

Part G: HAL Network Change

- 7.1.2 HAL may, if it considers it expedient to do so in order to confirm whether or not Condition G7.1.1 has been satisfied, issue a notice to all affected Access Beneficiaries when it reasonably believes it is entitled to implement a proposed HAL Network Change.
- 7.1.3 HAL's entitlement to implement a proposed HAL Network Change shall be treated as confirmed 21 days after it has served a notice in respect of that HAL Network Change in accordance with Condition G7.1.2 unless it receives notice from an Access Beneficiary within those 21 days disputing HAL's entitlement to implement that proposed HAL Network Change under Condition G7.1.1 and giving full particulars of its reasons.
- 7.1.4 If HAL does not agree with the contents of a notice served by an affected Access Beneficiary in accordance with Condition G7.1.3, HAL may:
- (a) refer the matter for determination in accordance with the ADRR and Condition G8 shall apply; or
 - (b) withdraw the proposed HAL Network Change.
- 7.2 Implementation of a Sponsor proposed HAL Network Change
- 7.2.1 The Sponsor shall be entitled to instruct HAL to implement a proposed HAL Network Change if:
- (a) HAL has not given notice under Condition G4.1 by the Relevant Response Date; or
 - (b) HAL 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 G8; or
 - (c) HAL 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 G8; and
 - (d) there is no other unresolved dispute under this Part G (whether under this Condition G7 or otherwise) as regards the proposed Change between the Sponsor and any Access Party.
- 7.2.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition G7.2.1 has been satisfied, instruct HAL to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to instruct HAL to implement a proposed HAL Network Change and HAL shall then serve such a notice within 7 days of the instruction.
- 7.2.3 The Sponsor's entitlement to instruct HAL to implement a proposed HAL Network Change shall be treated as confirmed 35 days after HAL has served a notice in respect of that HAL Network Change in accordance with Condition G7.2.2 unless:
- (a) HAL gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to require the implementation of that HAL Network Change under Condition G7.2.1 and giving full particulars of its reasons; or
 - (b) HAL receives notice from an Access Beneficiary within 21 days of the notice served by HAL disputing the Sponsor's entitlement to require the implementation of that HAL Network Change under Condition G7.2.1 and giving full particulars of its reasons.
- 7.2.4 If the Sponsor does not agree with the contents of a notice served by HAL or an affected Access Beneficiary in accordance with Condition G7.2.3, the Sponsor may:
- (a) refer the matter for determination in accordance with the ADRR and Condition G8 shall apply; or
 - (b) withdraw the proposed HAL Network Change.

Part G: HAL Network Change

7.3 When a HAL Network Change may not be implemented

7.3.1 HAL shall not be entitled, and a Sponsor shall not be entitled to require HAL, to implement a proposed HAL Network Change unless it is so entitled to implement, or require the implementation of that HAL Network Change under Condition G7.1.1 or Condition G7.2.1.

7.3.2 For the purposes of the Conditions G7.1.1 and G7.2.1, 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 G8 or agreed not to apply; and
- (b) a notice has been served under Condition G4.1.1(c) or (d) which has not been agreed or resolved as referred to in Condition G7.1.1(b) or G7.2.1(b) or (c) or otherwise agreed, resolved or withdrawn.

Condition G8: Appeal Procedure

8.1 Right of referral in accordance with the ADRR

8.1.1 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, G5.1.1 or G7 (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 HAL Network Change can be reasonably reversed, in a notice of proposed HAL Network Change given under Condition G1.1; or
- (e) the reasons given by HAL as to why it does not believe that the effect of the Short Term HAL Network Change is preventing the Access Beneficiary using the infrastructure in accordance with the reasonable expectations of that Access Beneficiary as to the future use of the relevant part of the HAL infrastructure under Condition G5.1.4(b),

that Access Party may refer the matter for determination in accordance with the ADRR.

Part H: HAL Railway Operational Code

Explanatory Note

- A. Part H sets out a requirement for HAL, in consultation with the industry, to establish a Heathrow Railway Operational Code(the "ROC"). For these purposes the Network Rail ROC will be adopted through a Connection Agreement and will be supported by the Heathrow Emergency Plan (the "HEP").
- B. The HEP describes the arrangements that are specific to the HAL infrastructure and relate to the interfaces between the HAL infrastructure and Heathrow Airport. The obligations within the HEP are sub contracted out to Heathrow Express Operating Company under ROGs. Both the ROC and the HEP arrangements share the objective of sustaining operation of train services on the HAL infrastructure in accordance with the working timetable, as well as where necessary restoring operation in accordance with the working timetable, having regard to the needs of passengers; the interests of safety and security; the efficient and economical operation of the HAL infrastructure and of trains operating on it; and criteria published by the ORR.
- B. The ROC is to be kept under regular review, and covers such issues as 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 necessary or expedient to achieve its objective.
- C. The HEP is to be kept under regular review, and covers such issues as incident command structure; contingency plans; incident management and control; control arrangements; roles and responsibilities; welfare arrangements; emergency services and local authority support and other matters necessary or expedient to achieve its objective.
- D. Part H also sets out a procedure for varying the HEP.
- E. The ROC is part of the services procured by HAL under contract to Network Rail. Any changes to the ROC can only be made through the provisions of the Network Rail Network Code and therefore requests for variations from parties to the HAL Network Code should be made to HAL for submission to Network Rail.
- E. This Explanatory Note does not form part of the HAL Network Code.

Definitions

In this Part H, unless the context otherwise requires:

"appeal"	means, in relation to a ROC Section, the exercise by a person of a right under the Network Rail Network Code to make a reference in that respect; and means, in relation to the Heathrow Emergency Plan, the exercise by a person of a right under the HAL Network Code to make a reference in that respect;
"Disruptive Event"	means any event or circumstance which materially prevents or materially disrupts the operation of trains or any part of the HAL infrastructure in accordance with the Working Timetable;

Part H: HAL Railway Operational Code

"established"	means, in relation to a ROC Section, or a variation to a ROC Section, as the case may be, that the ROC Section or the variation has come into effect 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;
"ROC Section"	means a section of the Railway Operational Code covering one or more of the matters specified in Condition H3 or any part of them.
"Objective"	means the objective of the Railway Operational Code and Heathrow Emergency Plan specified in Condition H1.2;
"Network Rail ROC Criteria"	means any document published by Network Rail from time to time specifying the matters to which Network Rail will expect to have regard and the relative weight which it will expect to be placed on such matters when any reference made under Condition HA7 is considered by an appeal body;
"Permitted Exemptions"	has the meaning ascribed to it in Condition H3.3;
"Railway Operational Code"	has the meaning ascribed to it in Condition H1.1;
"Subsidiary Documentation"	means all plans, procedures and documents which are required to be produced under one or more ROC Sections and designated as Subsidiary Documentation under them.
"Heathrow Emergency Plan"	means all plans, procedures and documents which are required to be produced to support the arrangements and application of the Heathrow Emergency Plan

Condition H1: Railway Operational Code and Heathrow Emergency Plan and their Objective

1.1 Railway Operational Code and Heathrow Emergency Plan

1.1.1 The Railway Operational Code which applies to the Wider UK Rail Network is also applicable to the HAL infrastructure and is a code established under this Part H and references to the Railway Operational Code include each ROC Section when it is established and all Subsidiary Documentation.

1.1.2 The Heathrow Emergency Plan is established under this Part H.

1.2 Objective

The objective of the Railway Operational Code and Heathrow Emergency Plan is to sustain and, where necessary, restore expeditiously the operation of Services in accordance with the Working Timetable and in a manner consistent with the Network Rail ROC Criteria, having regard to:

Part H: HAL Railway Operational Code

- (a) the needs of passengers;
- (b) the interests of safety and security; and
- (c) the efficient and economical operation of the HAL infrastructure and of trains operating on it.

1.3 Relationship of Railway Operational Code and Heathrow Emergency Plan to the HAL Network Code

1.3.1 The Railway Operational Code:

- (a) is a national code procured by HAL and where a Train Operator wishes to vary the Railway Operational Code, a request should be submitted to HAL to propose that variation to Network Rail for consideration under the procedures set out in the Network Rail Network Code; and
- (b) does not form part of the HAL Network Code.

1.3.2 The Heathrow Emergency Plan describes the arrangements that are specific to the HAL infrastructure and contains emergency procedures that reflect the specific interfaces between the HAL infrastructure and Heathrow Airport.

1.3.3 The obligations within the Heathrow Emergency Plan are sub contracted out to Heathrow Express Operating Company under ROGs.

1.3.4 The procedures to vary the Heathrow Emergency Plan are set out in Condition H8.

Condition H2: Obligation to observe the Railway Operational Code and Heathrow Emergency Plan

2.1 HAL and each Train Operator shall comply with the Railway Operational Code and Heathrow Emergency Plan.

Condition H3: Scope of Railway Operational Code

3.1 Contents of Railway Operational Code

3.1.1 The Railway Operational Code contains:

- (a) a specification of the procedures and policies by which HAL in cooperation with Train Operators 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

Part H: HAL Railway Operational Code

- (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 Railway Operational Code; and
- (c) procedures for the production, review, approval and publication of Subsidiary Documentation.

