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Dear Stakeholder

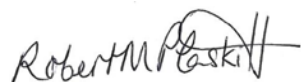
Changes to Network Rail's network licence – conclusions and statutory notice

We consulted you about the implementation of PR13 on 12 July 2013¹. Chapter 8 covered some proposed changes to conditions in Network Rail's network licence.

Network Rail, Virgin Trains and Railfuture responded. We deal with the points raised in Annex A and have made some further changes to our proposals in light of Network Rail's comments.

Annex B is the formal statutory consultation on our updated proposals. We invite any final views by 12 December 2013. Subject to this consultation and Network Rail's consent, we intend to make the changes proposed no later than 1 April 2014 when CP5 starts. The changes are mainly to clarify, streamline and simplify obligations. Other changes related to indebtedness and payments to funders were covered in our final determination² and will be dealt with separately through the review notices we will issue in December.

Yours faithfully

A handwritten signature in black ink that reads 'Robert Plaskitt'.

Rob Plaskitt

¹ Consultation on implementing PR13 <http://www.rail-reg.gov.uk/server/show/ConWebDoc.11192>

² See chapter 22 of the final determination <http://www.rail-reg.gov.uk/pr13/PDF/fd-chapters-21-24.pdf>

Network Rail's response

Part II Interpretation

1. We proposed to simplify the wording around consents in the interpretation part of the licence to clarify that any consent we may give can be specific or a general consent. We also proposed to amend licence condition (LC) 20 to make it clear that ORR's general approval for third party liability insurance is itself a consent. Network Rail welcomed and supported these proposals.

LC1 Network management

2. We suggested that references to route utilisation strategies (RUSs) could be updated to refer to long term plans given recent developments in the industry planning process. We also proposed to provide more flexible and updated guidelines³. Network Rail did not object to these changes, but suggested we make clear that long term planning still includes RUSs, as this is a familiar industry term. We agree and have amended the condition to reflect this. The company was also positive about our approach not to 'micromanage' the development of long term plans or governance of the process.

LC2 Information for passengers

3. Although Network Rail is considering the way it publishes the National Rail Timetable, there was no need to change this licence condition. Network Rail agreed with this.

LC4 Financial ring-fence

4. We did not think that we needed to make any changes to the financial ring-fencing condition, apart from improving or simplifying the drafting. However, Network Rail thought that in order for it to respond effectively to its principal funders, the regulatory system should be more open to change as the company shows more responsibility, transparency and accountability. Network Rail proposed a more fundamental review of what is permitted and '*de minimis*' business under its licence, and that we should consider reclassifying certain 'core' Network Rail activities.

³ ORR will also make changes to the current RUS guidelines as set out at:
<http://www.rail-reg.gov.uk/upload/pdf/rus-guidelines-apr09.pdf>

5. We are discussing with Network Rail, the Department for Transport, Transport Scotland and other stakeholders their views on the activities Network Rail should be permitted to carry out under its network licence. These discussions are still at an early stage. If the outcome shows it is appropriate to review what activities Network Rail is permitted to carry out, we will do so after PR13.

LC4 Payment of dividends

6. We proposed to revise the licence condition about the payment of dividends to clarify the circumstances when Network Rail should issue a certificate to ORR and seek our consent. Network Rail's comments and our conclusions are included in our final determination⁴. In summary we have decided to simplify the drafting in this section of the licence to make clear the payment of dividends is subject to our consent. The shorter, revised wording is in schedule 1 below.

LC5 Interests in rolling stock and train operators

7. We proposed to introduce a general consent to allow Network Rail to enter into routine arrangements with other parties that would otherwise require our specific consent. For example, the occasional loan of track recording or other specialist equipment to other networks. We also proposed to retitle the condition as "Interests in railway vehicles".
8. Network Rail welcomed our proposals and we have worked with it to develop the terms of an appropriate general consent. This should reduce the administrative burden for Network Rail and ORR without weakening the safeguards in the licence condition. The company had no comment on the proposed rewording to the condition itself.

9. The text of the general consent we have agreed for use with an updated LC5 is:

"ORR consents, for the purposes of condition 5 of the network licence, that Network Rail may enter into arrangements with a third party for the provision of railway vehicles and related resources and services, where Network Rail is satisfied that:

- a) such vehicles, resources and services are not required for the efficient operation and management of the network for the duration of the arrangements; and
- b) the arrangements are consistent with its other obligations under the network licence.

