

Part D - Timetable Change

[applicable to preparation of the timetable commencing on ~~14~~10 December ~~2005~~2006 and of subsequent timetables and all Timetable Weeks commencing on or ~~after 14~~after 10 June ~~2005~~2006.]

Explanatory Note

- A. *Part D sets out the procedures by which the Working Timetable, Rules of the Route and Rules of the Plan may be changed. Although changes may be made to the Working Timetable at any time, significant changes in the Passenger Timetable may be made only twice a year, namely at the dates referred to as the Principal Change Date (in December) and the Subsidiary Change Date (in ~~June~~May).*
- B. *The development of a robust timetable demands dialogue between Network Rail and Bidders (i.e. Train Operators and others entitled to take part in the process), between the Bidders themselves, and also between Bidders and their customers or customers' representative bodies.*
- C. *Significant timetable change may require discussion between Bidders and Network Rail over a period of several years; provision is therefore made for this in Condition D1.5 headed 'Major Changes to the Timetable'. At least two years before each Principal Change Date, Network Rail, in collaboration with potential Bidders, will commence preparation of a Base Timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *Network Rail has the role of managing the Working Timetable. It is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Such specification will normally allow a degree of flexibility to both Network Rail and the Train Operator, both in terms of the timing and other characteristics of the services. A Train Operator's Train Slots are protected insofar as they are based on Firm Rights which are not inconsistent with the applicable Rules of the Route and/or applicable Rules of the Plan, provided that the Firm Rights have been asserted no later than the Priority Date. Any such flexibility will operate within the confines of the applicable Rules of the Route and applicable Rules of the Plan which, like the service specification, will constrain Network Rail's ability to flex the timetable.*
- E. *Each year, at the start of the timetable development process, Network Rail is obliged to review the applicable Rules of the Route and applicable Rules of the Plan and decide if any amendments should be made in respect of the period of the annual timetable commencing on the next Principal Change Date. In addition each year, at the start of the process for development of the timetable changes applying from the Subsidiary Change Date, Network Rail is obliged to undertake a more limited review of the applicable Rules of the Route and the applicable Rules of the Plan. Bidders are consulted on each review, and there is a right to refer disputes to the relevant ADRR panel in accordance with the procedure described in paragraph N below.*

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- F. Each year at or before the start of the timetable development process there will be dialogue between Network Rail and Bidders regarding the Base Timetable content and any variations to those train services which the Bidder aspires to run in that timetable year. Each Bidder will notify Network Rail of ~~these~~ any changes in the contractual rights (as set out in the Bidder's Access Agreement with Network Rail) that the Bidder will wish to exercise in support of these services, giving reasons for such changes, and ~~give an indication~~ will also notify Network Rail of any changes to the Base Timetable Train Slots which will be sought. The notification must be made on or before the Priority Date.
- G. To facilitate the proper processes of dialogue and consultation Network Rail will convene an annual Timetabling Conference just before the Priority Date and invite all Bidders to attend to discuss openly the services which they seek to run in the following timetable year. Following the Timetabling Conference, which will include bi-lateral and multi-lateral dialogue between Industry Parties, Network Rail will lead a joint industry process with Bidders to prepare and issue a Draft Timetable which will be developed from the Base Timetable, taking account of the consultation held before, during and after the Timetabling Conference. Network Rail's decisions must take account of the Decision Criteria, where applicable, in Condition D6.
- H. Following issue of the Draft Timetable, Network Rail will continue to work with Bidders to further refine the timetable plan to correct any errors and omissions. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. Network Rail will make a formal offer of its proposed First Working Timetable and Bidders will have a right of appeal against Network Rail's decisions reflected in that Timetable.
- I. In respect of each Timetable Week, where Network Rail requires possessions or other restrictions of use in order to undertake engineering work on the Network, Network Rail will notify Bidders of the changes it proposes to make to the allocation of capacity and timetable structure in the relevant week and whether it requires Train Operators to submit Revised Bids for timetable slots for that week. Network Rail, in consultation with Bidders, will then compile a revised timetable taking into account any Revised Bids and any Spot Bids received in the same timescale.
- J. Spot Bids may be made during the period of operation of a Working Timetable or during the preceding Supplemental Period. As a general rule, Spot Bids are given priority on a first in time basis; however, Network Rail may exercise its Flexing Right to resolve conflicts between Spot Bids.
- K. If a Spot Bid is received by Network Rail in relation to a sporting or other public event which, if accepted, would conflict with any Train Slot in the Working Timetable, Network Rail must consult with the Train Operator entitled to the Train Slot with a view to obtaining its consent to Network Rail exercising its Flexing Right to accommodate the Spot Bid. A Train Operator may not unreasonably withhold or delay its consent to a request from Network Rail in such circumstances if the Spot Bid relates to a Train Slot for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the route and on the days and times of day in question. If as a result of accommodating a Spot Bid Network Rail is obliged to make payment to a Train Operator whose Train Slot is flexed by Network Rail, the Train Operator whose Spot Bid was accommodated must reimburse Network Rail the amount of such payment.
- L. In its capacity as manager of the Working Timetable, Network Rail is required to make a number of decisions, including whether to accept Bids for new or different

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timetable slots, how to reconcile competing or conflicting Bids and how to exercise any right it may have to flex a particular Train Operator's Bids (to the extent that the Train Operator's service specification allows it). Network Rail must have due regard to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable Rules of the Route and applicable Rules of the Plan. These criteria are to be weighed and balanced by Network Rail in the light of the particular circumstances surrounding each decision and in certain circumstances Network Rail must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available. There is a criterion that will enable Network Rail to preserve paths for subsequent Spot Bids where there is reasonable expectation that these will be required and utilised.

- M. *In the event of a series of engineering, maintenance or renewal works requiring restrictions of use of one or more sections of track extending over a period of more than one year or a period containing a Principal Change Date and a Subsidiary Change Date, Network Rail may give notice to Train Operators affected by the works in order to consult, and if possible agree, with the relevant Train Operator a strategy for implementation of the works. Network Rail is obliged to have due regard to the Decision Criteria in deciding its proposed method of implementation and its decision is subject to appeal in accordance with the procedure referred to in paragraph N below.*
- N. *It is expected that the normal means of resolving timetable disputes between Network Rail and each Bidder will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Bidders to appeal against any relevant Network Rail decision. An appeal is, in the first instance, made to the relevant ADRR panel (established under the Access Dispute Resolution Rules). If either Network Rail or the Bidder is dissatisfied with the decision of that disputes panel, it may appeal to the Office of Rail Regulation. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.*
- O. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part D, unless the context otherwise requires and subject as provided below:

“Ancillary Movements”	means train movements which are not an express part of any Services but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any such train movement as is referred to in paragraph (c) of the definition of "Services" to the extent that it is not expressly provided for in the relevant Access Agreement;
“Appeal Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks commencing on the first day <u>Working Day</u> following the end of the Finalisation Period and forming part of the Supplemental Period;
“Base Timetable”	means, in respect of any Timetable Period, the timetable issued by Network Rail in accordance with Condition D2A.3 showing those Train Slots which Network Rail expects to include in the Working Timetable applicable to that Timetable Period;
“Base Timetable Initial Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling one calendar year before the Priority Date in respect of such Timetable Period;
“Base Timetable Notification Date”	means, in respect of any Timetable Period, the date to be notified by Network Rail pursuant to Condition D1.4 and normally falling 8 weeks prior to the Priority Date in respect of such Timetable Period;
“Bid”	means any Train Slot included in the Base Timetable (to the extent not varied or withdrawn by any subsequent Bid), or any bid made to Network Rail for one or more Train Slots (comprising, as the case may be, the notifications (if any) made in accordance with Conditions D3.2.1, D3.2.4 and D3.2.6, any Spot Bid or any Revised Bid);
“Bidder”	means each Train Operator, each Access Option Holder and each other person who has been allowed to participate in the procedure set out in this Part D pursuant to Condition D1.2;

