

Dated 1 April 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,

29 JUNE 2006, 10 DECEMBER 2010,

10 NOVEMBER 2011, 13 FEBRUARY 2014, 8 FEBRUARY 2018

AND

01 NOVEMBER 2018

(TO TAKE EFFECT FROM 1 April 2019)

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

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THIS AGREEMENT is dated 1 April 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 The Helicon, One South Place, London EC2M 2RB (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.
- (B) The Company has been established to give effect to the Primary Objective and the Principles of Operation as may be amended from time to time pursuant to the terms of this Agreement.
- (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, 29 June 2006, 10 December 2010, 10 November 2011, 13 February 2014 and 8 February 2018 and 01 November 2018 has amended this Agreement in accordance with the provisions set out at Schedule 5 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:

“**Affected Member**” has the meaning ascribed to it in clause 3.4;

“**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 3.4(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 3.2.1(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 in respect of any Financial Year, a Budget prepared in accordance with clause 6.1 and approved by a Reserved Resolution in accordance with clause 4.4.6;

“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 an annual budget prepared pursuant to clause 6.1;

“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;

“Business Plan” means a business plan prepared by the Company’s chief executive and approved by the Board following consultation with Members (as amended or updated from time to time in accordance with this Agreement), and which shall set out how the Company will deliver its Primary Objective including the products and services to be delivered and the resources, funding and general management arrangements required by the Company for the applicable period;

“Certificate” means a certificate for the purposes of clauses 3.2.4 or 6.1.7 (as the case may be) regarding the Annual Turnover of a Member (broken down, if provided pursuant to clause 3.2.4, by reference to the categories of activities respectively set out in clauses 3.2.1(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 approved by the ORR and published by the Company in 2013 (Issue 4) (as amended from time to time);

“Companies Act” means the Companies Act 2006;

“Company’s Intellectual Property” means the Intellectual Property;

- (a) 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; and
- (b) has been created, developed or acquired to provide products and services to Members solely from applying the funds made available by Members pursuant to clause 6 of this Agreement;

and excludes Intellectual Property the Company has a right to license which has been created, developed or acquired (whether in whole, or in part) using funds made available other than pursuant to clause 6 of this Agreement;

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

“CPI” means the Consumer Price Inflation Index 00: All Items (base year 2015) as published by the Office for National Statistics, from time to time;

“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 HM Revenue and Customs 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 subsidiary undertakings 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 3.4;

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

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

“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 an entity, that entity and any entity which is a parent undertaking or subsidiary undertaking of that company and any subsidiary undertaking of any such parent

undertaking; and for the purposes of this Agreement “**subsidiary undertaking**” and “**parent undertaking**” have the meanings ascribed to them by section 1162 of the Companies Act;

“**In Confidence Information**” has the meaning ascribed to it by clause 9.2(b);

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

“**Infrastructure Manager or Owner**” means any public body or undertaking responsible for:
(i) establishing railway infrastructure, control and safety systems; and/or (ii) maintaining railway infrastructure and operating the control and safety systems;

“**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 Railways Act (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 as amended 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 9.2(a);

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

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

“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 Articles, together with any modification of that proposal as referred to in paragraph 1.5 of Schedule 5;

“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 Delivery Group” means Rail Delivery Group Limited, a company incorporated in England and Wales with registered number 08176197;

“Rail Industry Standards” has the meaning ascribed to it in the Standards Manual;

“Rail Network” means:

- (a) the network of which Network Rail or any successor organisation or organisations is the Infrastructure Manager or Owner; and
- (b) the network of which any other Infrastructure Manager or Owner which is for the time being a member of the Company in accordance with clause 3.1.1(d) is the Infrastructure Manager or Owner;

“railway” has the wider meaning ascribed to it under section 81(2) of the Railways Act

“Railway Group” means:

- (a) Network Rail or any successor organisation and any Train Operator or Station Operator which has a safety management system under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 for operation on or in relation to infrastructure managed by Network Rail or any successor organisation; and
- (b) any other Infrastructure Manager or Owner which is a member of the Company and any other Train Operator or Station Operator which has a safety management system under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 for operation on or in relation to infrastructure managed by that Infrastructure Manager or Owner; and
- (c) the Company;

“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;