⁴ See chapter 12 (paragraphs 12.109 -113) <http://www.rail-reg.gov.uk/pr13/PDF/fd-chapters-12-14.pdf>

ORR may after consulting the licence holder modify or revoke this general consent if it appears to ORR requisite or expedient to do so, having regard to the duties imposed on ORR by section 4 of the Act.”

10. We will need to be satisfied that the general consent works as intended and we will audit Network Rail’s records of qualifying transactions. This is the same approach that we already take with Network Rail’s land disposals, which we audit annually. However, the volume of LC5 referrals has been relatively small so audits would be less frequent.

LC7 Land disposal

11. Network Rail agreed to our proposal to reduce the time we have to consider applications from 3 to 2 months, considering it to be a positive step for the disposal process. It recognised however, that the company will need to produce applications of an appropriate high quality to enable us to reach conclusions in the reduced time period.
12. We also proposed to include land potentially subject to a compulsory purchase order within the general consent rather than in LC7 itself. Network Rail had no objections to this providing an appropriate mechanism is included in the general LC7 consent to cover these situations. We are currently finalising an updated regulatory arrangements’ document to reflect this change and will publish it on our website shortly.

LC8 Stakeholder relationships

13. Network Rail agreed to our proposal to update the references in this condition to Passenger Focus and London TravelWatch.

LC12 Annual returns

14. We proposed to remove the requirement that we give Network Rail 2 years’ notice where our requirements for the statistics or data in its annual return changed. Initially the company wanted to retain the current wording, arguing a lesser notice period could be problematic and it may not be practical to gather wholly new data retrospectively within a year. We think that the proposed timescales work, given we acknowledge we must act reasonably regarding any specific changes we identify within a reporting year. Where we identify new data that should be collected, we would expect to discuss with Network Rail what could cost-effectively and reasonably be achieved in the time available for the next annual return.

15. We also intend to specify our baseline requirements for Network Rail's annual return for each year of CP5 before CP5 starts so that further annual updates should only need to cover small adjustments or clarifications, if they are needed at all. In light of the extra certainty this will give, Network Rail has welcomed the proposed drafting at LC12.3 in Schedule 1.
16. Network Rail suggested we delete the reference to ORR approving its annual return before publication. We agree we should do this given it is Network Rail's document and if there were problems these could be dealt with through our licence compliance procedures.

LC15 Governance

17. We proposed to update the condition so it is clearer what good corporate governance means for Network Rail. In particular, we proposed to focus the condition on compliance with the UK Corporate Governance Code.
18. Network Rail suggested the licence might usefully highlight the UK Corporate Governance Code principle of '*comply or explain*' whereby a company can deviate from the Code where it sets out clearly its rationale and alternative arrangements. We agree this principle will apply to Network Rail but having confirmed that there is no need to make a specific reference to that part of the Code, we will not include this on the face of the licence.
19. We agree with Network Rail's proposal that it need only publish or procure the publication of *relevant* information under the Financial Conduct Authority rules.
20. Network Rail was concerned we proposed to keep the current requirement that it has at least 2 non-executive directors with relevant railway experience. For now, we consider this is an important obligation to retain though we are open to review that position in future. We have proposed to remove the often impractical requirement that Network Rail must fill a vacancy for such a director within 1 month of it arising.
21. We had proposed drafting to future proof the condition and allow us to set good governance requirements that were different to the UK Code, but more appropriate for a company such as Network Rail. Network Rail was concerned this was an unnecessarily wide ranging power. We have considered this, and propose instead to add a more limited flexibility at the start of the condition for us to consent to Network Rail deviating from the code. Network Rail is willing to work with us to agree changes in the event more relevant standards emerge.

LC17 Financial information

22. We proposed to delete this condition given the other changes to LC15. Network Rail agreed that the more explicit reference to the UK Corporate Governance Code in LC15 meant the requirement to publish information in LC17 was an unnecessary duplication.

LC24 Systems code

23. We proposed to delete this condition as it ceased to have effect on 30 September 2010. Network Rail agreed this was sensible.

Schedule: Revocation

24. After consulting the Department for Transport, we proposed to delete the revocation clause that related to the Railways (Safety Case) Regulations 2000 as the regulations no longer apply and other legislation⁵ has been introduced. Network Rail agreed, given the ROGS arrangements for safety authorisation is now in place.