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- “Capacity Request Deadline” means the last day on which a Bidder may propose changes to the content of the Draft Timetable and which shall be no more than 4 weeks before the end of the Drafting Period;
- “Decision Criteria” means those decision criteria set out in Condition D6;
- “Development Commencement Date” means the first day of a Timetable Development Period;
- “Draft Timetable” means the version of the Working Timetable which Network Rail provides in accordance with Condition D3.2.5;
- “Drafting Period” means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 16 weeks and commencing on the first ~~day~~Working Day following the end of the Preliminary Period;
- “Finalisation Period” means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 6 weeks and commencing on the first ~~day~~Working Day following the end of the Drafting Period;
- “Firm Right” means:
- (a) in the case of a Bidder, a right under its Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; and
 - (b) in the case of Network Rail, a right under the applicable Rules of the Route or the applicable Rules of the Plan
- which is not expressed to be subject to any contingency outside the control of the holder of the right, except, in a case within paragraph (a) above, the applicable Rules of the Route or the applicable Rules of the Plan, and any reference in an Access Agreement to “Firm Contractual Right” shall be deemed to be a reference to “Firm Right”;
- “First Working Timetable” means the version of the Working Timetable in respect of which Network Rail gives notice pursuant to Condition D3.2.7, as that version may be amended in accordance with Condition D3.2.9;
- “Flexing Right” means a right, exercisable by Network Rail, either
- (a) pursuant to Condition D3.4.1 or D4.4.1, to vary a Bid or to define in detail the

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	content of a Train Slot or series of Train Slots in any way within and consistent with the Firm Rights (if any) of the Bidder; or
	(b) pursuant to Condition D3.4.2 or D4.4.2, to vary a Train Slot previously scheduled in the relevant Working Timetable or a Bid as the case may be;
“International Operator”	means each Bidder who has rights to train movements through the Channel Tunnel;
“International Path”	means any Train Slot which is contiguous with a train movement through the Channel Tunnel or any combination of Train Slots which are contiguous with each other and of which at least one is contiguous with a planned train movement through the Channel Tunnel;
“Passenger Change Date”	means the Principal Change Date or, as the case may be, the Subsidiary Change Date;
“Passenger Timetable”	means any timetable of railway passenger services published or procured to be published to the public by Network Rail;
“Possessions Strategy Notice”	means a notice issued by Network Rail in accordance with Condition D2.2.3 in relation to Network Rail’s proposed implementation of works requiring Restrictions of Use, as such notice is amended from time to time;
“Preliminary Period”	means a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 10 weeks and commencing on the first day <u>Working Day</u> of the Timetable Development Period;
“Preliminary Rules of the Route/Plan Proposal”	means an initial proposal made by Network Rail in respect of the applicable Rules of the Route or the applicable Rules of the Plan pursuant to Condition D2.1.3;
“Principal Change Date”	means the date, to be notified by Network Rail in accordance with Condition D1.4 and normally falling on the Sunday next following the second Saturday in December in any calendar year, or such alternative dates as may be notified by Network Rail in accordance with the provisions of Directive 2001/14/EC;
“Priority Date”	means the date, notified under Condition D1.4 and in any event occurring not more than 7 <u>daysfive</u> <u>Working Days</u> after the commencement of the Drafting Period relating to a Timetable Development Period ending on a Principal Change Date, by which Bidders, in

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	accordance with Condition D3.2.1, must notify to Network Rail those rights which they intend or, as the case may be, do not intend to exercise in either or both of the Timetable Period commencing on that Principal Change Date and the Timetable Period commencing on the next following Subsidiary Change Date;
“Qualified Person”	means a person whose business comprises or includes the provision, to operators of trains, Access Option Holders and persons who intend to apply for a licence under section 8 of the Act, of services in relation to the acquisition of permission to use the Network;
<u>“Regulations”</u>	<u>means The Railways Infrastructure (Access and Management) Regulations 2005;</u>
“Revised Bid”	means any Spot Bid seeking to revise a Train Slot scheduled in the relevant Working Timetable, as submitted to Network Rail by a Train Operator in accordance with Condition D4.8.3;
“Revision Bid Date”	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, being the last date for submission by a Bidder of its Revised Bids for the Timetable Week to which that Revision Bid Date relates;
“Revision Finalisation Date”	means, in respect of any Supplemental Timetable Revision Period, a date to be specified by Network Rail in accordance with Condition D4.8.1, occurring 2—weeks <u>10 Working Days</u> prior to the relevant Revision Period End Date, or, when Christmas Day falls no more than 14—days <u>10 Working Days</u> prior to the relevant Revision Period End Date, the date occurring 3—weeks <u>15 Working Days</u> prior to the relevant Revision Period End Date, being the last date for notification by Network Rail of its decisions in respect of the Timetable Week to which that Revision Finalisation Date relates;

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“Revision Period Commencement Date”	means, in respect of any Supplemental Timetable Revision period <u>Period</u> , a date to be specified by Network Rail in accordance with Condition D4.8.1, normally occurring between 14 and 17 weeks prior to the relevant Revision Period End Date for the Supplemental Timetable Revision Period in question;
“Revision Period End Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring 12 weeks prior to the commencement of the Timetable Week to which that period relates;
“Revision Response Date”	means, in respect of any Supplemental Timetable Revision Period, the date occurring one week after the relevant Revision Finalisation Date;
“Short Notice Spot Bid”	means a Spot Bid for a Train Slot made to Network Rail by 1000 hours on day A which would, if the Spot Bid were accepted, be planned to operate between 1000 hours on day A and 0001 hours on day C, where day A is the first day, day B is the second day (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays), and day C is the third day of any 3 consecutive days from (and including) the day on which the Spot Bid is made;
“Spot Bid”	means any Bid (other than a Revised Bid) made during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that Timetable Period;
“Subsidiary Change Date”	means the date to be notified by Network Rail in accordance with Condition D1.4 and normally falling on the Sunday next following <u>which is eight days before the second-Saturday</u> <u>last Monday</u> in June <u>May</u> in any calendar year, or such alternative dates as may be notified by Network Rail in accordance with the provisions of Directive 2001/14/EC <u>Regulations</u> ;
“Subsidiary Rules Revision”	means, in respect of any Timetable Period commencing on a Subsidiary Change Date, any revision to the applicable Rules of the Route or the applicable Rules of the Plan that either: (a) is not material in nature and makes no material adjustment to or correction of detail set out in the applicable Rules of the Route or applicable Rules of the Plan; or

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	(b) is material in nature but the need for which was not reasonably foreseeable when the applicable Rules of the Route or applicable Rules of the Plan were previously revised;
“Supplemental Period”	means the period, to be notified by Network Rail in accordance with Condition D1.4, normally of 22 weeks, commencing on the first day <u>Working Day</u> following the end of the Finalisation Period and ending on the day before the relevant Passenger Change Date;
“Supplemental Timetable Revision Period”	means, in respect of any Timetable Week, the period commencing on the relevant Revision Period Commencement Date and ending on the relevant Revision Period End Date;
“Timetable Development Period”	means, in respect of any Passenger Change Date, the period of development of the Working Timetable to be implemented on that date, being a period, to be notified by Network Rail in accordance with Condition D1.4, normally of 55 weeks, ending on the day before that date and comprising, in chronological order: <ul style="list-style-type: none">(a) a Preliminary Period;(b) a Drafting Period;(c) a Finalisation Period; and(d) a Supplemental Period;
“Timetable Period”	means the period of operation of a Working Timetable;
“Timetable Week”	means, in respect of a Timetable Period, any week (or, in the case of the first and last such week of such period, part thereof) occurring during that period and commencing at 0001 hours on any Saturday and ending at 2400 hours on the next following Friday;
“Timetable Week Slot”	means, in respect of any Timetable Week, any Train Slot that is scheduled in the Working Timetable to leave its point of origin during that week;
“Train Slot”	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
“User Representative”	means any of the Rail Passengers’ Committees <u>Council</u> established under Section <u>219</u> of the <u>Railways Act</u> , or, where

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“Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays ~~appropriate, the London Transport Users’ Committee 2005; and~~ days when banks in the City of London are not open for business.

