

## Part G - Network Change

~~[This amended Part G is reflective of a steady state position once the changes to this Part G are fully implemented. The drafting does not therefore deal with the how this Part G would apply during the implementation or transition period.]~~ The explanatory note will need to be updated as per ATOC's comments (see below) once all the amendments to Part G are agreed.]

[applicable to the payment of any compensation attributable to a Network Change being implemented on or after [the implementation date] unless the compensation amount or the specific<sup>1</sup> method of calculating the compensation amount has been agreed prior to [the implementation date] under the Part G [identify "old" Part G] and such compensation amount or calculation method relates to Network Changes being implemented before [a date which is 6 months after the implementation date];]

### Explanatory Note

- A. Part G is concerned with the procedures which Network Rail and Train Operators must go through when certain types of change to the Network (defined as "Network Change") occur or are proposed.
- B. The definition of "Network Change" is broad, and much of it is expressed in non-exhaustive terms (i.e. after some general words of definition, 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 definition should always be considered carefully and in its entirety before any decision is made as to whether a particular change falls within the scope of Part G (see generally the Rail Regulator's judgment in *Network Rail Infrastructure Limited v Great North Eastern Railway Limited* [2003] RR 2). The following specific points should also be noted:
- (i) only changes which are likely to have a material effect on the operation of the Network or of trains operated on the Network are Network Changes;
  - (ii) Network Changes can either be physical (e.g. changes to the layout, configuration or condition of the Network) or operational (e.g. the introduction of a speed restriction on a section of track, a change to the way Network Rail 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 Network Changes if they last, or are likely to last, for more than six months;

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<sup>1</sup> In this context only, "specific" means that where possessions are agreed under a Major Project Notice or a Network Change Notice on the basis that the TOC has an entitlement to compensation, neither Access Party can claim that the calculation regime in the old Schedule 4 is the "method of calculating" that compensation. In such circumstances, the parties would have to agree what the appropriate calculation method is having regard to the timing of the compensation claim and the transitional arrangements on which version of schedule 4 should be applied. Specific therefore means a bespoke agreement on compensation methodology.



Part G on its website. Network Rail is also obliged to publish model terms and conditions which it is prepared to use in connection with the implementation of Network Change proposals.

- G. Conditions G1 and G2 are concerned with proposals made by Network Rail. Conditions G3 and G4 are concerned with proposals made by Train Operators. Conditions G5 to G7 inclusive are concerned with proposals made by Network Rail using the Complex Projects Procedure. Condition G8 is concerned with the expiry and reversal process of a Short Term Network Change. G9 is concerned with mandatory changes (resulting from a Change of Law or a Direction of a Competent Authority). Condition G10 is concerned with the processes that may be adopted for establishing and implementing Network Changes. Condition G11 is concerned with dispute resolution in connection with Network Change proposals.
- H. Except where it elects to follow the Complex Projects Procedure (see note J below for guidance), where Network Rail wishes to make a Network Change proposal the procedure is as follows:

- (i) Network Rail gives a notice of proposal and sets a deadline for Train Operators to respond to it. Conditions G1.1 and G1.2 specify the persons to whom the notice must be given and what it must contain. In particular, the notice is to contain information on the likely material effects of the Network Change and the reasons for its proposal and proposals as to how affected Train Operators should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.
- (ii) Network Rail consults with operators of railway assets likely to be affected by the proposed change and may adjust the deadline for responses in the light of consultation.
- (iii) If the deadline for responses is 60 or more days after the date of Network Rail's notice, Network Rail may require Train Operators to submit preliminary responses or estimates of the costs, losses and expenses which they may incur as a result of the implementation of the proposed change.
- (iv) Train Operators are entitled to be reimbursed 75% of their reasonable costs of assessing a Network Change proposal by Network Rail. Network Rail may require Train Operators to provide it with estimates of such assessment costs, or to cease incurring such costs.

[NOTE: Adjust note (v) – to reflect revision to removal of RoU impacts from cannot be adequately compensated blocking right and to reflect that compensation for RoUs is now dealt with via TAC S4 or equivalent.]

- (v) In responding formally to a Network Change proposal, a Train Operator must either accept the proposal in its entirety or object to it on one or more of the grounds specified in Condition G2.1.1(a). Grounds for

*objection fall into four categories: objections to the proposed change because it would breach the Train Operator's access contract; objections to the change proposal on the grounds that it does not contain sufficient information to allow the Train Operator to make an informed response; objections to the proposed change on the grounds that it would result in a material deterioration in performance that could not adequately be compensated; and objections to the proposed change because it does not take into account the reasonable expectations of the Train Operator in relation to the future use of the part of the Network in question. When making a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, a Train Operator must state on what terms it believes such compensation should be paid. The benefits of the change to the Train Operator and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of such compensation.*

- (vi) Network Rail must then either reach agreement with any objecting Train Operators, refer the matters in dispute to the relevant ADRR Panel or abandon the proposal. Implementation will then depend on whether the ADRR Panel proceedings and any subsequent appeal to the Office of Rail Regulation result in a determination that the change should be implemented on terms which are acceptable to Network Rail. If no Train Operator objects to a Network Change proposal, Network Rail is entitled to implement following the procedure set out in Condition G10.*
- I. The Short Term Network Change process allows Network Rail to propose to maintain any part of the Network at less than the published capability for a specified period. Condition G8 provides Train Operators with the ability to request, at Network Rail's cost, the reversal of any such change should they have a reasonable expectation as to the future use of the relevant part of the Network before the expiry of the specified period.*
- J. Where Network Rail wishes to make a Network Change proposal using the Complex Projects Procedure, this should be carried out as follows:*
  - (i) Before giving formal notice of a proposal for a Network Change which it intends to progress using the Complex Projects Procedure, Network Rail must advise all affected Train Operators that it intends to initiate that procedure. The information provided must include details of the proposed change, the reasons for it being progressed and a draft plan setting out the intended stages and timetable for the procedure. Network Rail must also include a draft Scope of the proposal.*
  - (ii) Network Rail must consult with all affected Train Operators on the information it has provided. Train Operators must take all reasonable steps to supply any information that Network Rail has requested to enable it to develop its proposal, and to provide a response to Network Rail within 30 days (or such longer period as Network Rail may specify) of receiving the consultation information. Due consideration must be*