Other responses

Railfuture LC2 and LC7

25. Railfuture opposed any moves to significantly reduce the scope of the National Rail Timetable (NRT). Network Rail has said it wants to simplify the way it produces and publishes the NRT. It is considering providing the NRT in spreadsheet form on its website rather than in pdf form, so the core timetable information will still be available as now, but in a different format. We expect Network Rail to discuss this proposal with affected stakeholders and address any concerns they may have.

26. On the issue of Network Rail's disposal of land, Railfuture commented that Network Rail should be required to consult local planning authorities and potential freight customers, among others, before consent for a disposal is sought from ORR.

27. We have considered this issue before. We already expect Network Rail to consult a wide range of stakeholders, including relevant local planning authorities, the Rail Freight Group and Freight Transport Association and individual freight train operators. We consider that, together, these stakeholders are well placed to identify prospective

⁵ The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)

uses for land and that Network Rail's consultation requirements need not be broadened further. We publish Network Rail's applications for land disposal consent on our website⁶. These show who Network Rail has consulted and summarise their views.

Virgin Trains LC1

28. Virgin Rail Group's (VRG) response to the consultation raised issues around the long term planning process. In relation to the licence changes VRG sought the inclusion of a specific reference requiring Network Rail to adopt a more robust, transparent, inclusive and accountable approach to passenger demand modelling. We have considered whether VRG's proposed wording was necessary.
29. In April 2011 Network Rail started to discuss ways of long term railway planning with industry groups. Over the remaining year it refined its original proposal and agreed a final form with the Rail Industry Planning Group. It then wrote to ORR in February 2012 for our endorsement. Network Rail published its letter and invited representations to be made to ORR by April 2012. We did not receive any responses relating to the issues VRG has made. We subsequently endorsed the new approach and agreed that this would fulfil Network Rail's obligation to maintain RUSs. This did not require any changes to the network licence to happen. Our recent proposed changes are intended to update terminology to reflect that this is happening; in light of VRG's response we have reviewed whether the wording achieves this.

Robustness

30. The industry does not currently have a comprehensive suite of tools to fully model the complexities around demand forecasting. VRG's response illustrated this point with specific problems that it has identified. However, difficult as it may be, this should not prevent the industry from planning for the long term. In the absence of any other proposed methodology, Network Rail has devised an approach that involves a degree of uncertainty and some judgement.
31. We reviewed Network Rail's analysis during the LTPP market studies consultation, and considered it to be fit for purpose. In particular Network Rail's scenario analysis was an effective method for testing a range of possible outcomes.
32. We have observed at first hand the approach taken towards industry engagement and collaboration through the working groups. We believe the market studies provide a sound basis from which Network Rail will continue to work with industry and other

⁶ <http://www.rail-reg.gov.uk/server/show/nav.151>

stakeholders to develop route studies across the network. It is important Network Rail keeps up momentum, as this work will inform the planning for CP6. We acknowledge that demand forecasting at present is not perfect and that Network Rail along with the industry should continue to refine the way it can be done to overcome some of the difficulties involved.

33. Market studies are part of an on-going process led by Network Rail in developing long-term route plans and its demand forecast is likely to be modified to reflect changes in market conditions over time. Indeed, the published studies provide guidance on the circumstances where it may be necessary to re-examine the forecasts. There will be scope for stakeholders to be involved in this.

Transparency, inclusion and accountability

34. Market studies have been developed within a cross industry framework and published on Network Rail's website. The Rail Industry Planning Group oversees the process and each study has been developed through a working group consisting of train operators. There was adequate opportunity for train operators to be involved and we have not received complaints of exclusion from other operators, ATOC or the Rail Freight Group. ORR understands that VRG was invited to attend. It also understands that VRG did not respond to the public consultation. Network Rail set out its demand forecasting methodology in the market study consultation document; and the final published documents include a technical appendix detailing the methodology that has been used to derive the conditional outputs. This has been discussed at the market study working groups and Network Rail has amended the relevant sections in the final market studies to provide greater detail of the forecasting methodology used.

35. Overall, we do not think it is necessary to insert VRG's proposed wording into the network licence. If there is evidence that Network Rail is failing to adopt a robust, transparent, inclusive and accountable approach then the licence condition would allow ORR to take action.