Note 1:

When:

- (a) Christmas Day or
- (b) where Christmas Day falls on a Saturday or a Sunday, the public holiday which is established in lieu of Christmas Day

occurs in any of the Appeal Period, Drafting Period, Finalisation Period, Preliminary Period, or Supplemental Period, Network Rail shall be entitled to extend the duration of the relevant period by one week and shall notify such extension to each Bidder at the same time as details of the dates of each of the periods comprised in the relevant Timetable Development Period are notified to Bidders pursuant to Condition D1.4.

Note 2:

For the purposes of these Notes:

“Commencement Date” means ~~4 May 2005~~ 2 September 2006;

“Major Project Notice” means a notice of a Major Project given by Network Rail pursuant to Condition D2.2.1 of the ~~Preceding~~ October 2005 Code; ~~and~~

“The October 2005 Code” means the version of the Network Code dated 16 October 2005 and printed on pink paper; and

“Preceding Code” means the version of the Network Code in effect immediately prior to the Commencement Date and printed on yellow paper.

Note 3:

~~In relation to the preparation of the First Working Timetable for the Timetable Period commencing in December 2005 each reference in Condition D3.2.1 to “Base Timetable” shall be deemed to be a reference to the Working Timetable for the Timetable Period commencing in December 2004.~~

~~Note 4:~~

~~In relation to the preparation of the Base Timetable for the Timetable Period commencing in December 2006, the reference in Condition D2.A.2 to “the most recently issued Base Timetable” shall be deemed to be a reference to the Working Timetable for the Timetable Period commencing in December 2004.~~

Note 5:

- (a) Any Restriction of Use notified under an established Major Project Notice shall be deemed to have been notified under an established Possessions Strategy Notice. For these purposes a Major Project Notice shall be deemed to be established if:
 - (i) Network Rail has complied with Condition D2.2 of the ~~Preceding~~ October 2005 Code in relation to such Major Project Notice; and

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- (ii) the proposed method of implementation set out in such notice:
 - (aa) has not been referred to the Industry Committee (as defined in the [Preceding October 2005](#) Code) for determination prior to the date referred to in Condition D2.2.4 of the Preceding Code;
 - (bb) has been finally determined by either the Industry Committee or the Office of Rail Regulation pursuant to that Condition; or
 - (cc) has been determined by the Industry Committee and is not the subject of an appeal to the Office of Rail Regulation pursuant to that Condition.
- (b) If prior to the Commencement Date Network Rail has given notice of an intended Major Project pursuant to Condition D2.2.1 of the [Preceding October 2005](#) Code and the proposed method of implementation of such Major Project has not yet been established as referred to above, the provisions of Condition D2.2 of the [Preceding October 2005](#) Code shall continue to apply in relation to such notice, save that:
 - (i) in Condition D2.2.4 of the [Preceding October 2005](#) Code the words ‘refer the matter to the Industry Committee for determination’ shall be substituted by the words ‘refer the matter to the Access Disputes Panel which shall determine the appropriate body to determine such matter’; and
 - (ii) Condition D2.2.5 of the [Preceding October 2005](#) Code shall not apply.
- (c) In the event that Network Rail wishes to implement a Major Project, it shall issue a Possessions Strategy Notice in respect thereof in accordance with Condition D2.2 and identify that notice as one relating to a Major Project (and for these purposes ‘Major Project’ shall have the same definition as in the [Preceding October 2005](#) Code), provided that such obligation of Network Rail shall cease to apply if the term ‘Major Project Notice’ is no longer used in defining a Significant Restriction of Use under any Access Agreement.

Note 6:

~~The provisions of Condition D4 of this Part D do not apply in relation to the preparation of the timetable for any Timetable Week commencing earlier than 11 June 2005. The preparation of any such timetable shall be governed by the Preceding Code.~~

Note 7:

~~With effect from 4 May 2005 any reference in any Access Agreement to the Revision Notification Date shall be interpreted as a reference to the date on which Network Rail notifies Bidders in accordance with Condition D4.8.2(c)(ii)~~

Note 8:

No Access Party shall have any liability for failure to comply with any provision of Part D if and to the extent: that the relevant act:

- (i) was not required under the Preceding Code; and
- (ii) was required under the current version of Part D to take place at a time prior to the Commencement Date.

CONDITION D1 - GENERAL

1.1 *Establishment of systems*

Network Rail shall establish and manage the systems necessary to implement the procedures described in this Part D.

1.2 *Rights of potential Access Parties*

Any person who proposes in good faith to enter into an Access Agreement, or become the holder of an access option, shall be entitled to participate in the procedure set out in this Part D, provided that such person has first undertaken to Network Rail to be bound (as a Bidder) by the provisions of this Part D.

1.3 *Confidentiality*

Network Rail shall not, in relation to the operation of any part of the procedures set out in this Part D, be obliged to keep confidential

- (a) the identity of any Bidder; or
- (b) any information provided to Network Rail by a Bidder.

1.4 *Notification of relevant dates*

Network Rail shall, at least 12 weeks prior to the Base Timetable Initial Date relating to a Principal Change Date and having consulted with each Bidder, give notice to each Bidder of the dates of each of the periods comprised in the Timetable Development Periods commencing on the relevant Development Commencement Date and the next following Development Commencement Date. The dates in such notice shall include each Passenger Change Date and the Base Timetable Initial Date, Base Timetable Notification Date and the Priority Date applicable to those change dates.

1.5 *Major changes to the timetable*

1.5.1 In order to facilitate effective development of the Draft Timetable where Network Rail considers that major timetable changes may be required, for example to accommodate growth in demand for railway services, Network Rail may decide to invoke a consultation process at an earlier stage than would otherwise be the case with a view to increasing the period for consultation and ensuring that the timetable changes are implemented in a co-ordinated fashion.

1.5.2 In such circumstances Network Rail shall notify each Bidder in writing of all relevant information about any such major changes and of the Timetable Development Periods likely to be affected by such changes, and shall give notice to all Bidders of the date it proposes to commence the pre-bidding consultation process in respect of the affected Timetable Development Periods.

1.5.3 Any Train Operator wishing to propose significant alterations to its services or any Bidder wishing to introduce significant new services shall

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consult with Network Rail at the earliest opportunity to assist Network Rail in deciding whether or not to invoke an early start to a pre-bidding consultation process and, if so, in deciding when that process should begin.

1.6 *Working Timetable*

1.6.1 Network Rail shall draw up a timetable showing, so far as reasonably practicable, every train movement on the Network, including:

- (a) every service for the carriage of passengers by railway, every service for the carriage of goods by railway, every Ancillary Movement and every other Service;
- (b) the times of arrival and departure of trains at origin and destination, at every intermediate stopping point and at appropriate passing points; and
- (c) all relevant timing allowances,

as they shall have been amended pursuant to Part H and including goods train planning publications and documents detailing platforming arrangements.

1.6.2 Movements of trains operated by a Train Operator which are not made in the exercise of access rights shall not be entered in the Working Timetable. In this Condition D1.6.2, "access rights" means permission, under an Access Agreement, to use track for the purpose of or in connection with the operation of railway assets by a Train Operator.

1.6.3 Network Rail shall not be obliged to publish details of any Spot Bid which it accepts in any Passenger Timetable.

1.7 *Accreditation*

Network Rail may from time to time establish procedures for:

- (a) accrediting planners employed or engaged by Train Operators for the purposes of those planners carrying out work in relation to the preparation of the Working Timetable on behalf of Network Rail; and
- (b) allowing such planners to undertake such work in relation to the preparation of the Working Timetable.

Any such procedures shall be notified by Network Rail to all Train Operators.

CONDITION D2A – BASE TIMETABLE

2A.1 *Consultation*

2A.1.1 Network Rail shall consult with Bidders before the Base Timetable Initial Date to establish their aspirations for development of their services during the Timetable Development Periods to which such Base Timetable Initial Date relates. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to the development of the Bidder's services.

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- 2A.1.2 Bidders shall hold appropriate consultation regarding proposals for development of services with Passenger Transport Executives, User Representatives and any other parties with the right to be so consulted.
- 2A.1.3 Network Rail shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary service patterns and efficiency of operation.

