

INTERCITY WEST COAST PASSENGER RAIL FRANCHISE

STATION ASSET STEWARDSHIP

WORKING ARRANGEMENTS BETWEEN DFT AND ORR

This document sets out the working arrangements between the Department for Transport (“DfT”) and the Office of Rail Regulation (“ORR”) concerning station asset stewardship for the Inter City West Coast franchise, and how each will carry out and co-ordinate their respective contractual and regulatory functions in relation thereto.

Introduction

1. This document is written to be an aid to effective co-operation, understanding and co-ordination of effort between the DfT and ORR in relation to the new station asset stewardship policy to be applied to the Inter City West Coast (ICWC) franchise.
2. The policy has been led by DfT in close consultation with those concerned, principally the Association of Train Operating Companies representing the rail franchise operators, Network Rail as station freeholder and ORR as the statutory rail regulator.
3. Primary responsibility for implementation of the new stations policy for ICWC will lie with the appointed franchisee. But the DfT retains an important oversight as contracting party to the franchise agreement and having overall strategic oversight of main line rail policy and legislation for England and Wales. ORR too has a critical role to play in assisting the DfT in assessing the station aspect of franchise bids, and subsequently in issuing, monitoring and enforcing the station licence needed by the franchisee under the Railways Act 1993 to operate the stations.
4. The relevant statutory powers and duties of the Secretary of State for Transport and ORR are contained in the Railways Acts. How ORR will apply its particular powers and duties in relation to the ICWC franchise will be set out in the station licence, supported by an explanatory regulatory statement from ORR. The DfT’s contractual powers and duties will be set out in the ICWC franchise agreement.

Status

5. This document is not intended to be legally binding or to create expectations whose non-fulfilment would give rise to rights at law. Neither do any of its terms give rise to any rights for any other person under the Contracts (Rights of Third Parties) Act 1999. Whilst every care has been taken in its production it cannot be relied on as a

definitive or complete statement of the law or the documents it refers to.

Background

6. Long term station asset stewardship responsibilities currently sit with Network Rail, with ORR monitoring and enforcing Network Rail's licence obligations, although currently franchise operators have certain responsibilities in relation to station infrastructure, mainly in relation to day to day routine maintenance. Under the new policy ORR will continue to monitor and enforce stewardship responsibilities under a new operator station licence condition that effectively transfers Network Rail's station asset stewardship responsibilities to the franchisee with the result that the franchisee will become wholly responsible for managing the station asset rather than sharing this role with Network Rail.
7. With Network Rail as long term station asset steward, ORR provides 'end-to-end' regulation starting with a determination of appropriate funding (reflecting the SoFA and HLOS and Network Rail's position as a monopoly infrastructure manager) and Network Rail producing a delivery plan as to how it intends to achieve its stewardship obligation. ORR monitors delivery of the stewardship obligation against the plan, but does not enforce delivery of the plan itself. However, with the station operator as total station asset steward, funding and delivery commitments will be established through the franchise competition but largely documented through the station licence and its associated documents, with monitoring and enforcement regulated under the station licence.
8. The station operator therefore has a purposive obligation in the station licence to meet the stewardship obligation. The station operator will set out the detail of how it intends to fulfil this obligation in the associated policy and plan documents.
9. The opportunity for the station operator in fully complying with this purposive approach is flexibility and autonomy; the consequence of failure to fulfil obligations will be determined by ORR and can include increased audit, requirement for increased information, explanation and plans, and issuing compliance orders. Where the station operator fails to comply with orders and, following discussion with ORR, the DfT considers a failure sufficiently material, an Event of Default could be triggered under the franchise agreement.
10. ORR recognises that in relation to station stewardship it has an important role to help protect the value purchased through the franchise process by the DfT on behalf of taxpayers and passengers. In particular, the DfT's ability to recover monies and, ultimately, to act to terminate the franchise for failure of the station operator to meet its licence stewardship obligations is dependent on the actions of ORR (i.e. ORR's identification of a rectification amount at the end of the

franchise (see paragraph 42 below), or ORR taking licence enforcement action which in turn triggers an event of default under the franchise agreement as described above).

Objectives

11. The DfT and ORR agree, through effective co-ordination, to:-
 - (a) work together so that ORR advises the DfT on the station asset stewardship proposal received from franchise bidders, and on whether the licence application proposal received from the successful franchisee properly reflects its bid in relation to station asset stewardship in order that the DfT may take up any shortcomings with the franchisee, and so that ORR may subsequently hold the franchisee as station operator to account for delivery of its station asset stewardship obligations under the licence;
 - (b) minimise duplication of activity but ensure fair and effective monitoring and enforcement of the franchise operator station asset stewardship obligations under the station licence and franchise agreement.