Conclusion

36. We have revised our proposals where appropriate in the light of the consultation. We consider our final proposed changes in the notice at Annex B will make the licence easier to understand, clarifying, streamlining and simplifying obligations and so making the licence more fit for purpose in CP5.

Annex B

Notice of modification of Network Rail Infrastructure Limited's network licence

Network Rail Infrastructure Limited has been granted a network licence under section 8 of the Railways Act 1993 subject to conditions in the licence.

ORR gives notice, in accordance with section 12(2) of the Act, that it proposes to make the changes detailed in Schedule 1 to the licence.

The effect of the proposed modifications is to:

- a) simplify wording, particularly around any consent ORR may give;
- b) better align obligations with the industry's changing approach to long term planning;
- c) simplify restrictions on the payment of dividends;
- d) streamline the process for securing ORR's consent to land disposal;
- e) update references to RPC and LTUC to Passenger Focus and London TravelWatch respectively;
- f) make the wording regarding annual returns more flexible;
- g) focus governance obligations on the UK Corporate Governance Code; and
- h) delete unnecessary terms including the financial information and systems code conditions.

Any representations or objections to the proposed modifications should be made to in writing by 5pm on 12 December 2013. Please send any comments to:

Mute Mowoe
Licensing and Network Regulation Team
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN
Okiemute.Mowoe@orr.gsi.gov.uk

Schedule 1

Part II – Interpretation

“LTUC”

London TravelWatch

means the London Transport Users’ Committee and any successor to ~~LTUC~~ body which performs the same functions;

.....

~~“RPC”~~ Passenger Focus

means the Rail Passengers’ Council and any successor or ~~delegated~~ body which performs the **same** functions of the ~~RPC~~;

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Where in this licence there is a provision for ORR to give its consent, ORR may give such consent subject to conditions. **Any consent given by ORR under this licence shall be in writing and may be expressed in general or specific terms.**

Part III Conditions

1 Network management

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Planning

- 1.4 The licence holder shall plan the means by which it will comply with the general duty in condition 1.2 over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 1.5 In complying with condition 1.4, the licence holder shall consult, and take into account the views of, persons providing services relating to railways and funders so as to facilitate effective industry-wide planning.
- 1.6 In complying with condition 1.4, the licence holder shall prepare and provide to ORR plans, strategies or other documents demonstrating its compliance and proposed compliance with the general duty in condition 1.2, including:
 - (a) the delivery plan referred to in condition 1.10;
 - (b) **those associated with or arising from the route utilisation strategies long term plans (including route utilisation strategies)** referred to in condition 1.14;

- (c) other plans, strategies or documents that ORR may reasonably require from time to time; **and**
- (d) revisions of the plans, strategies and other documents referred to in condition 1.6 (a) to (c) that ORR may reasonably require from time to time.

1.7 Each of the plans, strategies and other documents referred to in condition 1.6 shall demonstrate the position, as appropriate, on a network-wide basis and at a suitably disaggregated level of detail.

1.8 Each of the plans, strategies and other documents prepared in compliance with condition 1.6 shall be provided to ORR in respect of such period, in such format and structure, to such standard and level of detail and in accordance with such requirements (including any requirements as to publication) as ORR may, from time to time, specify by notice or in guidelines to the licence holder.

1.9 Any notice or guidelines to the licence holder issued under condition 1.8 may include a procedure under which ORR may object to the contents of a plan, strategy or other document on grounds specified in the notice or guidelines.

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Long term planning process ~~Route Utilisation Strategies~~

1.14 In complying with condition 1.4, the licence holder shall establish and maintain ~~route utilisation strategies~~ **long term plans** to promote the ~~route utilisation~~ **long term planning** objective in accordance with guidelines issued by ORR under condition 1.8.

1.15 The **long term planning objective** referred to at 1.14 means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence.

1.156 The licence holder shall have due regard to the ~~route utilisation strategies~~ **long term plans** when carrying out its licensed activities.