“the Railways Act” means the Railways Act 1993;

“Relevant Amount” has the meaning ascribed to it in clause 3.4;

“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 9.2(c);

“RIDRR” means the Railway Industry Dispute Resolution Rules dated 1 November 2015 (as amended from time to time);

“Stakeholder” means:

- (a) any Member and any person who notifies the Company of its intention to become a Member;
- (b) any Funder;
- (c) any body representing rail users;
- (d) any trade union, any of whose members are employed by any persons falling within (a) above;
- (e) any statutory body whose functions include the investigation of railway accidents and incidents;
- (f) the Rail Delivery Group; and

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

“**Standards Manual**” means the manual published by the Company in 2014 (Issue 3) (as amended from time to time) pursuant to the Code;

“**Station Operator**” means any person responsible for managing and operating a station on the rail infrastructure holding a licence under section 8 of the Railways Act or required to maintain a safety management system under the Railway and Other Guided Transport Systems (Safety) Regulations 2006;

“**Successor Member**” has the meaning ascribed to it in clause 3.4;

“**Supplier**” means:

- (a) any person other than a Train Operator or Infrastructure Manager or Owner whose business activities or any goods which he manufactures or owns comply, directly or indirectly, with national or international standards and specifications relevant to the railway such as Railway Group Standards, Rail Industry Standards and TSIs; and
- (b) any person other than a Train Operator or Infrastructure Manager or Owner 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 or organisation that operates a train on rail infrastructure: holding a licence under section 8 of the Railways Act, or bound by the Statement of National Regulatory Provisions, or required to maintain a safety management system under the Railway and Other Guided Transport Systems (Safety) Regulations 2006;

“**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 3.3.3, the date on which (i) a Member gives the Company notice under clause 3.3.2(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 3.1.1(a)-(d) subject to clause 3.4, or (iii) the Board resolves that a Member shall cease to be a member of the Company pursuant to clause 3.3.2(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 or any Decisions

adopted by the European Commission 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, European Union legislative 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 Railways 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;
- (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 in 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 DfT; and
- (f) general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling with the general words. Any phrase introduced by the terms “other”, “including”, “in particular”, “such as” and “focus” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 PRIMARY OBJECTIVE AND PRINCIPLES OF OPERATION OF THE COMPANY

2.1 Primary Objective

2.1.1 The Company's primary objective shall be to support its members to deliver a safe, efficient, and sustainable railway, by:

- (a) enabling cross-industry collaboration and cooperation;
- (b) conducting independent evidence-based analysis and research; and
- (c) providing a whole system perspective to support decision making.

The Company will fulfil its Primary Objective through the delivery of functions and services in accordance with the Principles of Operation and as set out in the Business Plan and may undertake such other activities, actions or matters (including those commissioned by member or non-member organisations) as the Board considers to be desirable to achieve, or are incidental or conducive to, the Primary Objective.

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 efficiency and economy on the part of persons providing railway services;
 - (iii) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
 - (iv) to demonstrate leadership and efficiency in the development and management of its support functions;
 - (v) to support and take account of relevant strategies that are promoted or endorsed by the Rail Delivery Group;
 - (vi) to be accountable to its members for identified elements of industry process;
 - (vii) to lead for the whole industry in areas where a) by virtue of its functions it holds industry leading competence, or b) requested by the industry through its Board;
 - (viii) to maintain the independence of the Company, and, where appropriate, to challenge or act as a conscience for the industry with respect to the functions it fulfils;
 - (ix) to provide an industry audit trail for the industry decisions it facilitates; and
 - (x) to promote solutions that recognise the railway as a system and the respective interests of different Railway Industry Parties;

- (b) where it is necessary to impose restrictions on Railway Industry Parties, 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)-(x).

2.2.2 Transparency and Non-Discrimination

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 **Publication of activities**

The Company shall Publish the activities it is engaged in, from time to time, on its website.