Responsibilities

12. The DfT will set the commercial terms for the franchise including the appropriate transfer of risk to the station operator. This transfer of risk includes the station operator accepting cost risk for fulfilling its station asset stewardship licence obligations.
13. The station operator will take on responsibility for operating, maintaining, and improving the stations. However this core duty will not be set in the franchise agreement. It will be set in the station licence and thus monitored and enforced by ORR under the station licence.
14. Bidders will have to set out in their franchise bid how they will discharge and price for this duty, including any specific commitments they offer, as the bid will be reviewed by the Secretary of State, with ORR assistance. The DfT will require the successful bidder's accepted station proposition, by the Conditions Precedent Agreement, to form the basis of its station licence application, and ORR will take this into consideration as part of its review of that licence application (see paragraph 28 below).
15. Proprietary rights in the stations will be granted through a long lease from the freeholder, Network Rail, of each station.
16. Therefore, briefly, the DfT's acceptance of the successful bidder's offer will buy:
 - (a) through committed obligations documented in the franchise agreement:-

- (i) specified enhancements to station facilities; and
 - (ii) passenger satisfaction levels at stations;
- (b) through the conditions precedent agreement, and subsequently the station licence and associated station asset management policy, and station asset management plan:-
- (i) the maintenance of assets to a given condition level;
 - (ii) a specific plan of renewals to be delivered in the first year of the franchise; and
 - (iii) asset stewardship to be carried out in accordance with those policies and plans.
17. ORR will support the DfT by monitoring and enforcing the station asset management regime of the licence through the life of the franchise.
18. ORR has developed a regulatory statement of how it plans to monitor and enforce the obligations of the station operator's licence.
19. The regulatory statement may be amended from time to time by the ORR following consultation with the station operator. ORR would also involve the DfT in discussions about such amendments, taking into account the transfer of risk to the station operator under the franchise agreement and the enhancements and condition level purchased through the franchise.

Working arrangements

The franchise competition

20. The DfT will run the franchise competition to procure an operator to enter into a new franchise agreement with the Secretary of State. The successful bidder will have to obtain a station licence from ORR. Against that context the DfT has requested ORR to give some assistance in relation to assessment of bidders' proposals regarding stations and ORR has agreed to do so as indicated below. Accordingly the DfT will liaise with ORR in relation to the competition process, timescales and the objectives for the franchise competition.
21. ORR will participate with the DfT in the examination of bidders' station asset stewardship proposals during the franchise bid evaluation stage in order to:-
- a) advise on the quality and scope of those proposals (but not to score them);
 - b) advise whether those proposals show sufficient maturity to be developed into a Station Asset Management Policy and Plan, such

as would meet the requirements of the new station asset stewardship condition of the station licence when issued; and

- c) advise in particular on the credibility of the proposed spend profile against planned outputs.
22. ORR will provide its advice to the DfT in writing. The advice should assist the DfT in making a reasoned decision, as far as the stations aspect of bids are concerned, for selecting the successful bidder.
23. Following franchise award to the successful bidder the DfT will brief ORR on the outcome as concerns station asset stewardship, providing details of relevant station related obligations which are contractualised in the franchise agreement.

Station Stewardship Measures (SSM)

24. Bidders are required in their bids to address certain requirements regarding the development of the SSM system. The SSM system will be used for the evaluation and assessment of the condition of station assets. The ORR's role in relation to this is described in paragraphs 11 to 23 of the "ICWC Station Asset Stewardship – Guidance" document which was published with the ITT (copy attached). However, since that Guidance was issued it has been accepted that, because there are only a limited number of stations to be operated by the franchisee, it is not appropriate to divide them into relevant categories (SSM refers to six categories of station) and provide average SSM condition scores for each category; instead, all the stations will be treated as one category and a single average condition score calculated.

Mobilisation period between franchise award and commencement

25. The mobilisation period is the time between signature of the new franchise agreement and its start date when the new franchisee takes over from the old (likely to be four months). During this period the franchisee is obliged by a "Conditions Precedent Agreement" (signed with the DfT at the same time as the franchise agreement) to satisfy various conditions before it may commence operations.
26. The DfT's intention is that the licence application, and licence issued, reflect and give effect to the station asset stewardship bid as accepted by the Secretary of State with ORR advice. The franchisee is to take on responsibility for operating, maintaining and improving the stations. This core duty will not be set out in the franchise agreement. It will be set out in the station licence issued by ORR, and associated documentation, and thus monitored and enforced by ORR under that licence.
27. Accordingly, the franchisee will be obliged by the Conditions Precedent Agreement to ensure that:-

- (a) its application for a station licence, and associated documentation including **station asset management policy** and **station asset management plan** shall reasonably and properly reflect its accepted bid proposals regarding the stations; and
- (b) it uses all reasonable endeavours to ensure that any such licence issued by ORR and associated documentation will so reflect and mandate its bid proposals;

and the Conditions Precedent Agreement provides that the franchise may not start unless and until the Secretary of State receives a notice from ORR indicating that the franchisee has, or will be, granted a station licence to take effect no later than the start date.