*given to the views contained in all responses and where Network Rail disagrees with the views of any Train Operator, it must send a written explanatory response to that Train Operator.*

- (iii) Once the consultation process outlined above has been completed, Network Rail may, if it wishes to proceed with the proposed Network Change, issue a notice of intended Scope to each affected Train Operator.*
- (iv) Upon receipt of a notice of intended Scope, each Train Operator must within 30 days (or longer if specified by Network Rail) respond in writing to Network Rail stating whether it agrees to the Scope. It can only refuse to agree if it believes that if the Scope were to be proposed as a Network Change at least one of the 'normal' reasons for rejection of a Network Change proposal, set out in Condition G2.1.1(a), would apply (see note H(v) above). Train Operators who do not respond within the specified timescales, e.g. 30 days, are deemed to have agreed to the Scope.*
- (v) If the Scope cannot be agreed by Network Rail and an affected Train Operator, either party can refer the matter to dispute (using the process set out in Condition G11).*
- (vi) Train Operators are entitled to be reimbursed 100% of their minimum reasonable costs of assessing Network Rail's notice of proposed Scope. Network Rail may require Train Operators to provide it with accurate estimates of such assessment costs to enable it to assess whether they are reasonable, or if necessary to cease incurring any further costs.*
- (vii) At any time before a Network Change notice is issued, Network Rail may issue further notices of intended Scope to consult about the inclusion of further elements which it would like to form part of the Scope.*
- (viii) If Network Rail chooses to proceed with a Network Change using the Complex Projects Procedure it may issue a Network Change notice or notices (using the process in Condition G1) to consult on the implementation of Preparatory Works to facilitate the development of the project. Train Operators must take all reasonable steps to facilitate such works, although they have the same rejection or acceptance rights as they would if the Preparatory Works were issued as a Network Change proposal in their own right.*
- (ix) Once the Scope has been agreed by a Train Operator, Network Rail may issue a Network Change notice to consult on the implementation of the proposed change. A Train Operator cannot reject elements of the Scope which are included in such a proposal for Network Change, unless the Scope has changed from that which was agreed such that it is likely materially to affect that Train Operator. If Train Operator is thus prevented from rejecting the Network Change proposal under*

*normal grounds but would otherwise have been able to do so, it can reject the proposal if it believes the proposal for Network Change is not to the benefit of the industry as a whole.*

K. *Where a Train Operator wishes to make a Network Change proposal, the procedure is as follows:*

- (i) The Train Operator (“Sponsor”) gives a notice of proposal to Network Rail. Condition G3.2 prescribes the contents of such a notice. In particular, the notice is to contain information on the likely material effects of the Network Change and the reasons for its proposal and proposals as to how Network Rail and affected Train Operators should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. Network Rail must then evaluate the proposal and be permitted to consult with Train Operators and other relevant persons about the effects of the proposal.*
- (ii) Within 30 days of receiving the Sponsor’s notice, Network Rail gives a notice setting out the Sponsor’s proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor’s proposal). The notice includes a deadline for Network Rail to respond to the Sponsor’s notice of proposal, which may be adjusted in the light of consultation.*
- (iii) If the deadline for responses is 90 or more days after the date of Network Rail’s notice, the Sponsor may require Network Rail to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.*
- (iv) Network Rail is entitled to be reimbursed 75% of its reasonable costs of assessing a Network Change proposal by the Sponsor. The Sponsor may require Network Rail to provide it with estimates of such assessment costs, or to cease incurring such costs.*

*[Note: Query add comment over NR costs including compensation for RoUs payable to third party operators, while third party operators cannot claim for RoU impacts direct – also address in compensation note.]*

- (v) In responding formally to a Network Change proposal, Network Rail must state on its own behalf and on behalf of any other Train Operator, whether the proposal is accepted in its entirety or objected to on one or more of the grounds specified in Condition G4.1.1(a) or (b). If a Network Change proposal is accepted and Network Rail and/or an affected Train Operator make a claim for compensation for costs, losses and expenses which it may incur as a result of the proposed change, Network Rail must state on what terms it (or another Train Operator) believes such compensation should be paid. The benefits of the change to Network Rail or any other Train Operator and their*

*chances of recouping their costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.*

- (vi) The Sponsor must then either reach agreement with Network Rail and other Train Operators to the extent that they raise objections to the proposal, refer the matters in dispute to the relevant ADRR Panel or abandon the proposal. Implementation will then depend on whether the ADRR Panel proceedings and any subsequent appeal to the Office of Rail Regulation (see further Condition G10) result in a determination that the change should be implemented. If there are no objections to the proposal the Sponsor is entitled to require Network Rail to implement it following the procedure set out in Condition G9.*
- (vii) Where a proposal for Network Change proposed by a Train Operator requires the implementation of a Vehicle Change, that Train Operator must follow the required procedures under Part F as well as those under Part G.*

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

## DEFINITIONS

In this Part G, unless the context otherwise requires:

