

Dated April 1st 2003

NETWORK RAIL INFRASTRUCTURE LIMITED (1)

RAIL SAFETY AND STANDARDS BOARD LIMITED (2)

AS AMENDED BY APPROVAL OF THE MEMBERS

OBTAINED AT GENERAL MEETINGS OF

THE MEMBERS ON 14 DECEMBER 2005

AND 29 JUNE 2006

**Constitution Agreement relating
to Rail Safety and Standards Board
Limited**

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Appendix 1 The Code

Appendix 2 The Licence Conditions

THIS AGREEMENT is dated

2003 and made **BETWEEN:**

- (1) **THE PERSON** whose name and address is set out in schedule 1; and
- (2) **RAIL SAFETY AND STANDARDS BOARD LIMITED** (No. 04655675) whose registered office is at Evergreen House, 160 Euston Road, London NW1 2DX (the "**Company**").

WHEREAS:

- (A) The Company is a company limited by guarantee and not having a share capital incorporated in England on 4 February 2003 under the Companies Act 1985 (the "**Companies Act**").
- (B) The Company has been established to give effect to the Primary Objective and the Principles of Operation.
- (C) This Agreement regulates the operation and management of the Company and the relationship amongst the Members.
- (D) The Company consulted its Members on various changes to this Agreement and following their approval at general meetings of the Members on 14 December 2005 and 29 June 2006 has amended this Agreement in accordance with the provisions set out at Schedule 6 of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

"**Act**" means the Railways Act 1993;

"**Advisory Committee**" has the meaning ascribed to it in clause 8.1;

"**Affected Member**" has the meaning ascribed to it in clause 3.5;

"**Annual Review Period**" means each successive period of one year, the first of which shall commence on 1 April 2003;

"**Annual Turnover**" means in respect of a Member:

- (a) subject to clause 3.5(c), such part of that Member's annual turnover (including subsidiaries) as is derived from rail-related business activities in Great Britain (excluding turnover relating to any network which is not a Rail Network); or
- (b) (other than in respect of a Member falling within any of the categories described in clauses 3.3.1(a)-(c)) if that Member is part of a Group, such part of the annual turnover of that Group (including subsidiaries) as is derived from rail-related business activities in Great Britain (excluding turnover relating to any network which is not a Rail Network) provided that if that Group includes more than one Member, then such turnover shall be divided by the number of Members in that Group;

"Approved Budget" means:

- (a) in respect of the First Financial Year, the First Budget;
- (b) in respect of any Pre 2006 Financial Year, a Budget prepared in accordance with clause 0 and approved by the ORR after consultation with the HSE and the DfT, and either approved by a Reserved Resolution in accordance with clause 4.4.6 or by the Members in accordance with clause 5.3; and
- (c) in respect of any Post 2006 Financial Year, a Budget prepared in accordance with clause 6.3 and either approved by a Reserved Resolution in accordance with clause 4.4.6 or by the Members in accordance with clause 5.3;

"Articles" means the Articles of Association of the Company as amended from time to time;

"Board" means the board of directors of the Company for the time being;

"Budget" means the First Budget or any other annual budget prepared pursuant to clause 6.2 or 6.3 comprising a monthly projected income statement and cashflow prepared in accordance with generally accepted accounting principles and the Company's accounting policies and which identifies a projected funding requirement to be funded by levies to be paid pursuant to clause 6;

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are ordinarily open for the transaction of normal banking business in London;

"Certificate" means a certificate for the purposes of clauses 3.3.4 or 6.3.10 (as the case may be) regarding the Annual Turnover of a Member (broken down, if provided pursuant to clause 3.3.4, by reference to the categories of activities respectively set out in clauses 3.3.1(a)-(f)) from the finance director or auditors of a Member and which, if the certificate is provided by the finance director of a Member, sets out the amount which the finance director certifies to be a bona fide estimate of the Annual Turnover (and, if applicable, the breakdown of it) of the

Member or, if provided by the auditors of a Member, sets out the amount which is in the opinion of the auditors a bona fide estimate of the Annual Turnover (and, if applicable, the breakdown of it) of the Member;

“**Code**” means the Railway Group Standards Code as set out in Appendix 1 to this Agreement (as amended from time to time) and whose objectives are set out in clause 2.4, compliance with which by each holder of a licence under section 8 of the Act whose licences include the Licence Conditions and by the Company is mandatory;

“**Company’s Intellectual Property**” means the Intellectual Property which the Company has a right to license to Members without giving rise to an obligation of the Company to pay a royalty to any other person;

“**the Department for Transport**” or “**DfT**” means the Secretary of State for Transport;

“**Director**” means a director for the time being of the Company;

“**Disqualifying Interest**” means an interest in any benefit which concerns or is determined by reference to the commercial activities or affairs of any person engaged in or likely to be engaged in the provision of services relating to the Railway Industry but shall not include an entitlement to participate in an all-employee share scheme established by any such person and for the purposes of this definition, “**all-employee share scheme**” means any Inland Revenue approved employee share scheme established by a company under which it is a condition of such approval that participation is offered generally to all employees of the company and its participating subsidiaries or to all such employees fulfilling conditions as to length of service; “**benefit**” includes any payment, profit, gain or advantage however expressed, established, given or made; and “**interest**” in relation to a benefit, includes the possession, receipt or expectation of or entitlement to an interest;

“**Excluded Services**” has the meaning ascribed to it in clause 3.5;

“**First Budget**” means the Budget for the First Financial Year referred to in clause 6.1;

“**First Directors**” means the individuals whose names are set out in schedule 5;

“**First Financial Year**” means the period of 12 months commencing on 1 April 2003;

“**First Industry Directors**” means such of the First Directors as are Industry Directors;

“**First Non-Industry Directors**” means such of the First Directors as are Non-Industry Directors;

“**Franchise Agreement**” has the meaning ascribed to it by the Act;

“Functions” means the functions of the Company set out in clauses 2.3, 2.5, 2.6 and 2.8 and such other functions as may be approved in accordance with clause 2.7 or 2.8;

“Funder” means the DfT, 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 who provides money by way of grant or loan with the primary purpose of securing the provision of services relating to railways in respect of the Rail Network;

“Group” means, in respect of a company, that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; and for the purposes of this Agreement ‘subsidiary’ and ‘holding company’ have the meanings ascribed to them by sections 736 and 736A Companies Act 1985;

“HSE” means the body established under the name “The Health and Safety Executive” under the Health and Safety at Work etc Act 1974 or the relevant part of any person to whom its rights and obligations under this Agreement are transferred;

“In Confidence Information” has the meaning ascribed to it by clause 11.2(b);

“Index Linked” means, in relation to amounts payable by way of levy pursuant to clause 6.3.5(a), that each amount set out in column two of the table contained in clause 6.3.5(a)(i) or 6.3.5(a)(ii) (as appropriate) shall be increased or, as the case may be, reduced to a sum determined by multiplying the relevant amount by the percentage resulting from the application of the following formula:

$$\frac{A}{B} \times 100$$

where:

“A” is, in respect any Post 2006 Financial Year, an aggregate amount equal to the projected funding requirement of the Company as shown in the Approved Budget for that Post 2006 Financial Year (such Approved Budget to include revenue attributable to health and safety-related research and development to be undertaken by the Company to the extent that such health and safety-related research and development will be funded directly by the DfT or some other person); and

“B” is £20 million

“Industry Directors” means a non-executive Director as referred to in clause 4.1(c);

“Infrastructure Controller” has the meaning ascribed to it by the Railways (Safety Case) Regulations 2000;

“Insurance Proposal” has the meaning ascribed to it by clause 15.2(c)(i);

“Intellectual Property” means patents, trademarks, service marks, trade names, design rights, copyrights, Internet domain names, database rights, rights in computer software, inventions and Know-How, and other similar proprietary rights which may subsist in any part of the world, whether registered or not, including where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;

“Know-How” means drawings, formulae, test results, reports, project reports and testing procedures, instruction and training manuals, tables of operating conditions, specifications, quotations, tables, technical literature and brochures and any other technical, industrial and commercial information and techniques in any tangible form (including, but not limited to paper, electronically stored data, magnetic media, film and microfilm);

“Licence Conditions” means the conditions which form part of certain licences granted under section 8 of the Act in the forms respectively set out in Appendix 2 to this Agreement (as amended from time to time);

“Members” means the members of the Company for the time being, the Members on the date of this Agreement being those listed in schedule 1, and any **“Member”** means any of them;

“Network Rail” means Network Rail Infrastructure Limited, a company incorporated in England and Wales under number 02904587;

“Non-Industry Director” means a non-executive Director as referred to in clause 4.1(b);

“Open Information” has the meaning ascribed to it by clause 11.2(a);

“ORR” means the Office of Rail Regulation established under section 15 of the Railways and Transport Safety Act 2003;

“Post 2006 Financial Year” means a period of 12 months commencing on 1 April 2006 or on 1 April in any following year;

“Pre 2006 Financial Year” means a period of 12 months commencing on 1 April 2004 or 1 April 2005;

“Primary Objective” means the primary objective of the Company as set out in clause 2.1;

“Principles of Operation” means the principles of operation of the Company as set out in clause 2.2, which principles (wherever referred to in this Agreement) are those to be followed by the Company in pursuing the Primary Objective;

“Proposal for Change” means any proposal to change this Agreement or the Memorandum of Association of the Company or the Articles, together with any modification of that proposal as referred to in paragraph 1.5 of schedule 6;

“publish” in relation to any document or instrument, includes placing that document or instrument on the website of the Company in a position and with links which enable visitors to that site to locate it quickly and without difficulty, and cognate expressions shall be construed accordingly;

“Rail Network” means:

- (a) the network of which Network Rail or any successor organisation or organisations is the Infrastructure Controller; and
- (b) the network of which any other Infrastructure Controller which is for the time being a member of the Company in accordance with clause 3.2.1(d) is the Infrastructure Controller;

“Railway Group” means:

- (a) Network Rail or any successor organisation and any Train Operator or Station Operator which holds a railway safety case under the Railways (Safety Case) Regulations 2000 for operation on or in relation to infrastructure controlled by Network Rail or any successor organisation; and
- (b) any other Infrastructure Controller which is a member of the Company and any other Train Operator or Station Operator which holds a railway safety case under the Railways (Safety Case) Regulations 2000 for operation on or in relation to infrastructure controlled by that Infrastructure Controller; and
- (c) the Company;

“Railway Group Safety Plan” means a plan setting out the collective health and safety performance and objectives of Railway Group members and the activities planned to deliver those objectives, focusing in particular on the encouragement and facilitation of good practice and on co-operation;