- 28. ORR will consider and assess the licence application, and associated documentation including **station asset management policy** and **station asset management plan** in accordance with its normal licence application procedures applied or adapted as may be expedient in order to give effect to this working arrangements document. If ORR considers that there are any material differences between the approved bid proposals and the licence application and associated documents, ORR will give the DfT an opportunity to take the matter up with the franchisee in pursuance of the conditions precedent agreement. (ORR's grant of a licence will not necessarily be conditional on any material difference being resolved between the DfT and the franchisee. The DfT will in any event be consulted on the granting of the proposed licence as part of the normal licence application procedure.)
- 29. The DfT franchise management team and ORR's station asset stewardship team will maintain regular contact during the mobilisation period.

The Franchise term

Generally

- 30. ORR will have sole responsibility for monitoring and enforcing the franchisee's licence obligations relating to the stewardship of station assets.
- 31. ORR will provide performance information obtained from the station operator (as part of its reporting under its licence commitments) to the DfT together with ORR's own assessment of the asset stewardship of the station operator. This will normally be annually and at the end of the franchise but may be more frequently where there are specific performance concerns and/or the DfT has made ORR aware of wider issues affecting the viability of the franchise.
- 32. The information which the station operator will report to ORR, and which ORR will in turn provide to the DfT with its assessment, would cover performance against the station asset management policy,

station asset management plan, and in relation to the delivery of any particular commitments the station operator makes on maintenance, renewals and/or enhancements in its station asset management policy or plan, actual spend against forecast spend, and will take into account any audit report required under the licence. ORR's assessment will also summarise any changes agreed with the station operator to its policy and plan.

33. During the franchise term the DfT franchise management team and ORR's station asset stewardship team will liaise at least annually, more frequently at the start of the franchise term, where either party has concerns over the station operator's performance, and in the last 18 months of the franchise.

Works which are contractualised in the franchise agreement

34. In the case of:-

- (a) any enhancements of £10 m or over (which are expressly contracted in the franchise agreement as "committed obligations");
- (b) any station enhancements offered by the franchisee as "incremental options" which have been accepted by the Secretary of State and contractualised in the franchise agreement; and
- (c) any enhancements proposed during the franchise term that are accepted by the Secretary of State and contractualised,

the DfT will be responsible for the monitoring and enforcement of the delivery phase as a contractual issue. In these cases however the enhancements should still be included in the station asset management policy and the station asset management plan as appropriate. The DfT will liaise with ORR to keep it informed about progress during the delivery phase.

35. When the DfT is satisfied that each such contractualised enhancement has been substantially completed, the station operator will be responsible for amending its asset management arrangements to take account of the new or enhanced station assets. The maintenance and operation of these will then be monitored and enforced by ORR under the station licence in the normal manner. However the DfT will remain responsible for approval, or making arrangements for the approval of, post substantial completion snagging works and issue of final certificate and release of any retentions.
36. The Secretary of State will consider and, if appropriate, approve changes proposed by the station operator to the timing or scope of specific enhancements contractualised under the franchise agreement. However the DfT will discuss any proposed changes to the contracted commitments (so far as they relate to the stewardship of stations) with ORR, and will take account of impacts on licence commitments or other

issues raised by ORR. When a change to the contracted commitments is agreed with the station operator, the DfT will notify ORR. This notification will set out the agreement with the station operator including the scope and timing of the enhancement and information on the impact to the condition level to which station assets are managed. It shall be the station operator's responsibility to update its station asset management policy and station asset management plan accordingly, and ORR will monitor that this is done.

Other works

37. ORR will monitor that other alterations, new additions or works to stations required or authorised by the station licence are in line with the station operator's station asset management policy and plan and, where applicable, that any consequential impacts on the station operator's station asset management plan are understood, and the station asset management policy and plan are updated by the station operator accordingly. Where necessary, ORR will take enforcement action in accordance with its enforcement policy.

