbent shall respond the CVL IM in writing within 10 Working Days stating that it either accepts or disagrees with the CVL IM's decision.

7.8.2 If the Incumbent disagrees with the CVL IM's decision under Condition J7.7, then in addition to its response under Condition J7.8.1, it shall also at the same time refer the matter for determination in accordance with the CVL ADRR.

7.8.3 If the Part J Access Beneficiary fails to respond to the CVL IM in accordance with Condition J7.8.1, it will be deemed to have accepted the CVL IM's decision.

**7.9 *Surrender of Access Rights***

7.9.1 The surrender of the Rights Subject to Surrender will be deemed to have occurred:

(a) where either the Incumbent accepts the CVL IM's decision made pursuant to Condition J7.7 or there is a CVL ADRR Determination, on the date on which such notice is given to the Office of Rail and Road pursuant to Condition J7.8.2; or

(b) on the date specified in the Office of Rail and Road Determination, if applicable.

7.9.2 In the event of the Incumbent accepting the CVL IM's decision or there is a CVL ADRR Determination in accordance with Condition J7.8.1, the CVL IM shall notify the Office of Rail and Road of the relevant modifications to the Part J Access Beneficiary's (and, if applicable, Appointed Operator's) Access Agreement no more than 10 Working Days after the date of the acceptance or of the relevant CVL ADRR Determination, as applicable and shall include a copy of the relevant CVL ADRR Determination, if applicable, with such notice.

7.9.3 In respect of this Condition J7.8, any relevant Determination will be between the CVL IM and the Incumbent, and the Applicant shall accept that the Determination will dispose of the matter as between the Applicant and the CVL IM.

## 7.10 **Grant to Applicant**

The CVL IM shall, through the issue of a notice to both the Applicant and the Incumbent, grant to the Applicant the rights surrendered by the Incumbent under this Condition J7. Such rights shall be granted to the Applicant:

- (a) as from the latest of the following dates:
  - (i) the date stated in a notice given to the Office of Rail and Road pursuant to Condition J7.5.5(c), J7.4.1(c) or J7.8.2 or the date specified in the Office of Rail and Road Determination (as applicable);
  - (ii) the date the Applicant's Access Agreement is modified to include, where applicable, any relevant Restrictive Provisions associated with such rights contained in the Incumbent's Access Agreement
- (b) with Service Characteristics in substantially the same form as the Rights Subject to Surrender; and
- (c) for a period of time:
  - (i) equal to that which the Incumbent would have enjoyed had the rights remained with the Incumbent; or
  - (ii) until expiry of the Applicant's Access Agreement,

whichever is the shorter.

## 7.11 **Access Proposals**

7.11.1 Where any Rights Subject to Surrender surrendered under this Condition J7 include the surrender of an Access Proposal, the CVL IM's obligations under Condition **D**~~Error!~~ **Reference source not found.** shall, in respect of that Access Proposal:

- (a) cease to have effect in relation to the Incumbent as from the date the surrender takes effect in accordance with this Condition J7; and
- (b) be deemed to have effect in relation to the Applicant as from the date the Access Proposal is granted to the Applicant in accordance with Condition J7.10.

## **Condition J8 - NOT USED**

## **Condition J9 - RIGHTS REVIEW MEETINGS**

## 9.1 ***The Rights Review Meeting***

9.1.1 The CVL IM shall hold Rights Review Meetings as frequently as necessary in order for it to ensure that capacity on the network is shared in the most efficient and economical manner in the overall interest of users, providers, potential providers and funders of railway services.

9.1.2 The CVL IM shall give a Part J Access Beneficiary at least 10 Working Days written notice of a Rights Review Meeting ("**Rights Review Notice**"). The CVL IM shall, in the Rights Review Notice, list the Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths which are going to be the subject matter of the meeting ("**Rights under Review**").

9.1.3 Where a Part J Access Beneficiary has received a Rights Review Notice in accordance with Condition J9.1.2, it shall attend the meeting and participate in it in a collaborative manner in order to assist the CVL IM to meet its objectives set out in Condition J9.1.4 below.

9.1.4 In holding a Rights Review Meeting, the CVL IM's objectives shall include:

- (a) establishing why any Rights under Review are not being used;
- (b) assessing whether it is appropriate for the CVL IM to commence the Failure to Use procedure under Condition J4 in relation to any of the Rights under Review;
- (c) assessing whether it is appropriate for any Relevant Adjustment to be made to the Part J Access Beneficiary's Access Rights; and
- (d) considering whether it is appropriate to agree any amendments or additions to the Part J Access Beneficiary's Access Rights.

9.1.5 Further to a Rights Review Meeting, the CVL IM shall, where it considers it appropriate, commence and pursue the Failure to Use procedure under Condition J4 to remove any of the Rights under Review from the Part J Access Beneficiary.

## 9.2 ***ORR Power to Direct a Rights Review Meeting***

9.2.1 If the Office of Rail and Road considers that a Part J Access Beneficiary is not using any of its Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths and the CVL IM has not held a Rights Review Meeting related to this, then the Office of Rail and Road may, in writing, direct the CVL IM to hold a Rights Review Meeting ("**J9 Direction**").

9.2.2 The CVL IM shall comply with a J9 Direction within 10 Working Days of its receipt.

- 9.2.3 If any third party Part J Access Beneficiary reasonably believes that another Part J Access Beneficiary is not using any of its Quantum Access Rights, related Train Slots or associated Ancillary Movements, Stabling or Y-Paths and the CVL IM has not held a Rights Review Meeting related to this, then it may report the matter to the Office of Rail and Road. The Office of Rail and Road will then consider whether it is appropriate for it to direct, pursuant to Condition J9.2.1, the CVL IM to hold a Rights Review Meeting.
- 9.2.4 Where the CVL IM has failed to comply with a J9 Direction in accordance with Condition J9.2.2, the Office of Rail and Road may apply to the High Court (in Scotland, the Court of Session) for it to make such order as it thinks fit for requiring the failure to be made good.

### 9.3 ***Notification***

- 9.3.1 If before, during or after the Rights Review Meeting, the Part J Access Beneficiary agrees a Relevant Surrender or Relevant Adjustment of any of the Rights under Review, then, within 10 Working Days, the CVL IM shall give the Office of Rail and Road notice of the relevant modifications to that Part J Access Beneficiary's Access Agreement. The modifications shall be deemed to have effect on the date such notice is given to the Office of Rail and Road.

## **Condition J10 - RIGHT OF THE CVL IM TO MAKE AN ACCESS RIGHT CHANGE**

### 10.1 ***Obligation to facilitate a proposed Access Right Change***

- 10.1.1 The CVL IM shall take all reasonable steps to facilitate the development of a proposed Access Right Change, except where the proposed Access Right Change has been submitted by a Third Party who:

- (a) has not set out, in as much detail as reasonably possible, the reasons why it believes that:
- (i) the proposed Access Right Change will achieve Better Use;
  - (ii) the positive impact of the Access Right Change was not reasonably foreseeable when the relevant Firm Right took effect; and
  - (iii) Better Use cannot reasonably be achieved using:
    - (A) Parts D, G or Conditions J2.1 – 9.3 of Part J of the CVL Network Code;
    - (B) relevant provisions of the Act; or
    - (C) increased investment in the network; or

(b) has not provided a Relevant Undertaking.

10.1.2 Where applicable, the obligation of the CVL IM under Condition J10.1.1 includes but is not limited to:

- (a) evaluation of a submission for a proposed Access Right Change proposal submitted to the CVL IM by a Third Party;
- (b) consultation as may reasonably be expected to enable any Part J Access Beneficiary who holds a Firm Right subject to the proposed Access Right Change (the "**Incumbent**") to make representations, before notice of a proposed Access Right Change is given;
- (c) consultation before a notice of a proposed Access Right Change is given with relevant parties including any relevant funder; and
- (d) the preparation of a notice given under Condition J10.2.1.

## 10.2 ***Notice by the CVL IM of a proposed Access Right Change***

10.2.1 The CVL IM shall give notice of a proposed Access Right Change:

- (a) submitted to the CVL IM by a Third Party; or
- (b) identified by the CVL IM on its own initiative

if it considers that the criteria in Condition J10.2.2 have been satisfied.

10.2.2 The criteria required to be satisfied in order for the CVL IM to be entitled to give notice of a proposed Access Right Change in accordance with Condition J10.2.1 are as follows:

- (a) the CVL IM must reasonably believe that:
  - (i) the proposed Access Right Change will achieve Better Use;
  - (ii) the positive impact of the Access Right Change was not reasonably foreseeable when the relevant Firm Right took effect; and
  - (iii) Better Use cannot reasonably be achieved using:
    - (A) Parts D, G or Conditions J2.1 – J9.3 of the CVL Network Code;
    - (B) relevant provisions of the Act; or
    - (C) increased investment in the network; and/or

- (b) Network Rail has amended an access route which impacts on the CVL.

10.2.3 The CVL IM shall give notice of a proposed Access Right Change to:

- (a) any Incumbent;
- (b) the Office of Rail and Road; and
- (c) any relevant funder.

10.2.4 The CVL IM shall give notice of a proposed Access Right Change no less than 18 months before the commencement of the relevant Working Timetable during which Access Right Change is proposed to take effect.

### 10.3 ***Content of notice of a proposed Access Right Change***

10.3.1 Notice of a proposed Access Right Change given by the CVL IM under Condition J10.2.1 shall:

- (a) identify the Firm Right of any Incumbent which is subject to the Access Right Change;
- (b) set out the Access Right Change;
- (c) explain, referencing evidence where possible, why the CVL IM believes that each of the criteria in Condition J10.2.2 is met;
- (d) state the date on which the Access Right Change will take effect, that date falling no later than the Priority Date for the relevant Working Timetable during which the Access Right Change is proposed to take effect;
- (e) request from the Incumbent an estimate of compensation with evidence where possible, payable under Condition J10.7 and, subject to Condition J10.5.3, to be provided to the CVL IM within 60 Working Days of the date on which notice is given by the CVL IM under Condition J10.2.1;
- (f) request from the Incumbent an estimate of the Incumbent's reasonable costs of providing an estimate of compensation, to be provided within 10 Working Days of the date on which notice is given by the CVL IM under Condition J10.2.1; and
- (g) where the proposed Access Right Change was submitted to the CVL IM by a Third Party, contain a Relevant Undertaking.

#### 10.4 ***Negotiation following notice of a proposed Access Right Change***

10.4.1 The CVL IM shall use reasonable endeavours to negotiate with the Incumbent so as to agree:

- (a) after giving notice under Condition J10.2, the proposed Access Right Change, if applicable;
- (b) after receiving an estimate of reasonable costs under Condition J10.5.2, the reasonable costs payable in advance under Condition J10.10.2; or
- (c) after receiving an estimate of compensation under Condition J10.5.1, the compensation payable under Condition J10.7.

10.4.2 In any negotiation carried out under Condition J10.4.1, the Incumbent shall use reasonable endeavours to negotiate with the CVL IM the matters set out at Condition J10.4.1(a)-(c).

10.4.3 If the proposed Access Right Change was submitted to the CVL IM by a Third Party, the CVL IM shall carry out a Relevant Consultation as appropriate during the negotiation.

10.4.4 Subject to Condition J10.4.5, the CVL IM and the Incumbent may agree a proposed Access Right Change at any time before the date on which the Office of Rail and Road makes a direction under Condition J10.17, where applicable.

10.4.5 If the proposed Access Right Change was submitted to the CVL IM by a Third Party, the CVL IM and the Incumbent may not agree a proposed Access Right Change until the CVL IM has obtained the agreement of the Third Party.

10.4.6 If an agreement is reached under Condition J10.4.4, the CVL IM and the Incumbent shall submit the relevant Access Agreement, amended to reflect the proposed Access Right Change, to the Office of Rail and Road for approval under section 22 of the Act.

#### 10.5 ***Response of Incumbent to notice of a proposed Access Right Change***

10.5.1 The Incumbent shall provide an estimate of compensation in accordance with Condition J10.3.1(e).

10.5.2 The Incumbent shall provide to the CVL IM an estimate of the reasonable costs of providing an estimate of compensation in accordance with Condition J10.3.1(f).

- 10.5.3 An Incumbent who provides an estimate of reasonable costs in accordance with Condition J10.3.1(f) has 40 Working Days from receipt of payment of the agreed reasonable costs to provide the estimate of compensation.
- 10.5.4 The Incumbent shall give notice to the CVL IM and the Office of Rail and Road if it:
- (a) agrees to the proposed Access Right Change;
  - (b) considers that one or more of the criteria in Condition J10.2.2 is not met;  
or
  - (c) considers that any other aspect of the notice was deficient.
- 10.5.5 If the Incumbent gives notice under Condition J10.5.2 (b) or (c), it shall provide reasons, referencing evidence where possible,
- 10.5.6 Notice shall be provided to the CVL IM and ORR under this Condition J10.5 within 60 Working Days of the date on which notice is given by the CVL IM under Condition J10.2.
- 10.5.7 A failure to give notice under Condition J10.5.4 shall constitute agreement to the proposed Access Right Change, as if notice had been given under Condition J10.5.4(a).

## 10.6 ***Offer of compensation***

- 10.6.1 Subject to Conditions J10.4.1 and J10.6.3, the CVL IM shall, no later than 30 Working Days after receiving an estimate of compensation provided by the Incumbent pursuant to Condition J10.3.1(e), make a written offer of compensation in confidence to the Incumbent.
- 10.6.2 Subject to Condition J10.6.3, if the Incumbent fails to provide an estimate of compensation pursuant to Condition J10.3.1(e), the CVL IM shall, no later than 90 Working Days after the date on which notice is given by the CVL IM under Condition J10.2.1, make a written offer of compensation in confidence to the Incumbent.
- 10.6.3 If the proposed Access Right Change was submitted to the CVL IM by a Third Party, the CVL IM shall not make a written offer of compensation under Conditions J10.6.1 or J10.6.2 until it has carried out a Relevant Consultation and obtained agreement of the Third Party to fund the offer of compensation.

## 10.7 ***Amount of compensation***

- 10.7.1 Subject to Condition J10.9.2, the CVL IM shall pay compensation to the Incumbent in respect of an Access Right Change.

10.7.2 The amount of compensation referred to in Condition J10.7.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which are reasonably incurred or can reasonably be expected to be incurred by the Incumbent as a consequence of the implementation of the proposed change.

10.7.3 There shall be taken into account in determining the amount of compensation:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Incumbent as a consequence of the Access Right Change; and
- (b) the ability or likely future ability of the Incumbent to recoup any costs, losses and expenses from third parties including passengers and customers or to otherwise mitigate the costs, direct losses and expenses (including loss of revenue).

#### 10.8 ***Acceptance of offer of compensation***

10.8.1 If the Incumbent wishes to accept the compensation offered under Condition J10.6, it shall, within 30 Working Days of receiving the offer, indicate its acceptance in writing.

10.8.2 A failure to indicate acceptance in writing in accordance with Condition J10.8.1 or to refer the matter for determination in accordance with Condition J10.14, shall constitute acceptance of the offer.

#### 10.9 ***Payment of compensation***

10.9.1 Subject to Condition J10.9.2, the compensation payable under Condition J10.7 shall be paid to the Incumbent by the CVL IM on or before the date on which the proposed Access Right Change is due to take effect.

10.9.2 If the proposed Access Right Change was submitted to the CVL IM by a Third Party, the Third Party shall pay the CVL IM an amount equal to the compensation payable under Condition J10.7 on a date agreed with the CVL IM but no later than-

- (a) the Working Day before the date on which the Access Right Change is due to take effect, or
- (b) where a matter has been referred for determination under Condition J10.15.1 and the date on which the Access Right Change is due to take effect has been missed or is likely to be missed, a revised date notified to the Incumbent and the Third Party by the CVL IM, or

- (c) where notice has been given under Condition J10.5.4(b) or (c), the date specified by the Office of Rail and Road pursuant to Condition Part J10.16.1(b) or (c), where relevant.

10.9.3 The CVL IM shall not pay compensation to the Incumbent until an amount equal to the compensation owed has been received by the CVL IM from the Third Party.

10.9.4 The Access Right Change shall not take effect until the compensation payable under Condition J10.7 has been received by the Incumbent.

10.9.5 Compensation is not payable under this Condition J10.9 if it has already been paid pursuant to a Relevant Undertaking because the Third Party has requested that the CVL IM withdraw the notice of a proposed Access Right Change.

#### 10.10 ***Reimbursement of assessment costs***

10.10.1 Subject to Condition J10.10.2, the Incumbent shall be entitled to reimbursement by the CVL IM of all reasonable costs incurred by the Incumbent in assessing any Access Right Change.

10.10.2 If the proposed Access Right Change was submitted to the CVL IM by a Third Party, that Third Party shall reimburse the CVL IM for:

- (a) the reasonable costs incurred by the CVL IM in giving notice of a proposed Access Right Change;
- (b) the Incumbent's reasonable costs of providing an estimate of compensation, to be paid by the Third Party in advance of these costs being incurred; and
- (c) the reasonable costs incurred by an Incumbent and reimbursed by the CVL IM pursuant to Condition J10.10.1.

#### 10.11 ***Obligation to incur no further costs***

10.11.1 The incumbent shall, if requested by the CVL IM at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any Access Right Change.

#### 10.12 ***Confidentiality of the Incumbent***

10.12.1 If the CVL IM has reasonable grounds for believing that, in order to carry out a Relevant Consultation:

- (a) it is necessary for it to disclose to the Third Party any Qualifying Information; and

- (b) such disclosure would or might, in the CVL IM's reasonable opinion, seriously and prejudicially affect the interests of the Incumbent, the CVL IM shall give notice to that effect to the Third Party and such Qualifying Information shall not be disclosed.

#### 10.13 ***Application of Part J confidentiality mechanism***

10.13.1 The provisions of Conditions J3.2 to J3.15 apply to the conduct of a Relevant Consultation as if:

- (a) Notice served under Condition J10.12.1 was served under Condition J3.1;
- (b) "Relevant Response" means "Relevant Consultation";
- (c) "Part J Access beneficiary" means "Third Party"; and
- (d) "Affected Person" means "Incumbent".

#### 10.14 ***Right of appeal to relevant CVL ADRR Forum***

10.14.1 If the Incumbent is dissatisfied as to the compensation offered under Condition J10.7, it may, within 30 Working Days of receiving the offer refer the matter for determination in accordance with the CVL ADRR.

10.14.2 If the Incumbent or Third Party is dissatisfied as to any matter concerning the reimbursement of costs, it may refer the matter for determination in accordance with the CVL ADRR.

#### 10.15 ***Right to withdraw***

10.15.1 The CVL IM may withdraw the notice of a proposed Access Right Change identified by the CVL IM on its own initiative if it believes that the criteria in Condition J10.2.2 are no longer met.

10.15.2 Subject to Condition J10.16.3, the CVL IM shall withdraw the notice of a proposed Access Right Change as soon as possible if it is requested to do so by the Third Party.

10.15.3 If the CVL IM receives a request to withdraw the notice of a proposed Access Right Change and wishes to pursue the proposed Access Right Change on its own initiative, it may do so without serving another notice under Condition J10.2.3 but must notify the Incumbent and the Office of Rail and Road of its decision as soon as reasonably possible.

10.15.4 If the CVL IM withdraws the notice of a proposed Access Right Change identified by the CVL IM on its own initiative, Condition J10.10 applies to costs incurred up to and including the date on which notice is withdrawn.