“Railway Group Standards” has the meaning ascribed to it in the Code;

“Railway Industry” means members of the Railway Group and Suppliers;

“Railway Industry Party” means a person who is:

- (a) a member of the Railway Group; or

(b) a Supplier;

“Railway Safety” means Railway Safety, a company limited by guarantee incorporated in England and Wales under number 03937800;

“ORR’s Appeal Procedures” means appeal procedures expressed to apply to this Agreement and published by the ORR (as amended from time to time);

“relevant amount” has the meaning ascribed to it in clause 3.5;

“Relevant Employee” means:

(a) every director of the Company and every other person who has decisive authority in respect of any aspect of the Company’s activities (whether or not an employee of the Company); and

(b) the spouse, partner and dependent children of any such person;

“Reserved Resolution” has the meaning ascribed to it by clause 4.4.6;

“Restricted Information” has the meaning ascribed to it by clause 11.2(c);

“RIDRR” means the Railway Industry Dispute Resolution Rules dated 21 September 1995 (as amended from time to time);

“Stakeholder” means:

(a) any member of the Railway Group and any person who notifies the Company of its intention to become a member of the Railway Group;

(b) any Supplier and any person who notifies the Company of its intention to become a Supplier;

(c) any Funder;

(d) any body representing rail users;

(e) any trade union, any of whose members are employed by any persons falling within (a) and (b) above; and

(f) such other persons as the Company reasonably considers are appropriate in order to help to meet the Primary Objective;

“Station Operator” means any person holding a licence under section 8 of the Act or a railway safety case under the Railways (Safety Case) Regulations 2000 in respect of the operation of a station on the Rail Network;

“Successor Member” has the meaning ascribed to it in clause 3.5;

“Supplier” means:

- (a) any person other than a Train Operator or Infrastructure Controller whose business activities or any goods which he manufactures or owns must comply, directly or indirectly, with Railway Group Standards or TSIs; and
- (b) any person other than a Train Operator or Infrastructure Controller who supplies goods or services to the Railway Industry and whose business activities are, in the opinion of the Board acting reasonably, pertinent to the achievement of the Primary Objective;

“Train Operator” means any person holding a licence under section 8 of the Act or a railway safety case under the Railways (Safety Case) Regulations 2000 in respect of the operation of trains on the Rail Network;

“Triennial Review Period” means each successive period of three years, the first of which shall commence on 1 April 2003;

“Trigger Date” means, for the purposes of clause 3.4.3, the date on which (i) a Member gives the Company notice under clause 3.4.2(a) of its intention to cease to be a member of the Company, or (ii) a Member ceases to fall within any of the categories of members described in clauses 3.2.1(a)-(d) subject to clause 3.5 or (iii) the Board resolves that a Member shall cease to be a member of the Company pursuant to clause 3.4.2(c);

“TSIs” means Technical Specifications for Interoperability under Directives 96/48/EC and 2001/16/EC of the European Parliament and of the Council and under any other Directives adopted by either the Council or the European Parliament and the Council which from time to time relate to technical specifications for interoperability of trans-European rail systems.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) any reference to a statute or statutory provision or any subordinate legislation includes that statute, provision or subordinate legislation as from time to time modified, re-enacted or consolidated whether before or after the date of this Agreement;
- (b) terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in this Agreement;
- (c) references to this Agreement include the schedules to it and references to clauses and schedules are to clauses of and schedules to this Agreement;

- (d) where, under this Agreement, reference is made to a requirement to obtain the approval of the ORR, that approval shall not be regarded as having been obtained unless it is given in writing; and
- (e) where reference is made to the approval of the ORR or a determination of the ORR or a requirement or direction of the ORR under
 - (i) clauses 2.4(b)(v), 2.5(a), 4.2.6, 4.3 or 7.4 of this Agreement, this Agreement shall be read and construed so that such approval, determination, requirement or direction may be given or, as the case may be, made only after consultation with the HSE; and
 - (ii) clauses 2.3(b)(i)-(iii), 2.4 (first paragraph), 2.7, 2.8, 3.2.1(d) and 13.2 of this Agreement, this Agreement shall be read and construed so that such approval, determination, requirement or direction may be given or, as the case may be, made only after consultation with the HSE and the DfT.

2 PRIMARY OBJECTIVE, PRINCIPLES OF OPERATION AND FUNCTIONS OF THE COMPANY

2.1 Primary Objective

The Company's primary objective shall be to lead and facilitate the Railway Industry's work to achieve continuous improvement in the health and safety performance of the railways in Great Britain and thus to facilitate the reduction of risk to passengers, employees and the affected public so far as reasonably practicable, so aiding compliance by providers of railway services with their obligations under health and safety law.

2.2 Principles of Operation

2.2.1 *Pursuing the Primary Objective*

In pursuing the Primary Objective, the Company shall:

- (a) exercise its functions in a manner best calculated to achieve an appropriate balance between the need:
 - (i) to protect the interests of users of railway services;
 - (ii) to promote the use of the Rail Network in Great Britain for the carriage of passengers and goods, and the development of the Rail Network, to the greatest extent economically practicable;

- (iii) to promote efficiency and economy on the part of persons providing railway services;
 - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
 - (v) to facilitate the furtherance by the DfT of any strategies which it has formulated with respect to its purposes including by having due regard to the appraisal criteria, expenditure priorities and budgets which form part of those strategies; and
 - (vi) to contribute to the development of an integrated system of transport of passengers and goods; and
- (b) where it is necessary to impose restrictions on Railway Industry Parties, to do so to the extent proportionate to the achievement of the Primary Objective and having regard to the criteria set out in clauses 2.2.1(a)(i)-(vi).

2.2.2 *Carrying out the Company's functions*

The Company shall carry out its functions in a transparent and non-discriminatory way, and where appropriate shall encourage and foster co-operation between Railway Industry Parties to achieve the Primary Objective.

2.3 Functions of the Company

The Company shall carry out the following functions:

- (a) the Company shall:
 - (i) in consultation with its Members, representatives of other Stakeholders, the DfT and the HSE, develop and publish the Railway Group Safety Plan;
 - (ii) monitor and report on the Railway Industry's health and safety performance and facilitate the collection and flow of information on health and safety matters in the Railway Industry;
 - (iii) maintain a current record of:
 - (A) recommendations of accident investigations and formal inquiries;
 - (B) the responses of all the organisations to which the respective recommendations are directed; and

- (C) the state of progress towards implementation within timescales recommended or prescribed by such investigations or formal inquiries;
 - (iv) disseminate and encourage adoption of good practice and encourage and facilitate co-operation in each case on health and safety matters in the Railway Industry;
 - (v) in consultation with its Members, facilitate the effective representation of the Railway Industry (including direct representation by the Company of one or more Railway Industry Parties if so agreed with those parties) in subject areas relevant to the Primary Objective in discussions with other industries, other railway companies and organisations, public bodies and European Union institutions; and
 - (vi) in consultation with its Members, representatives of other Stakeholders, the HSE and the DfT and within the constraints imposed by funding available from the DfT or other sources for this purpose, develop and implement a programme of health and safety related research and development.
- (b) the Company:
- (i) is responsible for establishing the Code and the document set out in Appendix 1 to this Agreement which has been approved or determined by the ORR shall be the Code;
 - (ii) shall comply with the provisions of the Code (as revised from time to time with the prior approval of the Directors as a Reserved Resolution in accordance with clause 4.4.6 or its Members in general meeting and the ORR);
 - (iii) shall from time to time or when so directed by its Members in general meeting or the ORR review in consultation with its Members and representatives of other Stakeholders the provisions of the Code and its implementation and propose revisions to the Code so as better to give effect to the Licence Conditions;

2.4 The Code

The Code shall be a code whose objectives promote the Primary Objective and the Principles of Operation (subject to such transitional provisions as may be approved or determined by the ORR in respect of Railway Group Standards in the course of preparation when the Code is established) and which:

- (a) establishes procedures for the review and monitoring of the effectiveness of Railway Group Standards;

- (b) establishes procedures for the creation of new Railway Group Standards, and the modification or abolition of existing Railway Group Standards, which are such as to:
 - (i) provide for a fair and balanced representation and participation in such procedures by experienced and competent persons from all classes of Stakeholders likely to be materially affected;
 - (ii) provide for proposals for the creation, modification or abolition of Railway Group Standards to be fully and fairly considered (other than any which are trivial or vexatious), and for full and proper consultation with the HSE and the DfT;
 - (iii) provide for Railway Group Standards to be consistent with European Technical Specifications for Interoperability in force for the time being;
 - (iv) provide an accelerated procedure for the creation, modification or abolition of Railway Group Standards in specified circumstances to remedy material non-compliance with the Primary Objective;
 - (v) provide for any Stakeholder aggrieved in any material respect by a decision in respect of the creation, modification or abolition of a Railway Group Standard to have the matter reviewed by the Board and thereafter, if dissatisfied with the results of such review, to have the matter referred to the ORR for determination;
- (c) requires the Company, where there are reasonable grounds for considering that the creation, modification or abolition of a Railway Group Standard is necessary or expedient having regard to the Primary Objective of the Company, to propose such action and pursue it in accordance with the procedures referred to in clause 2.4(b); and
- (d) authorises the Railway Group Standards in force from time to time.

2.5 The Code and Railway Group Standards

The Company shall:

- (a) publish the Code and any modifications to it in such form or manner and with such frequency as the ORR may require;
- (b) provide a copy of the Code and any modification to it to each holder of a licence under section 8 of the Act, other Members, the DfT, the HSE and the ORR;
- (c) publish a catalogue of current Railway Group Standards; and
- (d) provide a copy of the Code and any Railway Group Standard or proposed Railway Group Standard and of the catalogue referred to in clause 2.5(c) to any person

requesting a copy (and the Company may charge for the provision of copies under this clause 2.5(d) provided that such charge shall not exceed an amount which in the opinion of the ORR is reasonable).

2.6 Information

The Company may publish from time to time such information as may be necessary or expedient to facilitate the comprehension and efficient and economic application of standards (including TSIs) falling within the scope of the Primary Objective.

2.7 Other activities

The Company may, subject to the passing of a Reserved Resolution or the approval of Members in general meeting and the prior approval of the ORR, propose and implement arrangements for it to carry out activities (in addition to those set out in clauses 2.3 to 2.6 and 2.8 of this Agreement) related to the Primary Objective and the Principles of Operation or which facilitate improvements in the safety, efficiency or performance of railways in the United Kingdom.