Uninsurable risks / latent defects

38. Under the station access conditions (SACs 2011(FRI Leases) (England and Wales)) the station operator will have broad responsibility to insure stations not only for usual property owner's liability and third party liability etc but also for a wide range of disasters (e.g. fire, lightening, malicious damage, rolling stock impact, flood, subsidence etc). However should an event which is uninsurable, or a latent defect in the structure or fabric of a station building, cause damage or destruction to a station or equipment this would require special handling.
39. Under the franchise agreement the station operator would be liable for the first £500,000 (index linked) of reinstatement works per event per station with an overall liability cap of £10m (index linked) in aggregate for all stations over the entire franchise term.
40. If such an event were to happen where the reinstatement works will exceed the station operator's liability:-
 - (a) the station operator should provide appropriate evidence to the DfT (copied to ORR) to verify the cause of the event, and its likely reinstatement cost, and propose options with a recommendation as to how to deal with the issue;
 - (b) ORR will advise the DfT, so far as it is able, with its views on the station operator's submission;
 - (c) the DfT will consider the same in liaison with ORR to determine the appropriate course of action. In particular under the franchise agreement the Secretary of State reserves the right to choose the appropriate way forward from a number of options e.g.:-

- (i) require the station operator to carry out the reinstatement to an agreed programme;
- (ii) require the station operator not to reinstate (e.g. where near franchise end it may be more expedient for the new incoming franchisee to do so);
- (iii) require the station operator to use all reasonable endeavours to secure other sources of grant funding to finance the works;
- (iv) seek to utilise alternative funding mechanisms to finance the works by, subject to ORR approval, adjusting the station asset management policy and plan (e.g. to delay, re-programme or abandon works); or
- (v) to do so by delaying, re-programming or abandoning construction works contractualised in the franchise agreement.

(Note: The DfT will maintain a record of all uninsurable risks / latent defects events, and in particular an account of the estimated and final costs of reinstatement, net of Cost Savings (as defined in the franchise agreement) for the purpose of applying the franchisee cost liability limits stated in the franchise agreement.)

Franchise end

41. The competition for a new franchisee is likely to start around 18 months before franchise end. ORR will work with the DfT using, where appropriate, its rights (e.g. under the Railways Act 1993 or station licence) to secure information from the station operator (or operators where re-mapping brings together stations in different franchises) to support preparation for refranchising. This information will include:
 - (a) the condition, capability and capacity of the station assets;
 - (b) short, medium and long term plans for maintenance renewals and enhancements; and
 - (c) details of schemes in preparation and construction and arrangements for their hand over.

42. At franchise end ORR will determine whether the station operator has not met its station asset stewardship obligations under the station licence. Where ORR considers that these obligations have not been fulfilled to a material extent, ORR will make a determination as to the amount that would be required to remedy any such failure. A report on the fulfilment of obligations including, where applicable, details of any material default and ORR determination should be provided to the DfT within 4 months of the end of the franchise. Station condition will be a particular focus, and ORR therefore expects it will normally be able to

discuss possible issues with the station operator before the franchise end, on the basis of the station operator's regular reports to ORR.

Official correspondence etc

- 43. ORR and the DfT will co-operate in responding to any questions from Parliament, official correspondence, press enquiries and briefing for Ministers on matters relating to stewardship of the West Coast franchise stations.
- 44. The arrangements in this memorandum will be kept under review and updated as appropriate.

Acknowledged and agreed:

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DfT **ROGER JONES, Deputy Director** Deputy Director, ORR

Dated **27 July**2012

Annex

- Current Station asset stewardship condition of station licence
- Current ORR associated Regulatory Statement
- ITT annex on stations
- Notes on Conditions Precedent Agreement

Station stewardship

Condition 27: Station asset stewardship

Purpose

1. The purpose, in relation to those stations listed in the Schedule, is to secure for the long term:
 - (a) the maintenance of the stations;
 - (b) the renewal and replacement of the stations; and
 - (c) the improvement, enhancement and development of the stations,in each case in accordance with best practice, and in a timely, efficient and economical manner, so as to satisfy the reasonable requirements of persons providing services relating to railways, funders [****and station customers****], including potential providers and potential funders [****and potential customers****].

General duty

2. The licence holder shall achieve the purpose in paragraph 1 to the greatest extent reasonably practicable having regard to all relevant circumstances.

Specific obligations

3. The following obligations in this condition are without prejudice to the generality of the general duty in paragraph 2, and compliance with those obligations shall not be regarded as exhausting that general duty.
4. The licence holder shall prepare and publish:
 - (a) a station asset management policy, which describes the licence holder's general maintenance, renewal and enhancement principles and procedures for the stations; and
 - (b) a station asset management plan, which sets out what the licence holder proposes to do to comply with the general duty in paragraph 2, consistent with the policy required by paragraph 4(a) and including an indicative renewal, replacement and enhancement timetable.
5. From time to time, and if required by ORR in accordance with paragraph 9, the licence holder shall review and, if necessary, revise and publish any document prepared under paragraph 4 to ensure it continues to demonstrate how it will comply with the general duty in paragraph 2.