3.2 Publication

3.2.1 The ROC shall be published on its website by HAL subject to:

- (a) Condition A3 of the HAL Network Code; and
- (b) Permitted Exemptions.

3.3 Permitted Exemptions

Permitted Exemptions are any matters contained in a ROC Section in respect of which the Network Rail ROC Criteria provide that general publication under Condition H3.2 is not required.

3.4 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 which are in accordance with the Network Rail ROC Criteria.

Condition H4: Appeals relating to Railway Operational Code

4.1 Right of appeal in accordance with the ADRR

As the Railway Operational Code, as varied under the Network Rail Network Code, is being adopted for the HAL infrastructure, neither HAL nor Train Operators can appeal against such variations through the provisions of this HAL Network Code. Insofar as Train Operators are also parties to the Network Rail Network Code, any such appeal should be made through the provisions of the Network Rail Network Code.

Condition H5: Variations to Railway Operational Code

The Railway Operational Code is a national code managed by Network Rail. Any variations to the code will be managed through the provisions set out in the Network Rail Network Code.

5.1 HAL Variations

HAL may request, but cannot compel, that Network Rail consider sponsoring variations to the Railway Operational Code on its behalf if:

Part H: HAL Railway Operational Code

- (a) at any time if it reasonably considers that a variation is necessary in order better to promote the achievement of the Objective, striking a balance between:
 - (i) the need for HAL, Train Operators 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 the ORR.

5.2 Variations proposed by a Train Operator

A Train Operator may request that HAL propose to Network Rail variations to the ROC through the Variation Procedure within the Network Rail Network Code, if it reasonably considers that this is necessary in order better to promote the achievement of the Objective and any such request shall include:

- (a) the reasons why it is proposed to make the variation; and
- (b) details of the proposed variation.

5.3 Issue of varied ROC Section

HAL shall publish on its website in accordance with Condition H3.2 any variation to a ROC Section.

5.4 Consequential changes to ROC Sections

Where any changes are made to this Part H that require consequential changes to be made to any ROC Section, HAL may request, but cannot compel, that Network Rail propose that those consequential changes are made and are effective from the date on which the relevant change to Part H is established.

Condition H6: Scope of Heathrow Emergency Plan

6.1 Contents of Heathrow Emergency Plan

The Heathrow Emergency Plan contains:

- (a) Incident management and control procedures;
- (b) Control roles and responsibilities;
- (c) Welfare arrangements;
- (d) Emergency services and local authority support; and
- (e) other matters necessary or expedient to achieve its objective.

6.2 Publication

The Heathrow Emergency Plan shall be published on its website by HAL subject to Condition A3 of the HAL Network Code.

Part H: HAL Railway Operational Code

Condition H7: Appeals

7.1 Right of appeal in accordance with the ADRR

Subject to Condition H7.3, if any Train Operator is dissatisfied as to any matter concerning or in connection with:

- (a) any variation to the Heathrow Emergency Plan issued under Condition H8; or
- (b) any decision by HAL not to implement a variation proposed by a Train Operator under Condition H8.2, the Train Operator may refer the matter for determination in accordance with the ADRR (as supplemented or varied by this Condition H7).

7.2 Time limits for appeal

A Train Operator's right of appeal under Condition H7.1 shall lapse if the relevant matter is not referred in accordance with the ADRR in the case of a variation under Condition H8:

- (a) if Condition H7.1 (a) applies, within 30 days of the later of the date on which it is published, or
- (b) if Condition H7.1(b) applies, within 30 days of HAL notifying the Train Operators of its decision not to implement a variation proposed by the Train Operator.

7.3 Information to be sent in relation to the appeal

If there has been a reference for determination in accordance with the ADRR under Condition H7.1:

- (a) in the case of a referral under Condition H7.1, HAL shall provide the Train Operator and the relevant ADRR Panel with the name and address of every other Train Operator who HAL reasonably considers may be affected by the variation within 7 days of the making of the reference; and
- (b) the person making the reference shall include with his reference a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
- (c) within 14 days of the reference HAL shall publish a copy of the reference and the statement specified in Condition H7.1 (b).

7.4 Criteria for appeal

Any matter referred under Condition H7.1 shall be determined by reference to the most effective manner of promoting the achievement of the Objective.

7.5 Issue of adjusted Heathrow Emergency Plan

When any appeal brought under this Condition H7 has been finally concluded, HAL shall promptly publish on its website and, if the outcome of the appeal is the adjustment of the Heathrow Emergency Plan, send to each affected Train Operator and the ORR the Heathrow Emergency Plan as adjusted by the outcome of such appeal.

Part H: HAL Railway Operational Code

Condition H8: Variations to Heathrow Emergency Plan

8.1 Mandatory Variations

HAL shall sponsor proposed variations to the Heathrow Emergency Plan at any time if it reasonably considers that it 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.

8.2 Variations proposed by a Train Operator

A Train Operator may propose to HAL variations to the Heathrow Emergency Plan 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.

8.3 Procedure for variations proposed by a Train Operator

Following receipt of a proposed variation to the Heathrow Emergency Plan from a Train Operator HAL shall:

- (a) evaluate and discuss the proposed variation with that Train Operator for such period as is reasonable having due regard to the likely impact of the proposed variation on the achievement of the Objective and on any of HAL and other operators of trains; and
- (b) following the evaluation and discussion;
 - (i) implement the variation and issue the revised Heathrow Emergency Plan in accordance with paragraph H8.4; or
 - (ii) propose a variation under Condition H8.1 to implement the proposed variation; or
 - (iii) inform the Train Operator that HAL does not propose to implement the proposed variation, giving reasons for its decision.

8.4 Issue of varied Heathrow Emergency Plan Section

HAL shall publish on its website in accordance with Condition H3.2 any variation to the Heathrow Emergency Plan, and send a copy of the revised Heathrow Emergency Plan to each affected Train Operator.

Condition H9: Emergency Access to HAL Infrastructure

- 9.1 During any emergency affecting the railway, HAL shall, to the extent that it is legally entitled to do so, grant to any person requesting it such permission to use any of the HAL infrastructure as is necessary or expedient to alleviate the effects of the emergency.

Part J: Access to HAL infrastructure

Contents

Condition J1: Introduction	90
1.1 Overview	90
1.2 Interpretation	90
Condition J2: Adjustment of Access Rights	92
2.1 Obligation of Part J Access Beneficiaries to surrender Access Rights	92
2.2 Obligation of HAL to answer Part J Access Beneficiary's Relevant Enquiries	92
2.3 Contents of Relevant Enquiries	93
2.4 Information to be provided by HAL	93
2.5 Obligation to co-operate	94
2.6 Estimated costs of providing Relevant Response	94
2.7 Payments of costs of Relevant Responses	94
2.8 Division and payments of costs	95
2.9 Right to elect to surrender or adjust Access Rights	95
2.10 Right of Part J Access Beneficiary to have Access Rights adjusted	95
Condition J3: Confidentiality	96
3.1 Affected Persons and their interests	96
3.2 Part J Access Beneficiary's right to elect for Relevant Response without Qualifying Information	96
3.3 Relevant Response without Qualifying Information	96
3.4 Relevant Response with Qualifying Information	96
3.5 Contents of notice to Affected Person	96
3.6 Entitlement of HAL to include Qualifying Information if no Notice of Objection	97
3.7 Discretion of the Allocation Chair to order confidentiality	97
3.8 Allocation Chair's directions as to preservation of confidentiality of Qualifying Information	97
3.9 Grounds on which the Allocation Chair may order confidentiality	97
3.10 Opportunity to make representations to the Allocation Chair	98
3.11 Hearing on confidentiality representations	98
3.12 Written reasons for decision	98
3.13 Immunity of the Allocation Chair	98
3.14 Preservation of confidentiality of Qualifying Information pending determination	98
3.15 Obligation to provide Confidentiality Undertaking	98
Condition J4: Failure to Use	99
4.2 Use Quota and Use Period	99
4.3 Certain periods to be disregarded	100

Part J: Access to HAL infrastructure

4.4	Service of Failure to Use Notice	100
4.5	Cessation of Failure to Use.....	100
4.6	Contents of a Failure to Use Notice	100
4.7	Acceptance of surrender	100
4.8	Counter Notice.....	101
4.9	Grounds for Objection	101
4.10	HAL agrees with the Part J Access Beneficiary	101
4.11	HAL does not agree with the Part J Access Beneficiary.....	101
4.12	Surrender of Access Rights	102
4.13	Access Proposals	102
Condition J5: Failure to Use: third party application		102
5.1	Failure to Use Notices	102
5.2	Cessation of Failure to Use.....	102
5.3	Application of Conditions.....	102
5.4	Counter Notice	103
Condition J6: Rights Review Meetings		103
6.1	The Rights Review Meeting	103
6.2	ORR Power to Direct a Rights Review Meeting	103
Condition J7: Obligation of HAL to publish documentation		104
7.1	Template Notices.....	104
7.2	Publication of Other Documentation	104
7.3	ORR Power to Direct HAL to Publish.....	104
Condition J8: Appeals.....		104
8.1	Appeal in accordance with the ADRR	104
8.2	Appeal to the ORR	104

Part J: Access to HAL infrastructure

Condition J1: Introduction

1.1 Overview

- 1.1.1 Part J provides mechanisms where, if a Train Operator 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) HAL 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.
- 1.1.2 Condition J6 provides that HAL 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 HAL does not do this, the ORR can direct HAL to hold such a meeting.
- 1.1.3 Condition J7 obliges HAL to publish templates for any notice required under Part J and a copy of any notice served. Where HAL does not do this, the ORR can direct HAL to do so.
- 1.1.4 Condition J8 sets out a dispute resolution process whereby any dispute arising under Part J is first of all referred for determination in accordance with the ADRR and any appeal is referred to the ORR.