2.8 Review of activities

The Company may, in addition to the functions and activities set out in clauses 2.3 to 2.6 and any functions and activities which may be approved pursuant to clause 2.7, carry out for up to 12 months from 1 April 2003 any of the activities formerly carried on by Railway Safety. During such period, the Board shall carry out a review of those activities and shall make a recommendation to the Members as to the extent to which those activities should continue to be carried on by the Company following the expiration of that period. Some or all of those activities may continue to be carried on after the expiration of that period subject to the prior approval of the ORR and the approval of the Members having been obtained in accordance with clause 5.3.

2.9 Publication of activities

The Company shall publish a list on its website of those activities it carries out pursuant to clauses 2.7 and 2.8.

3 MEMBERSHIP

3.1 Application for membership

In order to become a member of the Company, Network Rail shall (if it has not already done so) immediately following execution of this Agreement sign an application for membership in the form set out in schedule 2 and submit such application for membership to the Company.

3.2 Admission to membership

3.2.1 *General*

The Board shall admit to membership of the Company:

- (a) Network Rail and each holder of a licence under section 8 of the Act if such persons are required to become members of the Company under the terms of their respective licences;
- (b) any Supplier which is not required by the terms of any licence held by it under section 8 of the Act to become a member of the Company;
- (c) any Train Operator which is not required by the terms of any licence held by it under section 8 of the Act to become a member of the Company; and
- (d) any Infrastructure Controller (other than Network Rail), subject to the prior approval of the ORR having been obtained;

3.2.2 *Conditions to admission to membership*

It shall be a condition of the Board admitting a person to membership of the Company that such person:

- (a) undertakes to the parties to this Agreement for the time being to observe and be bound by the terms of this Agreement by executing an accession agreement in the form set out in schedule 3, such accession agreement being entered into between the prospective new Member and the Company (acting on its own behalf and as agent for all the Members, for which purpose each Member hereby authorises the Company to act as its agent);
- (b) signs an application for membership in the form set out in schedule 2 and submits such application for membership to the Company; and
- (c) provides to the Company information of the kind specified in clauses 3.3.2, 3.3.4 and (if applicable) clauses 6.3.9 and 6.3.10 by no later than 30 days from the date of such person becoming a member of the Company.

3.3 Designation and categorisation of membership

3.3.1 *General*

On admission to membership of the Company, each Member shall be designated by the Board as falling within one only of the following categories of membership:

- (a) passenger Train Operators;

- (b) non-passenger Train Operators (excluding any party which operates non-passenger trains wholly or mainly in connection with its role as an infrastructure contractor);
 - (c) Network Rail and other Infrastructure Controllers;
 - (d) rolling stock owners (including rolling stock leasing companies);
 - (e) infrastructure contractors that fulfil either or both of the following criteria:
 - (i) the infrastructure contractor in question is a party to one or more infrastructure renewals contract with Network Rail or any successor organisation or any other Infrastructure Controller which is a member of the Company or any other contract which the Board reasonably considers to be a successor to or the equivalent of any of those forms of contract;
 - (ii) the infrastructure contractor in question holds a non-passenger operating licence to operate trains on the Rail Network of which Network Rail or any successor organisation, or any other Infrastructure Controller which is a member of the Company, is the Infrastructure Controller and operates such trains wholly or mainly in connection with its role as an infrastructure contractor;
- and
- (f) Suppliers (including rolling stock manufacturers).

3.3.2 *Categorisation based on Annual Turnover*

If a Member's activities fall within more than one of the categories set out in clauses 3.3.1(a)-(f), that Member shall be designated by the Board as falling within the category from which it (or, as the case may be, its Group) derives the greatest part of its Annual Turnover as at its admission to membership of the Company (if appropriate, determined by reference to its most recently published audited accounts).

3.3.3 *Review of categorisation*

The Board shall:

- (a) prior to the end of each Triennial Review Period review a breakdown of the Annual Turnover of each Member falling within the categories described in clauses 3.3.1(a), 3.3.1(b) and 3.3.1(c); and
- (b) prior to the end of each Annual Review Period review a breakdown of the Annual Turnover of each Member falling within the categories described in clauses 3.3.1(d), 3.3.1(e) and 3.3.1(f),

for the purpose of determining whether any change needs to be made to the category of membership to which it is then allocated having regard to the Annual Turnover of that Member amongst the categories of activities respectively set out in clauses 3.3.1(a)-(f) at that time (if appropriate, determined by reference to its audited accounts published immediately prior to such review).

3.3.4 *Provision of financial information*

If a Member is not able to provide audited accounts as required by clause 3.3.2 or 3.3.3 or if those audited accounts do not contain the requisite information, the Board shall be entitled to require such Member to provide a Certificate regarding the Annual Turnover of such Member. Each Member undertakes to provide such information as the Company may reasonably require for this purpose.

3.3.5 *Confidentiality*

The Company shall keep confidential all information provided by each Member pursuant to clause 3.3.2, 3.3.3 or 3.3.4 and such information shall be treated as Restricted Information (unless the Member supplying such information agrees otherwise) in accordance with the provisions of clause 11.

3.3.6 *Failure to provide information required*

If a Member fails to provide the information required by the Company pursuant to clause 3.3.2, 3.3.3 or 3.3.4 within 20 Business Days of the date on which it is requested by the Company, the Board shall estimate the Annual Turnover of such Member (or, as the case may be, the breakdown of such Annual Turnover) and (pending receipt of the information of that Member) such estimate shall be treated for the purposes of this Agreement as the Annual Turnover (or, as the case may be, the breakdown of such Annual Turnover) of that Member.

3.3.7 *Election of review period*

Notwithstanding clause 3.3.3(b), the Members falling within the categories described in clauses 3.3.1(d), 3.3.1(e) and 3.3.1(f) shall each be entitled to elect to have the words "Annual Review Period" in clause 3.3.3(b) read and construed as if that expression were a reference to "Triennial Review Period". Such election shall be subject to the consent in writing of the holders of more than one-half of the voting rights of the members falling within the categories described in clauses 3.3.1(d), 3.3.1(e) or 3.3.1(f) (as the case may be) or with the sanction of an ordinary resolution passed at a separate general meeting of the categories described in clauses 3.3.1(d), 3.3.1(e) or 3.3.3(f) (as the case may be).

3.4 Cessation and transferability of membership

3.4.1 *Cessation of membership of holders of licences under section 8 of the Act*

A Member of the description set out in clause 3.2.1(a) may only serve notice on the Company to cease to be a Member in accordance with the Articles if the prior written approval of the ORR has been obtained.

3.4.2 *Cessation of membership of other Members*

Membership shall cease in the following circumstances:

- (a) if a Member (other than a Member of the description set out in clause 3.2.1(a), save where such cessation is agreed by the ORR to be in accordance with his duties under section 4 of the Act) gives to the Company not less than 6 months' notice of its intention to cease to be a member of the Company to expire on the accounting reference date of the Company next following, in which case that Member shall cease to be a member of the Company on the accounting reference date of the Company next following;
- (b) subject to the provisions of clause 3.5, if a Member ceases to fall within any of the descriptions set out in clauses 3.2.1(a)-(d), in which case that Member shall cease to be a member of the Company on the accounting reference date of the Company next following; and
- (c) if a Member (other than a Member of the description set out in clause 3.2.1(a)) shall default in the payment of any sum due to the Company under this Agreement and shall fail to remedy such default within 30 days of being required so to do by the Company, in which case that Member shall cease to be a member at such time as the Board may in its absolute discretion determine.

3.4.3 *Voting and cessation of membership*

Nothing in clause 3.4.2 shall preclude any Member from exercising its rights as a member to vote at any general meeting of the Company for so long as the Member continues to be a member of the Company, except that a Member shall, from the Trigger Date, not be entitled to vote in respect of any resolution to:

- (a) approve the Company's annual Budget for a financial year which will commence after that Member will have ceased to be a member of the Company; or
- (b) approve the Railway Group Safety Plan applicable to a financial year which will commence after that Member will have ceased to be a member of the Company.

3.4.4 *Transferability of membership*

Membership shall not be transferable.

3.5 Train Operators and Franchise Agreements

This clause 3.5 applies in relation to any Member (an “**Affected Member**”) which is a Train Operator which operates services for the carriage of passengers by railway in the capacity of a franchise operator under a Franchise Agreement as follows:

- (a) if the Franchise Agreement relevant to an Affected Member is terminated without being replaced and the Affected Member does not continue to operate services for the carriage of passengers by railway, the Affected Member shall (unless otherwise obliged to continue to be a member of the Company under the terms of any licence held by it under section 8 of the Act) cease to be a Member when the Train Operator which takes over responsibility for the services previously operated by the Affected Member under the Franchise Agreement:
 - (i) becomes a Member (unless already a Member); and
 - (ii) assumes all the undischarged obligations which would otherwise be owed to the Company by the Affected Member under this Agreement for the period from the date from which such assumption is effective until the end of the financial year of the Company then current;

- (b) if a Franchise Agreement relevant to an Affected Member is amended so as to exclude some (but not all) of the services previously provided by that Affected Member (“**Excluded Services**”):
 - (i) the Affected Member shall continue to be a Member;
 - (ii) if and to the extent that the Excluded Services are assumed by another (new or existing) Member (the “**Successor Member**”) in succession to the Affected Member, then the Successor Member shall, in respect of the period from the date on which the Excluded Services are assumed until the end of the financial year of the Company then current, assume (in place of the Affected Member) the Affected Member’s obligation to pay part of the levy which the Affected Member would have been obliged to pay to the Company under clause 6 but for the amendment of the relevant Franchise Agreement to exclude the Excluded Services;
 - (iii) the amount of the levy which the Successor Member shall assume an obligation to pay in place of the Affected Member shall be calculated by reference to the following formula:

$$A = B \times \frac{C}{12}$$

Where:

“A” is equal to the amount of the levy to be assumed by the Successor Member;

“B” is equal to the levy payable by the Affected Member for the then current year to the extent that such levy is attributable to turnover in respect of the provision of the Excluded Services; and

“C” is equal to the number of whole unexpired months between the date on which the Successor Member assumes the obligation to pay part of the levy and the end of the financial year of the Company then current; and

- (iv) the Affected Member shall provide the Company with a certificate from its finance director containing a bona fide estimate of the amount of “B” (as referred to in clause 3.5(b)(iii)) and if the Affected Member fails to provide that certificate within 20 Business Days of the date on which it is requested by the Company, the Board shall be entitled to estimate such amount and (pending receipt of the certificate from the Affected Member) such estimate shall be treated for the purposes of this Agreement as the amount of “B”. The Company shall keep confidential all information provided by the Affected Member pursuant to this clause 3.5(b)(iv) and such information shall be treated as Restricted Information (unless the Affected Member agrees otherwise) in accordance with the provisions of clause 11;
- (c) if clauses 3.5(a) or 3.5(b) apply in respect of an Affected Member, then until such time as the relevant Successor Member or other Train Operator taking over responsibility for the services previously operated by that Affected Member is able to produce Annual Turnover information dealing with the provision of the services which it takes over for a complete period of one year, the Annual Turnover in respect of that Successor Member or other Train Operator shall, in respect of such period for which its Annual Turnover would not otherwise include the provision of those services be deemed to include an amount (the “**relevant amount**”) equal to the Annual Turnover which would have been reported by the Affected Member as being referable to those services and the period in question had the services continued in its operation;
- (d) if any relevant amount is included in the Annual Turnover of a Successor Member or other Train Operator under clause 3.5(c), it shall be disregarded in calculating the Annual Turnover of the Affected Member which has ceased to operate the services in question;
- (e) if the relevant Annual Turnover information is not available from the Affected Member in relation to the services being assumed and (where clause 3.5(b) applies) no apportionment is otherwise agreed between the Members concerned, then the relevant

amount shall be estimated by the Board following consultation with the Members concerned and having regard to the Annual Turnover last reported to the Company by the Affected Member for the purposes of this Agreement.