10.15.5 Where the CVL IM withdraws the notice of a proposed Access Right Change under Condition J10.16.1 or Condition J10.16.2, Condition J10.7 applies to costs, direct losses and expenses (including loss of revenue) accrued by the Incumbent as a consequence of the proposed Access Right Change.

10.15.6 If the Third Party requests the CVL IM to withdraw the notice of a proposed Access Right Change, Condition J10.10 applies to costs incurred up to and including:

- (a) the date on which notice is withdrawn; or
- (b) the date on which the CVL IM notifies the Incumbent and the Office of Rail and Road under Condition J10.16.3 as applicable.

10.15.7 Where the CVL IM withdraws the notice of a proposed Access Right Change under Condition J10.16.1 or Condition J10.16.2:

- (a) the Incumbent shall provide to the CVL IM an estimate of compensation within 40 Working Days of notification of that withdrawal;
- (b) negotiation in accordance with Conditions J10.4.1(b), J10.4.2 and J10.4.3 shall take place;
- (c) Condition J10.6 shall apply; and
- (d) Condition J10.15 shall apply.

#### 10.16 ***Office of Rail and Road power to direct an Access Right Change***

10.16.1 If the Office of Rail and Road receives a notice under Condition J10.5.4(b) or (c) it shall, after assessing objectively the merits of that notice, the notice provided by the CVL IM under Condition J10.2.1, and any other material it considers relevant, whilst having regard to the duties set out at section 4 of the Act:

- (a) direct the CVL IM to withdraw notice of the proposed Access Right Change;
- (b) approve the proposed Access Right Change and direct that it should take effect on a date specified by the Office of Rail and Road; or
- (c) after consultation with the CVL IM, the Incumbent, and the Third Party, approve the proposed Access Right Change with modifications and direct that it should take effect on a date specified by the Office of Rail and Road.

10.16.2 The Office of Rail and Road may also take into consideration the determination of the relevant CVL ADRR Forum made under Condition J10.15, where applicable.

10.16.3 The Office of Rail and Road shall not make a direction in respect of a notice received under Condition Part J10.5.4(b) until:

- (a) a matter referred for determination under Condition J10.15.1 has been so determined; and
- (b) the determination has been disclosed to the Office of Rail and Road in confidence.

## 10.17 ***Exclusion***

10.17.1 Conditions J10.1 – J10.17 have no application to an Access Agreement that already contains provision for compensating an amendment or limitation of Firm Rights, other than a provision contained in the CVL Network Code.

## **Condition J11 - OBLIGATION OF THE CVL IM TO PUBLISH DOCUMENTATION**

### 11.1 ***Publication of Other Documentation***

11.1.1 Subject to Condition A3, the CVL IM shall publish promptly an accurate and up-to-date copy or statement of every notice or notification given or received pursuant to this Part J, in order to inform persons holding or contemplating holding or surrendering Access Rights about how the allocation of capacity on any part of the CVL may change over time.

### 11.2 ***ORR Power to Direct the CVL IM to Publish***

11.2.1 If the CVL IM fails to comply with any of its obligations in Condition J11.1, then ORR may, in writing, direct that the CVL IM do so comply ("**J11 Direction**").

11.2.2 The CVL IM shall start any process to comply with a J11 Direction within 10 Working Days of receipt of it and shall have complied with the J11 Direction within 30 Working Days of receipt of it.

11.2.3 Where the CVL IM has failed to comply with a J11 Direction in accordance with Condition J11.2.2, the Office of Rail and Road may apply to the High Court (in Scotland, the Court of Session) for it to make such order as it thinks fit for requiring the failure to be made good.

## **Condition J12 - APPEALS**

## 12.1 ***Appeal in accordance with the CVL ADRR***

12.1.1 Except in relation to Conditions J10.1 – J10.17, any dispute arising under this Part may be referred by any Part J Access Beneficiary or the CVL IM for determination in accordance with the CVL ADRR.

12.1.2 A reference for determination brought under Condition J12.1.1 must be made:

- (a) within five Working Days of receipt of the decision to which objection is made; or
- (b) where the period referred to in Condition J12.1.2(a) includes Christmas Day, within 10 Working Days of such receipt.

## 12.2 ***Appeal to the Office of Rail and Road***

Except in relation to Conditions J10.1 – Part J10.17, where either the CVL IM or any Part J Access Beneficiary is dissatisfied with the decision reached in accordance with the CVL ADRR, it may refer the matter to the Office of Rail and Road for determination under Part M:

- (a) within five Working Days of receipt of the written determination reached in accordance with the CVL ADRR to which objection is made; or
- (b) where the period referred to in Condition J12.2(a) above includes Christmas Day, within 10 Working Days of such receipt.

# Part K

Not used.

## Part L

Not used.

### **Explanatory Note:**

*The CVL IM and each Train Operator shall participate in performance reporting, planning, monitoring and reviewing on a non-contractual basis with a view to agreeing and implementing performance targets in order to provide for the improvement, on a continuous basis, of performance both on the CVL and of the rail industry as a whole.*

# Part M - Appeals

## Condition M1 - INTRODUCTION

### 1.1 *Overview*

1.1.1 This Part M sets out the process pursuant to which a party dissatisfied with either a decision of a Timetabling Panel in relation to a dispute arising under Part D of the CVL Network Code or a decision reached by Access Disputes Adjudication (as defined in the CVL ADRR) in relation to a dispute arising under Part J, can appeal the matter to ORR for determination.

### 1.2 *Interpretation*

1.2.1 Not used.

1.2.2 In this Part M, capitalised words have the meanings shown below:

<b>"Appellant"</b>	means any Dispute Party seeking to challenge a determination made in accordance with the CVL ADRR by appeal to ORR;
<b>"Dispute Party"</b>	means any person who fulfils the definition of "Dispute Party" set out in the CVL ADRR;
<b>"Respondent"</b>	means, in relation to any determination which is challenged under this Part M, any other Dispute Party which is affected by such determination.

## Condition M2 - NOTICE OF APPEAL

### 2.1 *Requirements*

2.1.1 Any appeal made under this Part M must:

- (a) comply with the requirements of Condition M3; and
- (b) be served on ORR and the Respondent(s):
  - (i) within five Working Days of receipt of the decision to which objection is made; or
  - (ii) where the period referred to in Condition Part M2.1.1(b)(i) of the CVL Network Code includes Christmas Day, within 10 Working Days of that decision.

2.1.2 ORR may extend the timeframe referred to in Condition Part M2.1.1(b) of the CVL Network Code if it considers it appropriate to do so.

## Condition M3 - CONTENT OF A NOTICE OF APPEAL

3.1 A notice of appeal must:

- (a) identify the determination which the Appellant wishes to challenge;
- (b) detail why the Appellant believes that the determination is:
  - (i) wrong; or
  - (ii) unjust because of a serious procedural or other irregularity; and
- (c) insofar as reasonably practicable, attach any evidence on which the Appellant wishes to rely in support of the appeal.

#### **Condition M4 - RIGHT OF ORR TO REFUSE TO HEAR AN APPEAL**

##### **4.1 *Grounds of decision***

4.1.1 Within 10 Working Days of service of a notice of appeal pursuant to Condition M2 of the CVL Network Code, ORR may decide that the appeal should not proceed to it, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the industry;
- (b) the reference is frivolous or vexatious;
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; or
- (d) it is appropriate or convenient for the matter instead to be disposed of by the High Court of England and Wales.

##### **4.2 *Consequences of decision***

4.2.1 If ORR decides that the reference to appeal should not proceed, it shall immediately notify the Appellant and each Respondent of its decision, and:

- (a) in the case of decision on any of the grounds specified in Condition Part M4.1.1(a), (b) or (c) of the CVL Network Code, the decision made in accordance with the CVL ADRR shall stand; and
- (b) in the case of a decision on the ground specified in Condition Part M4.1.1(d) of the CVL Network Code, either party to the appeal shall be entitled to apply to the High Court of England and Wales for any appropriate relief.

#### **Condition M5 - RESPONDENT'S NOTICE**

##### **5.1 *Requirements***

- 5.1.1 Within 10 Working Days of service of a notice of appeal a Respondent may serve on the Appellant, any other Respondent and ORR a notice:
- (a) stating that they oppose the appeal; and
  - (b) insofar as reasonably practicable, attaching any evidence on which the Respondent wishes to rely in opposing the appeal.
- 5.1.2 In the event that a Respondent seeks more time to serve such a notice ORR may, upon the Respondent providing ORR with evidence which satisfies it that an extension of the timeframe for service of the notice is appropriate, grant such longer period for service of the notice as it considers necessary:

## **Condition M6 - EXPEDITED PROCESS**

### **6.1 *Appellant or Respondent Request to Expedite***

- 6.1.1 Where a party to the appeal believes that the appeal should be dealt with on an expedited basis, it should make representations to ORR, copied to the other party, explaining why it believes this to be the case and its proposed timetable for the appeal. Where the Appellant makes such representations, it should do so as part of its notice of appeal. Where the Respondent makes such representations, it should do so within two Working Days of receipt of the notice of appeal.
- 6.1.2 On receipt of representations in accordance with Condition M6.1.1, ORR shall give the other party to the appeal an opportunity to make any representations in response.
- 6.1.3 Having received any representations in accordance with Conditions M6.1.1 and 6.1.2, where ORR believes it is in the interests of justice to do so, it shall order that the appeal is heard on whatever expedited timeframe it considers appropriate.

### **6.2 *Power of ORR to order expedited process***

- 6.2.1 Even where a party to the appeal does not request that the appeal be dealt with on an expedited basis in accordance with Condition M6.1, ORR may, where it believes it is in the interests of justice to do so, order that an appeal is heard on whatever expedited timeframe it considers appropriate.

## **Condition M7 - MATTERS TO BE CONSIDERED ON APPEAL**

### **7.1 *Scope***

- 7.1.1 Every appeal will be limited to a review of the decision of the lower tribunal unless ORR considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

## 7.2 **Grounds**

7.2.1 At any hearing of the appeal, a party may not rely on a matter not contained in the appeal notice or Respondent's notice unless ORR gives permission.

### **Condition M8 - POWERS OF ORR**

8.1 ORR shall, in determining the matter in question, have the power:

- (a) to give directions as to the procedure to be followed in the appeal, including in relation to the time limits within which anything must be done, the making of any written and oral submissions, and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
- (b) to appoint any person to act as a legal or technical assessor who it considers has suitable knowledge and experience to assist ORR;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by ORR; and
- (d) to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as ORR shall determine) which shall be borne by each party.

### **Condition M9 - IMMUNITY OF ORR**

9.1 ORR shall not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the conduct of any reference to appeal.

### **Condition M10 - OBLIGATION TO COMPLY WITH DETERMINATION OF APPEAL**

10.1 All Appellants and Respondents shall:

- (a) subject to and pending the final determination of any reference to ORR, comply with:
  - (i) any determination made in accordance with the CVL ADRR in relation to any dispute referred; and/or
  - (ii) any interim order of ORR; and
- (b) comply with any final determination of ORR.

### **Condition M11 - EFFECTIVE DATE OF ORR'S DECISION**

11.1 If, in relation to any particular dispute, any interim order or final determination of ORR is made during any period of operation of the Working Timetable to which the dispute relates, ORR may, if it is of the opinion that in the

circumstances of the case the balance of material convenience to all affected persons (taking into account any material prejudice that may thereby result) favours such a course, stipulate that such order or determination shall take effect at a specified time during such period of operation.



# **ANNEX**

## **CVL Access Dispute Resolution Rules**

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## EXPLANATORY NOTE

*This Explanatory Note does not form part of the CVL Network Code.*

*This Explanatory Note provides a brief overview of the purpose and structure of the CVL Access Dispute Resolution Rules (CVL ADRR).*

*The CVL ADRR themselves are intended to be a readable single point of reference for parties involved in a dispute (and other access parties or potential access parties). However, further background, and the templates required for use in connection with the CVL ADRR are available at the access disputes website: <http://www.accessdisputesrail.org/>.*

### **Overview**

*The purpose of the CVL ADRR is to provide a clear, coherent and effective structure for dealing with those rail disputes arising under access agreements and access conditions/codes that should be dealt with under access-specific processes.*

### **Structure**

***Chapter A** of the CVL ADRR sets out principles which should be applied throughout the determination procedure by the parties, Chairs, arbitrators, experts and others involved. Those using the Rules are expected to respect the principles and have regard to them at all stages in the determination procedure. Failure to do so is intended to carry penalties including potential adverse costs awards.*

***Chapter B** provides the mechanism by which a dispute will be initiated and allocated to the agreed or most appropriate forum.*

***Chapter C** describes the mechanism by which issues of wider industry concern and issues of a regulatory nature (including those which come within the scope of the Rail Regulations 2016 (as defined in the "Definitions and Interpretation" section of these Rules)) can be referred to the industry Regulator at any stage of the process.*

***Chapters D-I** set out the Rules applicable to each of the dispute resolution processes provided for in the Rules. These include facilitative and determinative processes which may be conducted in parallel (particularly in the case of mediation in parallel with a determinative process) or by way of offering a means of appeal from a first instance decision.*

***Chapter J** contains the constitutional, governance and administrative arrangements required to provide the services contained within the Rules.*

*In addition it is envisaged that it will be possible in certain cases to refer cases outside these Rules to ORR under the Rail Regulations 2016 (as defined in the "Definitions and Interpretation" section of these Rules) or to court on particular issues for which a commercial jurisdiction is most beneficial. The following diagram illustrates how allocation can take place:*



## DEFINITIONS AND INTERPRETATION

1. In these Rules, unless the context otherwise requires, the following words and phrases where capitalised shall mean:

<b>Term</b>	<b>Definition</b>
Access Conditions	in relation to an Access Contract, whichever of the CVL Network Code, the CVL Station Access Conditions (as defined in the CVL Network Code) or any depot access conditions (or any successor documents of any of these documents) or any other document carrying out a similar purpose which is incorporated by reference in that Access Contract;
Access Contract	means in respect of a railway facility, an agreement which has the CVL IM as a party to it and which incorporates by reference the Access Conditions applicable to that railway facility;
Act	the Railways Act 1993 as amended from time to time and/or such other legislation taking effect in Great Britain in respect of the same subject matter as that act;
ADA	Access Disputes Adjudication in accordance with Chapter G;
Allocation Chair	the individual appointed by the Committee pursuant to Rule J2, or, where the context so allows, another individual appointed as a substitute by the Secretary to discharge the role of the Allocation Chair in respect of a specific dispute;
Applicable Laws	has the meaning given to it in the CVL Network Code;
Arbitration Acts	means those acts in force from time to time governing arbitration proceedings in England and Wales (including the Arbitration Act 1996);
Arbitrator	an arbitrator;
CAHA	the Claims Allocation and Handling Agreement dated 1 April 1994 (as may be amended from time to time);

CAHA Registrar	the Registrar appointed in accordance with CAHA;
Case Summary	is as defined by Rule D6(a) in respect of a mediation and Rule E5(a) in respect of an ENE;
Committee	the Access Disputes Committee constituted under Rule J2 of the NR ADRR;
Committee Chair	a Committee Member appointed as Committee Chair pursuant to Rule J19 of the NR ADRR;
Committee Member	a person appointed to the Committee pursuant to Rule J6 of the NR ADRR;
Conflict of Interest	includes bias or an appearance of bias, a potential conflict of interest and any circumstances in which a reasonable third party may consider that there is a real risk of a conflict of interest existing or arising in the future;
Costs	professional and other costs and expenses which would be recoverable following a judgment in Court proceedings in England and Wales;
CVL	has the meaning given to it in Part A of the CVL Network Code;
CVL IM	means Seilwaith Amey Cymru / Amey Infrastructure Wales Limited, a company registered in England and Wales under registered number 11389544;
CVL Network Code	the document entitled "CVL Network Code" published and maintained by the CVL IM (as amended from time to time);
Delay Attribution Board	the Delay Attribution Board constituted in accordance with Condition B6.2 of the Network Rail Network Code;
Dispute Party	an Involved Party which is likely to be materially affected by the outcome of the dispute and is putting its position to the Forum and/or requesting a determination from a Forum;
Document	hard copy or electronic data of any kind and in any format including internal or external

	correspondence, emails or other communications, documents, spreadsheets and databases;
ENE	Early Neutral Evaluation in accordance with Chapter E;
Evaluation Documents	is as defined in Rule E5(b);
Existing Resolution Service Parties	is as defined in Rule J37;
Forum	each Hearing Chair of an ADA or Timetabling Panel, evaluator, mediator, arbitrator and determining expert appointed under these Rules;
Hearing Chair	an individual appointed by the Secretary to determine a dispute referred to TTP or ADA in accordance with these Rules;
Human Rights Act	the Human Rights Act 1998 as amended from time to time and/or such other legislation taking effect in Great Britain in respect of the same subject matter as that act;
Industry Advisor	an individual appointed as such in accordance with Rule J11;
Infrastructure Manager	has the meaning given to it in the Rail Regulations 2016;
Involved Party	in relation to a dispute, dispute procedure or dispute resolution process means a party directly involved in the dispute including the Secretary, all Dispute Parties, and the Forum;
Mediation Documents	are those defined in Rule D6(b);
Network Rail	means Network Rail Infrastructure Limited, a company registered in England and Wales under registered number 2904587 having its registered office at 1 Eversholt Street, London NW1 2DN;
Network Rail Network Code	means the document commonly known as the "Network Code" published by Network Rail which applies to the operation of railway vehicles on the NR Network;

Notice of Dispute	a notice issued by a Resolution Service Party wishing to refer a dispute to resolution in accordance with these Rules;
NR ADRR	means the industry standard set of rules known as the "Access Dispute Resolution Rules", which govern the resolution of disputes on the conventional rail network, as annexed to the Network Rail Network Code;
NR Network	means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;
ODP	means Keolis Amey Wales Cymru Limited, whose registered office is at C/O Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom NP19 9DZ;
ORR	Office of Rail and Road (and where relevant the former Rail Regulator) or any successor body or regulator;
Panel Member	in respect of a dispute to be resolved by TTP or ADA, each individual member of the panel appointed from time to time in respect of that dispute;
Principles	the principles set out in Rules A5-A10;
Procedure Agreement	is as defined in Rule B11;
Rail Regulations 2016	the Railways (Access, Management and Licensing of Railway Undertaking) Regulations 2016 (SI no. 645 of 2016), as may be amended from time to time (including by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019) and/or such other relevant legislation taking effect in Great Britain in respect of the same subject matter;
Railway Safety Levy	has the meaning ascribed to railway safety levy in Regulation 2 of the Railway Safety Levy Regulations 2006;
Reference	in respect of a reference to ORR, is as defined in Rule C6;

Referring Party	is as defined in Rule C2;
Regulatory Issue	<p>a principle, issue or process connected with the railway industry (and any interactions between such principles, issues and processes) which</p> <p>(a) concerns the regulated structure of the industry as a whole or a material part of it, or</p> <p>(b) relates to or is closely aligned with a matter on which ORR has regulatory oversight (from time to time); or</p> <p>(c) is connected with ORR's duties, functions or powers as a regulator including without limitation under the Railways Act 1993 s4;</p>
Related Dispute	a dispute which in the reasonable opinion of the Allocation Chair raises similar or connected factual or legal issues;
Resolution Service Party	a party entitled to use the dispute resolution service described in these Rules, in accordance with regulated Access Contracts, agreements with the Committee or otherwise, having made payments to the Committee in accordance with Chapter J;
RIDR Rules	the Rail Industry Dispute Resolution Rules;
Secretariat	individuals appointed as such in accordance with Rules J21 and J22;
Secretary	the individual appointed as such in accordance with Rule J16;
Statement of Case	any of the initial submissions setting out a Dispute Party's case including a statement of claim, reference, statement of defence, reply, answers and response and such other Documents as a Hearing Chair, arbitrator or determining expert shall identify as such;
TfW	means Transport for Wales, whose registered office is at Qed Centre Main Avenue, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff, United Kingdom CF37 5YR;
Timetabling Dispute	a dispute arising out of or concerning issues of timetabling, timetable change and/or changes in

	the allocation of capacity, for which the TTP is identified in the relevant Underlying Contract as the relevant dispute resolution process;
Timetabling Panel	the panel including a Hearing Chair and, where possible, one or more members of the Timetabling Pool appointed in respect of a dispute to be resolved by TTP in accordance with Rule H12;
Timetabling Pool	the pool of potential members of Timetabling Panels established under Rule H2;
TTP	the dispute resolution process for resolving Timetabling Disputes in accordance with Chapter H of these Rules;
Underlying Contract	any contract (or to the extent applicable any other source of a reference to a dispute) under which disputes are or can be referred to resolution under these Rules, and this may include such interrelated contracts as govern access to infrastructure; and
Welsh Ministers	means the Welsh ministers whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, United Kingdom CF10 3NQ.