1.2 Interpretation

- 1.2.1 Where the following definitions are used in this Part J, they shall have the meanings shown below:

"ADRR"	means the Access Dispute Resolution Rules described in Part A of this Code;
"ADRR Determination"	means a determination made in accordance with the ADRR following a reference made under Condition J8.1, where such determination has not been referred to the ORR under either Condition J8.2 within the time limit for such referral;
"Access Proposal"	has the meaning shown in Part D of this 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;
"Affected Person"	means, in relation to Qualifying Information, the person to whose affairs the information relates;
"Allocation Chair"	has the meaning shown in the ADRR;
"Ancillary Movements"	has the meaning shown in Part D of this code;
"Applicant"	has the meaning shown in: (a) Condition J5.1.1
"beneficiary"	has the meaning shown in section 17(7) of the Act;
"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 HAL under Condition J4.8, J5.3.1(b);

Part J: Access to HAL infrastructure

"Determination"	means an ADRR Determination or an ORR 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 HAL to a Part J Access Beneficiary under Condition J4.4;
"Funder"	means the appropriate franchising authority, each Passenger Transport Executive 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;
"Incumbent"	has the meaning shown in Condition J5.1.1 (b)(ii);
"J6 Direction"	has the meaning shown in Condition J6.2.1;
"J7 Direction"	has the meaning shown in Condition J7.3.1;
"Level Two Right"	has the meaning shown, , in the relevant Access Agreement;
"New Working Timetable"	has the meaning shown in Part D of this code;
"Notice of Objection"	means a notice given by an Affected Person to HAL of the kind referred to in Condition J3.5.1(b);
"ORR Determination"	means a determination made by the ORR following a reference made under Condition J8.2;
"ORR's Model Passenger Track Access Contract"	means the model passenger track access contract published by the ORR under section 21 of the Act, as amended from time to time;
"Part J Access Beneficiary"	means a Train Operator
"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
"Qualifying Information"	means information which HAL has acquired in relation to the affairs of any Affected Person under an Access Agreement between HAL 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 infrastructure, 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 this 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 Part D in the exercise of that Quantum Access Right;
"Released Capacity"	means track capacity made available to HAL 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 Enquiry"	means an enquiry made of HAL 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;

Part J: Access to HAL infrastructure

"Relevant Response"	means HAL's answer to a Relevant Enquiry under Condition J2;
"Relevant Surrender"	means the surrender to HAL of Access Rights possessed by the Part J Access Beneficiary;
"Rights Review Meeting"	means a meeting held between HAL 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 J6.1.2;
"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 HAL 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 J6.1.2;
"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;
"Train Operator Variation Request"	has the meaning shown in Part D of this code;
"Train Slot"	has the meaning shown in Part D of this code;
"Use Period"	has the meaning shown in Condition J4.2.3;
"Use Quota"	has the meaning shown in Condition J4.2.2
"Y-Path"	means a Train Slot incorporated in the Working Timetable that is identified as such by the incorporation of the letter "Y" in the operating characteristics part of the Train Slot's heading.

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.
- 2.1.2 If a Part J Access Beneficiary wishes to make a Relevant Surrender pursuant to Condition J2.1.1, it shall give HAL notice to that effect. The Relevant Surrender shall have effect 10 days from the date on which notice is given to HAL.

2.2 Obligation of HAL to answer Part J Access Beneficiary's Relevant Enquiries

- 2.2.1 HAL shall provide the Part J Access Beneficiary with a Relevant Response within 30 Working Days of the making of a Relevant Enquiry.

Part J: Access to HAL infrastructure

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 HAL;
- (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 HAL 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 HAL

2.4.1 Subject to Condition J3, the Relevant Information which HAL shall provide in each Relevant Response shall be a statement of:

- (a) the costs which HAL 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 HAL 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 HAL 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
 - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the infrastructure;
- (e) the reasonably foreseeable financial effects on HAL of the release of capacity;
- (f) HAL'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 HAL and the Part J Access Beneficiary of the Relevant Financial Consequences; and
- (g) whether any other person has made an enquiry of HAL pursuant to an agreement between that person and HAL 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

Part J: Access to HAL infrastructure

Beneficiary in relation to the Specified Relevant Surrender or Specified Relevant Adjustment in question,

2.4.2 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. In preparing each Relevant Response, HAL 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 and other persons whom it has reason to believe intend to become operators of trains and

(ii) any Funders which may be directly affected and of which HAL is aware, or ought reasonably to have been aware,

as shall be necessary or expedient so as to enable HAL 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.

2.5 Obligation to co-operate

2.5.1 If:

(a) HAL 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 HAL with a response to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances.

2.5.2 Information provided in any response under Condition J2.7.1 shall be treated as Qualifying Information and Condition J3 shall apply accordingly.

2.6 Estimated costs of providing Relevant Response

2.6.1 HAL:

(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.

2.7 Payments of costs of Relevant Responses

2.7.1 The Part J Access Beneficiary shall:

Part J: Access to HAL infrastructure

- (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 HAL an amount calculated pursuant to Condition J2.10; and
- (c) be entitled to receive from HAL, 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.

2.8 Division and payments of costs

2.8.1 The amount referred to in Condition J2.9 (b) shall be an amount equal to 75 per cent of the amount of HAL'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 HAL requests payment of the amount in question in an invoice which is sufficient for the purposes of Value Added Tax.

2.8.2 For the purposes of this Condition J2, HAL's costs shall include a fair allocation of its administrative costs of carrying on its business.

2.9 Right to elect to surrender or adjust Access Rights

2.9.1 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 HAL in the Relevant Response,

it shall be entitled to do so after giving to HAL 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 same date.

2.9.2 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 HAL in the Relevant Response,

it shall give HAL 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 same date.

2.10 Right of Part J Access Beneficiary to have Access Rights adjusted

2.10.1 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 HAL as to whether it elects to exercise that entitlement. If the Part J Access Beneficiary does not give notice to HAL within 15 Working Days of the date of the Determination, the Part J Access Beneficiary shall lose the entitlement in question.

Part J: Access to HAL infrastructure

Condition J3: Confidentiality

3.1 Affected Persons and their interests

- 3.1.1 If, having received a Relevant Enquiry, HAL 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 HAL's reasonable opinion, seriously and prejudicially affect the interests of the Affected Person,

HAL 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 HAL pursuant to Condition J3.1, the Part J Access Beneficiary shall be entitled, by notice given to HAL, to elect either:
- (a) that the Relevant Response be provided to it without the Qualifying Information; or
 - (b) that HAL 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 HAL 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) HAL 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 HAL to revise it so as to include any Qualifying Information, it shall be entitled to do so by notice to HAL.
- 3.3.2 If the Part J Access Beneficiary gives notice to HAL pursuant to Condition J3.3.1(b), HAL shall proceed to give notice to the Affected Person in question pursuant to Condition J3.4 and thereafter comply with the procedures established in this Condition J3.

3.4 Relevant Response with Qualifying Information

- 3.4.1 If the Part J Access Beneficiary makes an election pursuant to Condition J3.2.1(b), HAL 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 HAL considers it necessary to disclose; and
 - (b) a statement to the effect that, unless the Affected Person gives notice to HAL within 15 Working Days of his receipt of the notice that he objects to the disclosure in question, that person shall have lost the right to object to its disclosure.

Part J: Access to HAL infrastructure

- 3.6 Entitlement of HAL 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 HAL within the Period for Objections, HAL 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 HAL 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 HAL 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, HAL 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 operators and potential operators of railway assets, in each case on the part of the HAL infrastructure in question in its disclosure to the Part J Access Beneficiary, having due regard to the matters about which duties are imposed on the ORR by section 4 of the Act; and
 - (b) the Allocation Chair has complied with the requirements specified in Conditions J3.11 and J3.12.