3 MEMBERSHIP

3.1 **Admission to membership**

3.1.1 General

The Board shall admit to membership of the Company:

- (a) Network Rail and each holder of a licence under section 8 of the Railways Act if such persons are required to become members of the Company under the terms of their respective licences;

and may admit:

- (b) any Supplier which is not required by the terms of any licence held by it under section 8 of the Railways 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 Railways Act to become a member of the Company; and
- (d) any Infrastructure Manager or Owner (other than Network Rail)

3.1.2 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 substantially 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 3.2.2, 3.2.4 and (if applicable) clauses 6.1.6 and 6.1.7 by no later than 30 days from the date of such person becoming a member of the Company; .

3.2 Designation and categorisation of membership

3.2.1 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) freight and other non-passenger Train Operators (excluding any party which operates freight and other non-passenger trains wholly or mainly in connection with its role as an infrastructure contractor);
- (c) Network Rail and other Infrastructure Managers or Owners;
- (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 Manager or Owner 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 Manager or Owner which is a member of the Company, is the Infrastructure Manager or Owner and operates such trains wholly or mainly in connection with its role as an infrastructure contractor;

and

(f) Suppliers (including rolling stock manufacturers).

3.2.2 Categorisation based on Annual Turnover

If a Member's activities fall within more than one of the categories set out in clauses 3.2.1(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).

3.2.3 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 3.2.1(a), 3.2.1(b) and 3.2.1(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 3.2.1(d), 3.2.1(e) and 3.2.1(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 3.2.1(a)-(f) at that time (if appropriate, determined by reference to its most recently published audited accounts).

3.2.4 Provision of financial information

If a Member is not able to provide audited accounts as required by clause 3.2.2 or 3.2.3 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.

3.2.5 Confidentiality

The Company shall keep confidential all information provided by each Member pursuant to clause 3.2.2, 3.2.3 or 3.2.4 and such information shall be treated as Restricted Information (unless the Member supplying such information agrees otherwise) in accordance with the provisions of clause 9.

3.2.6 Failure to provide information required

If a Member fails to provide the information required by the Company pursuant to clause 3.2.2, 3.2.3 or 3.2.4 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 Cessation and transferability of membership

3.3.1 Cessation of membership of holders of licences under section 8 of the Railways Act

A Member of the description set out in clause 3.1.1(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.

3.3.2 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 3.1.1(a), save where such cessation is agreed by the ORR to be in accordance with his duties under section 4 of the Railways 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 3.4, if a Member ceases to fall within any of the descriptions set out in clauses 3.1.1(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 3.1.1(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.

3.3.3 Voting and cessation of membership

Nothing in clause 3.3.2 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 relating to a period commencing after the cessation of membership.

3.3.4 Transferability of membership

Membership shall not be transferable.

3.4 Train Operators and Franchise Agreements

This clause 3.4 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 Railways 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:

$$A = B \times \frac{C}{365}$$

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 days 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 3.4(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 3.4(b)(iv) and such information shall be treated as Restricted Information (unless the Affected Member agrees otherwise) in accordance with the provisions of clause 9;
- (c) if clauses 3.4(a) or 3.4(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 3.4(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 3.4(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.

3.5 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 14 Directors of whom:

- (a) not more than 3 shall be executive Directors;
- (b) not more than 3 (including any person appointed to be both a Director and chairman of the Board in accordance with clauses 4.2.2 and 4.4.5) nor fewer than 2 shall be non-executive Directors who have satisfied the criteria set out in Article 66 of the Articles; and
- (c) not more than 8 shall be non-executive Directors who have relevant experience of the Railway Industry, who shall be appointed pursuant to clause 4.2.2.

4.2 Appointment of Directors

4.2.1 Appointment of Directors

Subject to clause 4.2.2, 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.

4.2.2 Industry Directors

Each of the categories of members described:

(a) in clauses 3.2.1(b) and 3.2.1(d) to 3.2.1(f) shall have the right to appoint and maintain in office one non-executive Director;

(b) in clauses 3.2.1(a) and 3.2.1(c) shall have the right to appoint and maintain in office two non-executive Directors, provided that any person appointed and maintained in office by the category of members described at clause 3.2.1(a) shall at all times occupy a post with responsibility for operational activities within the Railway Industry,

(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 61 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 61 of the Articles.

4.2.3 Appointment of Directors at general meetings

Except as set out in clauses 4.2.1 and 4.2.2, Directors shall be appointed by the Members in general meeting in accordance with clause 5.3.