6. The licence holder shall maintain appropriate, accurate, readily accessible and transferable information about the station assets, including their condition, capability and capacity.
7. In preparing any documents under paragraphs 4 and 5, the licence holder shall consult relevant persons providing services relating to railways, relevant funders and ORR.

Independent audit

8. At ORR's request, the licence holder shall commission and pay for an independent audit of any document produced under paragraphs 4 or 5 and any information maintained under paragraph 6, and shall provide a copy of the audit report to ORR.

Revisions

9. If at any time ORR considers that a document produced under paragraphs 4 or 5 does not adequately demonstrate how the licence holder will comply with the general duty in paragraph 2:
 - (a) ORR shall issue a notice requiring the licence holder to review and revise the document and specifying the ways in which it considers the document to be deficient; and
 - (b) the licence holder shall, within 1 month (or such other period as ORR may specify) of ORR issuing such a notice, review, revise and publish the document in accordance with paragraph 5.
10. No notice issued by ORR under paragraph 9(a) shall be effective unless ORR has first consulted the licence holder.

Inter City West Coast station operator licence – asset stewardship obligations

Statement by the Office of Rail Regulation

Introduction

1. This note sets out the approach that the Office of Rail Regulation intends to take in its monitoring and enforcement of the new condition 27 proposed for the station operator's licence on the new Inter City West Coast franchise which is expected to start in December 2012, where the station operator takes on the responsibility for station asset stewardship from Network Rail. The detail of what we require the station operator to deliver is set out in paragraphs 11 to 16 below. Should we intend to change our approach from what is set out here, we would consult as appropriate those affected, consider any representations made and provide reasons for any change.
2. Details about how we propose to work with the Department for Transport, given the interface between licence obligations and the Department for Transport's franchise specifications, are set out in a separate working arrangements paper.

Background

4. This statement reflects close working between ORR, the Department for Transport, Network Rail and the Association of Train Operating Companies (ATOC) to develop detailed proposals that will facilitate the transfer of responsibility for the maintenance, repair, renewal and enhancement of station assets from Network Rail to franchised train operators.
5. For the new Inter City West Coast franchise station asset stewardship responsibilities will pass from Network Rail to the winning bidder for the franchise which will take 99 year leases of the stations from Network Rail. That lease has been developed jointly by Network Rail and ATOC, without input from ORR. ORR will be responsible for monitoring and enforcing the station asset stewardship obligations through the station operator's licence.

General approach

6. Our approach is to replicate as far as possible what we already do in respect of Network Rail's stewardship of stations, while recognising that franchised operators will be in a very different commercial position to Network Rail.
7. We will insert into the relevant station operator's licence a new condition that imposes a *general duty* to achieve a *purpose* defined in the licence. This approach is intended to give the station operator considerable flexibility as to how it meets its obligations.

8. In summary, the purpose will be to secure the maintenance, renewal and improvement of the stations so as to meet the reasonable requirements of customers and funders (including potential customers and funders). This work will be done in accordance with best practice and in an efficient and economical manner.
9. The general duty will then be to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances.
10. The licence will also contain specific obligations in relation to publishing an asset management policy and a plan, maintaining information about the station assets and preparing, where needed, appropriate audits of the information. Information shall be provided to the ORR as agreed from time to time. All of this will be at the station operator's expense.

Customer and funder reasonable requirements

- 11 The Department for Transport intends to include in future franchises an obligation to achieve certain standards of passenger satisfaction at stations. Our focus will therefore be on the related issue of station condition (this could change if those satisfaction obligations are agreed to be better dealt with through the licence). We consider that a key reasonable requirement of the customers and funders is that the long-term condition of the station assets is maintained.
- 12 We will also consider the following obligations to be customer and funder reasonable requirements:
 - The provision of the documents and information specifically set out in paragraphs 4 to 8 of the licence condition;
 - In particular, the station asset management policy must be based on an analysis of whole-life costs and must include:
 - (i) policies inherited from Network Rail or appropriate replacement policies;
 - (ii) other appropriate and consistent policies to support the licence purpose where activities are not covered by policies covered in (i) above, including, for example, the approach to be followed in respect of the long term planning of station capacity and the standards for design, management and construction;
 - (iii) policies for the Station Stewardship Measure including survey, assessment and calculation methodologies inherited from Network Rail and to be developed by the station operator, and condition levels to be achieved during the franchise relative to the baseline;