- “authorised variation” means a variation to an established Network Change, where:
- (a) the terms and conditions on which the 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 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 Network Change, a series of changes;
- “Complex Projects Procedure” means the procedure set out in Conditions G5 to G7;
- “Effective Date” means the date specified in a notice of proposal of a Short Term Network Change upon which the Short Term Network Change is proposed to become effective;
- “Established Date” means the first date upon which a Short Term Network Change can be implemented in accordance with Condition G10, whether or not the change is implemented on that day;
- “established Network Change” means a change falling within the definition of “Network Change” and which:
- (a) in the case of a Network Change proposed by Network Rail, Network Rail is entitled to carry out having complied with the procedural and other

requirements of this Part G; and

(b) in the case of a Network Change proposed by a Train Operator, Network Rail is required by this Part G to carry out,

and “establish” and “establishment” of a Network Change shall be construed accordingly;

“Expiry Date”

means the date specified in a notice of proposal in relation to a Short Term Network Change which shall not be more than two years, or such longer period as is agreed between Network Rail and each Train Operator that may be affected by the implementation of the proposed Short Term 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 the Office of Rail Regulation);

“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;

“Network Change”

means, in relation to a Train Operator:

(a) any change in or to any part of the Network (including its layout, configuration or condition) which is likely materially to affect the operation of:

(i) the Network; or

(ii) trains operated by that Train Operator on the Network; or

(b) any change to the operation of the Network (being a change which does not fall within paragraph (a))

above) which:

- (i) is likely materially to affect the operation of trains operated by that Train Operator on the Network; 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 Railway Group Standards) owned or used by Network Rail or a Train Operator; or
- (c) any material variation to an established 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;

“Preparatory Works”

means testing, trials, pilot activities, surveys and all other activities reasonably necessary to develop the proposed Network Change;

~~“Restriction of Use”~~

~~means [●];<sup>4</sup>~~

“Relevant Costs”

means, in respect of any Network Change implemented in accordance with Condition G9:

(a) in respect of Network Rail, all costs, direct losses and expenses (including loss of revenue and liabilities to other train operators but excluding liabilities under any Train Operator’s Access Agreement as a consequence of any Restriction of

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<sup>4</sup> ~~\_\_\_\_\_ A definition applicable to TOCs, FOCs and open access passenger operators will need to be agreed.~~

Use in connection with the implementation of that Network Change) incurred by Network Rail as a consequence of the implementation of that Network Change;

(b) in respect of any Train Operator, the amounts which would otherwise be due under that Train Operator's Access Agreement as a consequence of any Restriction of Use in connection with the implementation of that Network Change;

“relevant response means:  
date”

(a) in relation to a proposal for a Network Change under Condition G1, the later of such dates as are reasonably specified by Network Rail under Condition G1.2(a) and Condition G1.3.2 as the date on or before which a Train Operator is to give notice of its response to that proposal under Condition G2.1, having regard to:

- (i) the size and complexity of the change; and
- (ii) the likely impact of the change on the Train Operator,

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 Network Change under Condition G3, the later of such dates as are reasonably specified by Network Rail 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 change; and
- (ii) the likely impact of the change on Train Operators,

and which shall not be:

- (A) less than 60 days; or
  - (B) unless Network Rail and the Sponsor agree otherwise in writing, more than 90 days,
- from the date on which Network Rail's notice under Condition G3.3.1(c) is given;

“Scope”	means those elements of the scope of a proposed Network Change that are set out in a notice issued by Network Rail under Condition G5.4;
“Short Term Network Change”	means a Network Change which Network Rail specifies as such in any proposal made under Condition G1, being a Network Change which involves only a temporary reduction in the capability of the Network for a defined period of time during which there is no reasonable expectation of a requirement for the capability being temporarily withdrawn;
“Sponsor”	means, in relation to a proposal for a Network Change under Condition G3.1, the Train Operator 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 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 Network Change, a procedure which: <ul style="list-style-type: none"><li>(a) forms part of the terms and conditions on which the Network Change is established; and</li><li>(b) provides for the established Network Change itself to be varied after it has been first established.</li></ul>

## **CONDITION GA - FACILITATION OF NETWORK CHANGE**

**A1 *Obligation to facilitate Network Change***

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

**A2 *Limit of obligation***

Condition GA1 does not oblige Network Rail to do anything which it is not required to do under its network licence.

**A3 *Facilitation***

The obligation of Network Rail under Condition GA1 includes:

- (a) the provision to a Train Operator of such information concerning the condition, capacity and/or capability of the Network as:
  - (i) Network Rail is required at any time to hold or have appropriate access to under its network licence; and
  - (ii) that Train Operator may reasonably request in connection with the development of a proposal for Network Change (whether the proposal is made by that Train Operator or another person);
- (b) the publication on its website (subject to Condition A3 of the Network Code) of:
  - (i) every proposal for Network Change made by Network Rail under Condition G1.1 or by a Train Operator under Condition G3.1;
  - (ii) every response to a proposal for Network Change made by a Train Operator under Condition G2.1 or by Network Rail under Condition G4.1;
  - (iii) every determination of matters which have been referred to the relevant ADRR Panel or the Office of Rail Regulation under Condition G11.1 or G11.2;
  - (iv) every authorised variation;
  - (v) standard forms, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, for the notification under this Part G of proposals for Network Change, and of responses to such proposals, which:

- (A) may include different forms for different types of 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 Network Change under this Part G, unless it is not reasonably practicable for it to do so; and
- (vi) model terms and conditions, produced after consultation with every other Access Party and approved by the Office of Rail Regulation, by way of supplement to the terms of this Part G and on which Network Rail is prepared to contract for or in connection with the implementation of a Network Change which:
  - (A) shall provide appropriate and proportionate forms of contract for different types of 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 Network Change which are proposed by Network Rail under Condition G1 or by a Train Operator under Condition G3;
- (c) the provision of a preliminary response to a proposal for Network Change by a Train Operator under Condition G3.4;
- (d) such consultation before a notice of a proposal for a Network Change is submitted by a Train Operator as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition G1.1(a) and G3.1(b) before a notice of a proposal for a Network Change is given by Network Rail or submitted by a Train Operator as:
  - (i) Network Rail considers reasonably necessary; and
  - (ii) any person specified in Condition G1.1(a) and G3.1(b) may reasonably request,to enable the proposal to be developed in an efficient and economical manner.