## **Interpretation**

### **2. Unless the context otherwise requires:**

- (a) terms and expressions defined in the Railways Act 1993 and the Rail Regulations 2016 shall, unless the contrary intention appears, have the same meaning in these Rules;
- (b) the use of male pronouns and other words connoting the male gender shall encompass the equivalent female word;
- (c) use of the singular shall include the plural
- (d) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).

- (e) any agreement, instrument, licence, standard, timetable, code or other document referred to in these Rules or entered into, approved, authorised, accepted or issued by a person pursuant to this code shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.
- (f) words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Rules and the rules of interpretation contained in that Act shall apply to the interpretation of these Rules.
- (g) where in these Rules any obligation of any party is required to be performed within a specified time limit that obligation shall continue after that time limit if the party fails to comply with that obligation within the time limit.
- (h) the words "include" and "includes" are to be construed without limitation.
- (i) references to Rules and Chapters are to Rules and Chapters of these Rules;
- (j) references to the law shall be to the law of England and Wales and shall include all binding legislation (including regulations and statutory instruments) and directly effective European law; and
- (k) the headings in these Rules are used for convenience only and shall not affect the interpretation of the Rules.

## CHAPTER A – THE PRINCIPLES AND OPERATION OF THE DETERMINATION PROCEDURE

1. The Principles set out in this Chapter A are intended to be applied to the whole of the conduct and determination of disputes relating to the CVL arising on or after the date that the CVL IM becomes Infrastructure Manager of the CVL by all parties including the Allocation Chair, the Secretary and each Forum. For the avoidance of doubt, any disputes relating to the CVL arising on or before the date that the CVL IM ceases to be Infrastructure Manager of the CVL shall continue to be governed by these Rules. Any disputes relating to the CVL arising before the date on which the CVL IM becomes Infrastructure Manager of the CVL shall continue to be governed by the NR ADRR.
2. Except as otherwise provided in these Rules, any and all references in any contractual document to resolution or determination of a dispute, matter or issue under or in accordance with the whole or any part of, or any process subject to or governed by:
  - (a) the CVL Access Dispute Resolution Rules (or CVL ADRR) incorporated into, or annexed to (as applicable), the CVL Network Code; or
  - (b) the CVL Network Code itself,

shall be a reference to resolution in accordance with these Rules as a whole and (unless otherwise provided in these Rules) no such reference shall restrict or otherwise limit or determine the process or processes to be adopted under these Rules to resolve or determine any dispute or issue.

### Purpose

3. The determination procedure for disputes described in these Rules is intended to:
  - (a) include one or more dispute resolution processes appropriate to the dispute;
  - (b) include at least one available determinative stage which is objectively impartial and fair trial compliant;
  - (c) provide a relatively swift and easy to access disputes process for all cases where this is appropriate;
  - (d) be able to accommodate larger cases of significant value or wider importance including cases that reasonably require extensive documentation and/or witness evidence;
  - (e) provide a mechanism for the parties or any relevant Forum to obtain a determination on Regulatory Issues from ORR;

- (f) allow parties to resolve disputes as efficiently and effectively as possible;
  - (g) allow the parties flexibility to identify and adopt the most appropriate dispute resolution process(es) for each dispute; and
  - (h) avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute.
4. The Allocation Chair and each Forum under these Rules shall have regard to the Principles:
- (a) when making any procedural decisions; and
  - (b) at any stage when Costs are awarded.

## **PRINCIPLES**

### **Determinations and Remedies**

5. Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis. Each and every Forum shall act in accordance with the law; and all its decisions, including its determinations and decisions on procedure, shall be in accordance with the law.
6. Each and every Forum shall:
- (a) where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or
  - (b) where a specific remedy is provided for at law, grant that remedy accordingly; or
  - (c) where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Forum, exercise that discretion in accordance with any requirements and criteria set out in the Access Conditions and Underlying Contract after due consideration of all remedies and orders that could properly be made.

### **Precedent**

7. In reaching its determination, each and every Forum shall:
- (a) take note of relevant published ADA or TTP determinations (and those of any predecessor bodies) and of any other

relevant tribunal regarding the CVL excluding (to the extent referred to in (b) below) ORR, as persuasive authority but need not be bound by them;

- (b) be bound by any relevant decision of ORR on a Regulatory Issue and any relevant decisions of the courts.

Any determination made in relation to railway infrastructure other than the CVL shall not be treated as persuasive authority or any precedent in relation to any dispute to be determined in accordance with these Rules.

### **Impartiality**

- 8. Members of Forums may be appointed in part due to their particular industry expertise. Nonetheless, all members of Forums shall exercise their functions impartially and not on behalf of any specific organisation, company, business, trade or profession.

### **Duties of Dispute Parties**

- 9. Dispute Parties shall at all times:
  - (a) co-operate with any reasonable request of the Allocation Chair, any Forum, the Secretary and each other;
  - (b) conduct themselves in good faith with the objective of resolving the dispute; and
  - (c) avoid antagonistic or unduly adversarial behaviour.
- 10. Dispute Parties shall provide voluntarily, or where reasonably requested, to each other, to the Allocation Chair, the Secretary and to any Forum, all material required for the effective consideration and determination of the dispute, mindful of the requirements of Rules F19, G24, H26, and I19 on Documents.

## **OPERATION OF THE RULES**

### **Funding**

- 11. The delivery of the dispute resolution service provided for in these Rules will be funded by potential users of the service in accordance with Chapter J.

### **The Role of the Allocation Chair and Secretary**

- 12. The Allocation Chair:
  - (a) has oversight (under the powers contained in Chapter B) of the effective overall case management of a dispute;

- (b) will consider any disputes referred under Chapter B in accordance with these Rules and the Dispute Parties' proposals for the procedure for resolution of them including whether any issues should or could be referred to ORR;
  - (c) may, at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules;
  - (d) where the Dispute Parties are not in agreement will seek to facilitate an agreement between them concerning the most appropriate determination procedure;
  - (e) has responsibility for any allocation hearing including directions for any submissions, the hearing itself and any decisions connected with allocation.
13. The Allocation Chair may, where reasonable to do so, delegate the performance of any of their functions in any dispute to the Secretary appointed under Rule J16 or any member of the Secretariat appointed under Rules J21 and J22 but such delegation shall not affect the obligations and responsibilities of the Allocation Chair set out in Rule A12.
14. The Secretary:
- (a) has responsibility for appointing Hearing Chairs and Industry Advisors from a register maintained by the Secretary and, where parties are unable to agree, arbitrators and determining experts.
  - (b) shall assist the Allocation Chair, as required, in the discharge of the functions in Rule A12;
  - (c) shall receive disputes referred under Chapter B, record them and allot a case number to them;
  - (d) is responsible for managing the delivery of the determination procedure allocated to the dispute;
  - (e) may at the request of any Resolution Service Party, give guidance on dispute procedure prior to the reference of any dispute for resolution under these Rules.

### **Timely Determination**

15. Subject to the other provisions of these Rules and any specific timescale provisions of the Access Conditions, Underlying Contract or any other legal requirements, a Forum shall reach its determination in a timely manner consistent with the nature and complexity of the dispute.

## **Consequences of procedural default**

16. If a Dispute Party is in procedural default, the Allocation Chair or Forum (as appropriate) may, whether or not upon the application of the other Dispute Party, make one or more of the following orders:

- (a) that the defaulting party comply with its obligation;
- (b) that the defaulting party is prohibited from relying upon the information or other matter which it has failed to provide in accordance with these Rules or a valid direction;
- (c) that the dispute can proceed to determination without one or more steps being taken which have not been taken because of the procedural default; and/or
- (d) that the Costs arising from or connected with the procedural default be paid by the defaulting party on an interim or final basis.

In addition, and where appropriate to do so, adverse inferences may be drawn by any Forum in respect of the position for which the defaulting party contends.

17. For the purposes of Rule A16 procedural default shall include:

- (a) failure to take a step by the time required by these Rules;
- (b) failure to comply with any direction of the Allocation Chair, the Secretary or any Forum;
- (c) failure to abide by the Principles.

## **Representation**

18. A Dispute Party is entitled to be represented by such person(s) (legally qualified or otherwise), as it chooses.

19. A Dispute Party shall not be prejudiced by its choice of one category of representative as against another. It shall, however, ensure that:

- (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value);
- (b) where a representative is also a witness, that representative is able to perform both duties in full;
- (c) where a representative is not a witness, any appropriate witnesses are present at the hearing to provide relevant information; and

- (d) its representatives shall respect and act at all times in accordance with the Principles.
20. In the event that a dispute arises which affects or relates to the CVL and the CVL IM is not a Dispute Party to such dispute, the CVL IM shall be entitled to attend as an interested party any hearing of such dispute which is conducted pursuant to these Rules.

### **Hierarchy**

21. In the event of conflict (when using these Rules) between the Act, Applicable Laws (other than the Act) the Access Conditions, an Underlying Contract, and these Rules the following order of precedence shall apply:
- (a) the Act;
  - (b) Applicable Laws (other than the Act);
  - (c) the Access Conditions;
  - (d) these Rules; and
  - (e) the Underlying Contract.

### **Service of Documents and Notice**

22. Documents may be served:
- (a) in person on any director of any party, in which case service shall be deemed to take place on the day on which the documents are given to the director in person;
  - (b) by personal delivery to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place on the day of delivery or, if delivery is made after 5pm, the following working day;
  - (c) by first class post, to the registered address or principal business address within the UK of any party, or such other address (including that of a representative or adviser) as that party identifies in connection with the relevant dispute; in which case service shall be deemed to take place two working days after posting;
  - (d) by email, to any party which has previously identified in writing an electronic address for service of documents in connection

with the relevant dispute (including the address of a representative or adviser) in which case service shall be deemed to take place on the day of receipt, or if receipt is after 5pm, the day following receipt. For the purposes of this Rule A22(d) the Secretary will accept documents sent to them at sec.adc@btconnect.com; or

- (e) where a party has no registered address or principal business address within the UK, service may be made in accordance with the above requirements to the Secretary on behalf of that party. The Secretary shall be considered to be the relevant party's agent for service and shall take all reasonable efforts to transmit the documents on to the party at such address as is specified outside the UK.

Provided that, in all cases in which documents are sent to any company or corporate entity, such documents are addressed "Urgent; for the attention of the Company Secretary" or addressed to a person representing the party who has previously confirmed in writing their willingness to receive such documents on behalf of the party.

23. In these Rules, whenever any notice is required to be given in writing, writing shall include email.
24. Any reference to pages is a reference to A4 pages containing reasonably legible typescript at 1.5 line spacing. All documents submitted shall be made in a form compatible with software agreed with the Secretary from time to time and all attachments should be where reasonably possible, in electronic format.
25. All documents, correspondence, communications and other material including spoken statements, submissions and communications shall be in the English language.
26. In the event that any date specified in these Rules for service of documents or any action by any party, Forum, Allocation Chair, Hearing Chair or Secretary or any other date specified would fall between 25 December and 31 December in any year, it shall be extended by seven days. Any such date falling on a public holiday in England and Wales shall be extended to the next working day.

## CHAPTER B – INITIATING A DISPUTE AND ALLOCATION

1. Disputes proceedings will be initiated and referred for allocation in accordance with the following Rules.

### Notification of a Dispute

2. A Resolution Service Party wishing to refer a dispute shall serve a written Notice of Dispute on the Secretary and shall serve a copy of the Notice of Dispute on every other party to the dispute.
3. The Notice of Dispute shall, unless otherwise advised by the Secretary, normally be in accordance with the template format for a Notice of Dispute (found on the access disputes website) and shall do all of the following as far as reasonably practicable:
  - (a) state the contract and relevant contractual clause under which the reference is made (or such other basis for the reference under these Rules);
  - (b) list the other parties concerned whether as a Dispute Party to the dispute or otherwise;
  - (c) summarise the basis of the claim including a brief list of issues;
  - (d) state whether the Dispute Parties have already agreed on a determination procedure, or, if not, specify the referring party's initial preference for a determination procedure, including, if it believes it is a Timetabling Dispute, a statement to this effect; and
  - (e) state whether exceptional circumstances exist requiring an expedited hearing or process provided that other parties shall not as a consequence be disadvantaged as a result of such expedited hearing or process.
4. Valid service of a Notice of Dispute upon the Secretary in accordance with Rule B2 shall amount to the issuing of proceedings relating to the dispute for the purposes of all relevant limitation periods or provisions. Provided that the dispute has not subsequently been finally resolved or withdrawn in accordance with Rule 4A below (upon the occurrence of which all relevant limitation periods shall be calculated by excluding the period during which the claim was subject to these Rules), no party shall raise any argument, defence or exclusion in subsequent proceedings (whether under these Rules or otherwise) on the basis of the expiry, after the date of valid service of a Notice of Dispute in accordance with Rule B2, of any limitation period.

4A A party which has referred a dispute by service of a Notice of Dispute in accordance with Rule B2 may (without affecting any powers in these Rules to

make consequential orders as to costs) discontinue the dispute by serving written notice of withdrawal of the Notice of Dispute on the Secretary and on every other party to the dispute.

4B Rule 4C applies where a party which has served a notice of withdrawal in accordance with Rule 4A seeks to serve a further Notice of Dispute in accordance with Rule B2, in which:

(a) One or more other parties to the dispute referred by the further Notice of Dispute was or were a party to the dispute which has been discontinued in accordance with Rule 4A; and

(b) The dispute referred by the further Notice of Dispute arises out of facts which are, in most part, the same as those relating to the discontinued dispute.

4C In the circumstances described in Rule 4B the dispute identified by the further Notice of Dispute will not be referred as a dispute under these Rules unless and until;

(a) All parties to the dispute have indicated to the Secretary that they agree that the dispute should be referred under these Rules; or

(b) Upon reference to the Allocation Chair by the Secretary and having invited submissions by all affected parties and duly considered these, the Allocation Chair gives permission for the dispute to be referred under these Rules having regard to the circumstances of the withdrawal and the further reference whether those circumstances amount to an abuse of the ADRR process whether the dispute party which is seeking permission has acted oppressively or unreasonably, the terms of any undertaking offered by the dispute party which is seeking permission to be responsible for the costs incurred by the other dispute parties in connection with the withdrawn dispute and the terms of any cost order made upon the withdrawal.

## **Allocation Process**

5. All Timetabling Disputes shall be referred to a Timetabling Panel in accordance with Chapter H. Following service of a Notice of Dispute relating to such a dispute the process under Chapter H shall commence and the Secretary shall appoint a Timetabling Panel in accordance with Rule H12. If either party raises any objection within 5 working days then the Hearing Chair of the Timetabling Panel shall consider the best way to proceed.
6. All disputes referred to resolution in accordance with these Rules under Condition B2.4.5 of the CVL Network Code shall be referred to an ADA in accordance with Chapter G as a single stage dispute resolution process with

no appeal. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.

7. Except as stipulated in Rule B8, all disputes referred for resolution in accordance with these Rules under Part J of the CVL Network Code shall be referred to an ADA in accordance with Chapter G with a right of appeal to ORR for determination in accordance with Part M of the CVL Network Code. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.
8. All disputes referred for resolution in accordance with these Rules under Condition J10.14 of the CVL Network Code shall:
  - (a) if concerning Condition J10.14.1, be referred to an ADA in accordance with Chapter G or referred for expert determination in accordance with Chapter I.
  - (b) if concerning Condition J10.14.2, be referred for expert determination in accordance with Chapter I.
9. Unless otherwise ordered by the Allocation Chair, following service of a Notice of Dispute upon them, the Secretary:
  - (a) shall allot a case number to the dispute and notify this case number to all Involved Parties including those identified in the Notice of Dispute according to Rule B3(b);
  - (b) where they reasonably believes that another party or parties are likely to be directly affected by the outcome of the dispute and it is appropriate that they should be informed of the existence of the dispute, may seek clarification from the party initiating proceedings about why that party has not been identified in accordance with Rule B3(b) and inform the Allocation Chair or relevant Hearing Chair (as appropriate) accordingly;
  - (c) (unless a Procedure Agreement has already been drawn up or served on them) shall set a date and time for an allocation hearing to take place within 28 days of the service of the Notice of Dispute upon them or such other time as the Dispute Parties may agree;
  - (d) (unless a Procedure Agreement has already been drawn up or served on them) shall provide initial directions to the parties

setting out the following initial timetable (or such variation of the timetable as the Allocation Chair shall approve):

- (i) fixing a date and time of the allocation hearing, a provisional method by which such allocation hearing shall take place (in writing, in person at a specified location, or by telephone conference or otherwise) and an estimated duration for the allocation hearing;
- (ii) encouraging the parties to seek to agree a determination procedure between them and in the event of reaching such an agreement immediately to notify them accordingly;
- (iii) requiring each party to serve upon them and exchange with the other parties a statement, at least seven days before the hearing, containing that party's:
  - (A) assessment of the basis of the claim and a brief list of issues. Alternatively agreement with the basis of the claim and list of issues provided with the Notice of Dispute; and
  - (B) preferences for the Forum and any facilitative stages together with short reasons in support of such process; and
  - (C) assessment of any issues which should be referred to ORR together with the proposed form of words for the reference and short reasons in support of such a reference.

Such statements should each be less than three pages long unless the Allocation Chair directs otherwise.