- (iv) clear rules for when intervention will be triggered specified in terms of asset condition and/or user satisfaction; and
 - (v) a policy for dealing with exceptional renewals, such as those arising from latent defects or exceptional adverse weather, environmental contamination or third party damage;
- The station asset management plan must include:
 - (i) details of and a timetable to deliver any particular commitments the station operator makes on maintenance, renewals and/or enhancements¹;
 - (ii) a detailed plan of renewals to be undertaken until the Station Stewardship Measure baseline condition is established; and
 - (iii) details of any reactive maintenance, including cyclical and planned preventative maintenance consistent with the station asset management policy;
 - Maintenance of appropriate, accurate, readily accessible and transferable information about the station assets, including their condition, capability and capacity (including asset information for the Station Stewardship Measure);
 - Short and long term rolling plans for maintenance, renewals and enhancements that are capable of being transferred to a subsequent operator; and
 - Arrangements for completing schemes at franchise end and for efficiently and effectively handing over incomplete schemes to a subsequent operator or third party.
13. We expect that delivery by the station operator of such a station asset management policy and plan will usually indicate that the station operator is complying with its licence obligation.

Station Stewardship Measure

14. The station operator shall determine the condition of all its stations using Network Rail's methodology for calculating a Station Stewardship Measure and the station operator's methodology for surveying condition. The resulting condition determination shall be audited by independent means, and reported to ORR no later than 12 months after the start of the franchise, and shall form the baseline.

¹ This does not include any enhancement schemes undertaken for Network Rail.

15. The station operator shall develop an improved Station Stewardship Measure to be agreed with ORR. The station operator shall then restate the condition of all its stations using this new Station Stewardship Measure with the survey data used to calculate the baseline. The restated condition scores shall be audited by independent means, and reported to ORR no later than 36 months after the start of the franchise, and shall replace the baseline.
16. The station operator shall update these condition scores whenever it delivers an enhancement in relation to which it has made a commitment under its franchise agreement, and shall audit the updated condition scores by independent means.

Monitoring and enforcement

17. We will enforce the station operator's delivery of those customer and funder requirements listed above in line with our applicable enforcement policy. (Current policy published at <http://www.rail-reg.gov.uk/upload/pdf/395.pdf>.)
18. ORR will require the station operator to report each year and at the end of the franchise about what maintenance, renewal and/or enhancement works were undertaken in the year and the reasons for (and consequences of) any variation from its published plan.
19. ORR will also require the station operator to report each year and at the end of the franchise about:
 - the current condition score of each station taking account of the most recent station surveys conducted;
 - the average condition score for all stations in the franchise; and
 - the methodology used to produce the data.
20. The information provided as part of the report made in paragraphs 18 and 19 above must be suitably audited, by independent means. Although the starting point of the audit (including the appropriate nature and size of any sampling exercise undertaken) will depend on the station operator's quality management system, ORR may require the station operator to commission further audit work (including changes to any sampling exercise) as part of its seeking assurance as to the quality, accuracy and reliability of the data reported. All auditing will be carried out at the station operator's expense.
21. A copy of such audits must be provided to ORR as part of the reports made in paragraphs 18 and 19 above. ORR may require other information provided under the licence to be audited, as appropriate.
22. A failure to achieve the station asset stewardship obligations is potentially a licence breach and could result in ORR taking

enforcement action, in line with then applicable policy. In this context, the purpose of enforcement is to ensure delivery of and compliance with licence obligations. If an area of concern is identified, say through our monitoring of the station operator's annual return, we would adopt a staged approach of investigation and escalation focused on serious and systemic failures, as we do when enforcing licence obligations now. Where necessary, this could lead ultimately to consideration of formal enforcement action in line with our published policy.

23. Where ORR undertakes enhanced monitoring and enforcement activity this may be re-charged to the station operator.
24. ORR will publish at the start of each new franchise, and at other times as appropriate, a regulatory statement setting out how it plans to monitor and enforce the obligations on the station operator under the specific requirements of the station operator's licence.
25. After mobilisation and throughout a franchise any proposed substantive variation to the station asset management plan or policies must be agreed by ORR.
26. For exceptional renewals that result from uninsurable risks or latent defects, the station operator should provide appropriate evidence to the DfT (copied to ORR) to verify the cause of the event and its likely reinstatement cost, propose options and make a recommendation on its proposed actions. ORR will discuss these with the Secretary of State before the Secretary of State decides on a particular course of action.
27. At franchise end, ORR will determine whether the station operator has not met its asset stewardship obligations under the station licence. Where ORR considers that these obligations have not been fulfilled to a material extent, ORR will make a determination as to the amount that would be required to remedy any such failure. ORR will provide a report on the fulfilment of the obligations, including where applicable details of any material default and ORR determination, to the Secretary of State within 4 months of the end of the franchise. Station condition will be a particular focus, and ORR therefore expects it will normally be able to discuss possible issues with the station operator before the franchise end, on the basis of the station operator's regular reports to ORR.
28. These arrangements will be reviewed from time to time.