3.6 Suppliers

The Company shall use all reasonable endeavours to encourage Suppliers to become members of the Company.

4 BOARD OF DIRECTORS

4.1 Constitution of the Board

The Board shall comprise not less than 10 but not more than 15 Directors of whom:

- (a) not more than 3 shall be executive Directors;
- (b) not more than 5 (or, where any person is appointed to be both a Director and chairman of the Board in accordance with clauses 4.2.2 and 4.4.5, 6) nor fewer than 4 (unless otherwise approved by the ORR) shall be non-executive Directors who have satisfied the criteria set out in Article 64 of the Articles; and
- (c) not more than 6 shall be non-executive Directors who have relevant experience of the Railway Industry, who shall be appointed pursuant to clause 4.2.3.

4.2 Appointment of Directors

4.2.1 First Chief Executive and Directors

The First Directors shall be the individuals whose names are set out in schedule 5.

4.2.2 Appointment of Directors

Subject to clause 4.2.3, the Directors shall have power at any time, and from time to time, to appoint any person to be a Director either to fill a casual vacancy or as an addition to the Directors, provided that the total number of Directors shall not at any time exceed the number set out at clause 4.1. Any Director so appointed shall hold office only until the next following general meeting of the Company and shall then be eligible for re-election.

4.2.3 Industry Directors

Each of the categories of members described in clause 3.3.1 shall have the right to appoint and maintain in office one non-executive Director (as referred to in clause 4.1(c)) and shall

have the right to remove any Director respectively nominated by them and appoint another Director in his place, in each case by giving notice in writing (evidenced by a written consent or a print of an ordinary resolution of the category of members in question as referred to in Article 58 of the Articles) to the Secretary of the Company at its registered office. Any decision in respect of any such appointment or removal shall be made in accordance with Article 58 of the Articles.

4.2.4 Appointment of Directors at general meetings

Other than the First Directors and except as set out in clauses 4.2.2 and 4.2.3, Directors shall be appointed by the Members in general meeting in accordance with clause 5.3.

4.2.5 Term of appointment

Directors (other than executive Directors and the First Non-Industry Directors) shall be appointed for a term of not less than 2 years and not exceeding 3 years and, except in the case of Directors appointed pursuant to clauses 4.2.2 and 4.2.3, Directors shall only be removed with the prior approval of the ORR.

4.2.6 Removal of First Industry Directors

Notwithstanding any provisions of this Agreement or the Articles, a First Industry Director shall automatically cease to hold office if within six months of the date of this Agreement no persons falling within the category of members to which the First Industry Director is associated (as set out opposite his name in schedule 5) have become members of the Company.

4.3 Disqualifying Interest

Without limiting Articles 71-73 of the Articles, the Company shall ensure that no Relevant Employee of the Company shall have a Disqualifying Interest except with the prior approval of the ORR and no person shall be nominated for appointment or remain in office as a Director if he has or acquires a Disqualifying Interest unless the prior approval of the ORR has been given in respect of that person's appointment and/or continuation in office as a Director.

4.4 Proceedings of Directors

4.4.1 General

Unless otherwise agreed by the Directors, meetings of the Board shall be held at least once every 4 weeks and otherwise as circumstances require. At least five Business Days notice of a Board Meeting shall be given to each Director specifying, where appropriate, that the business to be conducted includes consideration of a Reserved Resolution. An agenda identifying in reasonable detail the issues to be considered by the Directors at any such

meeting and copies of any relevant papers to be discussed at the meeting shall be distributed in advance of the meeting to all members of the Board.

4.4.2 *Quorum*

- (a) The quorum for the transaction of business (excluding that relating to a Reserved Resolution) at any Board meeting shall be seven including at least four non-executive Directors at least one of whom shall be a Non-Industry Director;
- (b) The quorum for the transaction of business relating to a Reserved Resolution shall be seven and shall include all non-executive Directors appointed by each category of members described in clause 3.3.1 pursuant to clause 4.2.3 and one Non-Industry Director.

4.4.3 *Involvement of the ORR , the DfT and the HSE*

The Members agree that the ORR, the DfT and the HSE shall each be entitled to appoint a representative to receive notice of, attend and speak at each meeting of the Board. The Company shall send the agenda for each meeting of the Board to the ORR, the DfT and the HSE (together with copies of all other papers distributed to Directors in preparation for that meeting) at the same time as they are distributed to members of the Board and shall send the minutes of meetings to them at the same time as they are distributed to the Directors.

4.4.4 *Majority vote*

Subject to clauses 4.4.6 and 5.3, no resolution of the Directors shall be effective unless carried by a majority of the Directors.

4.4.5 *Chairman*

The Directors shall appoint any one of their number to be the Chairman of the Board from among the non-executive Directors and may at any time remove him from that office.

4.4.6 *Reserved Resolutions*

- (a) The Directors may transact any of the matters described in Part A, Part B and paragraphs 2 and 3 of Part C of Schedule 4 by the passing of a unanimous resolution (a **“Reserved Resolution”**);
- (b) the Company shall supply each Member with a print of a Reserved Resolution within 14 days of the meeting of the Board at which it was passed.

4.5 Audit Committee, Remuneration Committee and Appointments Committee

4.5.1 General

The Board shall appoint and maintain an audit committee, a remuneration committee and an appointments committee having the membership and duties set out in clauses 4.5.2, 4.5.3 and 4.5.4 respectively.

4.5.2 Audit Committee

The membership of the audit committee shall consist solely of non-executive Directors of the Company and shall consist of not less than three non-executive Directors. The Audit Committee shall review the accounting policies and procedures of the Company, its internal financial control systems and its compliance with statutory requirements and shall consider any matter raised by the Company's external and internal auditors.

4.5.3 Remuneration Committee

The membership of the remuneration committee shall consist solely of non-executive Directors of the Company and shall consist of not less than three non-executive Directors (a majority of whom shall be Non-Industry Directors). The chief executive of the Company shall on the committee's request prepare and deliver a report and recommendation on remuneration. The remuneration committee shall consider and make recommendations to the Board on the remuneration of all executive Directors of the Company and all senior employees of the Company who are not Directors and whose annual base salary (excluding employer pension contributions, bonuses, travel expenses, car allowances and other benefits in kind) is in excess of £100,000 per annum or such higher amount as may be proposed by the appointments committee and approved by the Board from time to time.

4.5.4 Appointments Committee

The membership of the appointments committee shall consist solely of non-executive Directors of the Company, at least two of whom shall be Non-Industry Directors. The appointments committee shall consist of not less than three non-executive Directors. The appointments committee shall consider and make recommendations to the Board on the appointment of all Directors of the Company (other than those appointed pursuant to clauses 4.2.1, 4.2.2 and 4.2.3) and all senior employees of the Company who will not be Directors and whose annual base salary (excluding employer pension contributions, bonuses, travel expenses, car allowances and other benefits in kind) will be in excess of £55,000 per annum or such higher amount as may be proposed by the appointments committee and approved by the Board from time to time.

5 MEMBERS' MEETINGS AND POWERS

5.1 General

The Company shall convene general meetings of the Members at least once a year. The rights of the Members in respect of voting at general meetings of the Company are set out in the Articles.

5.2 Involvement of the ORR , the HSE and the DfT

The Members agree that the ORR, the HSE and the DfT shall each be entitled to appoint a representative who shall be entitled to receive notice of, attend and speak at each general meeting of the Members.

5.3 Reserved Matters

Except where the Directors have passed a Reserved Resolution, the power of the Company to:

- (a) transact any of the matters described in Part A of schedule 4 (Reserved Matters) shall be reserved to the Members and shall be subject to approval by Members holding eighty per cent. or more of the total voting rights exercised in respect of the resolution in question on a poll at a general meeting of the Company;
- (b) transact the matter described in Part B of schedule 4 (Reserved Matters) shall be reserved to Members and shall be subject to approval by Members holding eighty per cent. or more of:
 - (i) the total voting rights exercised in respect of the resolution in question on a poll at a general meeting of the Company; and
 - (ii) the total voting rights exercised on a poll in respect of the resolution in question by the categories of members described in clauses 3.3.1(a)-(c) and 3.3.1(e) (to the extent that the Members within this category also form part of the Railway Group); and
- (c) transact any of the matters described in Part C of schedule 4 (Reserved Matters) shall be reserved to the Members and shall be subject to approval by Members holding sixty five per cent. or more of the total voting rights exercised in respect of the resolution in question on a poll at a general meeting of the Company.

The power of the Board to manage the business of the Company shall be circumscribed accordingly. Except as required by this clause 5.3, the memorandum of association of the Company, the Articles and the Companies Act 1985, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company.

Nothing in this clause 5.3 shall preclude the Board from taking any step which it considers appropriate to put the Company into liquidation or administration.

5.4 Network Rail

If, at the time appointed for a general meeting as referred to in clause 5.3, Network Rail is not present by proxy or by a duly authorised representative, the general meeting shall be adjourned to such time and place as the chairman of the meeting shall determine and which shall be notified to all Members. Network Rail shall use all reasonable endeavours to procure that it is present by proxy or by a duly authorised representative at the time and place appointed for every general meeting of the Members.

6 FUNDING

6.1 First Budget

The First Budget shall be the Budget for the First Financial Year approved by the Regulator showing a projected funding requirement of £44.85 million (or such higher amount as may be approved by the Regulator).