10. The Secretary shall assist the parties to reach an agreement regarding the most appropriate determination procedure and whether any issues can or should be referred to ORR or to the courts. In doing so the Secretary shall act in a facilitative role impartially between the parties and shall not seek to impose their own assessment or preference upon the parties.
11. If the parties reach agreement upon a determination procedure, they shall confirm their agreement and the terms of that agreement to the Secretary by way of a written procedure agreement (the "**Procedure Agreement**") executed by or confirmed in writing on behalf of all Dispute Parties. The form of the executed Procedure Agreement received by the Secretary shall be definitive evidence of the agreement reached and shall specify at least:

- (a) the dispute resolution process or processes agreed by the parties and the order in which they will take place (or specify that facilitative processes are to take place in parallel to other dispute resolution processes);
  - (b) where appropriate, the basis on which any appeal or reference to a second (or later) stage may be made;
  - (c) (subject to the provisions of Part M of the CVL Network Code) where in exceptional circumstances ORR has identified that the matter is appropriate for it to determine (and the parties have requested that it do so) and has therefore agreed to act as an appeal body, confirmation of ORR's agreement. Parties should note that, except as expressly provided in these Rules, ORR will not generally accept the role of appeal body unless exceptional circumstances can be shown justifying it taking on this role; and
  - (d) where any dispute is agreed to be referred to the courts at any stage, specify the timescale (which shall not be less than 2 months nor more than 9 months) by which any claim must be initiated following conclusion of any prior stages, otherwise the dispute will be deemed withdrawn.
12. The Procedure Agreement may specify dispute resolution processes provided for in these Rules (including Court proceedings) or otherwise (provided that agreement from any tribunal/ determinative body not provided for in these Rules is obtained before a reference to it is agreed). The Procedure Agreement may not specify that a dispute be referred to a Timetabling Panel unless it is a Timetabling Dispute.
13. The Procedure Agreement may also specify any agreed timings for commencement of any dispute resolution process, the terms of any reference agreed to be made to ORR by the Dispute Parties and any other agreement between the parties regarding the procedure to be adopted.
14. The Allocation Chair shall preside over any allocation hearing which takes place. At an allocation hearing they shall:
- (a) consider the Notice of Dispute, the written statements of the parties and any oral representations from the parties;
  - (b) ask questions to identify the most appropriate determination procedure and whether any issues exist which could be referred to ORR;

- (c) seek to facilitate an agreement between the parties on the most appropriate determination procedure and whether any issues exist which should be referred to ORR;
- (d) having heard each party's full submissions, if no agreement has been reached, state clearly any view they have of the most appropriate determination procedure;
- (e) in the event that any party claims the right to refer a matter or issue directly to ORR under the Rail Regulations 2016 (without the need to first refer the matter to a Timetabling Panel), determine whether it is arguable that such a right exists and if so direct the reference of the matter to ORR;
- (f) in the event that any party claims the right to refer a matter or issue to a Timetabling Panel and subsequently to ORR in accordance with the Rail Regulations 2016, determine whether it is arguable that such a right exists and if so refer the matter to a Timetabling Panel followed by appeal to ORR. There is a presumption that disputes referred to resolution under Condition D5.1.1 of the CVL Network Code shall, unless there are compelling reasons to the contrary relating to subject matter, be allocated to a Timetabling Panel. Consequently the Allocation Chair shall not allocate a dispute ostensibly falling within Condition D5.1.1 other than to a Timetabling Panel without first inviting written representations from the Dispute Parties on their intention to do so (to be provided by the parties within seven days of the request or such other time as they shall specify) and giving proper consideration to any representations made;
- (g) in the event that the parties agree that an issue would be best determined by ORR but are unable to agree to the wording of the necessary reference, determine the wording of the reference and write to ORR (copying the parties) identifying the issue and requesting that the issue be considered in accordance with Chapter C;
- (h) in the event that agreement in principle on the resolution procedure has been reached, but the parties are unable to agree on the timings of each stage (including adjustments to the default timings in these Rules), determine the timings to be applied following consideration of the parties' submissions in that respect;
- (i) in the event that agreement is reached between the parties (including agreement following the exercise by the Allocation

Chair of their powers under **Error! Reference source not found.** and/or (h)), the Allocation Chair shall draw up, with the parties' assistance, the Procedure Agreement and the parties shall execute it or confirm it in writing;

- (j) in the event that no agreement is reached between the parties and neither **(d)** nor **Error! Reference source not found.** applies, determine that, unless the parties reach a contrary agreement within seven days of the allocation hearing, the matter shall be referred to determination by an ADA subject to Chapter G and shall draw up the Procedure Agreement accordingly and shall sign it as Allocation Chair.
- (k) in the event that no agreement is reached between the parties under Rule B8(a), shall determine that, unless the parties reach a contrary agreement within seven days of the allocation hearing, the matter shall be referred to final determination by expert determination subject to Chapter I and shall draw up the Procedure Agreement accordingly and shall sign it as Allocation Chair.

15. Following an allocation hearing in accordance with Rule B14 the Allocation Chair may at their discretion write formally to all parties stating their view on the best allocation of the dispute and the approach taken by the parties leading to the actual allocation of the dispute.
16. Following service upon them of a Procedure Agreement in accordance with Rule B11 or drawing up of a Procedure Agreement in accordance with Rule B5, 6, 7 or 14, the Secretary shall write to all the Involved Parties:
  - (a) dispensing with any remaining stages of any previous directions;
  - (b) confirming receipt of the Procedure Agreement and recording the determination procedure to be adopted for the dispute;
  - (c) confirming the first dispute resolution process and the first dates required by these Rules in respect of that process; and
  - (d) where the first dispute resolution process is ADA or TTP, identifying the Hearing Chair appointed for the dispute;
17. For the purposes of these Rules the first dispute resolution process specified in the Procedure Agreement shall commence upon the date on which the Secretary writes to the Involved Parties in accordance with Rule B16. Subsequent dispute resolution processes provided for in the Procedure Agreement shall commence upon receipt by the Secretary in accordance with

these Rules of notice from any party of that party's decision to refer the dispute to such dispute resolution process in accordance with these Rules.

18. In discharging their roles in respect of allocation under this Chapter B, the Allocation Chair shall have regard to:
  - (a) these Rules including the Principles;
  - (b) the allocation criteria (if any) published from time to time by the Committee on the access disputes website;
  - (c) the objective importance of the dispute to the Dispute Parties;
  - (d) the complexity of the issues;
  - (e) the significance (if any) to the railway industry of the issues involved;
  - (f) the scale of any financial claims involved; and
  - (g) Applicable Laws (including the right to a fair trial at common law and under the Human Rights Act).
19. The Allocation Chair (aided by the Secretary) shall continue to actively encourage and facilitate resolution of disputes throughout the life of the dispute. All parties and all Forums shall have liberty to apply to the Allocation Chair at any stage in respect of a restructuring of the determination procedure including as appropriate the addition of any facilitative process in parallel with determinative processes or otherwise.
20. In exceptional circumstances requiring an expedited hearing or process or where alternative actions or directions are required, the Allocation Chair may at any stage on the application of any party give directions varying the timescales provided for in these Rules and nothing in this Chapter B shall restrict such directions being given.
21. Upon the application of any Dispute Party or at their own instigation the Allocation Chair may order that any two or more disputes be joined or heard and resolved together where such disputes appear to them in their absolute discretion to concern the same or similar subject matter and where it is in the interests of efficient and fair resolution to do so.
22. Subject to the Arbitration Acts, any party may at any stage issue or initiate proceedings before the High Court of England and Wales for any interim remedies including injunctions, interdict or specific implement and nothing in this Chapter B shall prevent them from so doing.

## CHAPTER C – REFERENCE TO ORR IN THE COURSE OF A DISPUTE RESOLUTION PROCESS

1. This section describes how issues connected to disputes may be referred to ORR by the parties, the Allocation Chair or any Forum at any stage of the determination procedure and the basis on which ORR will determine such references.

### Issues to be Referred

2. Issues may only be referred to ORR under these Rules by:
  - (a) the parties together acting by agreement;
  - (b) the Allocation Chair in accordance with the provisions of Chapter B; or
  - (c) any Forum acting in accordance with these Rules,in each case a **"Referring Party"**.
3. A Referring Party may at any stage or stages in a dispute refer to ORR any discrete issue or matter which is connected to or forms part of a dispute and:
  - 3.1.1 concerns information to which ORR has access and which is not readily available from another source; or
  - 3.1.2 is or concerns a Regulatory Issue; or
  - 3.1.3 is an issue or matter of wider railway industry relevance which would benefit from ORR's industry specific experience and/or knowledge.
4. The purpose of a reference to ORR is to obtain answers to issues of general application to the railway industry (or a significant part of it) in respect of which ORR has relevant information or knowledge which may inform the resolution of the Dispute Parties' respective entitlements. Consequently (except where it is legally required to hear specific claims) ORR may at its discretion decline references which relate solely to one or more parties' specific factual or financial position or refuse to determine any party's rights on the basis of the particular facts applicable to that party. ORR may exercise its discretion not to consider the substantive commercial issues in dispute or give an opinion on the merits of the dispute or on the proposed Forum for resolution.
5. The provisions of this Chapter C are without prejudice to any statutory or Access Conditions provisions which provide a right for a party to refer an appeal to ORR.

## Process for References

6. Where a Referring Party decides to refer an issue or matter to ORR it shall send a Reference to ORR (copied to all other Involved Parties) ("**Reference**") containing the following:
  - (a) the Referring Party's formulation of a specific question or questions for ORR to answer with sufficient clarity to enable ORR to understand the nature of the answer requested from it; and
  - (b) a brief explanation of how the issue or matter fulfils the requirements of Rule C3; and
  - (c) a statement of the steps which have already been taken to resolve the issue; and
  - (d) (at the discretion of that Dispute Party) a statement from each Dispute Party of no more than three pages:
    - (i) stating that Dispute Party's position in respect of the Reference; and
    - (ii) explaining why the Reference should or should not be decided by ORR; and
    - (iii) attaching any relevant Documents which the party wishes to bring to the attention of ORR in connection with ORR's decision on whether the Reference should be decided by it.

Where applicable, the Referring Party should also state whether it believes that any party has a right to refer the issue or matter to ORR in accordance with the Rail Regulations 2016 or the CVL Network Code or otherwise.

7. For the purposes of this Chapter C, References to ORR may be sent to the following email address: [adrr.references@orr.gsi.gov.uk](mailto:adrr.references@orr.gsi.gov.uk)
8. ORR will aim to acknowledge receipt of a Reference within seven days to the Referring Party.
9. ORR will consider the Reference including any statements served under Rule C6 and will respond in writing within 21 days or such other period as ORR shall specify to the Referring Party (copying to all other Involved Parties):
  - (a) to advise it that ORR declines to respond to the Reference and that the issue remains a matter for the relevant dispute Forum to determine and to provide reasons for this decision; or

- (b) to provide a response on questions of fact and/or copies of relevant Documents or records in response to the Reference; or
  - (c) where ORR accepts the Reference, but requires additional time, information or submissions to consider its response, to set directions and a timetable for any further stages in responding to the Reference.
- 10. Following receipt of a response from ORR in accordance with Rule C9, the relevant Forum, if appropriate, shall give directions concerning any procedural steps required in light of the response including whether a stay is required pending further consideration by ORR.
- 11. Following completion of its process, ORR shall send its final written determination of the Reference to the Involved Parties. Following receipt of a final determination the Allocation Chair or the relevant Forum, as the case may be, shall give further directions concerning any procedural steps required in light of the determination.
- 12. Subject to any order from ORR for partial or complete redaction, all References, statements and submissions made under this Chapter C and all responses provided by ORR may be published by ORR and shall also be made accessible from the access disputes website.
- 13. In accordance with Rule A4, ORR's determinations will be applied (in accordance with Rule A7(b)) by relevant Forums to the resolution of the dispute on the basis of the Dispute Parties' respective entitlements. Consequently, subject to any specific legal obligations on ORR in considering a reference received under this Chapter C, ORR's determinations on the Regulatory Issues raised will be made in accordance with the Dispute Parties' respective entitlements. ORR will not take account of any argument raised by any Dispute Party which is not based upon the parties' respective entitlements or would have the effect of avoiding or rendering ineffective any Resolution Service Party's existing entitlements.

## CHAPTER D – FACILITATIVE PROCESS RULES – MEDIATION

1. Mediation under these Rules is a private facilitative dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

### Disputes to be submitted to mediation

2. Any dispute which the Dispute Parties have agreed shall be submitted to mediation under these Rules shall proceed according to the Rules of this Chapter D. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any mediation agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification to the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to mediate.

### Beginning a mediation

3. Upon commencement of a mediation (in accordance with the Procedure Agreement and Rule B17 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable mediator if not already done.
4. If no mediator can be agreed by the parties within 21 days of the date of commencement of the mediation, the Secretary shall recommend an appropriate individual from lists maintained by them or otherwise. If any party rejects the recommended individual then the mediation will be deemed to have failed and the Secretary shall write to the Involved Parties stating that that mediation stage has been terminated on the date of their letter.
5. Upon appointment of a mediator, the parties and the mediator will agree a date for the mediation session within 60 days of appointment of the mediator (subject to contrary agreement on timescales between the parties).

### Exchange of Information

6. Following appointment of a mediator, each party shall prepare the following documents:
  - (a) a concise summary (the "**Case Summary**") of its case in the dispute; and
  - (b) all documents to which the summary refers and any others to which it may wish to refer to in the mediation (the "**Mediation Documents**").

7. The parties will exchange the Case Summary and Mediation Documents with each other at least seven days before the mediation session, or other such date as may be agreed between the parties and the mediator. Copies shall be sent directly to the mediator on the same date.
8. Subject to contrary agreement between the parties:
  - (a) each Case Summary shall be a maximum of ten pages long; and
  - (b) a joint set of documents will be provided to the mediator containing the Mediation Documents requested by each party.

### **The Mediation**

9. The mediator, where appropriate, will:
  - (a) consult with the parties before the mediation session;
  - (b) read before the mediation session each Case Summary and all the Mediation Documents sent to them;
  - (c) determine the procedure for the mediation including the mediation session;
  - (d) facilitate the drawing up of any settlement agreement;
  - (e) be bound by the terms for the appointment of a mediator agreed with the parties; and
  - (f) abide by the terms of this Chapter D.
10. The mediation session will take place at the place and time stated by the mediator which is best suited to the location of the Dispute Parties.
11. No recording or transcripts of the mediation session will be made.
12. Each party shall be represented at the mediation session by at least one individual who shall be a senior manager with full decision-making authority to settle the dispute. If there is any restriction on that authority this should be discussed with the mediator before the mediation session. Parties should inform the mediator prior to the date of the mediation session of the identity of its representation which may include professional or other advisers. No other persons may attend without the mediator's agreement.
13. The mediator may see each party on their own if they see fit. The mediator shall not be entitled to disclose matters told to them in confidence without the permission of the party disclosing such matters.

14. Within seven days of the end of the mediation session, if the parties have not resolved the dispute by agreement and only if all the parties request, the mediator may advise the parties of their non-binding views as to the likely outcome of the dispute if it were to be referred back to the determination procedure and/or what they consider would be a fair settlement of the dispute.

### **Settlement Agreement**

15. Any settlement reached in the mediation will not be legally binding until it has been recorded in writing and signed by the parties.

### **Confidentiality**

16. The mediation is and shall be kept confidential.
17. The parties, their representatives and advisers, the mediator and the Secretary shall keep confidential all Documents, submissions, statements and other information disclosed in the mediation, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:
  - (a) to implement or enforce the agreement for settlement of the dispute; or
  - (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure or any obligations at law.
18. Its use in the mediation shall not affect the extent to which any Document, submission, statement or other information disclosed in the mediation is admissible or subject to disclosure or production in any subsequent arbitration, legal or other proceedings involving the parties.
19. New Documents generated in the course and for the purposes of the mediation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

### **Costs**

20. Unless the Dispute Parties otherwise agree, each Dispute Party shall bear its own costs of the mediation. The Dispute Parties shall share equally the mediator's fees and expenses, any costs of their appointment and all other administrative costs of the procedure.

### **Termination of the mediation**

21. The mediation shall terminate upon the earliest of:
  - (a) the occurrence of the events in Rule D4;

- (b) service by one party to the mediation on the others and on the mediator of a notice of withdrawal from the mediation;
  - (c) the provision to all parties by the mediator of their views in accordance with Rule D14;
  - (d) the expiry of 14 days from the end of the mediation session;
  - (e) withdrawal of the mediator from the mediation; or
  - (f) the conclusion of a written settlement agreement.
22. Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of the termination and its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination the claim shall be deemed to have been withdrawn.

#### **Exclusion of liability**

23. None of the Allocation Chair, the Secretary or any mediator shall be liable to any party for any act or omission (including negligence) in connection with any mediation under these Rules unless the act or omission is shown to have been in bad faith.

#### **Mediator barred from further proceedings**

24. The mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which they acted as mediator in any subsequent arbitration, legal or other similar proceedings.

## CHAPTER E – FACILITATIVE PROCESS RULES – EARLY NEUTRAL EVALUATION

1. Early Neutral Evaluation (ENE) under these Rules is a private facilitative dispute resolution process in which a neutral evaluator provides a confidential assessment of the likely merits of the case and tries to help the parties to reach a negotiated settlement.

### Disputes to be submitted to ENE

2. Any dispute which the Dispute Parties have agreed shall be submitted to ENE under these Rules shall proceed according to the Rules of this Chapter E. Such agreement may be made when the dispute arises or previously or in the Procedure Agreement or while any other dispute resolution process is taking place and may be made orally or in writing. Any ENE agreed by the parties which is not specified in the Procedure Agreement shall commence upon notification of the Secretary in writing by all parties (or confirmation in writing of such a notification on behalf of all parties) of their agreement to an ENE.

### Beginning an ENE

3. Upon commencement of an ENE (in accordance with the Procedure Agreement and Rule B17 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable evaluator, if not already done.
4. In the event that no evaluator can be agreed by the parties within 21 days of commencement of the ENE, the Secretary shall recommend an appropriate individual from lists maintained by them or otherwise. If any party rejects the recommended individual then the ENE will be deemed to have failed and the Secretary shall write to all involved Parties stating that that ENE stage has been terminated on the date of their letter.

### Exchange of Information

5. Following appointment of an evaluator, each party will prepare the following documents:
  - (a) a concise summary (the "**Case Summary**") of its case in the dispute; and
  - (b) all documents to which the summary refers and any others to which it considers to be relevant to the evaluation (the "**Evaluation Documents**").

Unless the evaluator specifies otherwise, each Case Summary should be limited to 15 pages.

6. The evaluator will specify the date for exchange of submissions and the parties will exchange the Case Summary and Evaluation Documents with each other on that date. Copies shall be sent directly to the evaluator on the same date.
7. Within seven days of the receipt by them of the Case Summaries and Evaluation Documents the evaluator shall notify the parties of any further submissions they require before making the evaluation including any questions they require the parties to answer, the date for provision of such further submissions and if necessary the time for an oral hearing. The evaluator need not hold an oral hearing if they consider it unnecessary.

### **The Evaluation**

8. The evaluator where appropriate, will:
  - (a) read each Case Summary and all the Evaluation Documents sent to them;
  - (b) determine whether any further submissions are required by them and whether an oral presentation from the parties would assist them;
  - (c) provide a written statement of their evaluation of the dispute
  - (d) facilitate the drawing up of any settlement agreement;
  - (e) be bound by the terms for the appointment of an evaluator agreed with the parties; and
  - (f) abide by the terms of this Chapter E.
9. Any oral hearing will take place at the place and time stated by the evaluator who will chair and determine the procedure for the hearing. No recording or transcripts of the hearing will be made. Unless the evaluator orders otherwise each party shall be limited to one submission of up to one hour. The evaluator may require the parties to answer questions posed by them.
10. Within seven days of any hearing or confirmation from the evaluator that there will be no hearing, or such other date as the parties and the evaluator shall agree, the evaluator shall provide a written statement of their evaluation to all parties. The evaluation will state, on the basis of the information provided to them:
  - (a) the evaluator's assessment of the dispute, the background and each party's arguments in respect of the facts;
  - (b) the evaluator's conclusions on, or their best estimate of, the likely outcome of the case and the merits of each party's case;

- (c) the key issues or facts which the evaluator identifies as influencing the likely outcome of the case; and
  - (d) at their discretion, any suggestions on a fair or appropriate settlement of the dispute as between the parties.
11. No party shall be bound to adopt the views expressed, or accept the advice provided, by the evaluator.