~~1.16 Each route utilisation strategy shall be established:~~

- ~~(a) by such dates as are specified in a programme or programmes proposed by the licence holder and approved by ORR or any amendment to such~~

dates which is approved by ORR;

~~(b) in accordance with:~~

~~(i) the policies and criteria referred to in condition 1.19(a); and~~

~~(ii) guidelines issued by ORR under condition 1.8.~~

1.17 The licence holder shall from time to time and when so directed by ORR review and, if necessary, amend ~~each route utilisation strategy~~ **each long term plan** to ensure that it: ~~(a) continues to promote the route utilisation~~ **long term planning** objective. ~~and (b) remains in accordance with the policies and criteria referred to in condition 1.19(a).~~

~~The provisions of condition 1.16 in relation to the establishment of a route utilisation strategy shall apply equally to the amendment of a route utilisation strategy under this condition 1.17.~~

.....

~~*Interpretation*~~

~~1.24....~~

~~“route utilisation objective” means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or is likely to become, available during the period of the route utilisation strategy and with the licence holder’s performance of the duty in condition 1.2;~~

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4 Financial ring-fence

Payment of dividends

4.29 The directors of the licence holder shall not declare or recommend a dividend unless ORR has consented in writing to the declaration or recommendation of the dividend no more than 6 months prior to it being made.

4.30 The licence holder shall not:

- (a) make any form of distribution within the meaning of sections 829, 830, 849 or 850 of the Companies Act 2006; or
- (b) redeem or repurchase any share capital of the licence holder

unless ORR has consented in writing to the distribution, redemption or repurchase no more than 6 months prior to it being made.

Payment of dividends

~~4.29 The directors of the licence holder shall not, without ORR's consent, declare or recommend a dividend and the licence holder shall not make any other form of distribution, within the meaning of sections 829, 830, 849 or 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licence holder unless prior to the declaration, recommendation or making of the distribution, redemption or repurchase (as the case may be) the licence holder shall have issued to ORR a certificate complying with the following requirements in conditions 4.30 and 4.31.~~

~~4.30 The certificate shall be in the following form:-~~

~~"After making enquiries, the directors of the licence holder are satisfied:-~~

- ~~(i) that the licence holder is in compliance in all material respects with all obligations imposed on it by condition 4 and condition 11 of its network licence;~~
- ~~(ii) that the payment of a dividend or making of a distribution, redemption or repurchase of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licence holder to be in breach to a material extent of any of these obligations in the future; and~~
- ~~(iii) that such payment of dividend or making of distribution, redemption or repurchase will not impair the ability of the licence holder to finance the Permitted Business."~~

~~4.31 The certificate shall be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.~~

~~4.32 Where the certificate required by condition 4.29 has been issued in respect of the declaration or recommendation of a dividend or the making of a distribution, redemption or repurchase, the licence holder shall be under no obligation to issue a further certificate prior to payment of that dividend or the making of that distribution, redemption or repurchase provided such payment, distribution, redemption or repurchase is made within six months of the issuing of that certificate.~~

5 Interests in ~~rolling stock and train operators~~ railway vehicles

5.1 ~~Subject to condition 5.2, t~~The licence holder shall not, ~~except in so far as ORR may otherwise consent,~~ be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.

5.2 For the purposes of condition 5.1 the licence holder is “directly interested” in the ownership or operation of railway vehicles where the licence holder:

- (a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or
- (b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.

5.3 For the purposes of condition 5.1 the licence holder is “indirectly interested” in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).

5.24 Condition 5.1 shall not apply in respect of any railway vehicle where:

- (a) it is used wholly or mainly for ~~any such~~ the purposes as is ~~mentioned in sub-paragraph 1(b) or (c)~~ set out in Part 1 of the (Sscope) of this licence; or
- (b) it forms ~~ing~~ part of the Royal Train.; or-
- (c) ORR has consented to the licence holder having an interest in the ownership or operation of that railway vehicle.

~~5.3 The licence holder shall, without limitation to the generality of condition 5.1, be regarded as directly interested in the ownership or operation of railway vehicles where the licence holder:~~

- ~~(a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or~~
- ~~(b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.~~

~~5.4 The licence holder shall, without prejudice to the generality of condition 5.1, be regarded as indirectly interested in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).~~

7 Land disposal

7.1 The licence holder shall not dispose of any land otherwise than in accordance

with the following paragraphs of this condition—7.

7.2 The licence holder may dispose of any land where:

(a) ORR consents to such disposal; or

(b) the disposal is required by or under any enactment.

7.3 Where the licence holder seeks ORR's consent it must give a minimum of 2 months' prior written notice specifying the land disposal it intends to make (the notice). A notice under this condition shall be in such form and contain such particulars as ORR specifies.