6.2 Pre 2006 Financial Year

6.2.1 Preparation of Budget

The Company shall prepare a Budget in respect of each Pre 2006 Financial Year and shall, following consultation with the Members, submit it to the ORR (together with representations (or a summary of them) made by Members to the Company in response to the Company's consultation) and Members for approval not later than 3 months prior to the commencement of the Pre 2006 Financial Year in question. The Budget shall be prepared in such format, and shall contain such information, as the ORR may require.

6.2.2 Provision of information

The Company shall promptly provide the ORR with such information as he may require in respect of any Budget submitted to him for approval.

6.2.3 Approval of Budget by the ORR and failure to approve Budget

The ORR shall following consultation with HSE and the DfT and having considered any representations made by Members of which details have been provided to the ORR pursuant to clause 6.2.1 be entitled to approve any Budget submitted to him:

- (a) without amendment; or

(b) with such amendments as he considers to be appropriate.

If for any reason the Budget in respect of a Pre 2006 Financial Year shall not have been approved by the ORR before the pre 2006 Financial Year to which it relates, then (until a Budget is approved by the ORR in respect of that Pre 2006 Financial Year) the Approved Budget in respect of the immediately preceding period of 12 months shall be deemed to be the Approved Budget for that Pre 2006 Financial Year also.

6.2.4 Approval of Budget by Members and failure to approve Budget

Following approval by the ORR, where the Directors have not passed a Reserved Resolution approving the Budget the Company shall submit the Budget as approved by the ORR in respect of a Pre 2006 Financial Year for approval by the Members in general meeting. If for any reason the Budget in respect of a Pre 2006 Financial Year shall not have been approved by a Reserved Resolution in accordance with clause 4.4.6 or by Members in accordance with clause 5.3 before the commencement of the Pre 2006 Financial Year to which that Budget relates, then (until a Budget is approved by both the ORR and either a Reserved Resolution in accordance with clause 4.4.6 or by the Members in accordance with clause 5.3 in respect of that Pre 2006 Financial Year) the Budget approved by the ORR in respect of that Pre 2006 Financial Year shall be deemed to be the Approved Budget.

6.2.5 Levies in respect of Pre 2006 Financial Year

In respect of each Pre 2006 Financial Year, Network Rail shall pay to the Company as a levy an amount equal to the projected funding requirement of the Company as shown in the Approved Budget for that Pre 2006 Financial Year (such Approved Budget to take into account revenue attributable to health and safety-related research and development to be undertaken by the Company, to the extent that such health and safety-related research and development will be funded directly by the DfT, or some other person). Such amount shall be paid by four equal payments on 1 April, 1 July, 1 October and 1 January during that Pre 2006 Financial Year, except that in respect of the First Year a higher proportion (as agreed between the Company and Network Rail) of such amount shall be paid on 1 April 2003 and the balance of such amount shall be paid by three equal payments on 1 July, 1 October and 1 January during the First Financial Year. Levies paid by Network Rail shall not be refundable or repayable in any circumstances.

6.3 Post 2006 Financial Year

6.3.1 Preparation of Budget

The Company shall prepare a Budget in respect of each Post 2006 Financial Year and shall submit it to its Members for consultation not later than 3 months prior to the Post 2006 Financial Year in question and for approval (with or without amendment following such

consultation) by the Directors as a Reserved Resolution in accordance with clause 4.4.6 or by the Members in accordance with clause 7.2.

6.3.2 *Provision of information*

The Company shall promptly provide any Member with such information as it may reasonably request in respect of any Budget submitted to Members for consultation or approval.

6.3.3 *Failure to approve Budget*

If for any reason (other than the Company having been put into liquidation or administration) a Budget in respect of a Post 2006 Financial Year shall not have been approved by a Reserved Resolution in accordance with clause 4.4.6 or by the Members in accordance with clause 5.3 before the commencement of the Post 2006 Financial Year to which that Budget relates, then (until a budget is approved by a Reserved Resolution or in accordance with clause 5.3 in respect of that Post 2006 Financial Year) the Approved Budget in respect of the immediately preceding period of 12 months shall be deemed to be the Approved Budget for that Post 2006 Financial Year also.

6.3.4 *Levies in respect of Post 2006 Financial Year*

During each Post 2006 Financial Year, the Members shall pay to the Company as a levy (in accordance with clauses 6.3.5 to 6.3.13) an aggregate amount equal to the projected funding requirement of the Company less the amount of any projected cash revenue of the Company as shown in the Approved Budget for that Post 2006 Financial Year (such Approved Budget to take into account revenue attributable to health and safety-related research and development to be undertaken by the Company to the extent that such health and safety-related research and development will be funded directly by the DfT or some other person). Levies paid by Members to the Company shall not be refundable or repayable by the Company in any circumstances.

6.3.5 *Aggregate amount of levies*

In respect of any Post 2006 Financial Year, the aggregate amount of annual levies payable pursuant to clause 6.3.4 shall be apportioned amongst the categories of Members as follows:

- (a) (i) each Member designated by the Board as falling within any of the categories described in clauses 3.3.1(b) and 3.3.1(d)-(e) and those Members falling within the category described in clause 3.3.1(a) which do not operate services pursuant to a Franchise Agreement shall pay the amount (Index-Linked) set out in column two of the

table set out below in this clause 6.3.5(a)(i) which is applicable to its Annual Turnover during its most recently completed financial year:

(1)	(2)
Annual Turnover	Amount of levy payable (Index Linked)
Less than £10 million	£5,000
£10 million or more but less than £100 million	£20,000
£100 million or more	£60,000

(ii) each Member designated by the Board as falling within the category described in clause 3.3.1(f) shall pay the amount (Index Linked) set out in column two of the table set out below in this clause 6.3.5(a)(ii) which is applicable to its Annual Turnover during its most recently completed financial year:

(1)	(2)
Annual Turnover	Amount of levy payable (Index Linked)
Less than £3.33 million	£1,000
£3.33 million or more but less than £100 million	A sum determined by multiplying the Member's Annual Turnover by 0.0003 and rounding the resulting figure up or down (as appropriate) to the nearest £1,000
£100 million or more	£30,000

The Company shall notify Members of the Index-Linked amounts payable in respect of any Post 2006 Financial Year not less than 30 days prior to that Post 2006 Financial Year (or, if later, not later than 7 days after the passing of a relevant Reserved Resolution or approval by the Members of the Budget for that Post 2006 Financial Year pursuant to clause 4.4.6 or clause 5.3 respectively).

- (b) one half of the balance of the aggregate amount of annual levies payable pursuant to clause 6.3.4 in respect of that Post 2006 Financial Year, after deducting the aggregate amount of levies payable by Members pursuant to clause 6.3.5(a), shall be payable by Members (other than passenger Train Operators which do not operate services pursuant to a Franchise Agreement) designated by the Board as falling within the category described in clause 3.3.1(a); and
- (c) one half of the balance of the aggregate amount of annual levies payable pursuant to clause 6.3.4 in respect of that Post 2006 Financial Year, after deducting the aggregate amount of levies payable by Members pursuant to clause 6.3.5(a), shall be payable by Members designated by the Board as falling within the category described in clause 3.3.1(c).

6.3.6 *Cap on levies*

The amount of the annual levy which any Member shall be obliged to pay in respect of any Post 2006 Financial Year shall not exceed an amount equal to 150 per cent. of the annual levy which that Member was obliged to pay in respect of the immediately preceding financial year of the Company, unless and to the extent that it is attributable to an increase in the Annual Turnover of that Member. If that Member was not for any reason obliged to pay a levy in respect of the immediately preceding financial year of the Company, the 150 per cent. threshold shall be calculated by reference to the annual levy which that Member would have been obliged to pay if clause 6.3.5 had applied to it in respect of that financial year.

6.3.7 *Payment of levies*

Levies payable by Members in respect of a Post 2006 Financial Year shall be payable by four equal payments on 1 April, 1 July, 1 October and 1 January during that Post 2006 Financial Year, unless the annual amount of a levy payable by a Member is less than £50,000, in which case the whole amount of that levy shall be payable on 1 April in that Post 2006 Financial Year.

6.3.8 *Apportionment of levies amongst certain categories of Members*

Unless, not less than one month prior to the commencement of any Post 2006 Financial Year, the Company receives a notice in accordance with clause 6.3.9, the aggregate annual levies payable by the categories of members described in clauses 3.3.1(a) and 3.3.1(c) (calculated in accordance with clauses 6.3.5(b)-(c) respectively) shall be apportioned amongst Members (other than passenger Train Operators which do not operate services pursuant to a Franchise Agreement) designated by the Board as falling within the relevant category by reference to the following formula:

$$A = \frac{B}{C}$$

Where:

“A” is equal to the proportion of the aggregate annual levies attributable by that category of Members (except for, in the case of the category of members described in clause 3.3.1(a), passenger Train Operators which do not operate services pursuant to a Franchise Agreement) which is to be payable by a Member;

“B” is equal to the amount of the Annual Turnover of the relevant Member during its most recently completed financial year;

“C” is equal to the aggregate amount of the Annual Turnover of all Members designated by the Board as falling within the category of Members in question (but, in the case of the category of members described in clause 3.3.1(a), excluding passenger Train Operators which do not operate services pursuant to a Franchise Agreement) during their respective most recently completed financial years.

6.3.9 *Annual Turnover*

Not later than 2 months prior to the commencement of any Post 2006 Financial Year, each Member shall provide to the Company the amount of its Annual Turnover during its most recently completed financial year (if appropriate, determined by reference to its most recently published audited accounts).

6.3.10 *Provision of financial information*

If the Member is unable to provide audited accounts as required by clause 6.3.9 or if those audited accounts do not contain the requisite information, the Board shall be entitled to require such Member to provide a Certificate regarding the Annual Turnover of such Member. Each Member undertakes to provide such other information as the Company may reasonably require to verify such amount.

6.3.11 *Confidentiality*

The Company shall keep confidential all information provided by each Member pursuant to clauses 6.3.9 and 6.3.10 and such information shall be treated as Restricted Information (unless the Member supplying such information agrees otherwise) in accordance with the provisions of clause 11.

6.3.12 *Failure to provide information required*

If a Member fails to provide the information required by the Company pursuant to clauses 6.3.9 and 6.3.10 within 20 Business Days of the date on which it is requested by the Company, the Board shall be entitled to estimate the Annual Turnover of such Member and (pending receipt of the information from the Member) such estimate shall be treated for the purposes of this Agreement as the Annual Turnover of that Member.