Part J: Access to HAL infrastructure

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, each of HAL, 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 he 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 he 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 HAL 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:

Part J: Access to HAL infrastructure

- (a) an Affected Person has given notice to HAL 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 HAL 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 HAL 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;
- (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 HAL by the Part J Access Beneficiary as soon as reasonably practicable after HAL has requested the Part J Access Beneficiary to provide it; and
- (b) held by HAL 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, HAL 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 HAL 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;
- (b) to Level Two Rights or Contingent Rights where HAL 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.

4.2 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.

Part J: Access to HAL infrastructure

- 4.2.3 The Use Period shall be thirteen 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 HAL 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 HAL considers has occurred;
 - (b) the Rights Subject to Surrender which HAL 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 HAL;
 - (b) the Rights Subject to Surrender shall be surrendered with effect from the date on which notice is given to HAL unless otherwise agreed.

Part J: Access to HAL infrastructure

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 HAL 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 10 days after the date on which notice is given unless otherwise agreed.

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: the Rights Subject to Surrender relate to an enhancement of the HAL infrastructure for which the Access Beneficiary is contracted to pay through access charges ("Grounds for Objection").

4.10 HAL agrees with the Part J Access Beneficiary

4.10.1 If HAL 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; 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,

the Failure to Use Notice shall have failed and HAL shall notify the Part J Access Beneficiary in writing that this is the case within 5 Working Days of receipt of the Counter Notice.

4.11 HAL does not agree with the Part J Access Beneficiary

4.11.1 If HAL 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,

then it shall notify the Part J Access Beneficiary in writing that this is the case within 5 Working Days of receipt of the Counter Notice.

Part J: Access to HAL infrastructure

4.12 Surrender of Access Rights

4.12.1 The surrender of the Rights Subject to Surrender will occur:

- (a) where either the Part J Access Beneficiary accepts HAL's decision made pursuant to Condition J4.11 or there is an ADRR Determination, on the date on which such Determination is given.

4.13 Access Proposals

4.13.1 Where any Rights Subject to Surrender surrendered under this Condition J4 include the surrender of an Access Proposal, HAL's obligations under Condition D2.4 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) HAL 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 HAL 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 HAL 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 J5.1.1(b)(iii), there will have been a cessation of a Failure to Use if the test in Condition J4.5 has been met.

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 (HAL agrees with the Part J Access Beneficiary);
- (e) J4.11 (HAL does not agree with the Part J Access Beneficiary);

Part J: Access to HAL infrastructure

- (f) J4.12 (Surrender of Access Rights), where in respect of this Condition J5, any relevant Determination is between HAL and the Incumbent, then the Applicant shall accept that the Determination will also dispose of the matter as between the Applicant and HAL; 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: Rights Review Meetings

6.1 The Rights Review Meeting

- 6.1.1 HAL shall hold Rights Review Meetings as frequently as necessary in order for it to ensure that capacity on the infrastructure is shared in the most efficient and economical manner in the overall interest of users, providers, potential providers and funders of railway services.
- 6.1.2 HAL shall give a Part J Access Beneficiary at least 10 Working Days written notice of a Rights Review Meeting ("Rights Review Notice"). HAL 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").
- 6.1.3 Where a Part J Access Beneficiary has received a Rights Review Notice in accordance with Condition J6.1.2, it shall attend the meeting and participate in it in a collaborative manner in order to assist HAL to meet its objectives set out in Condition J6.1.4 below.
- 6.1.4 In holding a Rights Review Meeting, HAL's objectives shall include:
 - (a) establishing why any Rights under Review are not being used;
 - (b) assessing whether it is appropriate for HAL 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.
- 6.1.5 Further to a Rights Review Meeting, HAL 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.

6.2 ORR Power to Direct a Rights Review Meeting

- 6.2.1 If the ORR 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 HAL has not held a Rights Review Meeting related to this, then the ORR may, in writing, direct HAL to hold a Rights Review Meeting ("J6 Direction").
- 6.2.2 HAL shall comply with a J6 Direction within 10 Working Days of its receipt.
- 6.2.3 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 HAL has not held a Rights Review Meeting related to this, then it may report

Part J: Access to HAL infrastructure

the matter to the ORR. The ORR will then consider whether it is appropriate for it to direct, pursuant to Condition J6.2.1, HAL to hold a Rights Review Meeting.

- 6.2.4 Where HAL has failed to comply with a J6 Direction in accordance with Condition J6.2.2, the ORR may apply to the High Court for it to make such order as it thinks fit for requiring the failure to be made good.

Condition J7: Obligation of HAL to publish documentation

7.1 Template Notices

- 7.1.1 HAL shall publish promptly templates, and any revision to them, for any notices required under this Part J.

- 7.1.2 Before publishing templates or any revisions to them in accordance with Condition J7.1.1, HAL shall consult with relevant Part J Access Beneficiaries.

7.2 Publication of Other Documentation

- 7.2.1 Subject to Condition A3, HAL 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 HAL's network may change over time.

7.3 ORR Power to Direct HAL to Publish

- 7.3.1 If HAL fails to comply with any of its obligations in Condition J7.1 or Condition J7.2, then ORR may, in writing, direct that HAL do so comply ("J7 Direction").
- 7.3.2 HAL shall start any process to comply with a J7 Direction within 10 Working Days of receipt of it and shall have complied with the J7 Direction within 30 Working Days of receipt of it.
- 7.3.3 Where HAL has failed to comply with a J7 Direction in accordance with Condition J7.3.2, the ORR may apply to the High Court for it to make such order as it thinks fit for requiring the failure to be made good.

Condition J8: Appeals

8.1 Appeal in accordance with the ADRR

- 8.1.1 Any dispute arising under this Part may be referred by any Part J Access Beneficiary or HAL for determination in accordance with the ADRR.
- 8.1.2 A reference for determination brought under Condition J8.1.1 must be made:
- (a) within 5 Working Days of receipt of the decision to which objection is made; or
 - (b) where the period referred to in Condition J8.1.2(a) includes Christmas Day, within 10 Working Days of such receipt.

8.2 Appeal to the ORR

- 8.2.1 Where either HAL or any Part J Access Beneficiary is dissatisfied with the decision reached in accordance with the ADRR under Condition J8.1, it may refer the matter to the ORR for determination under Part M:
- (a) within 5 Working Days of receipt of the written determination reached in accordance with the ADRR to which objection is made; or

Part J: Access to HAL infrastructure

- (b) where the period referred to in Condition J8.2.1(a) above includes Christmas Day, within 10 Working Days of such receipt.

Part K: Information

Explanatory Note

- A. Part K provides for the two-way flow of key information between Access Parties both on a regular and an ad-hoc basis.
- B. HAL is required to produce and update annual information and report on progress
- C. HAL is entitled to request information from an Access Beneficiary, and an Access Beneficiary is similarly entitled to request information from HAL, where this is reasonably requested for either party to plan its business with a reasonable degree of assurance.
- D. Part K will have effect subject to a notice or notices served by the ORR concerning the types and classes of information, timeliness of provision, quality (including completeness and accuracy) and level of detail of the information.
- E. Save as provided in the notice or notices served by the ORR, the information to be provided under Part K is to be complete and accurate in all material respects to the greatest extent reasonably practicable.
- E. This Explanatory Note does not form part of the HAL Network Code.

Part K: Information

Definitions

In this Part K:

"Accounting Period"	means each of thirteen consecutive periods in each Relevant Year, each such period being 28 days in length, save that the length of the first and last period in the Relevant Year shall be such as shall be adopted by HAL;
"Information"	means HAL Annual Information, HAL Monitoring Information and Requested Information;
"Monitoring Period"	shall consist in each financial year commencing on 1 April of one of four consecutive periods, each of which shall comprise three consecutive Accounting Periods except the last which shall comprise four consecutive Accounting Periods, or such periods beginning and ending on such other dates as the ORR may specify in a notice;
"HAL Annual Information"	means the information specified in Condition K1.1;
"HAL Annual Report"	means the report referred to in Condition K3.1;
"HAL Monitoring Information"	means the information specified in Condition K1.2;
"HAL Monitoring Report"	means the report referred to in Condition K3.2;
"Relevant Year"	means each 12 month period beginning 1 April;
"Requested Information"	means the information specified in Condition K1.3; and

Condition K1: Information covered by Part K

1.1 HAL Annual Information

HAL Annual Information means, in relation to any Access Beneficiary:

- (a) projections of future infrastructure quality and capability requirements;
- (b) planned activities and volumes of work in respect of the carrying out of:
 - (i) relevant activities; and
 - (ii) infrastructure services in relation to the Relevant Infrastructure to be carried out by any other person;
- (c) the expected effect of relevant activities on the quality and capability of the Relevant Infrastructure, the quality of infrastructure services and the ability of users to provide improved services to their customers; and
- (d) the expected effect of relevant activities on the outputs required of HAL and established in the last access charges review.