### **Settlement Agreement**

12. Any settlement reached in connection with the ENE will not be legally binding until it has been recorded in writing and signed by the parties.

### **Confidentiality**

13. The evaluation is and shall be kept confidential.
14. The parties, their representatives and advisers, the evaluator and the Secretary shall keep confidential all Documents, submissions, statements and other information disclosed in the ENE, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:
- (a) to implement or enforce the agreement for settlement of the dispute; or
  - (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure or any obligations at law.
15. Its use in the ENE shall not affect the extent to which any Document, submission, statement or other information disclosed in the ENE is admissible or subject to disclosure or production in any subsequent arbitration, legal or other proceedings involving the parties.
16. The evaluator's evaluation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

### **Costs**

17. Unless the Dispute Parties otherwise agree, each Dispute Party shall bear its own costs of the ENE. If the evaluator is chosen from the Committee's pool of Hearing Chairs, then the Committee shall not charge the parties for any part of the evaluation. Otherwise, the parties shall share equally the evaluator's fees and expenses, the costs of their appointment and all other administrative costs of the procedure.

### **Termination of the ENE**

18. The ENE shall terminate upon the earliest of:

- (a) the occurrence of the events in Rule E4;
  - (b) the service by one party to the ENE on the others and on the evaluator of a notice of withdrawal from the ENE;
  - (c) withdrawal of the evaluator from the ENE; or
  - (d) provision of the evaluation to the parties.
19. Upon termination any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of the termination and its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to another dispute resolution process (unless such other process has already been commenced) within 28 days of termination, the claim shall be deemed to have been withdrawn.

### **Exclusion of liability**

20. None of the Allocation Chair, the Secretary or any evaluator shall be liable to any party for any act or omission (including negligence) in connection with any ENE under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

21. ENEs shall take place in such location as the parties agree (or in default of agreement at such place as the evaluator specifies being appropriate for all parties and themselves). Unless otherwise agreed by the parties, evaluations shall be subject to the law of England and Wales.

### **Evaluator barred from further proceedings**

22. The evaluator shall not be entitled to act in any capacity in relation to the subject matter of the ENE in which they acted as evaluator in any subsequent arbitration, legal or other similar proceedings.

## **CHAPTER F – DETERMINATIVE PROCESS RULES – ARBITRATION**

1. Arbitration under these Rules is a private determinative dispute resolution process subject to the Arbitration Acts in which a neutral arbitrator determines the dispute on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to them.

### **Disputes to be decided by arbitration**

2. Any dispute which the parties to the dispute have agreed shall be submitted to arbitration under these Rules or which has otherwise been allocated to arbitration as a first, second or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter F.
3. Any arbitration under these Rules shall proceed before a sole arbitrator.

### **Beginning an arbitration and appointing the arbitrator**

4. Upon commencement of an arbitration (in accordance with the Procedure Agreement and Rule B17 or otherwise), the Secretary shall promptly approach all Dispute Parties and liaise with and assist the parties in identifying, choosing and retaining a suitable arbitrator, if not already done.
5. In the event that no arbitrator can be agreed by the parties within 21 days of the commencement of the arbitration, the Secretary shall propose an appropriate individual, from lists maintained by them and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as arbitrator unless any party notifies the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 5 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:
  - (a) uphold the proposed appointment; or
  - (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this Rule F5 shall affect the power of an arbitrator to determine their own jurisdiction or appointment.

### *Notice of arbitration*

6. Upon the appointment of an arbitrator, the Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator. The Secretary shall also send to the arbitrator a copy of:

- (a) this Chapter F and Chapters A, B and C;
- (b) any template terms for appointment of an arbitrator issued by the Committee;
- (c) the Notice of Dispute;
- (d) any statements from the parties made under Rule B **Error! Reference source not found.**; and
- (e) any correspondence from the Allocation Chair made under Rule B15

The Notice of Dispute shall stand as a notice of arbitration and no further notice of arbitration shall be required or served.

#### *Change of arbitrator*

7. If any arbitrator acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the arbitrator or any Dispute Party, on proof satisfactory to the Secretary, declare the position of arbitrator vacant.
8. If the arbitrator or any Dispute Party considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of their position as arbitrator or is disqualified for any reason from performing those duties, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Secretary may, at the request of the arbitrator or any Dispute Party, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the position of arbitrator vacant.
9. Where the position of arbitrator shall have been declared to be vacant pursuant to Rule F7 or F8, then Rule F4 shall apply to the appointment of a replacement arbitrator.

### **Procedure**

#### *General*

10. The arbitrator shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting their case and dealing with facts raised by their opponent.
11. The arbitrator shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each party's rights at law to a fair trial. The arbitrator may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be

followed by the parties in the arbitration. The directions shall be in accordance with the Principles.

12. Subject to Rule F13, an arbitration shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
13. The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the arbitrator from requiring one or more oral hearings if they consider it appropriate for the just and expeditious determination of the proceedings.
14. Unless the arbitrator rules otherwise (either on their own motion or upon the application of any party), the following timetable and procedure shall apply:
  - (a) within 21 days of the notice of appointment of the arbitrator, the claimant(s) shall serve upon the arbitrator and each other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought;
  - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the arbitrator and the claimant(s) a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make;
  - (c) the statements of case served pursuant to sub-paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** above shall be accompanied by copies of any Documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such Documents available for inspection by the arbitrator or the other party;
  - (d) after service by the respondent of its statement of defence the arbitrator may:
    - (i) allow the parties an adjustment period within which to adjust the written statements of case so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise). On the expiry of the adjustment period, the

statements of case shall be finalised and within seven days thereafter the claimant(s) shall reproduce the statements of case, as adjusted, into a single document and send 2 copies to each of the arbitrator and the other parties to the arbitration; or, alternatively; and/or

- (ii) within seven days of the service by the respondent of its statement of defence, allow a reply from the claimant(s) limited to responding to new matters and contentions of law raised in the statement of defence including any counterclaim raised;
- (e) within seven days after the statements of case have been finalised, the arbitrator shall (in consultation with the parties) set a hearing date and the estimated length of the hearing;
- (f) within 21 days after the statements of case have been finalised, each party shall serve upon the arbitrator and the other party signed statements of any factual witnesses upon whose evidence it wishes to rely, together with any copies of Documents referred to in them not already in the possession of the other party. That party shall, if requested to do so, make the originals of such Documents available for inspection by the arbitrator or the other party;
- (g) at least seven days before the hearing, each party shall serve on the other and on the arbitrator its written submissions;

15. Unless ordered otherwise by the arbitrator, at the hearing:

- (a) there shall be no oral opening submissions, but the arbitrator may ask the parties questions arising out of their written submissions or statements of case;
- (b) subject to sub-paragraph **Error! Reference source not found.** below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn, provided Rule F14(f) has been complied with. Any party may apply to the arbitrator for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the arbitrator shall make such order unless, having heard the parties, they are satisfied that such oral examination is not likely to assist them in making their award. If a witness is ordered to attend and fails to do so, the arbitrator may:

- (i) place such weight on the written statement or affidavit as they think fit;
- (ii) exclude it altogether; or
- (iii) apply to the court for an order for the citation or attendance of witnesses;

In addition, in making their determination on Costs the arbitrator may take any failure to attend into account;

- (c) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrator;
- (d) the parties may make oral closing submissions;
- (e) the parties may be legally represented; and
- (f) the arbitrator shall be entitled to receive such evidence as they shall consider relevant, whether or not such evidence would have been admissible in a court of law; and
- (g) the arbitrator shall deliver to the parties a reasoned award within 21 days of the end of the hearing.

#### *Proposed amendments*

16. Immediately after their appointment, the arbitrator shall require each party to propose directions to them or to inform them of any amendments to the procedure or the time limits set out in Rule F14 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the arbitrator and each other party. Before responding or ordering any amendments to the procedure, the arbitrator may require the parties to meet them.

#### *References to ORR*

17. The arbitrator may, on the application of either party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to ORR in accordance with Chapter C. Before making any such reference the arbitrator shall:
- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and

- (b) determine the wording of any reference to be made with due regard to such submissions.

### *Supplemental*

18. If they consider it appropriate for the just and expeditious determination of the proceedings, the arbitrator shall be entitled to appoint one or more advisers, assessors or experts on any matter (including matters of law) to report to them on any specific issue. The costs of any such person shall be subject to the provisions of Rule F29. The arbitrator shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the arbitrator receives a report from any such person, they shall disclose the report to the parties and afford them an opportunity to comment on it.

19. In relation to the production of Documents:

- (a) the arbitrator may, on the application of a Dispute Party, require the production of such specific identified Documents or class of Documents as are within the possession, custody or control of another Involved Party or any third party which the arbitrator considers relevant. The Dispute Parties shall be given the opportunity to inspect and to comment upon any Document so produced;
- (b) if any Document is not supplied to the arbitrator and the other party within such time as the arbitrator shall prescribe, the arbitrator may:
  - (i) proceed with the arbitration on the basis of the Documents already before them;
  - (ii) apply to the Court for an order to produce the Documents; or
  - (iii) strike out the part of the claim or defence to which the Document relates,

and in making their award the arbitrator shall be entitled to draw inferences as they may think fit from the failure to supply the Document. In addition, in making their determination on Costs the arbitrator may take any failure to supply a Document at any stage in the proceedings into account;

- (c) no party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts;
- (d) unless otherwise ordered by the arbitrator, an application by a party to the arbitrator pursuant to sub-paragraph **Error! R**

**reference source not found.** above shall be made not later than 21 days before the date fixed for the hearing; a party in receipt of a request from the arbitrator to produce a Document shall comply with such a request within 14 days;

20. Without prejudice to the powers in Rule A16 and in addition to them, the arbitrator shall have power to strike out part or all of any claim or defence made in the proceedings on any one or more of the following grounds:
  - (a) wilful breach of these Rules;
  - (b) deliberate non-compliance by a party with any order of the arbitrator; or
  - (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrator, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.
21. Without prejudice to the powers in Rule A16 and in addition to them, the arbitrator shall have power to strike out part or all of any claim or defence made in the proceedings if they are satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.
22. Without prejudice to the powers in Rule A16 and in addition to them, if any Dispute Party fails to serve a Statement of Case within the period allowed under these Rules or by order of the arbitrator, and fails to remedy their default within 14 days after despatch to them by the arbitrator or any other party to the dispute of notice of that default, the arbitrator shall be entitled to rule that they shall be treated as having abandoned their claim or defence (as the case may be) and, having made such a ruling, the arbitrator shall be entitled to proceed with the reference on a without notice basis.
23. Any party who becomes aware that any provision or requirement of these Rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

## **Awards**

### *Final and binding*

24. Awards shall be final and binding on the Dispute Parties subject to:
  - (a) the provisions (including rights of appeal) of the Arbitration Acts and any other relevant law and

- (b) the provisions of any agreement between the parties to the dispute, the relevant Access Conditions, and any further right of appeal or reference to another dispute resolution process provided for in the Procedure Agreement.
- 25. If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the final award, the final award shall be deemed to have been accepted by all parties.

*Power to make orders*

- 26. Subject to any other provision of the Access Conditions and Underlying Contract, the arbitrator may make such orders in their award as they consider necessary to resolve the dispute, including, without limitation, that:
  - (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the determination or calculated in accordance with such procedure as the arbitrator shall specify;
  - (b) one Dispute Party should take or not take specified action;
  - (c) the meaning of an agreement or a party's obligations under that agreement are as stated in the determination; or
  - (d) any principal sum the arbitrator may order one party to pay to another shall carry interest at such rate and over such period as they shall determine.

*Issue of arbitration award*

- 27. The arbitrator shall send a copy of their award to the parties, the Allocation Chair and the Secretary.

**Costs**

*Discretion to order payment of Costs*

- 28. Whether or not the arbitration reaches the stage of a final award, the arbitrator may order any Dispute Party to pay some or a specified proportion of any Dispute Party's Costs incurred in the arbitration, assessed in such manner as the arbitrator shall determine. The arbitrator may make such an order without limitation following any interim or final award.

### *Joint and several liability of parties to arbitrators for fees and expenses*

29. The Dispute Parties are jointly and severally liable to pay the arbitrator's reasonable fees and expenses.

### **Confidentiality**

30. Subject to the Rules in Chapter C and Rules F31, F32 and G68, all Documents produced or disclosed in the course of an arbitration including all awards shall be treated as confidential by the arbitrator, the Allocation Chair, the Secretary and all parties and shall not be published.
31. Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an arbitration including all awards shall only be used:
- (a) for the purposes of the arbitration, including any appeal against the arbitration award, or for judicial review, in respect of the award or any subsequent stages of the determination procedure;
  - (b) for enforcing the arbitration award; or
  - (c) in support of a plea of estoppel in any subsequent proceedings.
32. The confidentiality obligations under Rule F30 shall not apply to Documents which are:
- (a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);
  - (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
  - (c) disclosed on a confidential basis to ORR, TfW, the Welsh Ministers and/or the ODP in the normal course of business; or
  - (d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

### **Communications**

33. Communications for the purposes of the arbitration may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Exclusion of liability**

34. None of the Allocation Chair, the Secretary or any arbitrator shall be liable to any party for any act or omission (including negligence) in connection with any

arbitration under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

35. Arbitrations shall take place in England or Wales and be subject to the law of England and Wales.

### **Interim relief granted by the Court**

36. In an appropriate case, a party to a dispute which has been or may be submitted to arbitration may apply to the Court for interim relief (whether negative or positive), notwithstanding that the relief sought may overlap with the interim relief which is, or may be, claimed in the arbitration.

## **CHAPTER G – DETERMINATIVE PROCESS RULES – ACCESS DISPUTE ADJUDICATION**

1. An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, with the benefit of advice from independent railway Industry Advisors, a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to them.

### **Disputes to be decided by ADA**

2. Any dispute which is to be submitted to an ADA under these Rules shall proceed according to the Rules of this Chapter G.
3. Any ADA under these Rules shall proceed before a Hearing Chair and a number of Industry Advisors to be determined by the Hearing Chair in light of the issues in the dispute and/or its value or complexity. Unless otherwise ordered by the Hearing Chair the normal number of Industry Advisors shall be two.
4. An ADA shall:
  - (a) provide determinations as an adjudication body with relevant railway expertise;
  - (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise;
  - (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute; and
  - (d) balance the formality required to achieve a fair and efficient process with the accessibility required so that the process is quick and easy to use.
5. It is an overriding objective of these Rules that disputes referred to an ADA shall be administered in a way which is proportionate to:
  - (a) the objective importance of the dispute to the Dispute Parties;
  - (b) the complexity of the issues;
  - (c) the significance (if any) of the issues involved to the railway industry; and
  - (d) the scale of any financial claims involved.

Accordingly having regard to Rule G15, the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and value.

6. The ADA shall, in the case of unavoidable absence on the day of one Industry Advisor, be quorate to hear a dispute with all other selected Industry Advisors and the Hearing Chair present.

### **Beginning an ADA**

7. An ADA shall commence upon the date identified in Rule B17.
8. The Secretary shall, on any occasion where the next dispute resolution process provided for in the Procedure Agreement is an ADA stage, appoint a Hearing Chair appropriate to the dispute.
9. The Hearing Chair:
  - (a) has oversight of the effective case management of a dispute which has been referred to an ADA in light of the Principles;
  - (b) has responsibility to ensure that all procedures of the ADA (at and before ADA hearings) are being implemented fairly and effectively in respect of each dispute;
  - (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the ADA all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;
  - (d) will make a final determination of the dispute referred to the ADA and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter G;
  - (e) shall ensure that the final determination of the dispute is circulated promptly and (where applicable) in accordance with any mandatory time requirement; and
  - (f) may, where reasonable to do so, delegate the performance of any of their functions (with the exception of making the determination of the dispute) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Rule.
10. Upon appointment, the Hearing Chair shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined. The Hearing Chair may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the ADA. The directions shall be in accordance with the Principles.

11. The directions given under Rule G10 shall expressly require the parties to reconsider whether any third parties not already identified and notified to the Secretary, in accordance with Rule B3(b) or otherwise, may be directly affected by the outcome of the dispute and require the parties to notify the Secretary of the identity of any such parties.
12. Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the Dispute Parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair to provide an extension of time for any of the stages specified in the directions. The Hearing Chair shall make their decisions on any request for an extension of time based upon the Principles.
13. Subject to Rule G14, an ADA shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute. In relation to disputes referred under Part J of the CVL Network Code, the oral hearing shall be fixed by the Hearing Chair as soon as practicable after their appointment and shall take place, unless exceptional circumstances apply, within 14 days of completion of service of the statements of case referred to in Rules G16 **Error! Reference source not found.-Error! Reference source not found.** below.
14. The parties may agree that an ADA shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the Hearing Chair from requiring one or more oral hearings if they consider it appropriate for the just and expeditious determination of the proceedings.
15. The ADA process is flexible and may be adapted by the Hearing Chair to accommodate disputes of differing complexity and size and requiring different levels of evidence. The Hearing Chair shall therefore actively consider whether variations on the standard directions (which are for a straightforward matter) set out in Rule G16 are appropriate or justified and will have regard to the submissions of the parties in this respect.
16. Subject to Rule G15, unless the Hearing Chair directs otherwise (and subject to any party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:
  - (a) subject to Rule 16(h), within 14 days of the appointment of the Hearing Chair, the claimant(s) shall serve upon the Secretary and each other Involved Party, a written statement of its claim in accordance with the template format for a statement of claim (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute. The statement of claim shall include the following:

- (i) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;
  - (ii) the subject matter of the dispute;
  - (iii) identification of the provision(s) of the Underlying Contract under which the reference is made;
  - (iv) identification of any other provision(s) of the Underlying Contract or other contract(s) which the claimant believes are also relevant to the dispute;
  - (v) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party to identify the issues raised;
  - (vi) the decision sought from the ADA;
  - (vii) the remedy claimed;
  - (viii) an authorised signature of the referring party; and
  - (ix) copies of the following Documents which shall be annexed and cross referenced to the statement:
    - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
    - (B) any other Documents referred to in the reference.
- (b) subject to Rule 16(h), within 14 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon each other Involved Party a written statement of its defence. The statement of defence shall be in accordance with the template format for a statement of defence (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute and shall include the following:
- (i) a schedule identifying those parts of the statement of claim that it agrees with and those that it disagrees with;
  - (ii) the reasons for any disagreement including any further references to provisions of the Underlying Contract or other contract(s) not dealt with in the reference;

- (iii) details of any other related claim;
- (iv) the decision (and, if relevant) any remedy sought from the ADA;
- (v) an authorised signature of the responding party; and
- (vi) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the statement of claim:
  - (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and
  - (B) any other Documents referred to in the defence.
- (c) the claimant(s) may within seven days of the service by the respondent of its statement of defence, serve upon each Involved Party a reply limited to responding to new matters and contentions of law raised in the statement of defence and any counterclaim or related claim raised;
- (d) following service of the reply, the Secretary shall write to all parties to inform them that a hearing date will be set in accordance with (e) below and to inquire whether any party intends to make an application for alternative or varied directions and/or a directions hearing at this stage;
- (e) except in relation to a dispute arising under Part J of the CVL Network Code, before the date 14 days after the statements of case referred to in paragraphs **Error! Reference source not found.-Error! Reference source not found.** have been finalised, the Secretary shall agree with the Hearing Chair and the parties a hearing date and the estimated length of the hearing. If a date cannot be agreed with one or more parties the Hearing Chair shall determine the hearing date. Unless the parties agree otherwise, or the Hearing Chair determines otherwise having due regard to Rule G15, the hearing date shall be within 35 days of the date on which it is agreed or determined in accordance with this Rule. Upon agreement or determination of a hearing date, the Secretary shall write to all Involved Parties to confirm the date to them;
- (f) the Hearing Chair may raise any questions relating to the dispute they wish in advance of the hearing. In particular the Hearing Chair shall consider whether any additional third party

should be or should have been notified of the dispute subsequent to Rule B3(b) or otherwise and may ask the parties to justify their decision not to notify any such party. If any Industry Advisor or assessor raises a question, the Hearing Chair may in their absolute discretion refer such question to the parties;

- (g) at least seven days before the hearing, each Dispute Party shall serve on all other Involved Parties its written submissions for the hearing and any additional information or responses to questions requested by the Hearing Chair; and
  - (h) for disputes referred under Part J of the CVL Network Code the timeframes set out in Rules G16(a) and G16(b) shall be reduced to 7 days.
17. At any stage prior to the date on which the Secretary writes to inform the Involved Parties of the date of the hearing, in accordance with Rule G16(e) or otherwise, any third party made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or interested party in the dispute. Any Involved Party which has not requested to become a claimant, defendant or interested party in the dispute by this point shall cease to be an Involved Party.
18. Any third party which has not been made aware of the dispute subsequent to Rule B3(b) or otherwise can by notification to the Secretary request to become a claimant, defendant or interested party in the dispute at any stage prior to the final hearing. Unless the request seems to them vexatious or frivolous (in which case they shall request that the Hearing Chair determine appropriate directions) upon receiving such a request, the Secretary shall send copies of the Notice of Dispute and all statements of case to the third party making the request subject to a requirement that that party keep such Documents confidential.
19. Any request to become a claimant, defendant or third party in accordance with Rule G17 or 18 shall be considered and determined by the Hearing Chair having considered such submissions and evidence as they shall request. In making their decision the Hearing Chair shall take into account the Principles, the wider interests of the industry, the balance of interests between all relevant parties and such other matters as appear to them to be relevant.