7.4 Having given such notice, the licence holder shall provide further information as ORR may require.

7.5 Unless otherwise agreed between ORR and the licence holder, if ORR does not inform the licence holder of a consent or refusal of consent within the time specified in the notice, the licence holder will be deemed to have consent and may dispose of land in accordance with the notice.

7.6 If ORR refuses consent to the disposal of land specified in the notice, the licence holder will be informed of any entitlement to appropriate compensation for the loss of value (if any) as a result of not being able to make such disposal.

~~7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.~~

~~7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:~~

~~(a) where:~~

~~(i) ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:~~

~~(aa) transactions of a specified description; and/or~~

~~(bb) the disposal of land specified in the directions as excluded land;
and~~

~~which specifies the intervals at which the general consent can be reviewed; and~~

~~(ii) the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or~~

~~(b) where the disposal in question is required by or under any enactment and for these purposes a disposal shall be treated as being under an enactment if:~~

~~(i) the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or~~

~~(ii) the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.~~

~~7.4 Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:~~

~~(a) ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or~~

~~(b) ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 74(b).~~

7.57 In this condition:

“disposal” includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed accordingly;

~~“excluded land” means any land which is specified as such in directions issued under condition 7.3;~~

“land” includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.

8 Stakeholder relationships

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Cooperation with passenger representatives

8.5 Whenever reasonably requested to do so by **Passenger Focus** ~~the RPC and LTUC~~ or **London TravelWatch** (as relevant) in connection with its licensed activities, the licence holder shall cooperate with **Passenger Focus** ~~the RPC and LTUC~~ **London TravelWatch** (as relevant) in respect of the proper performance of their respective statutory functions, including the provision of relevant information held by the licence holder.

.....

Interpretation

8.8 In this condition:

“stakeholder” means:

.....

(f) ~~RPC~~ **Passenger Focus** and ~~LTUC~~ **London TravelWatch** in respect of their respective statutory functions.

12 Annual and periodic returns

Annual returns

12.1 The licence holder shall prepare and provide to ORR an annual return by ~~4 July each year (or a later date approved by ORR)~~ **a specified return date each year**. The annual return shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by notice to the licence holder.

12.2 ~~No notice of ORR under condition 12.1 shall be effective unless:~~

- ~~(a) it is given on or before 31 December in the year before that in which the annual return is to be published; and~~
- ~~(b) ORR has consulted the licence holder before 31 October in the year before that in which the annual return is to be published and has taken into consideration any representations duly made.~~

The annual return must comply with the requirements set out by ORR following consultation with the licence holder, including:

- (a) as to its form and content; and**
- (b) the dates to which the annual return relates.**

12.3 **The specified return date must be a date:**

- (a) not less than 3 months after the last day to which the annual return relates; and**
- (b) at least 6 months after the date on which ORR notifies the licence holder of the annual return requirements unless the licence holder otherwise agrees.**

~~12.3 To the extent that a notice of ORR under condition 12.1 requires the inclusion of statistical and other data, the notice shall not be effective unless it is given on or before 31 December in the year which is two years before that in which the annual return is to be provided, or such shorter period as may be agreed with the licence holder.~~

~~12.4 If ORR has not given an effective notice under condition 12.1 in respect of any year, the notice last given under that condition shall apply to that year.~~

12.4 If, in any year, ORR has not consulted on the annual return requirements or specified a return date in accordance with conditions 12.2 and 12.3, the licence holder shall prepare and provide an annual return for that particular year by the day and month previously specified in accordance with condition 12.3 and on the basis of the annual return requirements relevant to that specified return date.

12.5 The licence holder shall publish the annual return ~~W~~within one calendar month of delivery to ORR the return date, following consultation with ORR. ~~subject to any modification~~

~~(including deletions on the grounds of confidentiality) approved by ORR, the licence holder shall publish the annual return, except to the extent that ORR is satisfied that the information would or might seriously and prejudicially affect the interests of the licence holder or any other person and has so notified the licence holder.~~

.....

15 Governance

15.1 Except as ORR otherwise consents the licence holder must follow best practice corporate governance arrangements, so far as is reasonably practicable, by:

- (a) complying with the relevant provisions and principles of the UK Corporate Governance Code;
- (b) maintaining a board of directors with an appropriate balance of skills, experience, independence and knowledge, where at least two non-executive directors have substantial experience of working in the rail industry; and
- (c) publishing, or procuring the publication of, such relevant information as is required by the rules of the Financial Conduct Authority of a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.