6.3.13 *Schemes apportioning amounts payable*

Notwithstanding clause 6.3.8, Members designated by the Board as falling within any of the categories of members described in clauses 3.3.1(a) (other than passenger Train Operators which do not operate services pursuant to a Franchise Agreement) and 3.3.1(c) shall, amongst themselves, be entitled to apportion the aggregate amount payable by that category pursuant to clause 6.3.5 in a manner different from that prescribed by clause 6.3.8 if:

- (a) a scheme which allocates the aggregate amount payable by the relevant category of members amongst Members designated by the Board as falling within the relevant category is approved in writing by not less than 75 per cent. in number of Members designated by the Board as falling within that category;
- (b) the scheme is approved by the ORR, after consultation with the DfT and the HSE; and
- (c) the scheme (following approval by the requisite percentage of Members and by the ORR in accordance with (a) and (b) above) is notified in writing to the Company not less than two months prior to the commencement of the Post 2006 Financial Year during which it is intended to have effect.

6.3.14 *New Members*

Any new Member admitted to membership of the Company during a Post 2006 Financial Year shall pay a levy for that Post 2006 Financial Year calculated as follows:

$$D = \frac{E \times F}{12}$$

Where:

“D” is equal to the amount of the levy payable;

“E” is equal to the number of whole months which will elapse between the date of admission to membership of that Member and the end of the Post 2006 Financial Year which is current at the date of that Member’s admission to membership; and

“F” is equal to the annual levy which that Member would have been obliged to pay if it had been a Member at the beginning of that Post 2006 Financial Year (but disregarding any change in the number of Members designated by the Board as falling within the relevant category of Members following the beginning of that Post 2006 Financial Year).

The admission of new Members after the commencement of a Post 2006 Financial year shall not entitle any other Member to have adjusted the amount of the levies payable by it in respect of that Post 2006 Financial Year.

6.4 Failure to make payments

If any sum payable by a Member under or pursuant to this Agreement is not paid on its due date, that Member shall pay interest on such sum from its due date for payment until payment is actually received by the Company at the rate of 3 per cent. per annum above the base rate of Barclays Bank PLC from time to time.

6.5 Value Added Tax

The amount of any levy calculated in accordance with this clause 6 is exclusive of value added tax, which shall (if applicable) be payable by the Member or Members by whom the levy is payable on the amount of such levy at the applicable rate for the time being.

6.6 Borrowings

Subject to the passing of a Reserved Resolution in accordance with clause 4.4.6 or the Company obtaining the approval of Members in accordance with clause 5.3, the Company may borrow money and enter into other financing facilities and create security to secure its obligations in respect of such borrowings and other financing facilities.

6.7 Guarantees

No Member shall be obliged to give any guarantee or provide any other security in respect of the obligations or liabilities of the Company.

6.8 Members' contribution

Except as set out in this clause 6 and except for each Member's obligation to contribute up to £100 to the assets of the Company if the Company is wound up while it is a Member or within one year after it ceases to be a Member, no Member shall (unless otherwise agreed) have any other obligation to provide funds to the Company.

7 ANNUAL REPORT AND BUDGET

7.1 Accounts

The Company shall supply each Member with the following information:

- (a) within three months of the end of the financial year, the draft annual accounts of the Company for that financial year;
- (b) monthly management accounts where a Member elects (by notice in writing to the Company) to receive such accounts.

7.2 Approval of Budget

Except where the Budget has been approved by the passing of a Reserved Resolution in accordance with clause 4.4.6, the Company shall convene a general meeting of the Members to be held on or before 28 February in each year at which the Budget will be laid before the Members for their approval in accordance with clause 5.3.

7.3 Accounting and financial records

The Company shall maintain accurate and complete accounting and financial records.

7.4 Reports

The Company shall, as soon as practicable after the end of each period of 12 months ending on 31 December, or such other date determined by the ORR, produce to the ORR and the HSE and publish (in such form and manner determined by the ORR):

- (a) a report on its activities in respect of its functions during that period, including a general survey of developments during that period in relation to health and safety on the Rail Network; and
- (b) a report for that period in respect of the matters specified in clause 2.3(a)(iii).

7.5 Information regarding activities

The Company shall provide to the ORR such information relating to its activities as the ORR may reasonably require for the purpose of carrying out any of his functions under Part I of the Act other than any information which it could not be compelled to produce or to give in evidence in civil proceedings in any court.

8 ADVISORY COMMITTEE

8.1 General

Immediately following 1 April 2003 the Company shall establish a committee (the “**Advisory Committee**”) for the purpose set out in clause 8.2. The membership of the Advisory Committee shall until 1 January 2006 comprise a full range of representatives from the railway industry,

including Stakeholders and the DfT but from 1 January 2006 shall exclude representatives of ORR, DfT, HSE and Members.

8.2 Purpose of Advisory Committee

The purpose of the Advisory Committee shall until 1 January 2006 be to give advice to the Board and the Members in respect of the Functions and activities of the Company. Thereafter the purpose of the Advisory Committee shall be to consider the Company's work and key issues in respect of the Functions and activities of the Company and the manner in which they are being addressed by the Company and to provide advice on issues of a strategic nature only. The Advisory Committee shall not at any time take any part in the management of the Company

8.3 Meetings of Advisory Committee

Meetings of the Advisory Committee shall be convened by the Company and held not less frequently than once every 6 months. The chairman of the Advisory Committee shall be chosen by the members of the Advisory Committee from among the non-executive Directors.

8.4 Involvement of the ORR and the HSE

The Company and the Members agree that the ORR and the HSE shall each be entitled to appoint a representative who shall be entitled to receive notice of, attend and speak at each meeting of the Advisory Committee. The Company shall procure that the agenda for each meeting of the Advisory Committee shall be sent to the ORR and the HSE (together with copies of all other papers distributed to members of the Advisory Committee) at the same time as they are distributed to members of the Advisory Committee and that the minutes of meetings of the Advisory Committee shall be sent to the ORR and the HSE at the same time as they are distributed to members of the Advisory Committee.

8.5 Minutes of meetings of the Advisory Committee

The Company shall procure that minutes of meetings of the Advisory Committee are taken and provided by the Company to each of its Members. The minutes are also to be considered at the meeting of the Board which next follows their production.

9 DIVIDEND POLICY

The Company shall not declare, pay or make any dividend or other distribution.

10 FAILURE TO ACHIEVE REQUISITE MAJORITY

If, at any general meeting of the Company, a resolution shall not be carried by the requisite majority (as set out in clause 5.3), the Board (in consultation with Members) shall (unless the matter in question is of the type described in paragraph 3 of Part A of schedule 4)

reconsider such matter and, if appropriate, propose another resolution to Members in general meeting as soon as practicable thereafter. The Company and the Members shall act in good faith with a view to resolving the matter in question.

11 CONFIDENTIALITY

11.1 General

The Company shall carry out its functions in a transparent and non-discriminatory way having regard to the requirements for consultation provided for in this Agreement as between itself and its Members and as between itself and the Stakeholders and having regard to the commercial interests of the Members and their need for the maintenance of confidentiality.

11.2 Categorisation of information provided

Subject to clause 11.8, information provided by the Company to any Member or by any Member to the Company shall be categorised by the provider of such information either as:

- (a) Open Information, which shall mean information which may be reproduced and disclosed in any form to any third party (including to Members, the Advisory Committee and the public);
- (b) In Confidence Information, which shall mean information which may be reproduced and disclosed and/or copied or reproduced only as properly and reasonably necessary or desirable (in the opinion of the provider of such information) for the internal use of the recipient and its professional and technical advisers (but, except in accordance with clause 11.6, not to the Members or the Advisory Committee) and in any event on such terms as do not result in it being made public and which maintain its confidentiality; or
- (c) Restricted Information, which shall mean information which may be disclosed only as properly and reasonably necessary or desirable (in the opinion of the provider of such information) within the entity receiving such information and in any event on such terms as do not result in it being made public and which maintain its confidentiality. Restricted Information may not be disclosed to any third party (including the receiving entity's professional and technical advisers (other than legal advisers), the Company's Members or the Advisory Committee) or copied or reproduced by the recipient other than with the express written consent of the provider of such information. Where the provider of such information has expressly categorised that information as Restricted Information and has expressly specified a purpose for which it has been disclosed, then it may not be used by the recipient except in connection with the express purpose.

11.3 Restricted Information

Subject to clause 11.8, all information provided to the Company by Members, by the Company to Members or between Members in connection with the activities of the Company shall be treated as Restricted Information unless otherwise specified to be In Confidence Information or Open Information by the provider of such information. The confidentiality terms of this Agreement shall not apply in relation to any information sourced directly from third parties lawfully in possession of such information and who are not restricted from disclosing it.

11.4 Information in the public domain

Any information that is lawfully in the public domain at the time it is provided by or to the Company or which subsequently enters into the public domain (other than by reason of the breach of this Agreement or any other obligation of confidence between the Company and the Members or otherwise unlawfully) shall be treated as Open Information.

11.5 Disclosure and use of information provided

The Company and the Members will use reasonable efforts to prevent the unauthorised disclosure of any information categorised as In Confidence Information or Restricted Information and belonging to the Company or any Member. Nothing in this clause 11 shall be construed as granting authority for the receiving party to make use of disclosed information for any commercial purpose other than that expressly stated by the provider of such information, nor (subject to the provisions of clause 12) providing any licence of any right or intellectual property owned by or licensed to the provider of such information connected to the disclosed information.

11.6 Disclosure of derivative work

Subject to the Company obtaining the prior written consent of the provider of such information, the Company shall be entitled to prepare and disclose a derivative work based upon any In Confidence Information or Restricted Information received by the Company in a manner which:

- (a) does not enable the provider of such information to be identified from the information so provided;
- (b) does not affect the provider of such information's business and financial standing; and
- (c) presents such information from an industry-wide perspective rather than a Member-specific perspective.

11.7 Disclosure in compliance with mandatory legal obligations

Nothing in this Agreement shall prevent the disclosure of any information (including In Confidence Information or Restricted Information) received by the Company in proper compliance with any mandatory legal obligation, order of a court of competent jurisdiction or direction by a governmental or regulatory authority, but the Company shall use all reasonable

endeavours to give the provider of such information prompt notice of such disclosure in order to allow the provider of such information a reasonable opportunity to obtain a protective order, if permitted by law or the relevant authorities.

11.8 Railway Group Standards

The provisions of clauses 11.2 and 11.3 shall not apply in respect of information which a Member is obliged to provide to the Company in accordance with a Railway Group Standard.