#### *References to ORR*

20. The Hearing Chair may, on the application of any party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to ORR in accordance with Chapter C. Before making any such reference the Hearing Chair shall:

- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
- (b) determine the wording of any reference to be made with due regard to such submissions.

### **Length of References, Responses and Joint References and method of service**

21. The length of every Statement of Case shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair the maximum length of submissions shall be as follows:
- (a) a statement of claim or defence shall be no longer than 20 pages; and
  - (b) a reply shall be no longer than 10 pages.
22. The normal method of service shall be electronic to the Secretary and other Involved Parties.

### **Directions Hearing**

23. The Hearing Chair, if necessary, may at any time (on their own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:
- (a) whether further or additional third parties should be notified of the dispute;
  - (b) the procedures most appropriate to the dispute;
  - (c) the nature of the issues in dispute;
  - (d) whether any matters are to be referred to ORR under Rule G20 or otherwise;
  - (e) an outline timetable;
  - (f) the process and details of the preparation, submission and amendments of statements of case;
  - (g) whether any Document disclosure procedures shall take place;
  - (h) whether the parties shall be permitted to bring expert evidence and if so the details of such expert evidence;

- (i) the basis and timings for which witness evidence (if any) is to be prepared and exchanged; and/or
- (j) the appointment by the ADA of assessors.

## **Documents**

24. Although Documents reasonably requested should be provided in compliance with the directions specified at Rule G16, disclosure will not ordinarily be ordered. However the Hearing Chair, whether or not on the application of any party and having due regard to Rule G15, has the power to:
- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
  - (b) specify the formalities, detail and timings involved.

The Hearing Chair shall exercise this power in accordance with the Principles.

25. No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.
26. Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant Statement of Case giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.
27. Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference they wish from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by them.
28. When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise their discretion not to grant full disclosure.

## **Witness evidence**

29. Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any ADA hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.

30. A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence they will give in respect of each such issue. Witness summaries shall be signed by the witness.
31. Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted they shall specify the formalities, detail and timings involved.

### **Experts**

32. A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.
33. When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and Rule G15.
34. The reports of experts shall state:
  - (a) the full remit against which the report has been prepared;
  - (b) the identity, qualifications and experience of the person(s) preparing the report;
  - (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.
35. At any hearing the Hearing Chair, Industry Advisors, or any assessor appointed, may address questions directly to any experts.
36. The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

### **Assessors**

37. The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):
  - (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or

- (b) a legal assessor.
38. Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.
  39. The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of their advice.
  40. The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain their reasons for disagreeing with those views.

### **Hearing Conduct**

41. The hearing will be chaired by the Hearing Chair.
42. Subject to any contrary direction of the Hearing Chair with due regard to Rule G15, the following procedure will be adopted at hearings:
  - (a) the Hearing Chair, Industry Advisors and any assessor will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
  - (b) the Hearing Chair, Industry Advisors and any assessor will confirm to the Dispute Parties the extent to which they have read the papers submitted by the Dispute Parties;
  - (c) the claimant's representative will make an opening submission of its case of no longer than 10 minutes, referring if necessary to witness or expert evidence which the claimant wishes the Hearing Chair and Industry Advisors to consider;
  - (d) the respondent's representative will also make any opening submission of its response and/or counterclaim of no longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the ADA to consider;
  - (e) if a written witness statement has been provided, the witness will not be required to read out their statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide their evidence in full orally before cross examination;
  - (f) if expert evidence is used, the expert will not be required to read out their report unless the Hearing Chair decides otherwise;

- (g) the Hearing Chair and Industry Advisors and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
  - (h) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness they shall make that clear; and
  - (i) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.
43. The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Hearing Chair and Industry Advisors to consider the evidence and arguments with any assessor. The Dispute Parties shall remain available to allow the Hearing Chair, Industry Advisors and any assessor to put any additional questions.
44. The Secretary will unless otherwise directed by the Hearing Chair make a full note of the evidence given to the ADA. The Hearing Chair may in their discretion direct in advance that a full transcript is taken.
45. The Hearing Chair may, subject to any specified requirements of the Access Conditions or Underlying Contract and legal requirement, reserve their determination until a later date.

### **Determinations**

46. Having considered the submissions of the parties and the advice of the Industry Advisors and any assessor the Hearing Chair shall make a determination of the dispute in accordance with Rule G47.
47. Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in their determination as they consider necessary to resolve the dispute including, without limitation, that:
- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the Hearing Chair shall specify;
  - (b) one Dispute Party should take or not take specified action;
  - (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination; or

- (d) any principal sum the Hearing Chair may order one party to pay to another shall carry interest at such rate and over such period as they shall determine.

48. The Hearing Chair's determination of a dispute shall be in writing and comprise:

- (a) the date of the hearing;
- (b) the names of the Hearing Chair and Industry Advisors and any assessors present;
- (c) details of all Dispute Parties (including interested parties);
- (d) details of the attendance and status of all witnesses and interested parties;
- (e) a brief summary of the dispute;
- (f) an identification of the issues of fact and law considered by the Hearing Chair;
- (g) a summary of the evidence presented;
- (h) the findings of fact made by the Hearing Chair;
- (i) identification of any precedents considered;
- (j) the decisions and conclusions reached, distinguishing clearly between:
  - (i) decisions upon legal entitlement;
  - (ii) decisions upon remedy;
  - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
- (l) the signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.

49. The Hearing Chair shall provide a copy of their written reasoned determination to all the Dispute Parties. Where a dispute has arisen in connection with Condition J10.14.1 of the CVL Network Code, the Hearing Chair shall deliver their reasoned written determination within ten working days of final submission to the ADA of all relevant information.

50. Except as otherwise provided in the Underlying Contract and without prejudice to Rule G67, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.
51. If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

### **Costs**

52. The Committee's fees and expenses including costs of any assessors and transcription services relating to the period up to and including the first day of any ADA Hearing shall not be charged to the Dispute Parties. The Dispute Parties at the time of the ADA hearing are jointly and severally liable to pay the Committee's reasonable fees and expenses connected with the ADA relating to the period after the first day of the hearing. Subject to Rule G53, the Dispute Parties shall pay such fees in equal proportions.
53. The Hearing Chair shall have power to order one or more Dispute Party to meet part or all of the Costs or expenses of the ADA and of any other Dispute Party assessed by such means as the Hearing Chair shall determine. Any such order shall be made with due regard to the Principles and to the provisions of these Rules including in particular Rule A16(d).
54. An order for costs shall only be made where the Hearing Chair is satisfied that either:
  - (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
  - (b) the conduct of the relevant Dispute Party before or during the references was such as to justify an award of costs being made against it (or them).
55. The Hearing Chair may make such an order at any stage including following any interim or final award.

### **Confidentiality**

56. Subject to Rules G57, G59 and G60, and unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an ADA including the determination shall be treated as confidential by the Hearing Chair, Panel Members, the Allocation Chair, the Secretary and all parties and shall only be used:
  - (a) for the purposes of the ADA, including any appeal or further stage in the determination procedure;
  - (b) for enforcing the ADA determination; or

- (c) in support of a plea of estoppel in any subsequent proceedings.
57. The confidentiality obligations under Rule G56 shall not apply to Documents which are:
- (a) agreed in writing by all Dispute Parties to be disclosed (including in any Underlying Contract between them);
  - (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
  - (c) disclosed on a confidential basis to ORR, TFW, the Welsh Ministers and/or the ODP in the normal course of business;
  - (d) disclosed pursuant to Rule G59 or 60; or
  - (e) required to be disclosed pursuant to the order of a court of competent jurisdiction.
58. Within seven days of its receipt of the determination (or such longer period as the Hearing Chair shall allow), any party to the dispute may give notice to the Hearing Chair and the other parties to the dispute:
- (a) that it objects to the publishing of all or some of the Documents specified in Rule G59;
  - (b) whether it considers that the Hearing Chair should exercise their discretion to exclude from publication any part of the determination which relates to its affairs; and
  - (c) if confidentiality is sought, its justification for considering that the grounds referred to in Rule G61 do not exist.
59. If no notice under Rule G58 is given within the time specified in that Rule, the Secretary shall publish the following Documents on the access disputes website:
- (a) each finalised Statement of Case (including all exhibits and attachments to such statements of case);
  - (b) each request from the Hearing Chair for further information and all responses to such requests;
  - (c) all written submissions from all parties; and
  - (d) all awards and/or determinations from the Hearing Chair.
60. If any Dispute Party serves a notice in accordance with Rule G58, the Hearing Chair shall be entitled to hear the parties on the question of confidentiality and

determine which Documents shall be published and/or whether any aspects of such Documents should be made illegible or excluded prior to publishing. If any such representations shall have been made to them, unless the parties to the dispute otherwise agree the Hearing Chair shall provide the parties to the dispute with their reasons for making their determination on confidentiality. Such reasons shall be given in writing but shall not be published on the access disputes website.

61. There is a presumption that the Documents identified in Rule G57 shall be published provided that:
- (a) publication will not, in the Hearing Chair's reasonable opinion, result in any material adverse effect on the party or parties objecting to publication; and
  - (b) the determination contains a finding or findings of wider railway industry significance; and
  - (c) it is just in all the circumstances to decline the objection from the objecting party.
62. Documents including the determination produced or disclosed in the course of an ADA in connection with Condition J10.14.1 of the CVL Network Code shall be kept confidential and such Documents shall not be published on the access disputes website.

### **Communications**

63. Communications for the purposes of the ADA may be by telephone or email (or such other means as are appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Exclusion of liability**

64. None of the Allocation Chair, the Secretary, the Hearing Chair or any Industry Advisor shall be liable to any party for any act or omission (including negligence) in connection with any ADA under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

65. ADAs shall take place in England or Wales and be subject to the law of England and Wales.

### **Interlocutory relief granted by the Court**

66. In an appropriate case, a party to a dispute which has been or may be submitted to ADA may apply to the Court for interlocutory relief (whether

negative or positive), notwithstanding that the relief sought may overlap with the relief which is, or may be, claimed in the ADA.

## **Appeal**

67. Following a determination of a dispute by the Hearing Chair any Dispute Party is entitled to appeal in accordance with any relevant provisions in the Procedure Agreement. If the Procedure Agreement is silent in respect of a right of appeal then each party shall have a right of appeal to arbitration in accordance with these Rules.
68. Any further dispute resolution process to which an appeal is made in accordance with Rule G67, shall be subject to the confidentiality provisions set out in Rules G56 - G62 as if all Documents disclosed and prepared in relation to that further dispute resolution process had been prepared in respect of an ADA.
69. If any further dispute resolution process is provided for in the Procedure Agreement or if a right to appeal to arbitration exists in accordance with Rule G67 then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determination of the Hearing Chair, that determination shall be deemed to have been accepted by all parties.

## **CHAPTER H – DETERMINATIVE PROCESS RULES – TIMETABLING PANEL**

### **Purpose**

1. The purpose of a Timetabling Panel is to determine disputes referred to it by parties to an Access Contract which incorporates Part D of the CVL Network Code which arise out of or in connection with issues of timetabling, timetable change and the allocation of capacity including restrictions of use and train slots, in:
  - (a) such an access agreement; or
  - (b) the Access Conditions incorporated by reference in the Access Contract in question;

### **The Timetabling Pool**

2. The Committee shall establish (and have administered by the Secretary) a pool of panel members for the TTP called the Timetabling Pool. The Timetabling Pool shall be primarily made up of individuals with expertise and experience in train services planning and the timetabling development process including the allocation of capacity which will allow them to understand and advise Hearing Chairs upon Timetabling Disputes.
3. Not used.
4. Not used.
5. Individual members of the Timetabling Pool shall commit to:
  - (a) sit on any Timetabling Panel when requested to do so by the Secretary subject only to diary commitments;
  - (b) hear disputes impartially in accordance with the Principles.
  - (c) not sit on any Timetabling Panel where the operator involved is part of their own owning group.

### **Disputes to be decided by a Timetabling Panel**

6. Subject to Rule H7 and 8, any dispute which is to be submitted to a Timetabling Panel under these Rules, shall proceed according to this Chapter H.
7. Following service upon the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2, any Involved Party may apply to the Hearing Chair for a ruling that:
  - (a) the dispute is not a Timetabling Dispute and should be referred to allocation in accordance with Rule B9; and/or

- (b) some aspects of the dispute or issues raised by the dispute are not matters of timetabling, timetable change and/or capacity allocation and are not properly resolved by a Timetabling Panel and consequently should be reserved for determination by another dispute resolution process.

Any such application shall give the reasons relied upon by the applicant in support of the application and be made as soon as possible after the applicant has become aware that a Timetabling Dispute has been notified to the Secretary.

8. Upon an application being made in accordance with Rule H7 the Hearing Chair may give such directions as they determine are appropriate to resolve the application and, where appropriate, to remit the dispute or aspects of the dispute to allocation in accordance with Chapter B. Such directions may include, as appropriate, a direction on whether aspects of the dispute which are not referred to a Timetabling Panel should be resolved concurrently or sequentially with any TTP process.
9. In taking their decision in accordance with Rule H8 the Hearing Chair shall have regard to the following:
  - (a) there is a presumption that disputes for which a Timetabling Panel is identified in the relevant provisions of the Underlying Contract as the body to determine disputes are Timetabling Disputes and should be resolved in accordance with this Chapter H. Consequently the Hearing Chair shall not allocate a dispute ostensibly falling within such a provision other than to a Timetabling Panel without first inviting written representations from the Involved Parties on their intention to do so and giving proper consideration to any representations made;
  - (b) any determination which may affect the production of the railway operational timetable must be made within the necessary timescales to allow that timetable to be published; and
  - (c) The CVL IM may only make adjustments to a timetable which affects train slots allocated to a train operator who is not a party to a dispute, with the assent of all affected parties, or to give effect to a decision of a Timetabling Panel or ORR.

### **TTP Process**

10. The TTP process in respect of a dispute shall commence upon the receipt by the Secretary of the Notice of Dispute in relation to a Timetabling Dispute in accordance with Rule B2.

11. Upon commencement of the TTP process in respect of any dispute, the Secretary shall appoint a Timetabling Panel in accordance with Rule H12 and send to all the parties to the dispute, and publish upon the access disputes website, a notice of the appointment of a Timetabling Panel. This notice shall contain sufficient information regarding the matter under dispute that any other Resolution Service Party will be able to determine whether or not it should seek to be recognised as a Dispute Party. The Secretary shall also give the parties notice of the Hearing Chair who has been appointed.
12. A Timetabling Panel shall:
  - (a) be appointed by the Secretary;
  - (b) consist of a Hearing Chair and three members selected from the Timetabling Pool; and
  - (c) in each case include at least: (i) one member of the Timetabling Pool representative of an Infrastructure Manager; (ii) one member of the Timetabling Pool representative of an operator of passenger services; and (iii) one member of the Timetabling Pool representative of an operator of non-passenger services.
13. The Secretary shall appoint each Timetabling Panel in a manner that:
  - (a) is in accordance with the Principles as set out in Rule A5 - A10 and this Chapter H.
  - (b) over time rotates (as evenly as is reasonably achievable given inevitably differing levels of other commitments of individuals) the individuals from the Timetabling Pool hearing disputes subject to any preferences as to the utilisation of their own employees expressed by any organisation which employs two or more such individuals; and
  - (c) is in accordance with any further guidance issued to the Secretary by the Committee.
14. A Timetabling Panel shall:
  - (a) provide determinations on the basis of the expertise of a knowledgeable peer group with relevant railway expertise;
  - (b) endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise; and
  - (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute.

15. Members of the Timetabling Pool are chosen because of their particular railway expertise as described at Rule H2. They shall exercise their functions impartially and not on behalf of any specific organisation or type of railway operations.
16. It is an overriding objective of these Rules that disputes referred to a Timetabling Panel shall be administered in a way which is proportionate to:
  - (a) the objective importance of the dispute to the Dispute Parties;
  - (b) the complexity of the issues;
  - (c) the significance (if any) of the issues involved to the railway industry; and
  - (d) the need to ensure that the production processes for the railway operational timetable are not disrupted to the potential detriment of third parties.

Accordingly the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and significance. All procedures adopted must reflect the Principles and this Chapter H.