**CONDITION G1 - NETWORK CHANGE PROPOSAL BY NETWORK RAIL**

## **1.1 Notice of proposal**

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

- (a) give notice of its proposal for Network Change to:
  - (i) each Train Operator that may be affected by the implementation of the proposed Network Change;
  - (ii) the Secretary of State, and Scottish Ministers if they may be affected by the implementation of the proposed Network Change;
  - (iii) the Office of Rail Regulation; and
  - (iv) each Passenger Transport Executive that may be affected, Transport for London if it may be affected and the Welsh Assembly Government if it may be affected, by the implementation of the proposed Network Change; and
- (b) without delay publish on its website a summary of its proposal for Network Change.

## **1.2 Content of notice of proposed Network Change**

A notice of a proposed Network Change given by Network Rail under Condition G1.1 shall:

- (a) state the relevant response date and the obligations of Train Operators and Network Rail under Conditions G1 and G2;
- (b) indicate whether and to what extent the proposed Network Change has been progressed using the Complex Projects Procedure;
- (c) indicate whether the proposed Network Change is a Short Term Network Change;
- (d) invite the persons specified in Condition G1.1(a)(ii)-(iv) to submit comments by the relevant response date;
- (e) contain:
  - (i) the reasons why it is proposed to make the change, including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;

- (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 Network 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) Network Rail's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to Train Operators in respect of the change;
  - (v) in the case of a Short Term Network Change:
    - (A) Network Rail's proposals as to the Effective Date;
    - (B) Network Rail's proposals as to the Expiry Date;
    - (C) the estimated timescale in which the change could reasonably be reversed if so requested by a Train Operator based on its reasonable expectations as to future use of the Network; and
    - (D) the capability of the relevant section of the Network before the proposed Short Term Network Change (and any Short Term Network Change which it succeeds) and the proposed reduction to that capability;
  - (vi) any additional terms and conditions which Network Rail proposes should apply to the 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; and
- (f) 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), to enable any such person to assess the likely effect of the proposed 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 Consultation**

1.3.1 Network Rail shall, after giving notice of any proposal for Network Change under Condition G1.1, consult with each operator of railway assets likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform that operator of the change and to enable that operator to assess the consequences for it of the proposed change.

1.3.2 After consultation under this Condition G1.3, Network Rail may notify a later relevant response date to the persons to whom the notice of proposal for Network Change was given.

### **1.4 Obligations on Train Operators to facilitate Network Change**

1.4.1 Except in the circumstances and to the extent specified in Condition G1.4.2, a Train Operator shall, when consulted by Network Rail under Condition G1.3, take all reasonable steps to comply with any written request of Network Rail to provide Network Rail, within a reasonable period of time and at no cost to Network Rail, with:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition G2.2; or
- (b) a preliminary written response in respect of the proposed Network Change, which shall:
  - (i) be binding on the Train Operator, unless the Train Operator indicates otherwise; and
  - (ii) if it is negative, include reasons.

1.4.2 A Train Operator shall not be obliged to comply with a request from Network Rail under Condition G1.4.1:

- (a) unless:
  - (i) the relevant response date is 60 or more days after the date on which the proposal for Network Change was given; and
  - (ii) the request is made at the same time as Network Rail gives its notice under Condition G1.1; or

- (b) to the extent that the Train Operator is unable to comply with such a request, having regard to the information reasonably available to it.

#### **1.5 *Reimbursement of costs***

Subject to Conditions G1.4 and G2, each Train Operator shall be entitled to reimbursement by Network Rail of 75% of all costs incurred by that Train Operator in assessing any Network Change proposed by Network Rail. Those costs shall be the minimum reasonably necessary for that Train Operator to carry out that assessment.

#### **1.6 *Further information regarding costs***

Each Train Operator shall, upon request from Network Rail from time to time, provide Network Rail with written estimates of the costs of assessing a proposal for Network Change proposed by Network Rail (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 Network Rail from time to time, provide Network Rail with such information as may be reasonably necessary to enable Network Rail to assess the reasonableness of any estimate.

#### **1.7 *Accuracy of estimates***

Each Train Operator shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

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

A Train Operator shall, if requested by Network Rail at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any proposal for Network Change made by Network Rail.

#### **1.9 *Changes to the operation of the Network***

In the case of a Network Change within the meaning of paragraph (b) of that term's definition, Network Rail may commence implementing the procedure set out in this Part G and shall, upon notice being given by the relevant Train Operator to Network Rail 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 Network Change proposed by Network Rail.

### **1.10 *Network Change for safety reasons***

To the extent that a Network Change within the meaning of paragraph (a) of that term's definition is required to be made by Network Rail for safety reasons, Network Rail shall not be obliged to implement the procedure set out in this Part G in relation to that change until the change has lasted for three months. Upon expiry of the relevant period, Network Rail shall promptly commence implementing and thereafter comply with the procedure set out in this Part G as if the relevant Network Change were a Network Change proposed by Network Rail.