In this Condition K1.1:

- "duty" means the duty incumbent on HAL to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances;
- "purpose" is to secure:
- (a) the operation and maintenance of the infrastructure;
 - (b) the renewal and replacement of the infrastructure; and
 - (c) the improvement, enhancement and development of the infrastructure,

Part K: Information

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

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

"relevant activities" means the activities which are necessary or expedient in order to carry out the duty;

"relevant asset categories" means track, signalling and telecommunications, structures, electrification equipment, stations, maintenance depots, real and heritable property, information systems and such other categories of material asset as are necessary or expedient so as to facilitate compliance by HAL with the duty

1.2 HAL Monitoring Information

HAL Monitoring Information means, in relation to any Access Beneficiary:

- (a) information as to any changes to the programmes of work contained in the last HAL Annual Report and HAL Monitoring Report which changes are likely materially to affect the operation of trains operated by any Access Beneficiary on the Infrastructure;
- (b) a statement of HAL's actual performance on the Relevant Infrastructure in the immediately preceding Monitoring Period, and its projected performance on the Relevant Infrastructure for the remainder of the Relevant Year;
- (c) information as to the addition or removal of temporary speed restrictions on the Relevant Infrastructure in the immediately preceding Monitoring Period, and any temporary speed restrictions which are likely to be added or removed in the current Monitoring Period and in the remainder of the Relevant Year;
- (d) a statement of the duration of any temporary speed restrictions on the Relevant Infrastructure in the immediately preceding Monitoring Period and the likely duration of any temporary speed restrictions in the current Monitoring Period and in the remainder of the Relevant Year; and
- (e) a statement of the efficiency of possession utilisation on the Relevant Infrastructure in the immediately preceding Monitoring Period, including the proportion of possessions cancelled or subject to late change.

1.3 Requested Information

Requested Information means:

- (a) in relation to information to be provided by HAL, such information as an Access Beneficiary may reasonably request from time to time in order to plan its business with a reasonable degree of assurance.
- (b) in relation to information to be provided by an Access Beneficiary, such information as HAL may reasonably request from time to time in order to plan its business with a reasonable degree of assurance,

in each case

- (i) subject to the request for the information concerned being made in writing and identifying expressly that it is a request made under this Part K; and

Part K: Information

(ii) to the extent specified in a notice given by the ORR under Condition K6.1.

Condition K2: Provision of Information

2.1 Provision of Information by HAL

HAL shall, subject to Condition K3.3, make available to each Access Beneficiary:

- (a) HAL Annual Information;
- (b) HAL Monitoring Information; and
- (c) Requested Information,

in accordance with this Part K.

2.2 Provision of Information by each Access Beneficiary

Each Access Beneficiary shall make available to HAL Requested Information in accordance with this Part K.

2.3 Limitation on use of Information by HAL

Any Information provided to HAL under this Part K may only be used by HAL in accordance with this code.

2.4 Form of Information

Any Information made available under this Part K shall be in such form and level of detail as is reasonably necessary to enable:

- (a) HAL to assess the effect of the matters disclosed in the Information provided to it on its provision of infrastructure
- (b) the relevant Access Beneficiary to assess the effect of the matters disclosed in the Information provided to it on its Services.

2.5 Quality of information

Subject to Condition K6, Information provided by any party under this Part K shall, to the greatest extent reasonably practicable, be complete and accurate in all material respects.

Condition K3: Provision of HAL Annual Information and HAL Monitoring Information

3.1 Provision of annual report

Subject as provided in Condition K3.3, HAL Annual Information shall be provided as an annual report.

3.2 Provision of report

Subject as provided in Condition K3.3, HAL Monitoring Information shall be provided in the form of a report for each Monitoring Period.

Part K: Information

3.3 Provision of information at election of Access Beneficiary

- (a) HAL shall not be obliged to provide any Access Beneficiary with HAL Annual Information or Infrastructure Monitoring Information unless that Access Beneficiary has notified HAL that it elects to receive such information. Any such election shall have effect 28 days from the date it is received by HAL and shall continue until any date specified for its duration by the Access Beneficiary in the notice or (if no date is specified) until the election is withdrawn. An Access Beneficiary may withdraw or vary any such election made by it at any time by giving 28 days notice to HAL. The ability of an Access Beneficiary to seek Requested Information shall not be prejudiced by any failure by that Access Beneficiary to elect to receive information under this Condition K3.3.
- (b) Where an Access Beneficiary makes or has made an election to receive HAL Annual Information or Infrastructure Monitoring Information it may, either in the election or subsequently, inform HAL which elements of that information it wishes to receive. HAL shall use all reasonable endeavours, following consultation where appropriate with the Access Beneficiary, to meet the Access Beneficiary's request in respect of those elements of that information.
- (c) Where HAL complies with any request by an Access Beneficiary under Condition K3.3(b) regarding the elements of information required to be provided, it shall not also have to provide to that Access Beneficiary the balance of the information which is not required by that Access Beneficiary.

Condition K4: Timing of provision of information

4.1 Provision of Information by HAL

HAL shall provide to each Access Beneficiary, having elected to receive such information under Condition K3.3 and while its election remains effective:

- (a) HAL Annual Information by such date as shall be agreed between HAL and the relevant Access Beneficiary or, where the ORR specifies a date upon the application of any party, by the date specified;
- (b) HAL Monitoring Information within 28 days after the beginning of each Monitoring Period, unless the ORR agrees to the provision of such information on another date upon the application of any party, in which event the HAL Monitoring Information shall be provided on such other date; and
- (c) Requested Information in a timely manner after such information is requested, subject to Condition K4.3.

4.2 Provision of Information by Access Beneficiary

Each Access Beneficiary shall provide to HAL Requested Information in a timely manner after such information is requested, subject to Condition K4.3.

4.3 Provision of Requested Information

A party receiving a request for Requested Information shall within 15 Working Days of receipt of that request either (i) fulfil the request or (ii) notify the requesting party of the likely timescales and extent to which it reasonably expects to be able to fulfil the request and/or (iii) identify to the requesting party any element of the request which it considers it will not be able to fulfil or is not obliged to provide.

Part K: Information

Condition K5: Appeal procedure

5.1 Right of appeal to senior officers or in accordance with the ADRR

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part K;
- (b) any refusal by an Access Party to provide Requested Information;
- (c) the interpretation by an Access Party of the provisions of this Part K or any notice given by the ORR under Condition K6.1 in relation to whether or not any information requested is Requested Information; or
- (d) the adequacy of information provided or the time taken to provide that information, in each case in response to a Request for Requested Information,

the matter shall be referred by that Access Party for review by the Access Parties concerned, with the review process to involve a senior manager of each of those Access Parties. If those Access Parties fail to reach a resolution within 28 days of the referral, either party may refer the matter for determination in accordance with the ADRR.

Condition K6: Application of Part K

6.1 Extent and timing of information obligations

This Part K shall have effect to the extent, including as to:

- (a) the types or classes of information to be provided;
- (b) the times within which information must be provided;
- (c) the categories of persons to whom information of different types or classes is to be provided; and
- (d) the quality of information and the level of detail with which it must be provided (including the extent to which it must be complete and accurate),

as are specified in a notice or notices given by the ORR.

6.2 Consultation

No notice may be given by the ORR under Condition K6.1 unless it has first:

- (a) published the notice it intends to give and its reasons for that intention; and
- (b) considered any representations which it has received in relation to the proposed notice and reasons.

Condition K7: Other obligations to continue

7.1 This Part K is:

- (a) without prejudice to any other obligation of any Access Party to provide information under any other provision of this code or the relevant Access Agreement; and
- (b) subject to the confidentiality provisions of this code and the relevant Access Agreement.

Part L: Performance monitoring regime and remedies

Explanatory Note

- A. The performance regime meets the requirements of the Regulations.
- B. The performance regime has been developed in discussion with HAL engineering.
- C. Both HS1 and Network Rail's station performance regimes are based on Qualifying Expenditure principles and each station being independent of each other. Neither of these elements currently applies to HAL, so this Part L has been adapted to HAL's charging principles.
- D. We have included a payment cap on liability, which is calculated as 7% of station related charges in the Common Cost Charge.

Under the Regulations:

Para 14 (2a) performance schemes may include penalties for actions that disrupt the operation of the rail network;

So financial compensation is not compulsory under the Regulations, the focus and importance is on a regime that encourages improvement in performance.

- E. Section C of the performance regime is very similar to HS1 and Network Rail's Station Access Conditions and is replicated here.

Part L: Performance monitoring regime and remedies

The station performance regime measures individual unplanned performance downtime events for stated infrastructure assets e.g. lifts, escalators and information systems. Passenger Service Operators are therefore offered protection from identified major unit failures that would have a detrimental impact on their ability to serve customers. Each performance downtime event is recorded on a daily basis and aggregated to a performance level within each Accounting Period. Where cumulative downtime within an Accounting Period exceeds the permitted benchmark, financial recompense is given to the Passenger Service Operator.