17. In the case of absence on the day of one member (unless it is the Hearing Chair), and in the event that all of the parties subject to the dispute agree to the same, the Hearing Chair may determine that the Timetabling Panel shall be quorate to hear a dispute with either:
  - a) One member selected from the Timetabling Pool present; or
  - b) No members selected from the Timetabling Pool present.
18. The Hearing Chair:
  - (a) has oversight of the effective case management of a dispute which has been referred to a Timetabling Panel;
  - (b) has responsibility to ensure that all procedures of the Timetabling Panel (at, before and after TTP hearings) are being implemented fairly and effectively in respect of each dispute;
  - (c) will review each dispute following submission of statements of case to identify and to itemise in written form for consideration by the other Panel Members all relevant issues of law raised by the dispute a copy which shall be provided promptly to the Dispute Parties;

- (d) will make a final determination of the dispute referred to a Timetabling Panel and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter H;
  - (e) may, where reasonable to do so, delegate the performance of any of their functions (with the exception of making the determination of the dispute and acting as Hearing Chair at any hearing) in any dispute to the Secretary, however, such delegation shall not affect the obligations and responsibilities of the Hearing Chair set out in this Chapter H.
- 19. Any Resolution Service Party can by notification to the Secretary at any stage become a Dispute Party if it fulfils the definition of a Dispute Party, provided that the prior consent of the Hearing Chair is obtained in order for such a Resolution Service Party to become a Dispute Party if such notification is made after any directions hearing pursuant to Rule H25.
- 20. Upon appointment the Hearing Chair may give directions as to any or all aspects of the procedures to be followed. The Hearing Chair shall have the power at any time to make or amend the procedure to be followed by the parties in the TTP. The directions shall be in accordance with the Principles and this Chapter H and with any mandatory time requirements.
- 21. Unless the Hearing Chair directs otherwise (and subject to each party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:
  - (a) if the parties agree to submit a joint reference they shall, within 14 days of notification of the appointment of the Hearing Chair, submit a joint reference in accordance with the template format for a joint reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute;
  - (b) if the parties do not agree to submit a joint reference in accordance with **Error! Reference source not found.** above:
    - (i) each claimant shall within seven days of notification of the appointment of the Hearing Chair produce and serve upon all Involved Parties a sole reference which shall include:
      - (A) names, registered address and any relevant correspondence address (including email address) of the Dispute Parties;
      - (B) the subject matter of the dispute;

- (C) identification of the provision(s) of the Access Conditions or any Underlying Contract under which the reference is made;
- (D) identification of any other provision(s) of the Access Conditions or any Underlying Contract which the claimant believes are also relevant to the dispute;
- (E) a summary of the nature and circumstances of the dispute in sufficient detail for the other Dispute Party or Resolution Service Parties to identify the issues and whether they are likely to be materially affected;
- (F) the decision sought;
- (G) the remedy claimed;
- (H) an authorised signature of the referring party; and
- (I) copies of the following Documents which shall be annexed and cross referenced to the reference:
  - 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and
  - 2) any other Documents referred to in the reference,

and which shall be in accordance with the template format for a sole reference (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute; and

- (ii) each defendant shall within seven days of service on it of such sole reference produce and serve upon all Involved Parties a response which shall include:
  - (A) a schedule identifying those parts of the reference that it agrees with and those that it disagrees with;
  - (B) the reasons for any disagreement including any further references to provisions of the Access Conditions and Underlying Contracts not dealt with in the reference;

- (C) details of any other related claim;
- (D) the decision and, (if relevant) any remedy sought from the Hearing Chair;
- (E) an authorised signature of the responding party; and
- (F) copies of the following Documents which shall be annexed and cross referenced to the response if not dealt with in the reference:
  - 1) the relevant extracts of contractual Documents containing the provision(s) under which the referral to Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and
  - 2) any other Documents referred to in the response,

and which shall be in accordance with the template format for a response (found on the access disputes website) as may be adapted by the Hearing Chair in respect of a particular dispute;

- (c) the Dispute Parties shall send any additional information requested by the Hearing Chair, unless directed otherwise, to the Secretary not later than seven days prior to the hearing; and
- (d) an oral hearing lasting no more than one day shall be conducted.

22. Provided that such extension has no adverse effect upon the date fixed for an oral hearing, the parties may agree an extension of any timescales of up to seven days in respect of any stage. For any period beyond that extension a party may seek an order from the Hearing Chair for an extension of time for any of the stages specified in the directions. The Hearing Chair shall make their decisions on any request for an extension of time based upon the Principles and this Chapter H.

### **Length of References, Responses and Joint References and method of service**

23. The length of every reference and response shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair, the maximum length of submissions shall be as follows:

- (a) a joint reference shall be no longer than 20 pages; and

- (b) a sole reference or response shall be no longer than 10 pages.
24. The normal method of service shall be electronic to the Secretary and other Dispute Parties.

### **Directions Hearing**

25. The Hearing Chair, may at any time (on their own motion or that of any party) require the Dispute Parties to participate in a directions hearing to decide, after hearing representations from the Dispute Parties, any issues relating to the procedures adopted for the dispute including:
- (a) the procedures most appropriate to the dispute, subject to compliance with the Principles and this Chapter H;
  - (b) the nature of the issues in dispute;
  - (c) an outline timetable;
  - (d) the process and details of the preparation, submission and amendments of statements of case;
  - (e) whether any Document disclosure procedures shall be required to take place;
  - (f) the basis and timing in which witness evidence, if any, is to be prepared and exchanged; and/or
  - (g) the appointment by the Hearing Chair of assessors.

### **Documents**

26. Although Documents reasonably requested should be provided in compliance with the directions specified at Rule H21, disclosure will not ordinarily be ordered. However, the Hearing Chair, whether or not on the application of any Dispute Party, has the power to:
- (a) order any Dispute Party to provide by way of formal disclosure and inspection, Documents which it controls and which are relevant to the dispute; and
  - (b) specify the formalities, detail and timings involved.
27. The Hearing Chair shall exercise this power in accordance with the Principles and this Chapter H.
28. No party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts.

29. Requests and applications to the Hearing Chair for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant joint reference or sole reference or response giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Hearing Chair when considering a request.
30. Without prejudice to any other action open to the Hearing Chair, the Hearing Chair shall be entitled to draw any inference they wish from any failure to provide adequate or full disclosure by any party or disclosure in accordance with the terms of directions given by them.
31. When considering a request for disclosure, the Hearing Chair will consider the commercial sensitivity of the information requested and may exercise their discretion not to grant full disclosure.

### **Witness evidence**

32. Subject to any alternative direction from the Hearing Chair, a Dispute Party may rely on any witness evidence it believes to be relevant in its statements of case and at any TTP hearing provided that either a witness summary or a witness statement has been served on all other Involved Parties at least seven days before the hearing.
33. A witness summary shall identify in overview the issues on which the witness will give evidence and a summary of the evidence they will give in respect of each such issue. Witness summaries shall be signed by the witness.
34. Written witness statements will not normally be required. However if the Hearing Chair permits or requires witness statements to be submitted they shall specify the formalities, detail and timings involved.

### **Assessors**

35. The Hearing Chair may appoint one or more assessors to facilitate the determination of a dispute. Any such assessor may be (without limitation):
  - (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
  - (b) a legal assessor.
36. Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Hearing Chair may direct.
37. The Hearing Chair shall provide to the Dispute Parties the terms of reference, qualifications and experience of any assessor appointed and a summary of their advice.

38. The Hearing Chair shall not be bound by the views of an assessor but shall be required to explain their reasons for disagreeing with those views.

### **Experts**

39. A Dispute Party can rely, as of right, upon expert evidence completed prior to the date of the reference. Where a Dispute Party wishes to exercise this right it shall attach such evidence to its first Statement of Case and the other Dispute Parties shall be entitled to a direction that they may commission expert reports responding to the particular issues covered by such evidence.
40. When considering whether and to what extent to permit the Dispute Parties to commission further expert reports, the Hearing Chair shall consider what evidence is reasonably required to determine the dispute, the Principles and this Chapter H.
41. The reports of experts shall state:
- (a) the full remit against which the report has been prepared;
  - (b) the identity, qualifications and experience of the person(s) preparing the report;
  - (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the Dispute Parties.
42. At any hearing the Hearing Chair, other Panel Members, and/or any assessor appointed, may address questions directly to any experts.
43. The Hearing Chair shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports, by telephone, conferencing facilities or by any other means.

### **Hearing Conduct**

44. The hearing will be chaired by the Hearing Chair who may, in their absolute discretion make any order in respect of procedure at the hearing which they consider appropriate including whether to admit additional evidence (including oral evidence) from any party and the degree to which weight should be given to such additional evidence.
45. Subject to any contrary direction of the Hearing Chair, the following procedure shall be adopted at hearings:

- (a) the Timetabling Panel will meet in the absence of the Dispute Parties to discuss issues arising from the papers submitted by the Dispute Parties;
- (b) the Timetabling Panel will confirm to the Dispute Parties the extent to which it has read the papers submitted by the Dispute Parties;
- (c) the Hearing Chair, the other Panel Members and any assessors shall declare any relevant interests;
- (d) the claimant's representative will make an opening submission of its case of no longer than 10 minutes, referring if necessary to witness or expert evidence which the claimant wishes the Timetabling Panel to consider;
- (e) the respondent's representative will also make a brief opening submission of its response and/or counterclaim of no longer than 10 minutes, referring if necessary to additional witness or expert evidence which the respondent wishes the Timetabling Panel to consider;
- (f) if a written witness statement has been provided, the witness will not be required to read out their statement unless the Hearing Chair decides otherwise. If any witness summary has been provided the Hearing Chair shall direct how the evidence shall be admitted and may require the witness to provide their evidence in full orally before cross examination. The Hearing Chair shall direct whether any further witness evidence shall be allowed;
- (g) if expert evidence is used, the expert will not be required to read out their report unless the Hearing Chair decides otherwise. Whenever expert evidence is being given by any individual that individual shall state that they are giving expert evidence and the basis upon which they claim expertise in the relevant matter;
- (h) the Hearing Chair, other Panel Members and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
- (i) Dispute Parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness they shall make that clear; and

- (j) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.
- 46. The hearing shall be conducted with the Dispute Parties present. Following conclusion of the submissions, the Dispute Parties will withdraw to allow the Timetabling Panel to consider the evidence and arguments (with any assessor). The Dispute Parties shall remain available to allow the Hearing Chair, other Panel Members and any assessor to put any additional questions.
- 47. The Secretary will, unless otherwise directed by the Hearing Chair, make a full note of the evidence given to the hearing. The Hearing Chair may in their discretion direct in advance that a full transcript is taken.
- 48. The Hearing Chair may, subject to any specified requirements of any Access Condition and legal requirement, reserve their determination from the hearing until a later date.

### **Determinations**

- 49. Having considered the submissions of the parties and the advice of the other Panel Members and any assessor, the Hearing Chair shall make a determination of the dispute in accordance with Rule H51.
- 50. Subject to any other provision of the Access Conditions and Underlying Contract, the Hearing Chair may make such orders in their determination as they consider necessary to resolve the dispute including without limitation that:
  - (a) one Dispute Party should take or not take specified action; or
  - (b) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination.
- 51. The Hearing Chair's determination of a dispute shall be in writing and comprise:
  - (a) the date of the determination;
  - (b) the names of the Hearing Chair, other Panel Members and any assessors present;
  - (c) details of all parties to the dispute;
  - (d) details of the attendance and status of all experts, witnesses and interested parties;
  - (e) a brief summary of the dispute;
  - (f) an identification of the issues of fact and law considered by the Timetabling Panel;
  - (g) a summary of the evidence presented;

- (h) the findings of fact made by the Hearing Chair;
- (i) identification of any precedents considered;
- (j) the decisions and conclusions reached, distinguishing clearly between:
  - (i) decisions upon legal entitlement;
  - (ii) decisions upon remedy;
  - (iii) guidance to the Dispute Parties or other observations not forming part of a decision upon either legal entitlement or upon remedy;
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
- (l) signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form.

52. The Hearing Chair shall provide a copy of their written reasoned determination to all Dispute Parties and the Secretary. The Secretary shall send the determination to each Resolution Service Party and shall arrange for the determination to be immediately published on the access disputes website.

53. Subject to appeal in accordance with Rule H58, the Dispute Parties shall comply with the terms of the determination within such period as shall be specified in the determination.

54. If a Dispute Party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

### **Confidentiality**

55. Except for anything published pursuant to Rule H56 or where disclosed on a confidential basis by the CVL IM to TFW, the Welsh Ministers or the ODP, unless otherwise agreed by all parties, all Documents produced or disclosed in the course of a TTP shall be treated as confidential by the Panel Members, assessors or others present, the Allocation Chair, the Secretary and all parties and shall only be used:

- (a) for the purposes of the TTP, including any appeal or further stage in the determination procedure;
- (b) for enforcing the Hearing Chair's determination in the TTP; or
- (c) in support of a plea of estoppel in any subsequent proceedings.

56. Immediately upon receipt by the Secretary the following Documents shall be published on the access disputes website:
- (a) each finalised Statement of Case;
  - (b) each request for further information from the Hearing Chair and all responses to such requests;
  - (c) all written submissions from all parties; and
  - (d) all awards and/or determinations from the Hearing Chair.

### **Communications**

57. Communications for the purposes of the TTP may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Appeal**

58. Following a determination of a Timetabling Dispute by the Hearing Chair of a TTP any Dispute Party is entitled to appeal in accordance with the relevant part of the Access Conditions or Underlying Contract (including, as applicable, Part M of the CVL Network Code).

### **Costs**

59. The Hearing Chair shall have power to order one or more Dispute Parties to meet part or all of the Costs of the Timetabling Panel and of any other Dispute Party assessed by such means as the Hearing Chair shall determine.
60. An order for Costs shall only be made where the Hearing Chair is satisfied that either:
- (a) the case of the relevant Dispute Party shall have been so lacking in merit that the reference should not have been made (or defended); or
  - (b) the conduct of the relevant Dispute Party before or during the reference was such as to justify an award of Costs being made against it (or them).

Any such order shall be made with due regard to the Principles and this Chapter H.

### **Exclusion of liability**

61. None of the Allocation Chair, the Secretary, the Hearing Chair or any other Panel Member shall be liable to any party for any act or omission (including

negligence) in connection with any TTP under these Rules unless the act or omission is shown to have been in bad faith.

## **CHAPTER I – DETERMINATIVE PROCESS RULES – EXPERT DETERMINATION**

1. Expert determination under these Rules is a private determinative dispute resolution process in which a neutral expert (the determining expert) determines the dispute on the basis of the parties' respective legal rights, the information available to them and their own expertise.

### **Disputes to be decided by expert determination**

2. Any dispute which the Dispute Parties have agreed shall be submitted to expert determination under these Rules or which has otherwise been allocated to expert determination as a first or second stage or appeal stage dispute resolution process in accordance with these Rules, shall proceed according to the Rules of this Chapter I.
3. Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by a sole expert agreed between the parties or appointed by the Secretary in accordance with this Chapter I.

### **Beginning an expert determination and appointing the Determining Expert**

4. Upon commencement of an expert determination (in accordance with the Procedure Agreement and Rule B17 or otherwise), the Secretary shall promptly approach all parties to the dispute and liaise with and assist the parties in identifying, choosing and retaining a suitable determining expert, if not already done.
5. In the event that no determining expert can be agreed by the parties within 21 days of commencement of the expert determination, the Secretary shall propose an appropriate individual from lists maintained by them and published on the access disputes website, or otherwise. That individual shall be appointed by the parties as determining expert unless either or both parties notify the Secretary of a challenge to the appointment on the ground of (real or apparent or potential) bias, Conflict of Interest or a lack of competence within 3 days of notification of the Secretary's choice. If any challenge is made on the ground of bias, Conflict of Interest or lack of competence, the Allocation Chair shall consider the challenge and determine either to:
  - (a) uphold the proposed appointment; or
  - (b) remit the choice to the Secretary with directions concerning how a further choice should be made.

Nothing in this clause shall affect the power of a determining expert to determine their own jurisdiction or appointment.

#### *Notice of expert determination*

6. Upon the appointment of a determining expert, the Secretary shall send to all the parties to the dispute a notice of the appointment of the determining expert. The Secretary shall also send to the determining expert a copy of:
  - (a) this Chapter I and Chapter A, B and C;
  - (b) any template terms for appointment of a determining expert issued by the Committee;
  - (c) the Notice of Dispute;
  - (d) any statements from the Parties made under Rule B **Error! Reference source not found.**; and
  - (e) any correspondence from the Allocation Chair made under Rule B15

The Notice of Dispute shall stand as a notice of expert determination and no further notice of expert determination shall be required or served.

#### *Change of Determining Expert*

7. If any determining expert acting or appointed to act under these Rules resigns, withdraws, dies or refuses to act, the Secretary shall, upon application by the determining expert or any party to the expert determination, on proof satisfactory to the Secretary, declare the office of determining expert vacant.
8. If the determining expert or any Dispute Party considers that the determining expert is unable by reason of mental or physical infirmity to perform the duties of their position or is disqualified for any reason from performing the duties of their position, or has delayed unreasonably in the conduct of the expert determination or in the making of any award, the Secretary may, at the request of the determining expert or any Dispute Party, having heard the determining expert and the parties if they or any of them wish to be heard, declare the position of determining expert vacant.
9. Where the position of determining expert shall have been declared to be vacant pursuant to Rule 17 or 18, then Rule 14 shall apply to the appointment of a replacement determining expert.

#### **Procedure**

##### *General*

10. The determining expert shall act fairly and impartially as between the parties, giving each a reasonable opportunity of putting their case and dealing with facts raised by their opponent.

11. The determining expert shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined in accordance with each party's rights at law to a fair trial. The determining expert may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the expert determination. The directions shall be in accordance with the Principles.
12. Subject to Rule 113, an expert determination shall include an oral hearing which is appropriate in length and content for the just and expeditious determination of the dispute.
13. The parties may agree that an expert determination shall be conducted on the basis of written representations only. In such a case, nothing in this Rule shall prevent the determining expert from requiring one or more oral hearings if they consider it appropriate for the just and expeditious determination of the proceedings.
14. The determining expert may at any stage require one or more Dispute Parties to provide them with any information, data or computations which are within the control of that party or parties and reasonably accessible to them. The determining expert may further request one or more parties to produce further computations or analysis of data or information where such computations or analysis are reasonably necessary for the purposes of the fair resolution of the dispute and the necessary data, information and competence to prepare such computations or analysis is reasonably available to the relevant party or parties.
15. Unless the determining expert rules otherwise (either on their own motion or upon the application of any party), the following timetable and procedure shall apply:
  - (a) within 21 days of the notice of appointment of the determining expert, the claimant(s) shall serve upon the determining expert and each other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought;
  - (b) within 21 days of service by the claimant of the statement of its claim, the other party(s) shall serve upon the determining expert and the claimant(s) a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent

relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make;

- (c) the statements of case served pursuant to sub-paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** above shall be accompanied by copies of any Documents referred to in them or upon which the party serving the statement wishes to rely. In addition they shall be accompanied by (or, as appropriate refer to and identify) any computations, models, analysis or data prepared by or for that party upon which the party wishes to rely. That party shall, if so requested, make the originals of such Documents available for inspection by the determining expert or the other party(s) and shall as appropriate make available active electronic copies of such Documents for analysis by the determining expert or the other party(s);
- (d) The determining expert may raise such questions as they consider necessary or appropriate and require responses from the parties within such time as they specify.
- (e) at least seven days before any hearing, each party shall serve on the other and on the determining expert its written submissions;
- (f) unless ordered otherwise by the determining expert, at the hearing:
  - (i) there shall be no oral opening submissions, but the determining expert may ask the parties questions arising out of their written submissions or statements of case;
  - (ii) subject to sub-paragraph **Error! Reference source not found.** below, the testimony of a witness may be presented in written form, either as a signed statement or as an affidavit duly sworn. Any party may apply to the determining expert for an order that any witness whose written statement or affidavit is to be relied upon by a party should attend for oral examination at a hearing and the determining expert shall make such order unless, having heard the parties, they are satisfied that such oral examination is not likely to assist them in making their award. If a witness is ordered to attend and fails to do so, the determining expert may:

- (A) place such weight on the written statement or affidavit as they think fit;
- (B) exclude it altogether; or
- (C) apply to the Court for an order for the citation or attendance of witnesses.