2A.2 Development of Base Timetable

- 2A.2.1 Following the consultation referred to in Condition D2A.1.1, Network Rail shall lead the development of a Base Timetable.
- 2A.2.2 In developing such Base Timetable Network Rail shall take account of any aspirations of Train Operators for changes to the most recently issued Base Timetable which are notified to Network Rail on or before the Base Timetable Initial Date relating to the Timetable Development Period in question. Network Rail shall not be entitled to disregard such aspirations by reason solely of their complexity or the available time before the end of the Finalisation Period. Network Rail shall also take account of the views of Train Operators who do not wish changes to be made to the most recently issued Base Timetable, if such views are notified to Network Rail on or before the Base Timetable Initial Date.
- 2A.2.3 Following the Base Timetable Initial Date and at any time before the Base Timetable Notification Date, each Bidder shall have the right to notify to Network Rail new aspirations (if any) which amend, delete or add to those aspirations (if any) which it notified in accordance with Condition D2A.1.1. Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the matters set out in Condition D2A.2.4, incorporate each new aspiration into the Base Timetable. If Network Rail decides that it is unable to incorporate any new aspiration into the Base Timetable it shall notify the relevant Bidder as soon as reasonably practicable.
- 2A.2.4 Network Rail, in consultation with Bidders, shall compile a Base Timetable which takes due account of:
- (a) the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail in respect of the Rules of the Route and the Rules of the Plan;
 - (b) the rights or expectations of rights of each Train Operator and of Network Rail; and
- (c) the Decision Criteria.

2A.3 Issue of the Base Timetable

Network Rail shall, on or before the Base Timetable Notification Date, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Network Rail in providing that information, the Base Timetable which shall show:

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- (a) in respect of the relevant Principal Change Date, those Train Slots which Network Rail expects to include in the Working Timetable commencing on that Principal Change Date;
- (b) in respect of the relevant Subsidiary Change Date, those Train Slots which Network Rail expects to include in the Working Timetable commencing on that Subsidiary Change Date.

Network Rail shall indicate any major aspects of the Base Timetable which are not capable of being brought into operation without further development work.

2A.4 Right of appeal

2A.4.1 Referral to relevant ADRR panel

Following the provision of the Base Timetable in accordance with Condition D2.A.3, a Bidder may refer any decision by Network Rail in respect of the Base Timetable for determination by the relevant ADRR panel under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2A.4.2 Possessions Strategy Notice

No reference under Condition D2A.4.1 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred to the relevant ADRR panel for determination prior to the date referred to in Condition D2.2.4;
- (b) been finally determined by either the relevant ADRR panel or the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined by the relevant ADRR panel and is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2.

2A.4.3 Implementation pending outcome of determination

If any aspect of the Base Timetable has been referred for determination pursuant to Condition D2A.4.1, Network Rail shall be entitled (notwithstanding such Condition) to treat such aspect as accepted for the purposes of developing the Working Timetable for the Timetable Periods to which such Base Timetable relates, pending the outcome of that determination.

CONDITION D2 - CONSULTATION PROCESS TO ESTABLISH THE RULES of the ROUTE/PLAN

2.1 Review of the Rules of Route/Rules of Plan

2.1.1 Consultation

At least 8 weeks prior to the Development Commencement Date Network Rail shall consult with each Bidder in respect of Network Rail's anticipated requirements for Restrictions of Use needed to undertake

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maintenance, renewal and enhancement works on the Network during the Timetable Period to which such Development Commencement Date relates and the next following Timetable Period.

2.1.2 *Review by Network Rail*

Following the consultation referred to in Condition D2.1.1 Network Rail shall, before the Development Commencement Date:

- (a) in respect of any Timetable Period commencing on a Principal Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan for that Timetable Period and the next following Timetable Period and decide whether any amendment is required to either or both sets of Rules (including any amendment for the purposes of the implementation of any Network Change in accordance with Part G of this Network Code, Vehicle Change in accordance with Part F of this Network Code or of the implementation of any matter which is the subject of a notice issued in accordance with Condition D2.2); and
- (b) in respect of any Timetable Period commencing on a Subsidiary Change Date, review the applicable Rules of the Route and the applicable Rules of the Plan and decide as to whether any Subsidiary Rules Revisions should be made to either or both sets of Rules.

In conducting its review in accordance with this Condition D2.1.2 Network Rail shall consult with:

- (i) each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan; and
- (ii) each International Operator to ascertain the provisional International Paths that it wishes to have scheduled in the relevant Working Timetable and Network Rail shall incorporate that information in the Preliminary Rules of the Route/Plan Proposal.

2.1.3 *Preliminary Rules of the Route/Plan Proposal*

Network Rail shall, on or before each Development Commencement Date, serve a notice ("Preliminary Rules of the Route/Plan Proposal") on each Bidder specifying:

- (a) in the case of a Development Commencement Date relating to a Principal Change Date the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for the Timetable Period commencing on that Principal Change Date and for the Timetable Period commencing on the next following Subsidiary Change Date which, having due regard to the Decision Criteria, it proposes to make or, if no changes are proposed, that fact;
- (b) in the case of a Development Commencement Date relating to a Subsidiary Change Date the changes (if any) to the applicable Rules of the Route and applicable Rules of the Plan for the Timetable Period commencing on that Subsidiary Change Date which shall be deemed to be a Subsidiary Rules Revision and which, having due regard to the Decision Criteria, it proposes to make or, if no changes are proposed, that fact;

and, in either case, its reasons.

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2.1.4 *Consultation with Bidders*

Each Bidder shall:

- (a) consider the notice served on it by Network Rail in accordance with Condition D2.1.3 and discuss with Network Rail any concerns it may have in respect of the Preliminary Rules of the Route/Plan Proposal;
- (b) within 3 weeks of receipt of the Preliminary Rules of the Route/Plan Proposal give notice to Network Rail of any representations or objections it wishes to make in relation to that Preliminary Rules of the Route/Plan Proposal and any alternative proposals it may have; and
- (c) in respect of any Subsidiary Rules Revision, within 3 weeks of receipt of the Subsidiary Rules Revision, give notice to Network Rail of any representations or objections it wishes to make in relation to that Subsidiary Rules Revision and any alternative proposals it may have.

2.1.5 *Rules of the Route/Plan Decision*

- (a) Network Rail shall, following consideration of any representations, objections and alternative proposals made by affected Bidders in accordance with Condition D2.1.4, review the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision and, having due regard to the Decision Criteria, decide what amendments if any should be made to the applicable Rules of the Route and the applicable Rules of the Plan.
- (b) Network Rail shall, no later than 4 weeks after the issue of the Preliminary Rules of the Route/Plan Proposal or, as appropriate, the Subsidiary Rules Revision, notify each Bidder which is likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan of the amendments it has decided to make pursuant to Condition D2.1.5(a) or, where no amendments are proposed, that fact.

2.1.6 *Optimisation of the Draft Timetable*

Notwithstanding the provisions of D2.1.4 and D2.1.5 Network Rail shall have the right having consulted with affected Bidders to make further modifications to the applicable Rules of the Route and the applicable Rules of the Plan, having due regard to the Decision Criteria, to facilitate optimisation of the Working Timetable; and Network Rail shall promptly notify the Bidders thus affected.

2.1.7 *Referral to the relevant ADRR panel*

Following notification of Network Rail's decisions in accordance with Condition D2.1.5(b) or D2.1.6 a Bidder may refer any aspect of those decisions (including any decision of Network Rail not to make an amendment or any decision by Network Rail as to whether or not a revision is a Subsidiary Rules Revision) for determination by the relevant ADRR panel under Condition D5, provided that such referral is made within the period specified in Condition D5.1.

2.1.8 *Possessions Strategy Notice*

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No such reference under Condition D2.1.7 shall be made in respect of any matter referred to in a Possessions Strategy Notice which is within and consistent with the method of implementation established pursuant to Condition D2.2 and which has:

- (a) not been referred to the relevant ADRR panel for determination prior to the date referred to in Condition D2.2.4;
- (b) been finally determined by either the relevant ADRR panel or the Office of Rail Regulation pursuant to that Condition or Condition D5.2; or
- (c) been determined by the relevant ADRR panel and is not the subject of an appeal to the Office of Rail Regulation pursuant to Condition D5.2;

2.1.9 Implementation pending outcome of determination

Notwithstanding the provisions of Conditions D2.1.7 and D2.1.8, but subject to Condition D2.1.10, Network Rail shall be entitled to implement (in particular for the purposes of developing the Working Timetable to be implemented on the next succeeding Passenger Change Date) any aspect of the applicable Rules of the Route or the applicable Rules of the Plan which has been referred for determination pursuant to that Condition, pending the outcome of that determination.