Section A: Performance Monitoring Regime

L1 Performance Monitoring

L1.1 In Sections A to D of this Part L, unless the context otherwise requires:

"Accounting Period"	means a calendar month, recorded from January to December in each operating year.
"Access Charge"	has the meaning given in the Station Access Agreement.
"Availability Benchmark"	availability figures set out in Condition L4.
"CCTV"	means a closed circuit television system or an equivalent security system functionally replacing such system.
"CCTV Availability"	means the total number of hours (and fractions of hours) within the Station Operating Hours that a CCTV camera is operational and connected to a CCTV Image Monitoring System, summed across all CCTV cameras. If a CCTV Image Monitoring System is not operational, all connected CCTV cameras will be deemed not operational. Note that if identification of people in CCTV images from a CCTV camera is identified through the maintenance regime, no performance measure will apply, however if identification of people in CCTV images from a CCTV camera is not possible due to improper maintenance or cleaning, the CCTV camera will be deemed to be not operational for the Operating Month.
"CCTV Operating Time"	means the total Station Operating Hours for the relevant Accounting Period, multiplied by the total number of CCTV cameras.
"Central Terminal Area" or "CTA"	has the meaning given in the HAL Network Statement.
"Common Cost Charge"	has the meaning given in the HAL Network Statement.
"Default Responsibility"	has the meaning given in Condition L 8.
"Escalator Availability"	means the total hours (and fraction of hours) within the Station Operating Hours that an escalator route is fully available, summed across all escalators.
"Escalator Operating Time"	means the total Station Operating Hours during the Accounting Period, multiplied by the total number of escalators.

Part L: Performance monitoring regime and remedies

"Financial Year"	means each period of 12 months ending on 31 March.
"Help Point Availability"	means the total number of hours (and fractions of hours) within Station Operating Hours that a Help Point is operational, summed across all Help Points.
"Help Point Operating Time"	means the total Station Operating Hours for the relevant Accounting Period, multiplied by the total number of Help Points.
"Lift Availability"	means the total hours (and fraction of hours) within Station Operating Hours that a lift route is fully available, summed across all lifts.
"Lift Operating Time"	means the total Station Operating Hours during the Accounting Period, multiplied by the total number of lifts.
"Lighting Availability"	means the total hours (and fraction of hours) within Station Operating Hours that a lighting circuit within a passenger area is fully available, summed across all lighting circuits in passenger areas.
"Lighting Operating Time"	means the total Station Operating Hours during the Accounting Period, multiplied by the total number of lighting circuits in passenger areas.
"Measured Services"	means those Common Station Services and Common Station Amenities set out in Condition L4.2.
"Measured Stations"	means CTA Station, Terminal 4 Station and Terminal 5 Station.
"Max Operating Hours"	means for each Measured Service the total hours in an Accounting Period, multiplied by the quantity of Measured Services;
"Passenger information Displays (PIDs) Availability"	means the total number of hours (and fractions of hours) within Station Operating Hours that a PID is operational, summed across all PIDs.
"Passenger information Displays (PIDs) Operating Time"	means the total Station Operating Hours for the relevant Accounting Period, multiplied by the total number of PIDs.
"Passenger Service Operator"	has the meaning given in the Act.
"Passenger Service Operator's Performance Proportion"	means an amount calculated in accordance with Condition L3.8.
"Performance Band"	means the performance metric set out in Condition L5.4.
"Performance Event"	means any record of hours (and fractions of hours) within Station Operating Hours during which a Measured Service is unavailable.
"Performance Measurements"	means a review of each of the Measured Services in accordance with Condition L1.5.
"Performance Payment"	means an amount calculated in accordance with Condition L2 and set out in the notice issued by the Station Facility Owner pursuant to Condition L1.6.
"Planned Maintenance"	means planned maintenance, repair (such repair to be completed, where reasonably possible, outside of Station Operating Hours) and renewal of the Measured Service which, in the case of such maintenance, repair and renewal that is to take place during Station Operating Hours, has been notified by the Station Facility Owner to each relevant Passenger

Part L: Performance monitoring regime and remedies

	Service Operator: (i) in the case of maintenance and renewal of the Measured Service, in advance of the commencement of each Accounting Year; and (ii) in the case of repair of the Measured Service, as soon as is reasonably practicable following the Station Facility Owner becoming aware of the need for such repair.
"Public Announcement Unit"	means the Public Address (PA) Systems on each of the Measured Stations. There are three Public Announcement Units on the HAL infrastructure.
"Public Announcement Unit Availability"	means the total number of hours (and fractions of hours) within the Station Operating Hours that a Public Announcement Unit is operational, summed across all Public Announcement Units.
"Public Announcement Unit Operating Time"	means the total Station Operating Hours for the relevant Accounting Period, multiplied by the total number of Public Announcement Units.
"Relevant Agreement"	means any agreement or other instrument incorporating the Station Access Conditions.
"Relevant Date"	means the date upon which the first Station Access Agreement in respect of the Station is or was entered into.
"Station"	has the meaning given in the Station Access Agreement.
"Station Access Agreement"	means any particular access contract, whether or not entered into pursuant to the directions of the ORR under the Act, incorporating the Station Access Conditions.
"Station Access Conditions"	means the document entitled the "Heathrow Station Access Conditions".
"Station Facility Owner"	means HAL.
"Station Operating Hours"	means 0430 until 0030 of the immediately following day, on each day that the Station is open to the public.
"User"	means a person (whether or not an operator of trains) who is a beneficiary in respect of a Station Access Agreement.

- L1.2 The provisions of this Section A of Part L of this code shall apply to the Measured Services at the Measured Stations during the Station Operating Hours.
- L1.3 The Station Facility Owner shall procure that with effect from Relevant Date, Performance Measurements are carried out in accordance with Condition L1.5.
- L1.4 Without prejudice to Condition L1.7:
- (A) in respect of each and every Performance Event arising in relation to a Measured Service, a Passenger Service Operator shall claim under this Section A of Part L prior to seeking any other remedy under the Station Access Agreement to which it may otherwise be entitled; and
 - (B) unless otherwise agreed by the Station Facility Owner and each relevant Passenger Service Operator, a Passenger Service Operator may only pursue any other remedy under the Station Access Agreement to which it may be entitled in respect of a Performance Event where the Station Facility Owner's liability to the Passenger Service Operator in respect of that Financial Year has reached the Payment Cap described in Condition L3.9.
- L1.5 Performance Measurements shall be carried out by the Station Facility Owner following the end of each Accounting Period as follows:

Part L: Performance monitoring regime and remedies

- (A) the Station Facility Owner shall calculate the availability of each Measured Service at each station for the immediately preceding Accounting Period in accordance with Part B of this Section L. Such figures shall be adjusted on a pro-rata basis by the Station Facility Owner where the Station was not open to the public on each day of such Accounting Period;
 - (B) the Station Facility Owner shall calculate the total number of hours (or parts thereof) during that Accounting Period where each Measured Service was affected by a Performance Event; and
 - (C) the Station Facility Owner shall calculate the total number of hours (or parts thereof) in that Accounting Period where each Measured Service was affected by a Performance Event arising from Planned Maintenance, a Force Majeure Event or through Passenger Service Operator action.
- L1.6 The Station Facility Owner shall within 10 Business Days of the end of an Accounting Period serve a notice on each Passenger Service Operator, such notice to contain details of:
- (A) the Max Operating Hours for each Measured Service for that Accounting Period;
 - (B) the total number of hours (or parts thereof) in that Accounting Period where each Measured Service was affected by a Performance Event;
 - (C) the Performance Event or Performance Events which affected the provision of each of the Measured Services during that Accounting Period;
 - (D) any Performance Event or Performance Events arising from Planned Maintenance and/or Force Majeure Events during that Accounting Period; and
 - (E) the Performance Payment to which each Passenger Service Operator is entitled.
- L1.7 If a Passenger Service Operator disputes any of the matters or details outlined in the notice issued by the Station Facility Owner pursuant to Condition L1.6, within 10 Business Days of receipt of such notice the Passenger Service Operator shall give a notice to the Station Facility Owner stating that matters or details are in dispute and setting out its reasons for the dispute and:
- (A) within 10 Business Days of receipt by the Station Facility Owner of the notice from the Passenger Service Operator, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
 - (B) if, for any reason, within 5 Business Days of the meeting referred to in paragraph L1.7(A), the parties are still unable to agree any disputed aspects, each party shall within a further 5 Business Days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the other party;
 - (C) within 20 Business Days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and

Part L: Performance monitoring regime and remedies

- (D) if resolution of any dispute is not achieved before the expiry of 10 Business Days following the meeting held in accordance with Condition L1.7(C), either party may require that the matter be resolved in accordance with the ADRR.

L1.8 Notwithstanding Condition L3.2, each Passenger Service Operator waives its right to refer such dispute to the disputes process set out in Conditions L1.7 (A) to (D) if it does not give a notice to the Station Facility Owner stating that matters or details are in dispute and setting out its reasons for the dispute in accordance with Condition L1.7 within 10 Business Days of receipt of the notice from the Station Facility Owner pursuant to Condition L1.6.