## **CONDITION G2 - RESPONSE BY TRAIN OPERATOR TO NETWORK CHANGE PROPOSAL**

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

2.1.1 The Train Operator shall give notice to Network Rail if it considers that:

- (a) one or more of the following conditions has been satisfied:
  - (i) the implementation of the proposed change would necessarily result in Network Rail breaching an access contract to which that Train Operator is a party;
  - (ii) Network Rail has failed, in respect of the proposed change, to provide sufficient particulars to that Train Operator under Condition G1.2;
  - (iii) the implementation of the proposed change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under this Condition G2 or that Train Operator's Access Agreement; or
  - (iv) the proposed change does not adequately take account of the reasonable expectations of the Train Operator as to the future use of the relevant part of the 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 Network Change and the proposed 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 Network Change, to the benefit of the industry as a whole; and/or

- (c) it should be entitled to compensation from Network Rail for the consequences of the implementation of the change either:
  - (i) in accordance with compensation terms proposed under Condition G1; or
  - (ii) on terms other than those proposed (if any) under Condition G1.

2.1.2 Any notice of the kind referred to in Condition G2.1.1 (a) above shall include the reasons for the Train Operator's opinion. Any notice of the kind mentioned in Condition G2.1.1 (c) (ii) above shall include the reasons why the Train Operator considers that any compensation terms proposed under Condition G1 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 Train Operator 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 Network Rail should provide.

The notice referred to above shall contain such detail as is reasonable to enable Network Rail to assess the merits of the Train Operator's decision.

## **2.2 Amount of compensation**

Subject to Condition G2.3 and Condition G2.4(a), 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 can reasonably be expected to be incurred by the Train Operator as a consequence of the proposed change once implemented.

## **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 G 2.4(b), the benefit (if any) to be obtained or likely in the future to be obtained by the Train Operator as a consequence of the proposed Network Change; and
- (b) the ability or likely future ability of the Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

## 2.4 Restrictions of Use

- (a) The amount of the compensation referred to in Condition G 2.1 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 a Train Operator as a consequence of any Restriction of Use in connection with the implementation of the proposed change<sup>2</sup>.
- (b) The benefits taken into account in determining the amount of the compensation for the proposed 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 Restriction of Use in connection with the implementation of the proposed change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

## **CONDITION G3 - NETWORK CHANGE PROPOSAL BY TRAIN OPERATOR**

### **3.1 *Notice of proposal***

A Train Operator shall, if it wishes Network Rail to make a Network Change:

- (a) submit to Network Rail a proposal for such change; and
- (b) permit Network Rail to consult with:
  - (i) each Train Operator that may be affected by the implementation of the proposed Network Change;
  - (ii) the Secretary of State, and Scottish Ministers if they may be affected by the implementation of the proposed Network Change;

- (iii) the Office of Rail Regulation; and
- (iv) each Passenger Transport Executive that may be affected, Transport for London if it may be affected and the Welsh Assembly Government if it may be affected, by the implementation of the proposed Network Change,

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 Network Change given by the Sponsor under Condition G3.1 shall:

- (a) contain:
  - (i) the reasons why it is proposed to make the change, including the effects it is intended or expected to have on the operation of the Network or on trains operated on the Network;
  - (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 Network 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 change including any proposals in relation to the calculation or payment of compensation to Network Rail or any Train Operator in respect of the change; and
  - (v) the additional terms and conditions (if any) which the Sponsor proposes should apply to the 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(b), to enable:
  - (i) Network Rail; and

- (ii) any person specified in Condition G3.1(b),

to assess the likely effect of the proposed 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 Network Rail receives a proposal for 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 Network Change on either or both of Network Rail and other operators of trains;
- (b) consult with each person specified in Condition G3.1(b) likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform them of the change and to enable them to assess the consequences for them of the change; and
- (c) for the purpose of the consultation under Condition G3.3.1(b), 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(b), 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 Train Operators and Network Rail under Conditions G3 and G4;
  - (ii) the reasons given by the Sponsor under Condition G3.2(a)(i) for proposing to make the change;
  - (iii) Network Rail's estimate of the likely impact of the change on the operation and performance of the Network; and
  - (iv) Network Rail's own proposals as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the 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 Network 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 change, including any proposals in relation to the calculation or payment of compensation to Train Operators in respect of the change; and
- (E) any additional terms and conditions which should apply to the change, including any proposed variation procedure.

3.3.2 In preparing a notice under Condition G3.3.1(c), Network Rail:

- (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.

#### **3.4 Facilitation of Network Change by Network Rail**

3.4.1 Except in the circumstances and to the extent specified in Condition G3.4.2, Network Rail shall, when consulted by the Sponsor, take all reasonable steps to comply with any written request of the Sponsor to provide the Sponsor, within a reasonable period of time, and at no cost to the Sponsor, with:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition G4.2 which may be incurred by Network Rail; and/or
- (b) a preliminary written response in respect of the proposed Network Change, which shall:

- (i) be binding on Network Rail, unless Network Rail indicates otherwise; and
- (ii) if it is negative, include reasons.

3.4.2 Network Rail shall not be obliged to comply with a request from the Sponsor under Condition G3.4.1:

- (a) unless:
  - (i) the relevant response date is 90 or more days after the date on which Network Rail's notice under Condition G3.3.1(c) was given; and
  - (ii) the request is made within 7 days of the Sponsor receiving Network Rail's notice under Condition G3.3.1(c); or
- (b) to the extent that Network Rail 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), Network Rail 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 *Reimbursement of costs***

Subject to Conditions G3.4 and G4, Network Rail shall be entitled to reimbursement by the Sponsor of 75% of all costs incurred by Network Rail in assessing any Network Change proposed by the Sponsor. Those costs shall be the minimum reasonably necessary for Network Rail to carry out that assessment.

### **3.6 *Provision of estimate of costs by Network Rail***

Network Rail shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Network Change submitted by the Sponsor (as referred to in Condition G3.5) 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 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.

### **3.7 Accuracy of estimates**

Network Rail shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

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

Network Rail shall, if requested by the Sponsor at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Network Change made by the Sponsor.