4.2.4 Directors' duties

The Members acknowledge and agree that:

(a) all Directors shall act in accordance with the statutory obligations of directors set out in the Companies Act (including promotion of the success of the Company and avoidance of conflicts of interest) and any policies and procedures that the Board may from time to time adopt in furtherance of the principles of good corporate governance; and

(b) Industry Directors (including those appointed pursuant to clause 4.2.2(b)) shall, in carrying out their duties as Directors of the Company, take due consideration of the interests of the Members and the Railway Industry as a whole.

4.2.5 Term of appointment

Directors (other than executive Directors) shall be appointed for a fixed term of not less than 2 years and not exceeding 3 years and, except in the case of Directors appointed pursuant to clauses 4.2.1 and 4.2.2, Directors shall only be removed in accordance with this Agreement. Except in the case of executive Directors a person shall not be re-appointed to serve more than three fixed terms or nine years' service as a Director.

4.3 Disqualifying Interest

Without limiting Articles 74-76 of the Articles, the Company shall ensure that no Relevant Employee of the Company shall have a Disqualifying Interest except:

- (a) with the prior approval of the Audit and Risk Committee 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 Audit and Risk Committee has been given in respect of that person's appointment and/or continuation in office as a Director; or
- (b) to the extent that the Relevant Employee is an Industry Director and the Disqualifying Interest arises solely from their employment in the Railway Industry.

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 2 months 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 at least one non-executive Director appointed by each category of member described in clause 3.2.1 pursuant to clause 4.2.2 and one Non-Industry Director.

4.4.3 Involvement of the ORR and the DfT

The Members agree that the ORR and the DfT 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 and the DfT (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:

- (i) transact the matter described in Schedule 4 Part A; or
- (ii) approve the Company's annual Budget, or any material departure from or any material amendment to it;

in either case by the passing of a unanimous resolution by those Directors entitled to vote in the matter pursuant to the Articles (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 and Risk Committee, Remuneration Committee and Appointments Committee**

4.5.1 General

The Board shall appoint and maintain an Audit and Risk 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. Each committee shall be entitled (in accordance with the provisions of Articles 58 and 89) to co-opt persons with relevant professional skills and expertise as members of the committee for the purposes of providing advice to the committee on matters under consideration.

4.5.2 Audit and Risk Committee

The membership of the Audit and Risk Committee shall consist of non-executive Directors of the Company plus any persons co-opted pursuant to Articles 58 and 89 and shall consist of not less than three non-executive Directors. The Audit and Risk Committee shall monitor risks, 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 of non-executive Directors of the Company plus any persons co-opted pursuant to Articles 58 and 89 and shall consist of not less than three non-executive Directors (at least half 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 and benefits of all executive Directors of the Company and all senior employees of the Company who are not Directors identified by the Board from time to time and including any employee whose annual base salary (excluding employer pension contributions, bonuses, travel expenses, car allowances and other benefits in kind) is in excess of £120,000 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 of non-executive Directors of the Company, at least two of whom shall be Non-Industry Directors plus any persons co-opted pursuant to Articles 58 and 89. 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 and 4.2.2) and all senior employees of the Company who will not be Directors identified by the Board from time to time and including any employee whose annual base salary (excluding employer pension contributions, bonuses, travel expenses, car allowances and other benefits in kind) will be in excess of £120,000 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 and the DfT

The Members agree that the ORR 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 (in the case of Part A of Schedule 4), the power of the Company to:

- (a) transact either of the matters described in Part A or Part B 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 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 Articles and the Companies Act, 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 Funding and budget arrangements

The Board shall determine the levies payable by Members admitted to membership of the Company on or after 1 April 2019 and designated by the Board as falling within the category of members described in clause 3.2.1(c) using the methodology applied in determining the levies payable by the existing members falling within the category of members described in clause 3.2.1(c).

6.1.1 Funding Arrangements

The Company shall be funded on a five year cycle commencing 1 April 2019, whereby levies will be fixed in year one of that cycle with annual adjustments then made in accordance with

this Agreement. The Company's funding will include levies paid by Members in accordance with clause 6, grants received from the Department for Transport and other funders for specific purposes, payments from Members and other parties for specific services and such other income as the Company may receive through its operations. Toward the end of each five year period the Board will initiate a review of the levies as set out in clause 6.7. In the event that the Members do not agree any changes to the levies through the review, the funding provisions set out in this Agreement will continue.