L2 Performance Payments

L2.1 The Performance Payment for a particular Accounting Period shall be calculated in accordance with the following formula:

$$PP_{AP} = \Sigma MSZ_{AP}$$

where:

PP_{AP} means the Performance Payment for that Accounting Period;
 Σ means the summation across each Measured Service; and
 MSZ_{AP} means the performance payment in relation to a particular Measured Service for that Accounting Period, which shall be determined by reference to the Performance Bands for that Measured Service in accordance with Condition L2.4.

L2.2 In calculating MSZ_{AP} for the purpose of Condition L2.1, the Performance Band into which performance of the Measured Service for the Accounting Period falls shall be calculated in accordance with Conditions L2.3 and L2.4.

L2.3 For the purposes of Annex 2, the availability of each Measured Service shall be calculated in accordance with the following formula:

$$PER_{AP} = (PE_{Net} / HT_{AP}) \times 100$$

where:

PER_{AP} means the Measured Service Availability, used to determine the Performance Band into which performance of the Measured Service for that Accounting Period falls;
 PE_{Net} means the Net Performance Event hours (and part hours) for each measured service in the Accounting Period, calculated as:
 $PE_{Net} = PE_{AP} - PFM_{AP} - PPM_{AP} - PD_{AP}$

where:

PE_{AP} means the total number of Performance Event hours (and part hours) in that Accounting Period in respect of a Measured Service;
 PFM_{AP} means the total number of Performance Event hours (and part hours) in that Accounting Period in respect of which a Measured Service was subject to a Performance Event resulting from a Force Majeure Event;
 PPM_{AP} means the total number of Performance Event hours (and part hours) in that Accounting Period in respect of which a Measured Service was subject to a Performance Event caused by Planned Maintenance; and

Part L: Performance monitoring regime and remedies

PD_{AP} means the total number of Performance Event Hours (and part hours) in that Accounting Period in respect of which a Measured Service was subject to a Performance Event due to possession delay/overrun as a result of Passenger Service Operator action.

And

HT_{AP} means the maximum number of Station Operating Hours for each Measured Service in that Accounting Period as set out in Condition L4.

L2.4 The value of MSZ_{AP} shall, in respect of each Measured Service, be calculated by the Station Facility Owner as follows:

- (A) Using the value of PER_{AP} calculated pursuant to Condition L2.3 for each Measured Service, the Station Facility Owner shall determine into which Performance Band the value of PER_{AP} falls as follows;
- (B) The availability of each Measured Service (PER_{AP}) shall be subtracted from the Availability Benchmark set out in Section L4 to determine any unavailability in excess of the benchmark.
- (C) Any unavailability for each Measured Service in excess of the Availability Benchmark calculated in Condition L2.4 (B) shall be allocated to a Performance Band using the reference table set out in Section L5, and this shall determine the Performance Payment payable in respect of that Measured Service.

L3 Payment and Payment Caps

L3.1 Subject to Conditions L3.2 to L3.6, each Passenger Service Operator shall be entitled to claim Performance Payments (or part thereof) from the Station Facility Owner.

L3.2 In order to claim the Performance Payments (or part thereof) for an Accounting Period, the Passenger Service Operator shall, within 10 Business Days of the date of the notice provided by the Station Facility Owner pursuant to Condition L1.6, notify the Station Facility Owner of:

- (A) the Performance Payments specified in the notice provided pursuant to Condition L1.6 that the Passenger Service Operator intends to claim for that Accounting Period; and
- (B) the Performance Events to which such Performance Payments relate, and the Passenger Service Operator shall submit an invoice to the Station Facility Owner in respect of the Performance Payments it intends to claim in respect of that Accounting Period.

L3.3 Subject to Conditions L3.4 and L3.5, where the Passenger Service Operator:

- (A) fails to notify the Station Facility Owner of the Performance Payments it intends to claim in respect of an Accounting Period and submit an invoice in respect of the same; or
- (B) elects not to claim all or part of a Performance Payment to which it is entitled pursuant to this Section A of Part L, within the period provided in Condition L3.2, the Passenger Service Operator shall irrevocably waive its entitlement to claim all or part of such Performance Payment.

Part L: Performance monitoring regime and remedies

- L3.4 Where, pursuant to Condition L1.7, a Passenger Service Operator has disputed the contents of the notice provided by the Station Facility Owner under Condition L1.6, the Passenger Service Operator shall, within 5 Business Days of final determination of the dispute, notify the Station Facility Owner whether or not it elects to claim all or part of any Performance Payment that it has been determined it is entitled to. If the Passenger Service Operator elects to claim all or part of such Performance Payment it shall also submit an invoice in relation to such sums that it has elected to claim.
- L3.5 If the Passenger Service Operator fails to notify the Station Facility Owner of its election and/or to submit an invoice pursuant to Condition L3.4, it shall irrevocably waive its entitlement to claim all or part of such Performance Payment. Such failure shall not affect the Passenger Service Operator's right to claim Performance Payments in respect of any Performance Event occurring in any successive Accounting Period.
- L3.6 Subject to Condition L7.3, where a Passenger Service Operator is responsible for a Performance Event:
- (A) such Passenger Service Operator shall not be entitled to claim Performance Payments in relation to such Performance Event unless the Station Facility Owner has unreasonably delayed remedying such Performance Event and in such case the Passenger Service Operator shall be entitled to claim Performance Payments only to the extent that the Station Facility Owner has unreasonably delayed remedying such Performance Event;
 - (B) without prejudice to any other remedy that the Station Facility Owner may have under this code, such Passenger Service Operator shall pay to the Station Facility Owner an amount equivalent to the Performance Payments payable by the Station Facility Owner to other Passenger Service Operators in respect of such a Performance Event, but not to the extent that the Station Facility Owner is responsible for an increased level of Performance Payment arising due to its unreasonable delay in remedying the Performance Event; and
 - (C) such Passenger Service Operator shall be entitled to dispute, pursuant to Condition H5 of the Station Access Conditions, any amounts which it is obliged to pay the Station Facility Owner in accordance with Condition L3.6 (B) only on the basis that the Station Facility Owner has incorrectly calculated the Performance Payments that the Station Facility Owner is liable to pay to other Passenger Service Operators.
- L3.7 Subject to Condition L3.11, the aggregate payment cap to the Station Facility Owner, its officers, employees and agents arising out of or in connection with this Section A of Part L in respect of each Financial Year shall be limited to the Passenger Service Operator's Performance Proportion for that Financial Year in respect of any and all liability arising out of or in connection with this Section A of Part L in relation to a Passenger Service Operator's Station Access Agreement in respect of the relevant Stations.
- L3.8 The Passenger Service Operator's Performance Proportion in respect of a Financial Year shall be calculated as follows:

$$POPP = \sum PC_{AP} \times \frac{POTS_{AP}}{RT_{AP}}$$

where:

POPP means the Passenger Service Operator's Performance Proportion;

Part L: Performance monitoring regime and remedies

Σ	means the summation across all Accounting Periods in the year;
PC_{AP}	means, in respect to the total of all relevant Stations, the Payment Cap payable across all Passenger Service Operators in an Accounting Period, calculated in accordance with Condition L3.9;
$POTS_{AP}$	means the number of Passenger Service Operator Train Services timetabled to operate on the HAL infrastructure by a given Passenger Service Operator during the Accounting Period; and
RT_{AP}	means the aggregate of all values of $POTS_{AP}$ in respect to all Passenger Service Operators on the HAL infrastructure.

L3.9 In respect to the total of all relevant Stations, the Payment Cap in respect of an Accounting Period shall be calculated as follows:

$$PC_{AP} = PC_{FY} \times \frac{OD_{AP}}{OD_{FY}}$$

where:

PC_{FY} means the Payment Cap payable across all Passenger Service Operators for the Financial Year calculated as:

$$PC_{FY} = PCP \times CCCP$$

where:

PCP means the Payment Cap Proportion, set as the proportion of the Common Cost Charge representative of the stations variable and fixed access charges, as defined by the Civil Aviation Authority (CAA) Service Quality Regime (SQR) for Heathrow; currently 7.0%; and

$CCCP$ means the proportion of the Common Cost Charge representative of the stations variable and fixed access charges, as defined within the Passenger Service Operator's Track Access Agreement, in respect of all Measured Stations.

And:

OD_{AP} means the Operating Days in the Accounting Period;

OD_{FY} means the Operating Days in the Financial Year.

L3.10 The Station Facility Owner shall deduct such sums as are properly specified in the invoice provided by the Passenger Service Operator pursuant to Conditions L3.2 and/or L3.4 from the Access Charge payable in respect of the Accounting Period following receipt of the invoice.

L3.11 Nothing in this Section A of Part L of this code shall be construed as excluding or limiting the liability of the Station Facility Owner or any of its respective officers, employees and agents for fraud or for death or personal injury resulting from the negligence of the Station Facility Owner.

SECTION B: BENCHMARKING

L4 Agreement of Availability Benchmarks

L4.1 The Station Facility Owner and each Passenger Service Operator shall procure the Availability Benchmarks in respect of each Measured Service at the Measured Stations in accordance with the remaining provisions of this Condition L4.