2.1.10 Procedure for amendment of the Rules of the Route/Plan and amendment of scheduled Train Slots

Network Rail shall include within the Rules of the Plan a procedure to enable amendment of the Rules of the Route and the Rules of the Plan and consequential amendment of scheduled Train Slots other than as provided for in the foregoing provisions of this Condition D2.1. Notwithstanding the provisions of Condition D2.1.9, Network Rail shall not be entitled to implement any change to that procedure until any appeal against any such change has been determined pursuant to Condition D5.

2.1.11 Contents of amendment procedure

Each of the procedures proposed by Network Rail pursuant to Condition D2.1.10:

- (a) shall provide that no amendment shall be made to the applicable Rules of the Plan or the applicable Rules of the Route or that no revision shall be made to an accepted Bid (as the case may be) unless:
 - (i) Network Rail shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment or revision (as the case may be); and
 - (ii) due regard shall have been had to the Decision Criteria; and
- (b) shall be deemed to have been accepted by each such Bidder unless any such Bidder shall, within ~~7 days~~five Working Days of the relevant procedure being sent to it, have referred any aspect of it to the relevant ADRR panel for determination in accordance with Condition D5.

2.2 Possessions Strategy Notice

2.2.1 Notice of proposed possessions strategy

If Network Rail at any time proposes implementing works which require a programme of coordinated Restrictions of Use extending over:

- (a) a period of more than one year; or
 - (b) a period which contains two or more Passenger Change Dates,
- it may at its discretion give notice of its proposal to each Bidder that may be affected by the proposed works together with
- (i) such particulars of the proposed method of implementation of the works as are currently available to enable each such Bidder to understand the likely effect of the proposed works on its Services or the operation of its trains; and
 - (ii) an explanation of Network Rail's reasons for the proposed method of implementation.

In this Condition D2.2 the expression "method of implementation" means a statement containing a programme of Restrictions of Use which would be required in order to carry out the proposed works.

2.2.2 Consultation on proposed method of implementation

Network Rail shall invite the submission of comments from each Bidder to which it has given notice under Condition D2.2.1 within such period as is reasonable in the circumstances having due regard to the likely effect of the proposed works on those Bidders and shall consult with them concerning the method of implementation for the proposed works.

2.2.3 Notice of intended method of implementation

Subject to having complied with the foregoing provisions of this Condition D2.2, Network Rail shall issue to each Bidder to which it gave notice under Condition D2.2.1 a notice of its intended method of implementation for the proposed works ('Possessions Strategy Notice'), provided that:

- (a) in deciding such intended method of implementation, Network Rail shall have had due regard to the Decision Criteria; and
- (b) it shall have taken into account any comments submitted to it pursuant to Condition D2.2.2. ~~—~~ and given its reasons for discounting any it has discounted.

2.2.4 Right of appeal

If any Bidder is dissatisfied as to:

- (a) any matter concerning the operation of the procedure in this Condition D2.2; or
- (b) the intended method of implementation of the proposed works as notified by Network Rail pursuant to Condition D2.2.3 and, in particular, the application by Network Rail of the Decision Criteria

it may, at any time prior to the date 30 days after the date on which it was notified pursuant to Condition D2.2.3 of the intended method of implementation, refer the matter to the relevant ADRR panel for determination.

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2.2.5 Relationship with Part G and Condition D2.1

The provisions of this Condition D2.2 shall be without prejudice to:

- (a) the provisions of Part G, if the works referred to in a Possessions Strategy Notice, once completed, would constitute a Network Change within the meaning of that Part; and
- (b) the requirement to comply with Condition D2.1, to the extent that the implementation of the proposed works in accordance with the method of implementation would require an amendment to the applicable Rules of the Route and/or the applicable Rules of the Plan.

2.2.6 Amendment procedure

Network Rail shall include within the Rules of the Plan a procedure to enable amendment or withdrawal of any Possession Strategy Notice (subject to Conditions D2.2.7 and D2.2.8).

2.2.7 Contents of amendment procedure

The procedure proposed by Network Rail pursuant to Condition D2.2.6:

- (a) shall provide that no amendment shall be made to a Possessions Strategy Notice unless:
 - (i) Network Rail shall have consulted, to the extent reasonably practicable, with each Bidder likely to be affected by the amendment; and
 - (ii) due regard shall have been had to the Decision Criteria; and
- (b) shall be deemed to have been accepted by each such Bidder unless any such Bidder shall, within ~~7 days~~ five Working Days of the relevant procedure being sent to it, have referred any aspect of it to the relevant ADRR panel for determination in accordance with Condition D5.

2.2.8 Priority

In the event of any inconsistency between the applicable Rules of the Route and/or the applicable Rules of the Plan for a particular Timetable Period (once finalised in accordance with Condition D2.1.5) and any Possessions Strategy Notice (or any amendment to a Possessions Strategy Notice) relating to such period, the applicable Rules of the Route and/or the applicable Rules of the Plan (as the case may be) shall prevail to the extent of such inconsistency.

CONDITION D3 - CONSULTATION PROCESS TO ESTABLISH THE FIRST WORKING TIMETABLE

3.1 Consultation

3.1.1 Following the issue of the Base Timetable:

- (a) Bidders shall hold appropriate consultation regarding proposals for development of services with Passenger Transport Executives, User Representatives and other parties with the right to be so consulted;

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- (b) Network Rail shall consult with Bidders before the Priority Date to establish their aspirations for development of their services in the relevant Timetable Development Periods. Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to development of the Bidder's services; and
- (c) Network Rail shall facilitate and co-ordinate dialogue with all Bidders in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections and complementary service patterns.

3.2 Process for preparation of the First Working Timetable

3.2.1 Notification of rights to be exercised

Bidders shall, on or before the Priority Date, notify Network Rail in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date of:

- (a) those Firm Rights ~~that~~which they intend to exercise together with (to the extent such Firm Rights are being exercised to obtain the Train Slots which are different to those in the Base Timetable), an explanation of why they wish to exercise such Firm Rights in a manner different to the Base Timetable;
- (b) those Firm Rights ~~that~~which they have previously exercised to obtain the Train Slots in the Base Timetable but which they do not intend to exercise;
- (c) any other rights which they intend to exercise or wish to negotiate; and
- (d) an indication of any amendments, additions or deletions they wish to make in respect of the Train Slots in the Base Timetable (pursuant to the notifications under paragraph (a), (b) or (c) above), which indication shall include the extent of their requirements (if any) as to the matters set out in Condition D3.3 in respect of each amended or additional Train Slot requested;

and:

- (i) in the case of paragraph (b) above, shall identify any Train Slots in the Base Timetable to which such Firm Rights relate and which they do not wish to operate;
- (ii) in the case of paragraph (c) above, shall distinguish between
 - (A) Train Slots (whether or not included within the Base Timetable) for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(b);
 - (B) Train Slots (whether or not included within the Base Timetable) for which they would be seeking priority in the Draft Timetable in accordance with Condition D3.2.3(c); and
 - (C) other Train Slots (whether or not included within the Base Timetable); and

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- (iii) in the case of paragraph (d) above, shall identify the rights, if any, applicable to each of the amended or additional Train Slots requested.

3.2.2 *Compilation of the First Working Timetable*

Network Rail, in consultation with Bidders, will compile a Working Timetable which is in accordance with the following provisions of this Condition D3.2 and which:

- (a) in Network Rail's opinion is capable of being brought into operation;
- (b) takes account of the need to achieve optimal balance between the notified aspirations of each Bidder and the aspirations of Network Rail as expressed in the applicable Rules of the Route and the applicable Rules of the Plan; and
- (c) includes, in respect of the relevant Timetable Period, the Train Slots shown in the Base Timetable, together with the additions, amendments and deletions requested by Bidders in accordance with Condition D3.2.1 so far as reasonably practicable taking into account the complexity of those changes, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria.