11.9 Effect of confidentiality provisions

The provisions set out in this clause 11 shall continue to have effect in relation to any Member which ceases to be a member of the Company. Upon any such cessation of membership, the relevant Member shall forthwith return to the Company or destroy any In Confidence Information or Restricted Information received by that Member from the Company or another Member, together with any copies of that information which may have been made.

12 INTELLECTUAL PROPERTY

12.1 Licence granted to Members

Subject to the obligations set out in clause 11, the Company hereby grants to each of its Members a non-exclusive, royalty-free, world-wide, sub-licensable, non-assignable copyright licence to use, for any purpose consistent with the Primary Objective, copyright comprised in the Company's Intellectual Property (except to the extent that the grant of such a licence would result in the Company being in breach of any contract or of any other legally binding duty or obligation) for as long as any such Member remains a member of the Company.

12.2 Licence granted to the Company

Subject to the obligations set out in clause 11, each Member hereby grants the Company a non-exclusive, royalty-free, world-wide and irrevocable copyright licence in respect of Open Information provided by such Member to the Company, to use and reproduce in any material form from such Open Information for any purpose consistent with the Primary Objective and to sub-license such use and right to reproduce to other Members (except to the extent that the grant of such a licence would result in the Member being in breach of any contract or of any other legally binding duty or obligation).

12.3 In Confidence and Restricted Information

Nothing in this clause 12 shall grant any licence whatsoever to the Company in respect of In Confidence Information or Restricted Information.

12.4 No right of recourse

No Member shall have a right of recourse against the Company in respect of the licence granted under clause 12.1, whether in respect of any claim which may be made against a Member for infringement of any right relating to Intellectual Property or otherwise howsoever.

12.5 Fees

Each Member shall be prohibited from charging any licence or similar fees for the sub-licensing of any rights granted to it under clause 12.1, unless such charging has been approved by the Board.

13 REVIEW AND AMENDMENT

13.1 General

Subject to clause 13.2, the provisions of schedule 6 shall have effect in respect of the review and amendment of this Agreement, the Articles or the memorandum of association of the Company.

13.2 Approval of the ORR

The amendment or termination of this Agreement, or any amendment of the memorandum of association of the Company or the Articles (or the adoption of new Articles) shall require the prior approval of the ORR before such amendment, termination or adoption may have effect.

14 COMPLIANCE WITH LICENCES

The Company and the Members agree that:

- (a) the Company shall conduct its affairs so as to comply with its obligations under this Agreement and so as to ensure compliance by each Member who holds a licence under section 8 of the Act which contains either of the Licence Conditions with paragraphs 5 to 17 of the Licence Conditions (as amended from time to time);
- (b) any Member who holds a licence under section 8 of the Act which contains either of the Licence Conditions shall be entitled to require the Company and the other Members (to the extent that it is within their power to do so) to take such steps as may be necessary in order to enable that Member to comply with any provisional or final order made by the ORR under section 55 of the Act in respect of paragraphs 5 to 17 of the relevant Licence Condition (including an order in respect of the non-compliance of this Agreement or the Articles with the terms of that Licence Condition).

15 INSURANCE

15.1 Proposal to take out insurance

The Company proposes to take out policies of insurance to cover such of its risks (including the liability of directors and officers) as might reasonably be expected to be covered by insurance (having regard to the proposed activities of the Company and having regard to the availability and cost of such cover).

15.2 Unavailability of insurance from 2004

If the Board (acting reasonably) shall at any time resolve that:

- (a) it is not possible, or will not in respect of the year next following be possible, to obtain insurance or other cover against risks which, in its reasonable opinion, should prudently be covered by insurance;
- (b) it is not possible, or will not in respect of the year next following be possible, to obtain insurance or other cover against risks which, in its reasonable opinion, should prudently be covered by insurance on reasonable terms and at reasonable premia; or
- (c) it has incurred, or is likely to incur, a material uninsured, unforeseen liability which was not taken into account or provided for in the Approved Budget for the year then current;

then the Board shall carry out an urgent review of the Company's activities in the light of the insurance or other cover then or prospectively available to it in respect of its activities with a view to:

- (i) making a proposal to amend the provisions of this Agreement and (if necessary) the Articles in accordance with clause 15.3 (an "**Insurance Proposal**");
- (ii) making a Proposal for Change (in respect of which the provisions of schedule 6 shall have effect); or
- (iii) taking such other steps as the Board may consider appropriate (which may, without limitation, include steps to put the Company into liquidation or administration).

In any event the Company shall provide Network Rail with full details of the insurance or other cover obtained by the Company in respect of each year (or other period to which insurance cover applies) as soon as practicable after such insurance or other cover has been effected. The Company shall also provide Network Rail with details of any material liability of the kind referred to in clause 15.2(c) above as soon as it becomes aware of the same or the fact that the same has been or may be incurred, and provide Network Rail with such other information regarding the Company's insurances and any such material liability as is referred to in clause 15.2(c) above as Network Rail may reasonably request from time to time.

15.3 Insurance Proposal

An Insurance Proposal shall involve the assumption by Network Rail of an obligation to pay levies not exceeding in aggregate £25 million per annum (or such higher amount as may be agreed by Network Rail and the Company from time to time) to the Company (in addition to those which it otherwise has an obligation to pay under clause 6) in an amount which is sufficient to discharge, and contingent on the Company incurring, uninsured liabilities which would, but for the circumstances specified in clauses 15.2(a) or 15.2(b), have been covered by policies of insurance. It is agreed that there shall be no obligation on Network Rail to agree to any Insurance Proposal, or any of its terms, but in the event of the terms of an Insurance Proposal having been agreed between the Company and Network Rail and between the Company and such of the Members as may be required through charges payable by them to Network Rail (which are not subject to reimbursement by the DfT) to fund costs of Network Rail associated with the Insurance Proposal, the Company shall submit the Insurance Proposal to the ORR (together with a written memorandum explaining the reasons for the Insurance Proposal). The provisions of paragraphs 3.2 to 4.6 (except for paragraph 4.2) of schedule 6 shall apply in the same way as they apply to a Proposal for Change.

15.4 Duty to mitigate

The Company shall take all reasonable steps to mitigate its loss in respect of any matter which may give rise to a claim under a policy of insurance or which might give rise to an obligation of Network Rail to pay additional levies under clause 15.3.

16 NOTICES

16.1 Form of notice

Any notice required to be given under this Agreement shall be in writing in the English language and shall be delivered personally, or sent by electronic mail, by pre-paid first-class post (or air mail if overseas) or by fax, to each of the parties due to receive the notice, at in the case of Network Rail to its electronic mail addresses (if provided), registered office and fax number set out in schedule 1 and in the case of the Company to the electronic mail address, address or fax number set out below:

Company:	Evergreen House, 160 Euston Road, London, NW1 2DX
For the attention of:	The Company Secretary
Fax number:	020 7557 9070
Electronic Mail:	company.secretary@rssb.co.uk

or to such other address, number or addressee as each party may by notice advise from time to time to each of the other parties, but without prejudice to the effectiveness of any notice already given in accordance with this clause 16.1.

16.2 Delivery of notice

16.2.1 General

Any notice given in accordance with clause 16.1 shall be deemed to be given:

- (a) if delivered personally, when left at the relevant address referred to in clause 16.1;
- (b) if sent by electronic mail, on delivery of the electronic mail;
- (c) if sent by mail (other than air mail), three Business Days after it was posted;
- (d) if sent by air mail, six Business Days after it was posted;
- (e) if sent by fax, on completion of its transmission

provided that if, under the above provisions, any such notice would otherwise be deemed to be given after 5pm (local time) on a Business Day, such notice shall be deemed to be given at 9 am (local time) on the next Business Day.

16.2.2 Proof of delivery

In proving the giving of a notice under this clause 16, it shall be conclusive evidence to prove that it was left at the appropriate address or the envelope containing it was properly addressed and posted or the electronic mail was sent in full to the relevant address or the fax was sent in full to the relevant number (as the case may be).

17 MISCELLANEOUS

17.1 Successors and assigns

This Agreement shall be binding on and shall ensure for the benefit of each party's successors.

17.2 Assignment

None of the parties may assign, transfer or create or allow to subsist any security interest over any of its rights or obligations under this Agreement.

17.3 No partnership

Nothing in this Agreement shall create a partnership or (except as set out in clause 3.2.2(a)) establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

17.4 Agreement to prevail over Articles

In the event of any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, the Members shall join in procuring that the Articles are altered to accord with the provisions of this Agreement, which shall prevail.

17.5 Remedies

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law, in equity, by statute or otherwise. Each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law in equity, by statute or otherwise. The election by any party to pursue one or more of such remedies shall not constitute a waiver by such party of the right to pursue any other available remedy.

17.6 Payment of costs

Each of the parties shall be responsible for its respective legal and other costs incurred in relation to the preparation and negotiation of this Agreement.

17.7 Severability

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

17.8 Counterparts

This Agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

17.9 Effect of Agreement

This Agreement shall cease to have effect in relation to a Member who ceases to be a member save in respect of:

- (a) any provision of this Agreement which is expressed to continue after such cessation;
- (b) any liability which at the time of such cessation has accrued to another party or which may accrue in respect of any act or omission occurring prior to such cessation.

17.10 Contracts (Rights of Third Parties) Act 1999

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement

17.11 Governing law

This Agreement shall be governed by and interpreted in accordance with English law.

18 DISPUTE RESOLUTION

18.1 General

Any dispute between Members or between any Member and the Company arising out of or in connection with this Agreement shall be resolved as follows:

- (a) where the parties to the dispute agree, the dispute may be referred for resolution by mediation to be administered and conducted in accordance with RIDRR, the provisions of which are deemed to be incorporated by reference into this Agreement to the extent necessary to give effect to this clause; and
- (b) where either:
 - (i) the parties do not agree to refer a dispute for resolution by mediation pursuant to clause 18.1(a), or
 - (ii) a dispute has been the subject of mediation pursuant to clause 18.1(a) and that mediation has terminated in accordance with paragraph B6 of RIDRR and notice of arbitration has been served pursuant to RIDRR on the Disputes Secretary (as defined in RIDRR) by the party wishing to begin the arbitration within 28 days of such termination

then the dispute shall be referred for determination by arbitration to be administered and conducted in accordance with RIDRR, the provisions of which are deemed to be incorporated by reference into this Agreement to the extent necessary to give effect to this clause

18.2 Disputes regarding unpaid sums

Where a dispute arises between the Company and a Member relating to the failure of such Member to pay any sums due from it to the Company pursuant to clause 6 of this Agreement (it being agreed that such sums shall constitute a debt immediately due and owing from the relevant Member to the Company), at the option of the Company such dispute shall be referred to the courts of England in which case the parties to this Agreement agree to submit to the exclusive jurisdiction of the courts of England in respect of such dispute.