Part L: Performance monitoring regime and remedies

L4.2 The Availability Benchmarks, set out in Annex 2, shall reflect the standard of the provision of the Measured Services procured by HAL in each Accounting Period.

L4.3 If a Passenger Service Operator has indicated that it intends to withhold its approval of the proposed Availability Benchmarks, a dispute shall be deemed to arise and the Station Facility Owner shall be entitled to refer such dispute to the ADRR and the table within Annex 2 shall be updated to reflect the final determination of such dispute.

L5 Agreement of Performance Bands and Measured Service Weighting

L5.1 The Station Facility Owner shall reimburse each Passenger Service Operator in respect of each Measured Service at each Measured Station in accordance with the remaining provisions of this Condition L5.

L5.2 For every hour (and part hour) the Measured Services at each relevant Station are unavailable in excess of the Availability Benchmark, the Station Facility Owner shall make payment to the Passenger Service Operators in accordance with Conditions L2 and L3.8.

L5.3 The Performance Bands referenced in Condition L2.4 have been calculated such that the Payment Cap, shown in Condition 3.9, shall be accrued upon the availability of each Measured Service falling to the relevant Availability Benchmark less 5%.

L5.4 The accrual of Performance Payments in each Accounting Period (PP_{AP}) within the Performance Bands, up to the Payment Cap for the Accounting Period (PC_{AP}), for all Measured Services, is summarised in the table below:

Measured Service Availability in the Accounting Period	$PER_{AP} \geq AB$	$AB > PER_{AP} \geq AB-1\%$	$AB-1\% > PER_{AP} \geq AB-2\%$	$AB-2\% > PER_{AP} \geq AB-3\%$	$AB-3\% > PER_{AP} \geq AB-5\%$	$PER_{AP} < AB-5\%$
Proportion of the Payment Cap (PC_{AP}) Payable	0%	15%	25%	50%	75%	100%

* PER_{AP} = Performance of the Measured Service in the Accounting Period

*AB = Measured Service Availability Benchmark

L5.5 Further to the Performance Bands, the Measured Services have been weighted such that a higher cost per hour (or part hour) of unavailability in excess of the Measured Service Availability Benchmark is payable for those Measured Services that are deemed of higher importance to the customers on the HAL infrastructure. These weightings may be found in Annex 2.

L5.6 If a Passenger Service Operator has indicated that it intends to withhold its approval of the proposed Performance Bands and weightings, a dispute shall be deemed to arise and the Station Facility Owner shall be entitled to refer such dispute to the ADRR and the table within Condition L5.4 shall be updated to reflect the final determination of such dispute.

L6 Changes to the Common Station Amenities and Common Station Services

L6.1 If the Station Facility Owner and each relevant Passenger Service Operator agree that:

(A) any amenity or service shall cease to be or shall become a Measured Service; or

Part L: Performance monitoring regime and remedies

- (B) there is a change to the terms upon which any Measured Service is provided to the Passenger Service Operators; or
- (C) any Measured Service which was previously affected by any works permitted pursuant to Part C or Part D ceases to be adversely affected in such way, the Station Facility Owner and the Passenger Service Operators shall at the request of any of them negotiate with each other with a view to agreeing within 28 days of such request any modification to the Availability Benchmarks and/or Performance Bands as may be necessary to reflect those matters, and if that agreement is not reached within such 28 days, the matters in dispute shall be referred by the Station Facility Owner for determination pursuant to the ADRR. Such determination shall be final and binding on the Station Facility Owner and the Passenger Service Operators and shall establish the relevant modifications.

SECTION C: SELF HELP REMEDIES

L.7 Self Help Remedies

- L7.1 Subject to Conditions L7.6 and L11, if the Station Facility Owner fails to carry out any work at a particular station in accordance with Condition D5 of the Station Access Conditions and such failure would have a material adverse affect on the lawful business of a User carried on at the Station then that User, having consulted with each other User, may give the Station Facility Owner written notice of its intention to carry out such work unless, within a reasonable period after receipt of such notice, the Station Facility Owner remedies such breach.
- L7.2 If, after expiry of such reasonable period as is referred to in Condition L7.1, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition L7.1 or where more than one User referred to in Condition L7.3 may carry out the work in accordance with the relevant provisions of this code and the Station Facility Owner shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.
- L7.3 Where more than one User has given notice under Condition L7.1 then unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Common Cost Charge shall be the User referred to in Condition L7.2, provided always that where the User is carrying out any works in accordance with Condition L7.2, the Station Facility Owner shall not take any steps to remedy the relevant breach.
- L7.4 Subject to Conditions L7.6 and L11, if the Station Facility Owner fails to secure the provision of any of the Common Station Amenities or Common Station Services in accordance with its obligations under this code any User shall, subject to Condition L7.5, be entitled to procure that such services are carried out in accordance with the relevant provisions of this code during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the User's Access Charge payable by it to the Station Facility Owner for the relevant Accounting Period. If, and to the extent that the User's Access Charge for that Accounting Period has already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within 10 Business Days of the Station Facility Owner being notified of the amount of the relevant cost.
- L7.5 A User shall be entitled to the remedies referred to in Condition L7.4 only if:

Part L: Performance monitoring regime and remedies

- (A) each other User has agreed that the User may exercise those remedies or the User of the affected Station or Stations bears the greatest proportion of Common Cost Charge;
- (B) the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and
- (C) the breach remains unremedied by the Station Facility Owner at the end of that period.

L7.6 A User shall not be entitled to exercise any rights under this Condition L7 if such User is responsible for the Station Facility Owner failing to:

- (A) carry out any work in accordance with Condition D5 of the Station Access Conditions; and/or
- (B) secure the provision of any of the Common Station Services in accordance with its obligations under this code,

unless and until such time as such User has removed any circumstance contemplated by this Condition for which it is responsible and the Station Facility Owner has been given a reasonable period to fulfil the obligations which are the subject matter of this Condition.

L8 Default Responsibility

L8.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused:

- (A) a Performance Event;
- (B) the Station not to open for the periods specified outside the Station Operating Hours and in paragraph 5 of Annex 1 (as applicable) of the Station Access Conditions; and
- (C) a Performance Payment to be payable by the Station Facility Owner pursuant to Condition L1.8,

and where more than one person or event is the cause, so far as practicable, the extent to which each person or event is the cause.

L8.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition L8.1, have due regard to all information available to it which is relevant in the circumstances.

L8.3 Subject to Condition L1.6, as soon as reasonably practicable following the occurrence of a matter listed in Condition L8.1 and in any event not later than 10 Business Days following the occurrence of such matter, the Station Facility Owner shall notify each User of the degree of causation, if any, of that occurrence attributed by the Station Facility Owner to itself or to the User which shall, unless disputed by the User within 10 Business Days of receipt of that notice, be deemed to have been agreed by the User.

SECTION D: INDEMNITIES AND LIMITATION OF LIABILITY

L9 Indemnities

Part L: Performance monitoring regime and remedies

- L9.1 Subject to Condition L9, the Station Facility Owner shall (on an after tax basis) indemnify each User, and keep each of them respectively indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by each of them as a result of any breach by the Station Facility Owner of any of its obligations under a Relevant Agreement to which the User in question is party with the Station Facility Owner.
- L9.2 Subject to Condition L9, each User shall (on an after tax basis) indemnify the Station Facility Owner, and keep them indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by them as a result of any breach by the User of any of its obligations under a Relevant Agreement to which the Station Facility Owner is party with the User.
- L10 Limitation on claims
- L10.1 Save as otherwise expressly provided in any Relevant Agreement (including this code), no party to a Relevant Agreement shall be liable in respect of any breach of a Relevant Agreement:
- (A) unless notice of it is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant or could, with reasonable diligence, have become so known;
 - (B) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed:
 - i. in the case of a claim against the Station Facility Owner, the amount specified in paragraph 14 of Annex 9 (as applicable) of the Station Access Conditions;
 - ii. in the case of a claim against a Passenger Service Operator, the amount specified in paragraph 15 of Annex 9 (as applicable) of the Station Access Conditions; and
 - iii. in the case of a claim against a User other than a Passenger Service Operator, the amount specified in paragraph 16 of Annex 9 (as applicable) of the Station Access Conditions;
 - (C) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:
 - i. in the case of a claim against the Station Facility Owner, the amount specified in paragraph 17 of Annex 9 (as applicable) of the Station Access Conditions;
 - ii. in the case of a claim against a Passenger Service Operator, the amount specified in paragraph 18 of Annex 9 (as applicable) of the Station Access Conditions; and
 - iii. in the case of a claim against a User other than a Passenger Service Operator, the amount specified in paragraph 19 of Annex 9 (as applicable) of the Station Access Conditions,
- in any Accounting Year, in which case the liability of the respondent to the claimant shall be limited to the amount of the excess over those amounts respectively, provided that Conditions L10.1 (B) and L10.1 (C) shall not apply in respect of any obligation to pay any liquidated sum.