INTERCITY WEST COAST FRANCHISE

STATION ASSET STEWARDSHIP - GUIDANCE

PURPOSE OF THIS GUIDANCE

The purpose of this guidance is to briefly indicate where the stations asset stewardship proposition is to be documented. It identifies the key documents in relation to the proposition and briefly draws attention to certain provisions of the Franchise Agreement that have been introduced or amended as a consequence of the stations asset stewardship proposition. It starts with a section on the Invitation to Tender to draw out the relationship between the tender proposals regarding station asset stewardship and the franchise related documentation explaining how and where those tender proposals are expected to be documented.

STATUS OF THIS GUIDANCE

The information contained in this guidance does not purport to contain all of the information that a prospective franchisee or shareholder may require. Neither does it purport to identify or summarise every aspect of the franchise material or requirements relating to stations. Neither the Secretary of State, nor any of her employees, agents or advisers ("representatives"), makes any representation or warranty (express or implied) (and no such representatives have any authority to make such representations and warranties) as to the accuracy, reasonableness or completeness of the information contained in this document.

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DOCUMENTATION OF THE STATIONS ASSET STEWARDSHIP PROPOSITION

Provision for stations asset stewardship will be documented through the following documents:

1. **Franchise Agreement** between the Secretary of State and the Franchisee.
2. **Conditions Precedent Agreement** between the Secretary of State and the Franchisee.
3. **Parent Company Guarantee** to the Secretary of State.
4. **Station Licence** issued by the ORR to the Franchisee.
5. **Regulatory Statement** issued by the ORR to the Franchisee giving guidance in relation to the Station Licence.

6. **Lease** of each station from Network Rail to the Franchisee as Station Facility Owner (“SFO”).
7. **Station Access Agreements** between the SFO and another TOC station user.
8. **Station Access Conditions** 2011 (FRI Leases) (England and Wales) (“SACs”) – model clauses produced by the ORR for use in station access agreements.
9. **Supplementary Agreements** (re station facility charges).
10. **Direct Agreement** between the Secretary of State and Network Rail.
11. **Working Arrangement Letter** between the Secretary of State and the ORR.

1. INVITATION TO TENDER

The bid

1. The franchisee will take on responsibility for operating, maintaining, and improving the stations. However this core duty will not be set in the franchise agreement. It will be set in the station licence and thus monitored and enforced by the ORR under the station licence.
2. However bidders will have to set out in their franchise bid how they will discharge and price for this duty, including any specific commitments they offer, as the bid will be reviewed by the Secretary of State, with ORR assistance, and the successful bidders accepted station proposition will be required, by the Conditions Precedent Agreement, to form the basis of their station licence application.
3. For some purposes complementary provision will also be set out in the franchise agreement. For example any station enhancement schemes of £10m or more offered by bidders will be included in the franchise agreement as committed obligations.
4. Proprietary rights in the stations will be granted through a long lease from the freeholder, Network Rail, of each station.

ORR involvement at bid stage

5. The ORR will be involved, with the Secretary of State, in the examination of the bidder’s station asset stewardship proposals set out in their bid delivery plan, during franchise bid evaluation. This is to:
 - (a) advise on the quality and scope of the bidders station asset stewardship proposals;
 - (b) consider whether the bidder’s proposals show sufficient maturity to be developed into a full station licence application, with associated Station Asset Management Policy and Plan, and indicative renewal and replacement timetable, such as to successfully meet the requirements of the new station asset stewardship condition of the station licence; and

(c) to assess in particular the credibility of the proposed spend profile against planned outputs.

Guidance on expectations for Station Asset Management Policy, Plan, and indicative renewal and replacement timetables

6. In particular bidders will be required to submit to the Secretary of State, in their bid delivery plan, their proposals for their Station Asset Management Policy and Plan to some level of detail.

7. Bidders should set out their policy and proposals, including timetable, milestones, capability and construction standards, to secure a station licence, and state how they will satisfy its asset stewardship condition taking account of the ORR's proposed Regulatory Statement for it. They should set out their policy and proposals to a level sufficient to convey the quality and principles upon which the full licence application will be made and to capture the station asset stewardship offer. The policy and proposals should include the approach to be taken to secure a safety authorisation for the stations. Also it should include proposals for the efficient and effective retention and updating of asset data, and the ultimate handover of the policy, plan and records to a subsequent franchisee.

8. The bid delivery plan requirements are outlined in the ITT with a list of component items for each. The new licence obligation for stations transfers substantial new responsibilities to the station operator in a way that enables flexibility and freedom for bidders. To assist bidders with their development of proposals, guidance is offered below to assist with the scoping of the station asset stewardship aspect primarily assessed under delivery plan 9 "stations and accessing the network" though linked to other bid delivery plans.