6.1.2 Board review of Budget

The Company's chief executive shall prepare an income and expenditure Budget in respect of each Financial Year, taking account of the expected revenues from all sources and the planned activities of the Company and the Business Plan. The Budget shall be submitted to the Directors for consideration and approval pursuant to clause 4.4.6 of this Agreement, whereupon it will become the Approved Budget. The review and approval by Directors will consider the proposed priorities and resource allocation put forward by the Company's chief executive and will be finalised in a manner that the Directors consider best achieves the Primary Objective and the Principles of Operation, taking account of the available funding.

6.1.3 Circumstances under which Directors may revise the membership fees

The Directors may by a Reserved Resolution revise the levies provided for in this clause 6 if it appears to them that the balance between income attributable to Member-funded activity, and the costs of that same activity for any year is likely to involve a deficit of more than £1.5m (at 1 April 2019 price level) but they are under no obligation to do so if they consider that the deficit can be corrected within a reasonable period of time. Before revising such levies, the Directors shall consult with Members and shall provide at least 30 days' written notice of any intention to revise the levies. If, following consultation, the Directors decide by Reserved Resolution to revise the levies they shall be entitled to do so up to a maximum of 150% of the levies that would otherwise apply in the relevant Financial Year, do so in a manner that is equitable as between all Members and shall use all reasonable endeavours to return levies to the levels anticipated by this Agreement at the earliest opportunity.

Levies in respect of the Financial Year commencing 1 April 2019.

For the Financial Year commencing 1 April 2019, the Members shall pay to the Company as a levy the following amounts:

- (a) each Member designated by the Board as falling within any of the categories described in clauses 3.2.1(b) and 3.2.1(d)-3.2.1(e) and those Members falling within the category described in clause 3.2.1(a) which do not operate services pursuant to a Franchise Agreement shall pay the amount set out in column two of the table set out below in this

clause 6.1.3 which is applicable to its Annual Turnover during its most recently completed financial year:

(1)	(2)
Annual Turnover	Amount of levy payable in the Financial Year commencing 1 April 2019
Less than £3.33 million	£1,200
£3.33 million or more but less than £10 million	£5,900
£10 million or more but less than £100 million	£23,600
£100 million or more	£70,700

(b) each Member designated by the Board as falling within the category described in clause 3.2.1(f) shall pay the amount set out in column two of the table set out below in this clause 6.1.3(b) which is applicable to its Annual Turnover during its most recently completed financial year:

(1)	(2)
Annual Turnover	Amount of levy payable in the Financial Year commencing 1 April 2019
Less than £3.33 million	£1,200
£3.33 million or more but less than £100 million	A sum determined by multiplying the Member's Annual Turnover by 0.000354 and rounding the resulting figure up or down (as appropriate) to the nearest £100
£100 million or more	£35,400

(c) Members falling into the category described in clause 3.2.1(a) (other than passenger Train Operators which do not operate services pursuant to a Franchise Agreement) and clause 3.2.1(c) shall pay the levies set out in Schedule 6 to this agreement.

6.1.4 Levies in respect of the Financial Years commencing 1 April 2020, 1 April 2021, 1 April 2022 and 1 April 2023.

For the Financial Years commencing 1 April 2020, 1 April 2021, 1 April 2022 and 1 April 2023, the Members shall pay to the Company as a levy the following amount.

$$\text{Levy payable in the relevant Financial Year} = A + A \times \left(\frac{B-C}{C}\right)$$

Where:

“A” is the levy payable by the relevant Member under clause 6.1.3 above;

“B” is the value for CPI in the July immediately prior to the commencement of the relevant Financial Year; and

“C” is the CPI in July 2018.

The Company shall notify Members of the amounts payable pursuant to this clause 6.1.4 in respect of any Financial Year not less than 30 days prior to the commencement of that Financial Year.