18.3 Failure to resolve disputes

If the referral of a dispute under clause 18.1 for resolution by mediation and/or for determination by arbitration fails because the RIDR Council (as defined in RIDRR) or the Disputes Secretary (as defined in RIDRR) declines or is unable to administer such mediation and/or arbitration or the dispute cannot be administered or conducted pursuant to RIDRR for any other reason, then the provisions of clause 18.1 shall be deemed no longer to apply to such dispute and such dispute shall be subject to the exclusive jurisdiction of the courts of England.

18.4 Provisional relief

Nothing in this clause 18 shall prevent a party to a dispute from seeking provisional relief and/or conservatory measures (whether negative or positive and notwithstanding whether the relief and/or measures sought may overlap with a remedy which is, or may be, claimed in proceedings between the parties) from the courts of England and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate as set out in clause 18.1 of this Agreement.

IN WITNESS whereof this Agreement was entered into on the day and date first above written.

SCHEDULE 1
THE FIRST MEMBER

Network Rail Infrastructure Limited

40 Melton Street
London NW1 2EE

For the attention of: The Group Company Secretary

Fax number: 020 7557 9029

email address: hazel.walker@networkrail.co.uk

**SCHEDULE 2
APPLICATION FORM**

The Directors
Rail Safety and Standards Board Limited (the “**Company**”)
Evergreen House
160 Euston Road
London NW1 2DX

20•

Dear Sirs

We hereby apply for membership of the Company and agree that if the Company is wound up while we are a member or within one year after we cease to be member, we will contribute such amount as may be required (not exceeding £100) to the assets of the Company.

Yours faithfully

.....

For and on behalf of

•

5. This Agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Agreement has been executed by the New Member and the Company (for itself and as agent for the Members) on the date first above written.

SIGNED by

.....
for and on behalf of
RAIL SAFETY AND
STANDARDS BOARD LIMITED
(for itself and as agent for each
of the Members)

.....
Director

SIGNED by

.....
for and on behalf of the
New Member

.....
Director

SCHEDULE 4 RESERVED MATTERS

Part A

- 1 Adoption of, any material departure from or any material amendment to strategies prepared by the Board designed to set out how the Primary Objective and the Principles of Operation will be achieved by the exercise of the Functions.
- 2 Approval of any amendment to the Code or of any revised version of the Code
- 3 Approval of the carrying out by the Company of activities as contemplated by clauses 2.7 or 2.8 of this Agreement.

Part B

- 1 Adoption of or any material amendment to the Railway Group Safety Plan.

Part C

- 1 Appointment (other than in respect of the appointments described in clauses 4.2.1, 4.2.2 or the appointment of the First Directors) and removal of Directors to or from the Board of the Company (other than Directors appointed pursuant to clauses 4.2.2 and 4.2.3).
- 2 Approval of, any material departure from or any material amendments to the Company's annual Budget.
- 3 Approval of the entry by the Company into any borrowing or other financing facilities.

SCHEDULE 5 THE FIRST DIRECTORS

Executive Directors

John Self
Aidan Nelson
Mathias Walter

Non Executive Directors

First Non-Industry Directors

Denis Tunncliffe
Sir Frank Davies
Hans Ring
Tom Cox
Richard Profit

First Industry Directors

<i>Name of Directors</i>	<i>Associated with the category of members described in the Agreement</i>
Adrian Shooter	clause 3.3.1(a)
John Penney	clause 3.3.1(f)
Chris Leah	clause 3.3.1(c)
Andy Rose	clause 3.3.1(e)
David Waboso	clause 4.2.4
Allen Johnson	clause 3.3.1(b)
Tim Gilbert	clause 3.3.1(d)

SCHEDULE 6
CHANGES TO THIS AGREEMENT, THE ARTICLES OR THE MEMORANDUM OF
ASSOCIATION

1 Receipt and notification of Proposals for Change

1.1 Entitlement to make Proposal for Change

Any Member or the Company shall be entitled to make a Proposal for Change for consideration and, if thought fit, approval by the Company in general meeting. Any such proposal shall (unless made by the Company) be sent to the Company and shall:

- (a) be in writing;
- (b) contain reasonable particulars of the change proposed; and
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed change.

1.2 Reviews carried out by the Board

Notwithstanding paragraph 1.1, the Board:

- (a) shall not less frequently than every five years cause the provisions of this Agreement, the Articles and the memorandum of association of the Company to be reviewed for the more effective achievement of the Primary Objective, having regard to the circumstances then existing and shall, if it considers it appropriate to do so, make Proposals for Change; and
- (b) may, if it considers that the aggregate Annual Turnover of the Members designated by the Board as falling within either of the categories described in clauses 3.3.1(d) or 3.3.1(f) is substantially unrepresentative of the economic activity of the sector represented by that category and that the total voting rights of that category exercisable at general meetings of the Company (as set out in the Articles) are accordingly disproportionately high, make a Proposal for Change with a view to reducing the voting rights which may be exercised by that category of Members at general meetings of the Company.

1.3 Notice of Proposal for Change

The Company shall, within 7 days following receipt of a Proposal for Change from any Member (or in the case of a Proposal for Change made by the Company, within 7 days following the

Board resolving to propose such Proposal for Change) or, if later, within 7 days following receipt of any clarification that the Company may reasonably request from the sponsor of that proposal:

- (a) give notice of that proposal to each Member, the HSE, the ORR and the DfT; and
- (b) invite the submission to the Company of written representations (other than from the ORR) in respect of that proposal within such period as is reasonable in all the circumstances (the “**Consultation Period**”), being a period of not less than 30 days from the date of notification under paragraph (a) above.

1.4 Calling of meeting to consider Proposal for Change

The Company shall, within the period of 30 days following the end of the Consultation Period:

- (a) give notice to convene a general meeting of the Company; and
- (b) supply the Proposal for Change to each Member together with:
 - (i) copies of all representations received pursuant to paragraph 1.3(b); and
 - (ii) if the sponsor of the proposal consents, any modification of that proposal.

1.5 Material modification of Proposal for Change

If at any time a Proposal for Change is (with the consent of its sponsor) modified in a material way, the Company shall treat the proposal as a new Proposal for Change.

1.6 Clarification

The sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of the Company for further clarification of the proposal.

2 Consideration by Members in general meeting

2.1 Voting passmark

The Members in general meeting shall consider and, if thought fit, approve each Proposal for Change. A Proposal for Change shall have been approved only if approved by Members holding eighty per cent. or more of the total voting rights exercised in respect of that resolution on a poll at a general meeting of the Company. If a Proposal for Change is not so approved by the Members in general meeting in accordance with this paragraph 2.1 but Members of not fewer than four of the six categories of Members described in clauses 3.3.1(a)-(f) would, if each of those categories had voted as a class, have approved the Proposal for Change by exercising eighty per cent. or more of the total voting rights exercised by Members falling within that category in respect of that resolution on a poll, then any Member shall be entitled to require the

Company to convene another general meeting of the Company to reconsider the Proposal for Change.

2.2 Further consultation

The Company shall, as soon as reasonably practicable following a request by the Members in general meeting to carry out further consultation in respect of any Proposal for Change, carry out that further consultation.

2.3 Appeal procedure

2.3.1 General

If a Proposal for Change is not approved in accordance with paragraph 2.1 by the Members in general meeting at two general meetings but Members of not fewer than four of the six categories of Members described in clauses 3.3.1(a)-(f) would, if each of those categories had voted as a class, have approved the Proposal for Change at each of those meetings by exercising eighty per cent. or more of the total voting rights exercised by Members falling within that category in respect of that resolution on a poll, then any Member shall be entitled to give a notice of appeal against it to the ORR. The ORR may adopt such procedures as he thinks fit in considering such appeals. The ORR may publish ORR's Appeal Procedures to be adopted in respect of appeals to the ORR pursuant to this paragraph 2.3.1. The ORR's Appeal Procedures shall apply to such appeals as the ORR so directs.

2.3.2 Liability of the ORR

Where any Member shall have given a notice of appeal, the ORR shall not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the appeal.

2.3.3 Determination of the ORR

The determination of the ORR shall be final and binding on all Members and the Company.

3 Consequences of recommendation by Members in general meeting

3.1 Decision to approve a Proposal for Change

The Company shall, as soon as reasonably practicable following the passing of a resolution by the Members in general meeting to approve a Proposal for Change, submit the proposal to the ORR, together with a written memorandum:

- (a) explaining the reasons for the proposed change;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to paragraph 1.3(b) which shall have been neither accepted nor withdrawn); and
- (c) stating the reasons for any dissent from that decision by any Member (insofar as such reasons are known by the Company).

3.2 Provision of Information by Members

Members shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the ORR.

3.3 Effect of Proposal for Change

3.3.1 General

No Proposal for Change shall have effect unless the ORR (after consultation with the HSE and the DfT) gives notice to the Company in writing that the ORR approves the Proposal for Change.

3.3.2 Notice

The Company shall, if the ORR gives his approval of the Proposal for Change, give written notice to all Members of such approval and the Members and the Company shall immediately be bound by the Proposal for Change and shall execute such documents and shall do such acts and things as may be necessary or requisite to give effect to the Proposal for Change.

4 Notification of Change

4.1 Notification to parties

The Company shall notify any change made in accordance with this schedule 6, to all Members as well as to the HSE, the ORR and the DfT.

4.2 Arrangements for implementation of a change

The Members in general meeting may determine whether a change made in accordance with this schedule 6 shall have effect on a single date or series of dates and the Company shall give notice of such determination to all relevant parties at the same time as it provides notification pursuant to paragraph 4.1.

4.3 Effective date of change

The Company shall determine the applicable effective date or series of dates provided that such date or series of dates commences after the expiry of 21 days from the date of notification made pursuant to paragraph 4.1.

4.4 Approval of the ORR

Any determination made pursuant to paragraph 4.2 or 4.3 shall be subject to the approval of the ORR.

4.5 Maintenance of records

The Company shall keep and retain, for a period of 6 years following receipt, records of all representations made in respect of any Proposal for Change.

4.6 Access to records

The records referred to in paragraph 4.5 shall be open for inspection by Members during reasonable office hours and without charge. Any person inspecting any such records shall be entitled upon request to be provided with copies of the whole or any part of them at a cost not exceeding £0.20 per sheet.

SIGNED by and on behalf of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)

.....
Director/Duly Authorised

SIGNED by and on behalf of)
RAIL SAFETY AND)
STANDARDS BOARD)
LIMITED)

.....
Director/Duly Authorised