15.2 In this condition:

“the UK Corporate Governance Code” means the code published by the Financial Reporting Council in September 2012, or any successor document having a similar purpose and content;

and

“rules of the Financial Conduct Authority” means the rules made by or under Part VI of Financial Services and Markets Act 2000 and contained in the Financial Conduct Authority Handbook, or equivalent rules of any successor body.

~~15.1 The licence holder shall conduct the Permitted Business as if it were substantially the licence holder’s sole business and the licence holder were a separate public limited company.~~

~~15.2 Without limiting the generality of condition 15.1:-~~

- ~~(a) the licence holder shall ensure that each of its directors discloses to the licence holder and ORR any conflicts that in that director’s reasonable consideration do or may arise between that director’s duties as a director of the licence holder and other duties that that director may have; and~~

~~(b) in fulfilling its obligation under condition 15.1, the licence holder shall have regard, among other matters, to the dividend policy adopted by the licence holder in the light of conditions 4.29 to 4.32.~~

~~15.3 The licence holder shall comply, as if it were a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority, with the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose and content) as may from time to time be incorporated into or approved for the purposes of the listing rules of the Financial Services Authority.~~

~~15.4 Subject to paragraph 15.5, the licence holder shall ensure that at all times the board of directors of the licence holder contains a majority of non-executive directors who shall be persons of standing and of which at least two shall each have satisfied ORR that he or she has substantial relevant experience of working in the railway industry.~~

~~15.5 If at any time the licence holder is, by virtue of any person ceasing to be a director of the licence holder, unable to ensure the outcome in paragraph 15.4, the licence holder shall take such steps as are necessary to ensure that that outcome is achieved as soon as reasonably practicable after that event and in any case within one month of that event.~~

.....

17 Not in use

Financial information

~~17.1 Unless ORR otherwise consents, the licence holder shall, at such times and in such ways as would, generally applied, from time to time be required by the listing rules of the Financial Services Authority, publish such information as is by those rules required to be announced by a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.~~

20 Insurance

20.1 The licence holder shall, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR general or specific approval **consent**, as amended from time to time.

.....

24 Not in use

~~Systems Code~~

~~Requirement for a systems code~~

~~24.1 The licence holder shall comply with the provisions of the systems code as approved by ORR.~~

~~24.2 The licence holder may from time to time amend the systems code with the prior approval of ORR.~~

~~Publication~~

~~24.3 The licence holder shall provide a copy of the systems code and the systems catalogue:~~

~~(a) to each user who requests a copy; and~~

~~(b) to any other person who requests a copy, which may be on payment of a reasonable charge.~~

~~Derogations~~

~~24.4 The licence holder may, in so far as ORR consents, be relieved of its obligation to comply with the systems code or a part of the systems code, subject to such conditions as ORR may require.~~

~~Cessation~~

~~24.5 This condition shall cease to have effect on 31 March 2010 or such other date as ORR may specify by notice.~~

~~24.6 In this condition:~~

~~“code system” means a system which relates to data which:~~

~~(a) is necessary for or in connection with the operation of trains on or access rights to the licence holder's network; or~~

~~(b) is expedient for or in connection with such operation and in respect of which the licence holder or any affiliate or related undertaking of the licence holder is the system owner;~~

~~“system” means a computer application (not being an operating system, proprietary database, software package or other general purpose substrate of an application) or a statement of the structure of a message and the means of exchanging it between two computer systems;~~

~~“systems catalogue” means a document specifying:~~

~~(a) each code system and its main function and features and describing the data exchanged by use of that system; and~~

~~(b) in respect of each code system the name of the system owner and whether that system is categorised as a necessary code system or an expedient code system;~~

~~“systems code” means a code prepared by the licence holder which sets out the arrangements for obtaining access to, using and developing code systems;~~

~~“system owner” means the person who owns the intellectual property in a system or controls (other than collectively) the right to modify it or has the right to licence it to Users;~~

~~“user” means a beneficiary or an associate (within the meaning in section 17(7)) of the Act) under an access agreement in respect of, or an operator of a train being used on, the licence holder's network or a person who has applied or intends to apply for permission to use the licence holder's network under section 17 or 18 of the Act.~~