6.1.5 Payment of levies

Levies payable by Members in respect of a Financial Year (including any variation to them resolved by the Board pursuant to clause 6.1.3) shall be payable by four equal payments on 1 April, 1 July, 1 October and 1 January during that Financial Year, unless a Member elects to pay upfront in full or 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 Financial Year. Subject to approval of the Board, the Company can agree in writing a payment profile with individual Members such that they can overpay or underpay annual levies for any year as long as the total levies payable by the Member (annually adjusted as per 6.1.4) over the period of membership or the Company’s five year funding cycle remains unaffected by any under or over payment. Levies paid by Members to the Company shall not be refundable or repayable by the Company in any circumstances.

6.1.6 Annual Turnover

Not later than 2 months prior to the commencement of any Financial Year, each Member except for those categories of Member whose levies are calculated by reference to Schedule

6 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).

6.1.7 Provision of financial information

If the Member is unable to provide audited accounts as required by clause 6.1.6 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.

6.1.8 Confidentiality

The Company shall keep confidential all information provided by each Member pursuant to clauses 6.1.6 and 6.1.7 and such information shall be treated as Restricted Information (unless the Member supplying such information agrees otherwise) in accordance with the provisions of clause 9.

6.1.9 Failure to provide information required

If a Member fails to provide the information required by the Company pursuant to clauses 6.1.6 and 6.1.7 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.

6.1.10 New Members

(a) Any new Member, other than a new member who is a Train Operator providing services pursuant to a Franchise Agreement admitted to membership of the Company during a Financial Year shall pay a levy for that Financial Year calculated as follows:

$$D = E \times \frac{F}{365}$$

Where:

“D” is equal to the amount of the levy payable for that Financial Year in accordance with clause 6;

“E” is equal to the number of whole days which will elapse between the date of admission to membership of that Member and the end of the 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 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 Financial Year).

- (b) Any new Member which is a Train Operator providing services pursuant to a Franchise Agreement admitted to membership of the Company during a Financial Year shall pay a levy for that Financial Year calculated in accordance with the provisions of clause 3.4 unless there has been a remapping of franchises and it is not, in the reasonable opinion of the Company, possible to calculate the levies in accordance with that clause. Where this situation applies, the levy that the new member will pay will be as follows

$$P = Q \times \frac{R}{365}$$

Where:

“P” is equal to the levy payable for that Financial Year by the new Member in accordance with clause 6;

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

“R” is equal to 0.1% of relevant annual turnover

The sum determined by “P” will be inserted into Schedule 6 and shall in subsequent years of membership be the subject of the annual indexation.

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

6.2 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.

6.3 **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.

6.4 **Borrowings**

Subject to the Company obtaining the approval of Members in accordance with clause 5.3 where so required, 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.

6.5 **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.

6.6 **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.

6.7 **Review and Changes**

Commencing in the fourth year of any five year funding cycle, the Directors will initiate a review of the arrangements for funding, the adequacy of such funding, and any lessons learned, in the current period, and if they consider that adjustments are appropriate and will require a change to this Constitution Agreement will initiate changes to these arrangements in accordance with Schedule 5.

7 **ANNUAL REPORT AND ACCOUNTS**

7.1 **Accounts**

The Company shall publish its annual accounts of the Company for each Financial Year to its Members in accordance with the Articles and the Companies Act and shall, to the extent it is lawfully able to, make available to Members such information as they may reasonably request by notice in writing to the Company.

7.2 **Accounting and financial records**

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

7.3 **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 its functions under Part I of the Railways 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 **DIVIDEND POLICY**

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

9 **CONFIDENTIALITY**

9.1 **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.

9.2 **Categorisation of information provided**

Subject to clause 9.8, 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 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 9.6, not to the Members) 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) or the Company's Members) 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.

9.3 **Restricted Information**

Subject to clause 9.8, 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.

9.4 **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.

9.5 **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 9 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 10) providing any licence of any right or Intellectual Property owned by or licensed to the provider of such information connected to the disclosed information.

9.6 **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.

9.7 **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.

9.8 **Railway Group Standards**

The provisions of clauses 9.2 and 9.3 shall not apply in respect of information which a Member is obliged to provide to the Company in accordance with a Railway Group Standard.

9.9 **Effect of confidentiality provisions**

The provisions set out in this clause 9 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.

10 **INTELLECTUAL PROPERTY**

10.1 **Licence granted to Members**

Subject to the obligations set out in clause 9 and clause 10.5, the Company hereby grants to each of its Members a non-exclusive, royalty-free, world-wide, non 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.