3.2.3 *Priorities in compiling the First Working Timetable*

Without prejudice to the exercise by Network Rail of a Flexing Right, Network Rail shall, in determining the order of priority for inclusion of Train Slots in the First Working Timetable, accord priority:

- (a) first, to the satisfaction of any Firm Rights which:
 - (i) a Bidder may have, provided that
 - (A) the rights have been notified to Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(a) and constitute Firm Rights on the intended dates of the operation of those Train Slots; or
 - (B) the rights were exercised in the corresponding timetable prior to the timetable that is being prepared but have not been notified to Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(a). In such case only those rights which relate to quantum and which have been notified to Network Rail prior to the Capacity Request Deadline shall have force; or
 - (ii) Network Rail may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan,each of paragraphs (i) and (ii) above having equal priority;
- (b) second, to the satisfaction of any rights or expectations of rights which:
 - (i) have been notified by a Bidder to Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c); and

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- (ii) correspond to Firm Rights held by that Bidder at the Priority Date under an Access Agreement in force on that date but which at the Priority Date are prevented from constituting Firm Rights only because any or all of the intended dates of operation of those Train Slots fall after the expiry of the Access Agreement, or fall after the expiry of the Firm Rights from which those Train Slots are derived, and provided that Network Rail reasonably expects that an Access Agreement containing corresponding Firm Rights will be in force on the intended dates of operation of those Train Slots;
- (c) third, having due regard to the Decision Criteria, to the satisfaction of any other rights or expectations of rights which:
 - (i) a Bidder has notified to Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c); or
 - (ii) Network Rail may have including those contained in the applicable Rules of the Route or the applicable Rules of the Plan, and which (in any such case) do not fall within Condition D3.2.3(a)(ii),each of paragraphs (i) and (ii) above having equal priority; and
- (d) thereafter, having due regard to the Decision Criteria, to the satisfaction of any rights or expectations of rights which a Bidder has not notified to Network Rail on or prior to the Priority Date in accordance with Condition D3.2.1(c) but which are notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6

provided that Network Rail shall only accord priority pursuant to paragraph (a), (b) or (c) above if the Train Slots to which the relevant Firm Rights, rights or expectations of rights relate have been notified to Network Rail on or before the Priority Date in accordance with Condition D3.2.1(d) or included in the Base Timetable.

3.2.4 *Development of the Draft Timetable*

- (a) Following the Priority Date and at any time before the Capacity Request Deadline each Bidder shall have the right to notify to Network Rail new aspirations (if any) which amend, delete or add to those requests for changes which it notified in accordance with Condition D3.2.1.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the Capacity Request Deadline, and having due regard to the Decision Criteria, incorporate each new aspiration into the Draft Timetable in accordance with the priorities set out in Condition D3.2.3.

3.2.5 *Issue of the Draft Timetable*

Network Rail shall, on or before the last day of the Drafting Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Network Rail in providing that information, the Draft Timetable

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which, as a result of notifications made to Network Rail under Condition D3.2.1 and/or the operation of Conditions D3.2.3 and D3.2.4, shall show:

- (a) in respect of a Principal Change Date, those Train Slots which Network Rail expects to include in the Working Timetable commencing on that Principal Change Date; and
- (b) in respect of a Subsidiary Change Date, those Train Slots which Network Rail expects to include in the Working Timetable commencing on that Subsidiary Change Date.

3.2.6 Finalisation of the First Working Timetable offer

- (a) Following the issue of the Draft Timetable in accordance with Condition D3.2.5 and up to the end of the Finalisation Period, each Bidder shall have the right to notify to Network Rail new aspirations (if any) which amend, delete or add to those Train Slots shown in the Draft Timetable.
- (b) Network Rail shall, so far as reasonably practicable taking into account the complexity of the new aspirations, including any reasonably foreseeable consequential impact on the Working Timetable, and the available time before the end of the Finalisation Period, and having due regard to the Decision Criteria, incorporate each new aspiration into the First Working Timetable in accordance with the priorities set out in Condition D3.2.3.

3.2.7 Offer of the First Working Timetable

Network Rail shall, on or before the last day of the Finalisation Period, provide to each Bidder, and to each Qualified Person who has (or on whose behalf another person has) first agreed to pay the reasonable costs of Network Rail in providing that information:

- (a) the Working Timetable which shall show:
 - (i) in respect of a Principal Change Date, those Train Slots which Network Rail has decided to include in the Working Timetable commencing on that Principal Change Date; and
 - (ii) in respect of a Subsidiary Change Date, those Train Slots which Network Rail has decided to include in the Working Timetable commencing on that Subsidiary Change Date; and
- (b) details of those Train Slots which Network Rail has decided not to include in the Working Timetable.

3.2.8 Acceptance of the First Working Timetable

A Bidder shall, in respect of

- (a) the Working Timetable notified in accordance with Condition D3.2.7(a); or
- (b) the Train Slots notified in accordance with Condition D3.2.7(b) and any other Train Slots which the Bidder believes should have been notified in accordance with Condition D3.2.7,

within ~~14 days~~10 Working Days of receipt of the notification advise Network Rail of any Train Slots which it disputes and will be the subject of a reference to the relevant ADRR panel. Network Rail's decisions in respect of those Train Slots not so advised by the Bidder shall be

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deemed to have been accepted by the Bidder and may not be the subject of a reference to the relevant ADRR panel or the Office of Rail Regulation pursuant to Condition D5.

3.2.9 *Notification of Working Timetable*

As soon as possible after the expiry of the Appeal Period Network Rail shall give notice to each Bidder of the changes (if any) to the version of the Working Timetable provided under Condition D3.2.7 which it has made as a result of appeals determined pursuant to Condition D5 and/or Part M.

3.3 **Contents of a Bid**

A Bidder shall, in making a Bid, indicate, in respect of the Train Slots for which the Bid is being made, the extent of its requirements (if any) as to:

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the train movement;
- (c) intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs (b) and (c) above;
- (e) railway vehicles to be used;
- (f) train connections with other railway passenger services;
- (g) the route to be followed;
- (h) any Ancillary Movements;
- (i) platforming at any points specified pursuant to paragraphs (b) and (c) above;
- (j) any relevant commercial and service codes; and
- (k) the maximum train speed, maximum train weight and maximum train length.

3.4 **Flexing rights – Preparation of the First Working Timetable**

3.4.1 Network Rail may, in relation to

- (a) any Train Slot included in the Base Timetable;
- (b) any request for change notified to Network Rail in accordance with Condition D3.2.1; or
- (c) any aspiration notified to Network Rail in accordance with Condition D3.2.4 or D3.2.6;

exercise a Flexing Right at any time prior to the end of the Finalisation Period, provided that:

- (i) Network Rail shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (ii) Network Rail shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and

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- (iii) Network Rail shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

3.4.2 Network Rail shall exercise a Flexing Right at any time:

- (a) in order to give effect to a decision of the relevant ADRR panel or the Office of Rail Regulation as provided for in Condition D5; or
- (b) if it is necessary to do so in order to comply with any directions issued or approval given by the Office of Rail Regulation in the exercise of its powers under section 17, 18, 22 or 22A of the Act.

CONDITION D4 - SPOT BIDDING, VARIATION of SCHEDULED TRAIN SLOTS and the SUPPLEMENTAL TIMETABLE REVISION PROCESS

4.1 Making of Spot Bids

4.1.1 Every Bidder shall have the right to make a Spot Bid to change, delete or add to the Train Slots shown in the Working Timetable.

4.1.2 A Spot Bid may be made at any time during the Timetable Period to which that Bid relates or during the Supplemental Period immediately prior to that period, and (in either case) shall relate to that Timetable Period.

4.1.3 Network Rail shall use its reasonable endeavours to answer any enquiries made by any Bidder in relation to a Spot Bid by that Bidder.

4.2 Contents of a Spot Bid

A Bidder shall, in making a Spot Bid, indicate in respect of the Train Slots for which the Spot Bid is being made the extent of its requirements (if any) as to the matters listed in Condition D3.3.