### **3.9 Relationship with Vehicle Change**

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

## **CONDITION G4 - RESPONSE BY NETWORK RAIL TO NETWORK CHANGE PROPOSAL**

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

4.1.1 Network Rail 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 change would necessarily result in Network Rail breaching any access contract (other than an access contract to which the Sponsor is a party);
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition G3.2 provided that Network Rail shall first have given the Sponsor a reasonable opportunity to remedy that failure;
  - (iii) the implementation of the proposed change would result in a material adverse effect on the maintenance or operation of

the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this Condition G4 or the relevant Train Operator's Access Agreement; or

- (iv) the proposed change does not adequately take account of the reasonable expectations of Network Rail or a Train Operator (other than the Sponsor) as to the future use of the relevant part of the Network;
- (b) any Train Operator shall have given notice to Network Rail 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 change 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 Train Operator shall have given notice to Network Rail 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 G3;
  - (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 (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 (d) (ii) above shall include the reasons why Network Rail or the relevant Train Operator 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 Network Rail or the relevant Train Operator 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 Network Rail or the relevant Train Operator's decision.

#### **4.2 Amount of compensation**

Subject to Condition G4.3, the amount of the compensation referred to in Condition G4.1 shall be:

- (a) subject to Condition G4.4(a) 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 Network Rail or the relevant Train Operator in question as a consequence of the proposed change once implemented 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) incurred by Network Rail as consequence of implementing a Network Change including the recovery of any payments made by Network Rail to the relevant Train Operator under the relevant 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):

- (a) subject to Condition G4.4(b) the benefit (if any) to be obtained or likely in the future to be obtained by Network Rail or the relevant Train Operator as a consequence of the proposed change once implemented; and

- (b) the ability or likely future ability of Network Rail or the relevant Train Operator to recoup any costs, losses and expenses from third parties including passengers and customers.

#### 4.4 Restrictions of Use

- (a) The amount of the compensation referred to in Condition G 4.1 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 Restriction of Use in connection with the implementation of the proposed change.
- (b) The benefits taken into account in determining the amount of the compensation for the proposed change under Condition G2.3 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 change (with that exclusion including any compensation payable to that Train Operator in respect of that Restriction of Use under its Access Agreement).

### **CONDITION G5 - SCOPE OF COMPLEX PROJECTS**

#### **5.1 *Consultation prior to making a proposal for Network Change using the Complex Projects Procedure***

Before submitting a proposal for Network Change which Network Rail intends to establish using the Complex Projects Procedure, Network Rail shall provide the following information to each Train Operator which it considers may be affected by the implementation of the proposed Network Change:

- (a) that Network Rail intends to initiate the Complex Projects Procedure in respect of the proposed Network Change;
- (b) the details of the proposed Network Change which Network Rail can reasonably make available;
- (c) the reasons why Network Rail believes that the proposed Network Change is required including the effects it is intended or may reasonably be expected to have on the operation of the Network or on trains operated on the Network;

- (d) the reasons why Network Rail believes that the proposed Network Change should be established in accordance with the Complex Projects Procedure;
- (e) any other information Network Rail reasonably believes an affected Train Operator may reasonably require to understand the proposed Network Change;
- (f) a draft plan setting out the intended stages and timetable for the Complex Projects Procedure; and
- (g) the Scope that Network Rail intends to propose under Condition G5.4.

## **5.2 Consultation with affected Train Operators**

Network Rail shall, having provided the information set out in Condition G5.1, consult with each Train Operator which it considers may be affected by the proposed change. During the consultation process Network Rail shall give due consideration to the views of each Train Operator and, where Network Rail disagrees with the views of a Train Operator, shall provide that Train Operator with a written response setting out the reasons why Network Rail disagrees with the views of that Train Operator.

## **5.3 Facilitation by Train Operators**

Train Operators 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 Network Rail with such information as Network Rail reasonably requests in connection with the development of the proposal for Network Change under Condition G5.1; and
- (b) the provision to Network Rail of a response to Network Rail's consultation under Condition G5.2 in relation to the proposed Network Change within 30 days of being consulted by Network Rail, or such longer period as Network Rail may specify.

## **5.4 Notice of intended Scope**

Once the consultation procedure set out in Conditions G5.2 and G5.3 has concluded, Network Rail may, if it wishes to proceed with the proposed Network Change using the Complex Projects Procedure, issue a notice of intended Scope to each Train Operator which it considers may be affected.

## **5.5 Response to notice of intended Scope**

Each Train Operator that receives a notice of intended Scope from Network Rail under Condition G5.4 shall, within 30 days, or such longer period as Network Rail specifies, of the receipt of such notice, respond to Network Rail 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 Network Change under Condition G1, the Train Operator would be likely to succeed in preventing the Network Change being established solely due to it being entitled to give notice under Condition G2.2 (a) that:
  - (i) the implementation of the proposed change would necessarily result in Network Rail breaching an access contract to which that Train Operator is a party;
  - (ii) Network Rail has failed, in respect of the proposed change, to provide sufficient particulars to that Train Operator; or
  - (iii) the implementation of the proposed change would result in a material deterioration in the performance of that Train Operator's trains which cannot adequately be compensated under Condition G2; or
  - (iv) the proposed change does not adequately take account of the reasonable expectations of the Train Operator as to the future use of the relevant part of the Network.

Any notice under (b) above that an affected Train Operator does not agree to the Scope set out by Network Rail in the notice of intended Scope shall include the reasons why the affected Train Operator does not so agree.

If a Train Operator receives a notice of intended Scope from Network Rail under Condition G5.4 and fails to respond to Network Rail in writing within 30 days, or such longer period as Network Rail specifies, of the receipt of such notice, the affected Train Operator shall be deemed to have agreed to the Scope as if the affected Train Operator had given notice to Network Rail under Condition G5.5(a).