10.2 **Licence granted to the Company**

Subject to the obligations set out in clause 9, 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).

10.3 In Confidence and Restricted Information

Nothing in this clause 10 shall grant any licence whatsoever to the Company in respect of In Confidence Information or Restricted Information.

10.4 No right of recourse

No Member shall have a right of recourse against the Company in respect of the licence granted under clause 10.1, 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.

10.5 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 10.1, unless such charging has been approved by the Board.

11 REVIEW AND AMENDMENT

11.1 General

Subject to clause 11.2, the provisions of Schedule 5 shall have effect in respect of the review and amendment of this Agreement or the Articles.

11.2 Approval of the ORR

The amendment or termination of this Agreement, or any amendment of 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.

12 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 support each Member who holds a licence under section 8 of the Railways Act which contains either of the Licence Conditions in complying with the Licence Conditions applicable to membership of the Company (as amended from time to time);
- (b) any Member who holds a licence under section 8 of the Railways 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 Railways Act in respect of those paragraphs of the relevant Licence Condition applicable to membership of the Company.

13 INSURANCE

The Company shall maintain such insurance as is necessary to comply with its legal obligations, together with any further insurance that the Board considers appropriate from time to time.

14 NOTICES

14.1 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 or by pre-paid first-class post (or air mail if overseas), to each of the parties due to receive the notice, in the case of Network Rail to its electronic mail addresses (if provided) or registered office set out in Schedule 1 and in the case of the Company to the electronic mail address or registered office address set out below:

Company: The Helicon, One South Place, London EC2M 2RB

For the attention of: The Company Secretary

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 14.1.

14.2 Delivery of notice

14.2.1 General

Any notice given in accordance with clause 14.1 shall be deemed to be given:

- (a) if delivered personally, when left at the relevant address referred to in clause 14.1;
- (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,

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 9am (local time) on the next Business Day.

14.2.2 Proof of delivery

In proving the giving of a notice under this clause 14, 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 (as the case may be).

15 MISCELLANEOUS

15.1 Successors and assigns

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

15.2 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.

15.3 No partnership

Nothing in this Agreement shall create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

15.4 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.

15.5 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.

15.6 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.

15.7 **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.

15.8 **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.

15.9 **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.

15.10 **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.

15.11 **Governing law**

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

16 **DISPUTE RESOLUTION**

16.1 **General**

Subject to clause 16.2, 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 16.1(a); or
- (ii) a dispute has been the subject of mediation pursuant to clause 16.1(a) and that mediation has been terminated or deemed unsuccessful by any party (including the mediator), in accordance with Rule 3.7 of RIDRR,

then the dispute shall be referred for determination by arbitration in accordance with the Arbitration Act 1996.

16.2 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 and Wales in which case the parties to this Agreement agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of such dispute.

16.3 Provisional relief

Nothing in this clause 16 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 16.1 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

Kings Place, 90 York Way, London N1 9AG

For the attention of: The Group Company Secretary

email address: [to be inserted]

Schedule 2
APPLICATION FORM

The Directors
Rail Safety and Standards Board Limited (the “Company”)
The Helicon
One South Place
London
EC2M 2RB

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 a 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 Approval of any amendment to the Code or of any revised version of the Code

Part B

- 1 Appointment (other than in respect of the appointments described in clauses 4.2.1 or 4.2.2) and removal of Directors to or from the Board of the Company (other than Directors appointed pursuant to clauses 4.2.1 and 4.2.2).

Part C

- 1 Approval of the Company's entry into any borrowing or financing facilities other than those:
 - a. the Board considers from time to time to be prudent for the purposes of supporting the Company's existing business operations; and
 - b. which do not in aggregate (across all such borrowing or financing facilities entered into from time to time) exceed a sum equivalent to 10% of the total annual member levies payable to the Company by Members pursuant to clause 6 in any given Financial Year.

Schedule 5

CHANGES TO THIS AGREEMENT OR THE ARTICLES

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 and the Articles 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 3.2.1(d) or 3.2.1(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 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 3.2.1(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 3.2.1(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 it 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 its 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 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 its 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 5, to all Members as well as to 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 5 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