4.3 Priorities in considering Spot Bids

Without prejudice to the exercise by Network Rail of a Flexing Right, Network Rail shall, in relation to any Spot Bid which falls to be considered under Condition D4.8, deal with such Spot Bid as provided for in that Condition, and in all other cases shall accord priority to Spot Bids in the order in which they are received by Network Rail.

4.4 Flexing rights – Spot Bids

4.4.1 Time of exercise

Network Rail may, in relation to any Spot Bid, exercise a Flexing Right at any time prior to the acceptance of that Spot Bid, provided that:

- (a) Network Rail shall have first consulted with each person materially affected by the exercise of such Flexing Right;
- (b) Network Rail shall, in exercising that Flexing Right, have had due regard to the Decision Criteria; and

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- (c) Network Rail shall notify the Bidder of the exercise of its Flexing Right as soon as practicable thereafter.

4.4.2 Requirement to exercise

Network Rail shall exercise a Flexing Right at any time:

- (a) in the circumstances referred to in Condition D4.5.3 or Condition D4.8.6; or
- (b) in order to give effect to a decision of the relevant ADRR panel or the Office of Rail Regulation as provided for in Condition D5; or
- (c) if it is necessary to do so in order to comply with any directions issued or approval given by the Office of Rail Regulation in the exercise of its powers under section 17, 18, 22 or 22A of the Act.

4.5 Timing of acceptance, modification or rejection of Spot Bids

4.5.1 Without prejudice to Conditions D2.1 and D4.4, Network Rail shall in relation to any Spot Bid give notice (subject to Conditions D4.5.3, D4.5.4 and D4.8) to the Bidder of its acceptance, modification or rejection of it:

- (a) in relation to a Spot Bid received by Network Rail no later than ~~5~~five weeks prior to the applicable Revision Finalisation Date, no later than ~~5~~five Working Days after receipt of that Spot Bid;
- (b) in relation to a Spot Bid not falling within paragraph (a), by the later of:
 - (i) ~~5~~five Working Days after the Revision Finalisation Date in respect of the Timetable Week during which that Spot Bid would, if accepted, be planned to operate; and
 - (ii) ~~5~~five Working Days after receipt of that Spot Bid; or
- (c) by 10.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on the day preceding day A which, if accepted, would be planned to operate on day C; or
- (d) by 15.00 hours on day A in respect of that part of any Spot Bid received by 10.00 hours on day A which, if accepted, would be planned to operate on day C,

whichever of paragraphs (b), (c) or (d) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays), and

- (e) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by Network Rail of the Spot Bid,

provided that, in determining whether to accept, modify or reject a Spot Bid, Network Rail shall:

- (i) not accept such Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan; and
- (ii) otherwise have due regard to the Decision Criteria and, subject thereto and to the extent that the Spot Bid does not fall to be

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considered under Condition D4.8, give priority to that Spot Bid which is received first in time;

and any notice of rejection of a Spot Bid shall include a concise explanation therefor^e.

4.5.2 Network Rail shall, where it fails to notify the Bidder in accordance with Condition D4.5.1, be deemed to have accepted the Bidder's Spot Bid.

4.5.3 If a Spot Bid for a Train Slot which is to be used for the carriage of passengers in connection with a sporting or other public event would, if accepted, conflict with any Train Slot already scheduled in the Working Timetable, Network Rail shall:

- (a) consult with the Train Operator who is entitled to that Train Slot with a view to obtaining its consent to the exercise by Network Rail of its Flexing Right to accommodate the relevant Spot Bid; and
- (b) if that Train Operator gives its consent, exercise such Flexing Right.

4.5.4 A Train Operator which is consulted by Network Rail pursuant to Condition D4.5.3 shall not unreasonably withhold or delay its consent to the exercise by Network Rail of its Flexing Right if the relevant Spot Bid is for a Train Slot to be used for the carriage of passengers in numbers which are materially greater than are usually carried on trains on the relevant part of the Network and on the days and times of day in question.

4.5.5 If, as a result of exercising its Flexing Right pursuant to Condition D4.5.3, Network Rail is required to make any payment to a Train Operator under that Train Operator's Access Agreement, the Train Operator whose Spot Bid was accommodated by the exercise of that Flexing Right shall reimburse to Network Rail the amount of that payment.

4.6 **Decisions in relation to Spot Bids**

4.6.1 A Bidder shall, in respect of any Spot Bid, following notice given by Network Rail of the rejection of that Spot Bid, or the exercise of a Flexing Right by Network Rail, notify Network Rail if it disputes that decision of Network Rail:

- (a) no later than ~~7 days~~ five Working Days after receipt by the Bidder of such notice; or
- (b) by 15.00 hours on day A in respect of any notice received by the Bidder by 10.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C; or
- (c) by 17.00 hours on day A in respect of any notice received by the Bidder by 15.00 hours on day A regarding a Spot Bid which, if accepted, would be planned to operate on day C,

whichever of paragraph (a), (b) or (c) is the earliest to occur, where day A, day B and day C are three consecutive days (excluding, in the case of day A, Saturdays and Sundays and, in the case of day B, Sundays), and

- (d) in respect of a Short Notice Spot Bid, as soon as practicable after receipt by the Bidder of that notice.

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4.6.2A Bidder shall, where it fails to notify Network Rail in accordance with Condition D4.6.1, be deemed to have accepted the decision of Network Rail and shall not, in respect of that decision, be entitled to make a reference to the relevant ADRR panel or the Office of Rail Regulation pursuant to Condition D5.

4.6.3 Upon acceptance or deemed acceptance of a Spot Bid or upon a final determination pursuant to Condition D5, Network Rail shall enter the Train Slots in question in the Working Timetable.

4.7 Variation of scheduled Train Slot

4.7.1 Once a Bidder is deemed to have accepted a decision of Network Rail under Condition D3.2.8 or D4.6.2 or Network Rail has accepted a Bidder's Bid in accordance with Condition D3.2.7 or D4.5, both the Bidder and Network Rail shall, subject to Conditions D3.4.2, D4.4.2 and D4.7.2, be bound by that decision.

4.7.2A Train Slot scheduled in the Working Timetable may be varied by Network Rail:

- (a) in accordance with the procedures provided for in Condition D2.1.10, D4.5.3 or D4.8; or
- (b) by agreement between Network Rail and the Bidder (provided that every other affected party has also agreed in writing); or
- (c) in order to give effect to a decision of the relevant ADRR panel or the Office of Rail Regulation as provided for in Condition D5.

4.8 Supplemental Timetable Revision Process

4.8.1 Network Rail shall, at least 26 weeks prior to any Passenger Change Date (and having previously consulted with each affected Bidder), provide to all those persons referred to in Condition D3.2.7, its specific proposals as to the Revision Period Commencement Dates, Revision Bid Dates and Revision Finalisation Dates applicable to the Timetable Period commencing on that Passenger Change Date.

4.8.2 Network Rail shall,

- (a) on or before each Revision Period Commencement Date, provide to each Bidder its outline proposals for revision of the allocation of capacity in respect of the Timetable Week to which such Revision Period Commencement Date relates in order to enable Network Rail to take the Restrictions of Use contained in the Rules of the Route and/or Rules of the Plan applicable to that Timetable Week;
- (b) in consultation with Bidders, develop the structure of the amended train plan for the relevant Timetable Week, including any revision of the allocation of capacity, in accordance with agreed criteria, on Routes directly affected by Restrictions of Use included in the applicable Rules of the Route and/or Rules of the Plan and on diversionary routes; and
- (c) within 4 weeks of each Revision Period Commencement Date, notify each affected Bidder:

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- (i) of its capacity allocation decisions and proposed structure for the amended train plan for the relevant Timetable Week; and
- (ii) whether Network Rail requires any Bidder to prepare a Revised Bid in respect of any Timetable Week Slot in that Timetable Week.

4.8.3 Each Bidder shall, following receipt of notification from Network Rail under Condition D4.8.2(c)(ii) in respect of a particular Timetable Week Slot, submit:

- (a) a Revised Bid in respect of that Timetable Week Slot; and
- (b) a Revised Bid in respect of any other Timetable Week Slot, if any, which is materially affected by the revision of the Timetable Week Slot to which that notification relates;

in each case no later than 4 weeks prior to the applicable Revision Finalisation Date.