## **5.6 Failure to agree Scope**

If a Train Operator does not agree to the Scope under Condition G5.5(b), then Network Rail and the Train Operator 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 a Train Operator serves a notice under Condition G5.5(b) Network Rail or the Train Operator may refer the issue to the relevant ADRR Panel for determination in accordance with Condition G11.

#### **5.7 *Effect of agreement of Scope***

Once the relevant Scope of the proposed Network Change has been agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6 with a Train Operator, that Train Operator shall not be entitled to give notice to Network Rail subsequently under Condition G2.1.1(a) to challenge any elements of the 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 Train Operator since the Scope was agreed under Conditions G5.5 or G5.6 or determined under Condition G5.6.

#### **5.8 *Costs incurred by Train Operators due to the consultation process***

A Train Operator shall be entitled to reimbursement by Network Rail of 100% of all costs reasonably incurred by that Train Operator in complying with its obligations under Conditions G5.3 and G5.5. The costs shall be the minimum reasonably necessary for that Train Operator to carry out the assessment.

#### **5.9 *Further information regarding costs***

Each Train Operator shall, upon request from Network Rail from time to time, provide Network Rail 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 Network Rail from time to time, provide Network Rail with such information as may be reasonably necessary to enable Network Rail to assess the reasonableness of any estimate.

#### **5.10 *Accuracy of estimates***

Each Train Operator shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

**5.11 *Obligation to incur no further costs***

A Train Operator shall, if requested by Network Rail at any time, incur no further costs (except any costs which cannot reasonably be avoided) in respect of any consultation in respect of a proposed Network Change to which this Condition G5 applies.

**5.12 *Further agreement of Scope***

If, at any time before Network Rail issues a notice of proposed change under Condition G1.1, Network Rail wishes to agree further elements of the proposed Network Change to be included in the Scope, Network Rail 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 *Network Rail's obligations in relation to Preparatory Works***

Network Rail may, if it wishes to proceed with a proposed 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, Train Operators shall have the same rights in respect of such proposals as if each proposal of Preparatory Works was a separate Network Change proposal.

**6.2 *Train Operators' obligations in relation to Preparatory Works***

Each Train Operator which is likely to be affected by the Preparatory Works shall take all reasonable steps to facilitate the Preparatory Works which are undertaken by Network Rail including by the taking of all reasonable steps to provide Network Rail with such information as Network Rail reasonably requests in connection with the development of the Preparatory Works.

**6.3 *Further Preparatory Works***

If at any time Network Rail is reasonably of the view that further Preparatory Works are required, Network Rail shall propose such further Preparatory Works in accordance with this Condition G6.

## **CONDITION G7 - COMPLEX PROJECTS NETWORK CHANGE**

If, having previously agreed or determined the Scope in accordance with Conditions G5.5 or G5.6, Network Rail wishes to implement a Network Change which it has progressed using the Complex Projects Procedure, it shall propose the Network Change in accordance with Condition G1.

## **CONDITION G8 - SHORT TERM NETWORK CHANGE**

### **8.1 *Reversal of a Short Term Network Change***

8.1.1 A Train Operator may request in writing that Network Rail reverse the effect of a Short Term Network Change before its Expiry Date if the effect of the Short Term Network Change would prevent the Train Operator using the Network in a manner consistent with the reasonable expectations of that Train Operator as to the future use of the relevant part of the Network.

8.1.2 The Train Operator shall include with any notice requesting the reversal of the effect of a Short Term Network Change served under Condition G8.1.1 evidence to support the Train Operator's claim of reasonable expectations as to the future use of the relevant part of the Network which requires that reversal.

8.1.3 The Train Operator shall provide Network Rail with such further information as Network Rail may reasonably require to enable Network Rail to assess the reasonableness of the Train Operator's request to reverse the effect of a Short Term Network Change.

8.1.4 Upon receipt of a notice to reverse the effect of a Short Term Network Change served under Condition G8.1.1, Network Rail shall:

(a) reverse the effect of the Short Term 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 Network Change served under Condition G1.1; and

(B) the timescale within which Network Rail can complete the reversal without incurring any greater cost than

would have reasonably been incurred by Network Rail had the effect of the Short Term Network Change been reversed in accordance with the estimated timescale for reversal set out in the notice of proposed Network Change served under Condition G1.1; or

- (ii) the earliest use for which the Train Operator can demonstrate a reasonable expectation as to future use; or
- (b) respond to the Train Operator in writing within 30 days stating that Network Rail does not believe that the effect of the Short Term Network Change is preventing the Train Operator using the Network in accordance with the reasonable expectations of that Train Operator as to the future use of the relevant part of the Network and giving reasons for its decision.

Network Rail shall not be liable to any Train Operator if and to the extent that the date of the requested reversal is earlier than the date by which Network Rail must reverse the effect of the Short Term Network Change as calculated under Condition G8.1.4 (a).

## **8.2 *Expiry of a Short Term Network Change***

8.2.1 Network Rail shall restore at its own cost any part of the Network which has been subject to a Short Term Network Change to its original capability as set out in the notice of proposal for the Short Term Network Change by the Expiry Date unless and to the extent that:

- (a) a Network Change has been implemented in place of the Short Term Network Change; or
- (b) a further Short Term Network Change has been implemented.