In addition, in making their determination on Costs the determining expert may take any failure to attend into account;

- (iii) factual or expert witnesses who give oral evidence will not be required to provide their evidence in full orally. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the determining expert;
  - (iv) the parties may make oral closing submissions;
  - (v) the parties may be legally represented; and
  - (vi) the determining expert shall be entitled to receive such evidence as they shall consider relevant, whether or not such evidence would have been admissible in a Court; and
- (g) the determining expert shall deliver to the parties a reasoned award within 21 days of the end of the hearing.

#### *Proposed amendments*

16. Immediately after their appointment, the determining expert shall require each Dispute Party to propose directions to them or to inform them of any amendments to the procedure or the time limits set out in Rule 15 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall send promptly any proposed directions or amendments to the determining expert and each other party. Before responding and ordering any amendments, the determining expert may require the parties to meet them.

#### *References to ORR*

17. The determining expert may, on the application of any party or on their own motion, elect to refer any issue or issues to which Rule C3 applies, to ORR in accordance with Chapter C. Before making any such reference the determining expert shall:

- (a) seek submissions from all Dispute Parties on whether a reference should be made and if so the wording of such a reference; and
- (b) determine the wording of any reference to be made with due regard to such submissions.

*Supplemental*

18. If they consider it appropriate for the just and expeditious determination of the proceedings, the determining expert shall be entitled to appoint one or more advisers or assessors on any matter (including matters of law) to report to them on any specific issue. The costs of any such person shall be subject to the provisions of Rule 128. The determining expert shall provide to the parties the terms of reference, qualifications and experience of any adviser or assessor appointed. Where the determining expert receives a report from any such person, they shall disclose the report to the parties and afford them an opportunity to comment on it.
19. In relation to the production of Documents:
- (a) the determining expert may, on the application of a party, require the production of such specific identified Documents or class of Documents or data or information as are within the possession, custody or control of any other party or any third party which the determining expert considers relevant. The parties to the proceedings shall be given the opportunity to inspect and to comment upon any Document so produced;
  - (b) if any Document is not supplied to the determining expert and all other Dispute Parties within such time as the determining expert shall prescribe, the determining expert may:
    - (i) proceed with the expert determination on the basis of the Documents already before them;
    - (ii) apply to the court for an order to produce the Documents; or
    - (iii) strike out the part of the claim or defence to which the Document relates,

and in making their award the determining expert shall be entitled to draw such inferences as they may think fit for the failure to supply the Document. In addition, in making their determination on Costs the determining expert may take any failure to supply a Document at any stage in the proceedings into account;

- (c) no party shall be obliged to produce any Document which would be privileged from production in any proceedings in an action in the courts;
  - (d) Unless otherwise ordered by the determining expert, an application by a party to the determining expert pursuant to sub-paragraph **Error! Reference source not found.** above shall be made not later than 35 days after the appointment of the determining expert; a party in receipt of a request from the determining expert to produce a Document shall comply with such a request within 14 days;
- 20. Without prejudice to the powers in Rule A16 and in addition to them, the determining expert shall have power to strike out part or all of any claim or defence made in the proceedings on any one or more of the following grounds:
  - (a) wilful breach of these Rules;
  - (b) deliberate non-compliance by a party with any order of the determining expert; or
  - (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the determining expert, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.
- 21. Without prejudice to the powers in Rule A16 and in addition to them, the determining expert shall have power to strike out part or all of any claim or defence made in the proceedings if they are satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.
- 22. Without prejudice to the powers in Rule A16 and in addition to them, if any party fails to serve a Statement of Case within the period allowed under these Rules or by order of the determining expert, and fails to remedy their default within 14 days after despatch to them by the determining expert or any other Dispute Party to the dispute of notice of that default, the determining expert shall be entitled to rule that they shall be treated as having abandoned their claim or defence (as the case may be) and, having made such a ruling, the determining expert shall be entitled to proceed with the reference on a without notice basis.
- 23. Any party who becomes aware that any provision or requirement of these Rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

## **Determination**

*Final and binding*

24. The determining expert's determination shall be final and binding save
- (a) where it is so clearly erroneous on its face that it would be unconscionable for it to stand; or
  - (b) to the extent that a further right of appeal or reference to another dispute resolution process is provided for in the Underlying Contract, Access Conditions or Procedure Agreement.
25. If any further dispute resolution process is provided for in the Procedure Agreement then any party which wishes to refer the dispute to the next stage of the determination procedure (in accordance with the Procedure Agreement) shall notify the Secretary of its intention to refer. Any such notification shall be copied to all Dispute Parties. If no party notifies the Secretary of its intention to refer the matter to such further dispute resolution process within 28 days of the determining expert's determination, the determination shall be deemed to have been accepted by all parties.

*Power to make orders*

26. Subject to any other provision of the Access Conditions and Underlying Contract, the determining expert may make such orders in their determination as they consider necessary to resolve the dispute, including, without limitation, that:
- (a) one Dispute Party shall pay an amount of money (including damages) to another Dispute Party, whether that amount is specified in the determination or calculated in accordance with such procedure as the determining expert shall specify;
  - (b) one Dispute Party should take or not take specified action;
  - (c) the meaning of an agreement or a Dispute Party's obligations under that agreement are as stated in the determination;
  - (d) any Document, certificate, invoice, report or record be amended or reissued in a manner specified in the determination; or
  - (e) any principal sum the determining expert may order one party to pay to another shall carry interest at such rate and over such period as they shall determine.

*Issue of expert determination*

27. The determining expert shall send a copy of their determination to the parties, the Allocation Chair and the Secretary.

## **Costs**

### *Discretion to order payment of Costs*

28. Whether or not the expert determination reaches the stage of a final determination, the determining expert may order any Dispute Party to pay some or a specified proportion of any Dispute Party's Costs incurred in the expert determination, assessed in such manner as the determining expert shall determine. The determining expert may make such an order without limitation following any interim or final determination.

### *Joint and several liability of parties to Determining Experts for fees and expenses*

29. The Dispute Parties are jointly and severally liable to pay the determining expert's reasonable fees and expenses.

## **Confidentiality**

30. Subject to Chapter C and Rules I31, I32 and G68, all Documents produced or disclosed in the course of an expert determination including all awards shall be treated as confidential by the determining expert, the Allocation Chair, the Secretary and all parties and shall not be published.
31. Unless otherwise agreed by all parties, all Documents produced or disclosed in the course of an expert determination including all awards shall only be used:
- (a) for the purposes of the expert determination, including any appeal against the determination, or for judicial review, in respect of the award or any subsequent stages of the determination procedure;
  - (b) for enforcing the determination; or
  - (c) in support of a plea of estoppel in any subsequent proceedings.
32. The confidentiality obligations under Rule I30 shall not apply to Documents which are:
- (a) agreed in writing by all the Dispute Parties to be disclosed (including in any Underlying Contract between them);
  - (b) made available to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;

- (c) disclosed on a confidential basis to ORR, TfW, the Welsh Ministers and/or the ODP in the normal course of business; or
- (d) required to be disclosed pursuant to the order of a court of competent jurisdiction.

### **Communications**

33. Communications for the purposes of the expert determination may be by telephone or email (or such other means as is appropriate) and where by telephone shall be confirmed in writing wherever possible.

### **Exclusion of liability**

34. None of the Allocation Chair, the Secretary or any determining expert shall be liable to any party for any act or omission (including negligence) in connection with any expert determination under these Rules unless the act or omission is shown to have been in bad faith.

### **Jurisdiction and governing law**

35. Expert determinations shall take place in England or Wales and be subject to the law of England and Wales.

### **Interim relief granted by the Court**

36. In an appropriate case, a party to a dispute which has been or may be submitted to expert determination may apply to the Court for interim relief (whether negative or positive), notwithstanding that the relief sought may overlap with the interim relief which is, or may be, claimed in the expert determination.

## **CHAPTER J – CONSTITUTION, GOVERNANCE AND FUNDING**

1. This section establishes the basis on which the CVL IM procures services through the Committee for the performance of dispute resolution functions and related administrative processes and also sets out the roles associated with such functions and processes.

### **Appointment of the Allocation Chair**

2. The CVL IM shall procure that the Committee shall appoint an Allocation Chair who shall:
  - (a) preferably have suitable experience of the railway industry;
  - (b) not, during their term of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise their impartiality;
  - (c) preferably have qualified as a lawyer and mediator (or have experience as a mediator) and shall have extensive professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising certificate; and
  - (d) in addition to their role as set out in these Rules, determine any disputes arising in relation to relevant decisions of the CAHA Registrar.
3. The appointment of the Allocation Chair and the terms of such appointment shall be as prescribed in, and made pursuant to, Part J of the NR ADRR.
4. The Allocation Chair shall upon appointment, declare to the Secretary any relevant connection which they have or have had with the railway industry, and, subject to Rule J2(b), shall during their term of office promptly disclose any new connection of that kind. The Secretary shall provide a copy of any disclosure made under this Rule to the CVL IM and to any Resolution Service Party which requests it.
5. In the event that the Allocation Chair has or may have any Conflict of Interest in respect of any dispute they shall identify such Conflict of Interest to the Secretary who shall nominate a Hearing Chair from the pool referred to in Rule J11 to act as Allocation Chair for that dispute.
6. Not used.
7. Not used.

8. Not used.
9. Not used.
10. Not used.

### **Hearing Chairs and Industry Advisors**

11. The CVL IM shall procure that the Committee (in addition to the appointment of the Allocation Chair) shall appoint (as consultants) a pool of Hearing Chairs to sit on Timetabling Panels and ADAs and a pool of Industry Advisors to sit on ADAs as appropriate.
12. Hearing Chairs shall:
  - (a) preferably have suitable experience of the railway industry;
  - (b) not, during their terms of office, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
  - (c) preferably have qualified as a lawyer or hold a similar professional background and shall have professional and practical experience (at a senior level) of significant commercial disputes and commercial disputes processes but shall not be required to hold a current practising certificate (where Hearing Chairs are not legally qualified the Rules provide for assessors to be appointed as required);
  - (d) be appointed and be liable to termination of appointment in the same way as the Allocation Chair pursuant to Part J of the NR ADRR;
  - (e) have such skills and experience as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended; and
  - (f) chair TTP or ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair or Secretary or under any Procedure Agreement under Chapter B.
13. In the event that any Hearing Chair is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute they shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Hearing Chair from the pool to act as Hearing Chair for that dispute.

14. Industry Advisors shall:
- (a) have such skills, experience and qualifications as are deemed necessary by the Committee to discharge effectively the role for which the appointment is intended;
  - (b) not, during their terms of appointment, be employed by or be otherwise connected with any party entitled to use these Rules or receive any benefit from any such party in return for services provided to it, in either case in a way which may compromise impartiality;
  - (c) be appointed and be liable to termination of appointment in the same way as the Allocation Chair pursuant to Part J of the NR ADRR;
  - (d) participate in ADA hearings or discharge any other function otherwise falling within these Rules as directed by the Allocation Chair.
15. In the event that any Industry Advisor is appointed in respect of any dispute and has or may have any Conflict of Interest in respect of that dispute they shall identify such Conflict of Interest to the Secretary who shall nominate an alternative Industry Advisor from the pool to take part in that dispute.

### **The Secretary**

16. The CVL IM shall procure that the Committee shall employ the Secretary to discharge the following separate and distinct roles:
- (a) the Secretary for the purposes of these Rules;
  - (b) secretary to an ADA; and
  - (c) secretary to a Timetabling Panel.
17. Subject to Rule J16, the Committee shall specify the Secretary's remit and terms of employment in such terms as it shall (from time to time) think fit but such remit shall include the following tasks:
- (a) facilitating the work of the Committee and ensuring the efficient administration of its business;
  - (b) running the Secretariat efficiently and cost effectively;
  - (c) communicating with Dispute Parties conducting a dispute under these Rules and effecting the appointment of suitable and appropriately qualified mediators, evaluators, arbitrators or determining experts as required;

- (d) implementing efficiently any instruction given to the Secretary by the Allocation Chair or any Hearing Chair;
- (e) appointing an appropriate ADA and Timetabling Panel in each relevant dispute;
- (f) ensuring that the access disputes website is up to date, accurate and accessible;
- (g) maintaining a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators, experts, evaluators, assessors and of organisations which are qualified to suggest such persons;
- (h) sourcing external legal advice as requested or directed by the Committee, the Committee Chair, the Allocation Chair or a Hearing Chair; and
- (i) liaising with the CAHA Registrar.

18. The Secretary may:

- (a) delegate the performance of any of their functions to any member of the Secretariat but such delegation shall not affect their responsibilities to ensure that all matters falling within their remit are properly discharged;
- (b) in the discharge of their tasks, duties and obligations under these Rules seek guidance from the Committee Chair or the Allocation Chair (as appropriate) at any time and in relation to any matter, issue or question, as they see fit, prior to taking (or not taking) any relevant action;
- (c) be removed from office by the Committee in the same manner as the Allocation Chair pursuant to Part J of the NR ADRR.

19. The Secretary shall not be a Member of the Committee, the Allocation Chair, a Hearing Chair, an Industry Advisor, arbitrator, mediator, determining expert or evaluator or a member of any Timetabling Panel.

20. The appointment of the Secretary and the terms of such appointment shall be as prescribed in, and made pursuant to, Part J of the NR ADRR.

## **The Secretariat**

21. The Committee may appoint additional consultants or employ additional staff members, to assist the Secretary to discharge their duties (together, from time to time, the "Secretariat").
22. The Secretariat shall be appointed or employed, upon such terms as the Committee shall determine.
23. The appointment of the Secretariat and the terms of such appointment shall be as prescribed in, and made pursuant to, Part J of the NR ADRR.

### **Funding**

24. The Committee's financial year shall commence on 1 April.
25. Not used.
26. Not used.
27. The CVL IM shall be a Resolution Service Party and shall make a payment in an amount to be agreed between the CVL IM and the Committee which shall be a fair and reasonable amount in respect of the CVL, taking into account such factors as the Committee in its discretion believes to be appropriate.
28. The Committee may from time to time publish and/or amend a statement of the additional charges it will require Dispute Parties to pay in relation to the services provided in connection with disputes which have been referred for resolution under these Rules and may require Dispute Parties to pay such charges (including as a precondition to releasing determinations).
29. Not used.
30. Any request for payment from the Secretary shall be settled within 30 days.
31. Not used.
32. Not used.
33. Any Resolution Service Party shall be entitled to require the Secretary to provide them with a certificate from a firm of chartered accountants in relation to the costs and expenses of the Committee in respect of any financial year. The Secretary shall promptly comply with any such request.
34. Not used.

### **Capacity of Committee to enter into Contracts**

35. In making any appointment or otherwise exercising the powers under this Chapter J the Committee Members are authorised to act on behalf of the Resolution Service Parties.
36. No Hearing Chair, any Industry Advisor, or any member of the Secretariat, appointed as a consultant shall by virtue of their office be an employee of the Committee or any person.
37. A Resolution Service Party, on becoming such, shall indemnify those who are already Resolution Service Parties (the **"Existing Resolution Service Parties"**) against its share of any liability which arises:
  - (a) while it is a Resolution Service Party; and
  - (b) under any contract of appointment and or other contract that is entered into by the Committee Members on behalf of the Existing Resolution Service Parties (or some of them, and whether or not with others) before it became a Resolution Service Party.

A Resolution Service Party's share of such liability under this Rule J37 shall be a fair and reasonable amount as assessed by the Committee taking into account such factors as the Committee in its discretion believes to be appropriate.

38. A Resolution Service Party that ceases to be such shall be indemnified by the Resolution Service Parties which remain against any liability which arises:
  - (a) after it ceases to be a Resolution Service Party; and
  - (b) under a contract of appointment and or other contract entered into by the Committee on behalf of it (with other Resolution Service Parties) while it was a Resolution Service Party.

A Resolution Service Party's share of such liability under this Rule J38 shall be a fair and reasonable amount as assessed by the Committee taking into account such factors as the Committee in its discretion believes to be appropriate.

### **Publication of Information**

39. The CVL IM shall procure that the Committee shall require the Secretary to ensure that the access disputes website shall be maintained. It shall be up to date at all times so as to contain, by means of conspicuous and easily accessible links:
  - (a) the identity and telephone contact number for the Secretary, all Committee Members and members of the Timetabling Pool;

- (b) copies of the approved minutes of every meeting of the Committee;
- (c) copies of the annual report and any other reports of the Committee, and of all other general communications to Resolution Service Parties in relation to its affairs;
- (d) subject to determinations of commercial confidentiality, copies of every reference to ORR under these Rules and all responses from ORR; and
- (e) all other Documents including determinations and awards as specified for publication on the access disputes website in these Rules.

### **Liability of Committee Members, Panel Members and officers**

- 40. Subject to Rule J41 none of the Committee Members, the Committee, Panel Members (TTP or ADA), Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary, any member of the Secretariat or any employee of the Committee shall be liable in contract or tort or otherwise to any party for any act or omission (including negligence and vicarious liability for the negligence of employees)) in connection with any Committee proceedings or dispute determined by a Timetabling Panel or by a Hearing Chair under these Rules except in respect of any act or omission shown to constitute bad faith and/or dishonest conduct.
- 41. The exclusion of liability in Rule J40 does not extend to the express obligations of the Committee Chair, the Allocation Chair, any Hearing Chair, Industry Advisors and the Secretary, any member of the Secretariat, or any employee of the Committee contained in any contract of appointment or employment.
- 42. The Resolution Service Parties shall (subject to Rule J43) jointly and severally indemnify, and keep indemnified, the Committee Members, Committee Chair, the Allocation Chair, any Hearing Chair, Panel Members (TTP or ADA), Industry Advisors, the Secretary and any member of the Secretariat against any liability incurred (or alleged to have been incurred) by them to any Dispute Party or any third party in connection with any of their duties under these Rules so far as it relates to the CVL, except in respect of any act or omission which is shown to constitute bad faith and/or dishonest conduct or which would be a breach of any obligation contained in any contract of appointment.
- 43. The indemnity obligation of a specific Resolution Service Party under Rule J42 shall exclude any individual who is an appointed officer of that Resolution Service Party or of any affiliate if (and only to the extent that) such indemnity would be precluded under the Companies Acts. For the avoidance of doubt such exclusion shall not however affect:

- (a) the joint and several obligation of that Resolution Service Party under Rule J42 to indemnify other relevant individuals;
- (b) the joint and several obligation of all other Resolution Service Parties to indemnify any individual not entitled to an indemnity from any Resolution Service Party by virtue of a directorship; and
- (c) any lawful right of contribution by indemnifying Resolution Service Parties against a Resolution Service Party not required to indemnify by reason of this Rule J43.

### **Other Administrative Issues**

- 44. These Rules may be amended in accordance with the provisions of Part C of the CVL Network Code.
- 45. No amendment of these Rules shall have effect unless approved by ORR.
- 46. Any dispute arising out of the operation or interpretation of these Rules including this Chapter J shall be referred to ORR for determination in accordance with such process as ORR shall specify. In the event that ORR determines that a reference made to it under this Rule J46 does not relate to the operation or interpretation of these Rules, it shall decline to hear the reference.
- 47. These Rules are subject to the laws of England and Wales.
- 48. These Rules form part of the CVL Network Code.