4.8.4 Network Rail in consultation with Bidders, will compile and amend timetable in respect of each Timetable Week, which is in accordance with its decisions notified under Condition D4.8.2(c)(i) and which:

- (a) in Network Rail's opinion is capable of being brought into operation;
- (b) subject to Condition D4.8.5, takes account of any Revised Bids submitted in accordance with Condition D4.8.3; and
- (c) takes account of any Spot Bids received no later than 4 weeks prior to the applicable Revision Finalisation Date.

4.8.5 Network Rail shall, where it is in receipt of a Revised Bid which it considers to have been properly submitted to it in accordance with the provisions of this Condition D4.8.3, in determining whether to accept, modify or reject that Revised Bid:

- (a) not accept such Revised Bid if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or with the applicable Rules of the Route or applicable Rules of the Plan; and
- (b) otherwise have due regard to the Decision Criteria,

and any notice of modification or rejection of a Revised Bid shall include a concise explanation thereof.

4.8.6 Network Rail shall be entitled as reasonably necessary to amend any Timetable Week Slot notified in accordance with Condition D4.8.2(c)(ii) and in relation to which no Revised Bid has been submitted to Network Rail by a Train Operator in accordance with Condition D4.8.3 in order to enable Network Rail to take Restrictions of Use for the purpose of carrying out work included in the Rules of the Route and / or Rules of the Plan applicable to that Timetable Week Slot and that Train Operator shall not, in respect of that decision, be entitled to make a reference to the relevant ADRR panel or the Office of Rail Regulation pursuant to Condition D5.

4.8.7 Network Rail shall, by no later than the Revision Finalisation Date in respect of each Timetable Week, notify each Bidder of its decisions regarding additional, amended and deleted Timetable Week Slots, including its decisions to accept, reject or modify any Revised Bid or any

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Spot Bid which has been submitted to it not less than 4 weeks prior to the Revision Finalisation Date in respect of the relevant Timetable Week.

4.8.8 The Train Operator shall, following the receipt by it of notice of any decision by Network Rail pursuant to Condition D4.8.2(c) or Condition D4.8.7, notify Network Rail whether it accepts or disputes that decision of Network Rail, in each case prior to the relevant Revision Response Date, and the provisions of Conditions D4.6.2, D4.6.3 and D4.7.1 shall apply, *mutatis mutandis*.

4.8.9 Without prejudice to Conditions D4.4 and D4.7, nothing in this Condition D4.8 shall entitle Network Rail to amend any Train Slot already scheduled in the relevant Working Timetable except:

- (a) in order to take Restrictions of Use in accordance with the applicable Rules of the Route and the applicable Rules of the Plan; or
- (b) by way of revision of the allocation of capacity on Routes directly affected by such Restrictions of Use and on diversionary routes in accordance with this Condition D4.8.

CONDITION D5 -TIMETABLE APPEAL PROCEDURE

5.1 *Right of appeal to relevant ADRR panel*

5.1.1 Grounds for making an appeal

Without prejudice to Conditions D4.6.2, D4.7.1 and D4.8.6, if any Bidder is dissatisfied with any decision of Network Rail made under this Part D, including:

- (a) the application by Network Rail of the Decision Criteria;
- (b) the acceptance or rejection by Network Rail of any Bid;
- (c) the exercise by Network Rail of a Flexing Right; and
- (d) any decision of Network Rail which may be referred to the relevant ADRR panel under Condition D2.1.7, D2.1.11, D2.2.4 or D2.2.7,

it may refer the matter to ~~Network Rail and (if the matter cannot be satisfactorily resolved by discussion with Network Rail) it may then refer the matter to~~ the relevant ADRR panel for determination.

5.1.2 Timescales for making an appeal to the relevant ADRR panel

~~5.1.2~~ Timescales for notifying Network Rail of potential disputes

- (a) A reference to the relevant ADRR panel under Condition D5.1.1 shall, save as shown in paragraph (b) or (c) below, be made within ~~7 days~~five Working Days of receipt of the relevant decision from Network Rail. If Christmas Day occurs within such period of ~~7 days~~five Working Days then the period shall be lengthened to ~~14 days~~10 Working Days.
- (b) A reference to the relevant ADRR panel in respect of a decision by Network Rail regarding Train Slots notified to Train Operators in

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accordance with Condition D2A.3 or Condition D3.2.7 shall be made within ~~14 days~~ 10 Working Days of receipt of the relevant decision.

- (c) A reference to the relevant ADRR panel pursuant to Condition D2.2.4 shall be made within 30 days of receipt of the notification referred to in Condition D2.2.3.

~~5.1.3 Timescales for making an appeal to the relevant ADRR panel~~

~~A reference to the relevant ADRR panel under Condition D5.1.1 shall be made within 10 Working Days of the date on which the Bidder notified Network Rail of the potential dispute in accordance with Condition D5.1.2.~~

5.2 Right of appeal to the Office of Rail Regulation

If Network Rail or any Bidder is dissatisfied with any decision of the relevant ADRR panel in relation to any matter referred to it under Condition D5.1, that person may, within ~~7 days~~ five 5 Working Days of receipt of the relevant ADRR panel's written reasoned determination, refer the matter to the Office of Rail Regulation for determination under Part M. If Christmas Day occurs within such period of ~~7 days~~ five Working Days then the period shall be lengthened to ~~14 days~~ 10 Working Days.

5.3 Power of dispute bodies

In relation to a reference to it made pursuant to Condition D5.1 or D5.2, any dispute panel or the Office of Rail Regulation (as the case may be) (each a "dispute body") shall, in determining the matter in question, have the power:

5.3.1 in determining the matter in question:

- (a) to direct Network Rail to comply with directions which specify the result to be achieved but not the means by which it shall be achieved ("general directions");
- (b) to direct the parties to accept any submissions made by Network Rail as to any Train Slots; and/or
- (c) to specify the Train Slots and other matters which Network Rail should have determined in its decision made pursuant to this Part D,

provided that a dispute panel shall only take any action under paragraph (c) above in exceptional circumstances;

5.3.2 having given general directions, on the application of Network Rail within ~~7 days~~ five Working Days (or ~~14 days~~ 10 Working Days if Christmas ~~day~~ Day falls within such period of ~~7 days~~ five Working Days) of the determination of the matter in question (or such longer period as the dispute body shall allow), to make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

5.4 *Liability of Network Rail*

Network Rail shall not be liable for the consequences of any decision made by it which is implemented in a Working Timetable where, as a result of a reference under this Condition D5 in respect of that decision, that decision is subsequently overturned, unless that decision is unreasonable or has been made in bad faith, in which case the making of that decision shall be deemed to have been a breach of Network Rail's obligations under this Part D.

CONDITION D6 - DECISION CRITERIA

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

- (a) sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network;
- (b) [seeking consistency with any current Route Utilisation Strategy which is either \(i\) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006, or \(ii\) established by Network Rail in accordance with its Network Licence;](#)
- (c) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that Network Rail is aware or has been informed of such contracts;
- (d) ~~(e)~~—maintaining and improving the levels of service reliability;
- (e) ~~(d)~~—maintaining, renewing and carrying out other necessary work on or in relation to the Network;
- (f) ~~(e)~~—maintaining and improving connections between railway passenger services;
- (g) ~~(f)~~—avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;
- (h) ~~(g)~~—ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;
- (i) ~~(h)~~—ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question;
- (j) ~~(i)~~—enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;

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- (k) ~~(j)~~—facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;
- (l) ~~(k)~~—avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;
- (m) ~~(l)~~—encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots;
- (n) ~~(m)~~—avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and
- (o) ~~(n)~~—taking into account the commercial interests of Network Rail and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D6, Network Rail shall not be entitled to determine that its Restrictions of Use of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract. In this paragraph, "relevant maintenance contract" is a contract which Network Rail shall have entered into, or shall intend to enter into, with any person for the maintenance, renewal or the carrying out of any other work on or in relation to the Network.