## **8.3 *Notification of reversal of a Short Term Network Change prior to the Expiry Date***

8.3.1 Network Rail shall publish details of each Short Term Network Change which is reversed prior to the Expiry Date.

## **CONDITION G9 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

Where Network Rail is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail Regulation exercising

any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) Network Rail 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(d)(iv)) in respect of that Network Change;
- (b) each Train Operator shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that 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 F2.3.1(c)(v)(B) and (D)); ~~and~~
- (c) <sup>3</sup>subject to Condition G9(d), each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof; and
- (d) where Network Rail recovers compensation in respect of that Network Change from a Competent Authority or some other Governmental Body, it shall pay to Train Operators:
  - (i) where any compensation paid to Network Rail in relation to that Network Change is sufficient to cover the Relevant Costs of the Train Operator and of Network Rail, the Relevant Costs of the Train Operator; and
  - (ii) where such compensation is not so sufficient, such proportion of that compensation as the Train Operator's Relevant Costs bears to the sum of Network Rail's Relevant Costs and the Train Operator's Relevant Costs in respect of that Network Change.
- (e) Network Rail shall use reasonable endeavours to negotiate with the relevant Competent Authority or Governmental Body (as applicable) a level of compensation in respect of that Network Change which is sufficient to ensure that the Train Operator receives compensation for all of its Relevant Costs. Network Rail shall from time to time consult with the Train Operator and keep the Train Operator informed in reasonable detail of the progress of such negotiations.

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<sup>3</sup> ~~A discussion has taken place as to whether the words: "subject to the terms of its Access Agreement" should be included here such that operators still receive compensation for Competent Authority/Change of Law Network Changes. These discussions have not been concluded and the Policy Groups will therefore include conclusions on this point in its submission to ISG.~~

## **CONDITION G10 - ESTABLISHMENT AND IMPLEMENTATION**

### **10.1 *Implementation of a Network Rail proposed Network Change***

10.1.1 Network Rail shall be entitled to implement a proposed Network Change if:

- (a) it has not received a notice from any Train Operator under Condition G2.1 by the relevant response date; or
- (b) it has received notice by the relevant response date from a Train Operator under Condition G2.1 (c) and either the amount of any compensation referred to in Condition G2.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; and
- (c) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between Network Rail and any affected Train Operator.

10.1.2 Network Rail 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 Train Operators when it reasonably believes it is entitled to implement a proposed Network Change.

10.1.3 Network Rail's entitlement to implement a proposed Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that Network Change in accordance with Condition G10.1.2 unless it receives notice from a Train Operator within those 21 days disputing Network Rail's entitlement to implement that proposed Network Change under Condition G10.1.1 and giving full particulars of its reasons.

10.1.4 If Network Rail does not agree with the contents of a notice served by an affected Train Operator in accordance with Condition G10.1.3, Network Rail may:

- (a) refer the matter for determination pursuant to Part A of the Access Dispute Resolution Rules and Condition G11 shall apply; or
- (b) withdraw the proposed Network Change.

### **10.2 *Implementation of a Sponsor proposed Network Change***

10.2.1 The Sponsor shall be entitled to instruct Network Rail to implement a proposed Network Change if:

- (a) Network Rail has not given notice under Condition G4.1 by the relevant response date; or
- (b) Network Rail has given notice by the relevant response date under Condition G4.1.1 (c) 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; or
- (c) Network Rail has received notice from a Train Operator 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; and
- (d) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between the Sponsor and Network Rail or any Train Operator.

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 Network Rail to issue a notice to all affected Train Operators when the Sponsor reasonably believes that it is entitled to instruct Network Rail to implement a proposed Network Change and Network Rail shall then serve such a notice within 7 days of the instruction.

10.2.3 The Sponsor's entitlement to instruct Network Rail to implement a proposed Network Change shall be treated as confirmed 35 days after Network Rail has served a notice in respect of that Network Change in accordance with Condition G10.2.2 unless:

- (a) Network Rail gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that Network Change under Condition G10.2.1 and giving full particulars of its reasons; or
- (b) Network Rail receives notice from a Train Operator within 21 days of the notice served by Network Rail disputing the Sponsor's entitlement to require the implementation of that 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 Network Rail or an affected Train Operator in accordance with Condition G10.2.3, the Sponsor may:

- (a) refer the matter for determination pursuant to Part A of the Access Dispute Resolution Rules and Condition G11 shall apply; or
- (b) withdraw the proposed Network Change.

### **10.3 *When a Network Change may not be Implemented***

10.3.1 Network Rail shall not be entitled, and a Sponsor shall not be entitled to require Network Rail, to implement a proposed Network Change unless it is so entitled to implement, or require the implementation of that Network Change under Condition G10.1.1 or Condition G10.2.1.

10.3.2 For the purposes of the Conditions G10.1.1 and 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 (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 (d) which has not been agreed or resolved as referred to in Condition G10.1.1(b) or G10.2.1 (b) or (c) or otherwise agreed, resolved or withdrawn.

## **CONDITION G11 - APPEAL PROCEDURE**

### **11.1 *Right of referral to relevant ADRR Panel***

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, or (c), G9.1 or G10 (and, in particular, the amount of any compensation referred to in those Conditions);
- (c) any estimate referred to in Condition G1.6 or G3.6,
- (d) the:
  - (i) proposed Expiry Date; or

- (ii) estimated timescale in which a Short Term Network Change can be reasonably reversed,

in a notice of proposed Network Change given under Condition G1.1;  
or

- (e) the reasons given by Network Rail as to why it does not believe that the effect of the Short Term Network Change is preventing the Train Operator using the Network in accordance with the reasonable expectations of that Train Operator as to the future use of the relevant part of the Network under Condition G8.1.4 (b)

that Access Party may refer the matter to the relevant ADRR Panel for determination under Part A of the Access Dispute Resolution Rules.

## **11.2 *Right of appeal***

If any Access Party is dissatisfied with any decision of the relevant ADRR Panel in relation to any matter referred to it under Condition G11.1, that Access Party may refer the matter to the Office of Rail Regulation for determination under Part M.

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