9. Bidders should note the existence of the British Standards Institution guidance for optimal management of physical assets. Bidders may wish to consider and set out their strategic objectives (eg condition, capability, performance, safety and serviceability of assets, ambience of the station environment, customer satisfaction, revenue increase and cost efficiency) and go on to link these to identified specific policy statements with principles to address areas including the following:

- How the overall approach accords with best practice and what best practice means to the operator. Integration with the wider safety, environmental and quality management systems for the franchise.
- An approach that delivers non-discrimination for all asset users, so ensuring the assets are maintained taking into account the requirements of all types of operator.
- The operator's relationship with the network infrastructure manager, Network Rail, and other station users. The policy for access to manage assets including where assets exist in a 'High Street' environment, planned access and emergency unplanned access via the network infrastructure.
- The policy for setting the Long Term Charge (LTC), including the LTC rates for each station under the station licence.

- Long term planning of station capacity including the standards to be adopted to achieve passenger safety and comfort.
- Standards for design, management and construction including the relationship between those standards and the optimisation of whole life value.
- The Station Stewardship Measure (SSM) including survey, assessment and calculation methodologies, audit approach including survey frequency, audit/sampling and reporting, and condition levels to be achieved throughout the franchise relative to the baseline.
- Monitoring of assets including measurement, targets and tolerance of fault and service levels.
- The circumstances, including criteria, in which intervention will be triggered covering interventions including fault identification, planned preventative maintenance and renewal of life-expired assets. The approach for optimisation and prioritisation of asset interventions and the optimisation of whole life costs.
- Exceptional renewals, such as those arising from latent defects or exceptional adverse weather, environmental contamination or third party damage; incorporating the uninsurable risk provision in the draft franchise agreement.
- Asset information strategy and asset information systems to support asset management, audit, assurance and reporting, including:
 - A plan to achieve the quality of data appropriate to the effective management of the station assets.
 - The maintenance of appropriate, accurate, readily accessible and transferable information about the station assets, including their condition, capability and capacity (including asset information for the Station Stewardship Measure)
- The competencies of staff fulfilling asset management responsibilities.
- Short and long term outline plans for maintenance, renewals and enhancements addressing:
 - Details of and a timetable to deliver any particular commitments the station operator makes on maintenance, renewals and enhancements;
 - A detailed plan of renewals to be undertaken until the Station Stewardship Measure baseline condition is established;
 - Details of reactive, cyclical and planned preventative maintenance;
 - How the station asset stewardship policy will be applied to implement,
 - The relationship between works undertaken and targets, in particular the SSM score expected to be achieved through the life of the franchise.
- Handover arrangements for rolling plans to include completing schemes at franchise end and for efficiently and effectively handing over incomplete schemes to a subsequent operator or third party.

Accommodating future demand

10. Such proposals should address the issue that the Station Asset Management Policy and Plan will be expected to include provision to accommodate the effect on stations of reasonably foreseeable growth in rail passenger demand e.g. through proposed enhancement schemes or otherwise.

Station Stewardship Measures (SSM)***Brief description of the SSM system***

11. The franchisee will be required to develop and use a Station Stewardship Measure (SSM) system as the primary means to plan and monitor the obligation they will have, under the station licence, to protect the long term value of station assets. The system will take as its starting point the SSM system already developed for stations by Network Rail for CP4 and it is to be further developed by the franchisee as indicated below.

12. Assets (buildings, fabric and services) at each station are divided into groups (such as canopies) and each group is further sub-divided into elements (such as glazing). The percentage of remaining life of each element is assessed against its expected life, as ascertained from a national standard value based on evidence from the Building Research Establishment. That percentage is converted to a condition rating on a scale of 1 to 5 (1= long life, 5 = life expired). The condition rating is then weighted by a national standard set of risk factors for each type of element that reflect the relative importance of the element to the stations safety and basic functioning. The weighted condition ratings for the elements are then aggregated to produce an SSM score for each category of station (there are 6 categories of station).

13. The SSM score for a category of station gives a measure of the average remaining life of the stations in that category. If the SSM score remains stable this indicates the stations in that category are being maintained and renewed at a long term sustainable rate. However the score is not designed to be an indicator of passenger functionality or satisfaction.

SSM survey and ascertainment of initial baseline SSM scores in first 12 months

14. During the first 12 months of the franchise the franchisee will have to ascertain the initial baseline SSM score for each category of station and submit this to the ORR for acceptance. To do so it will have to survey the condition of all the managed West Coast stations using an accepted survey methodology.

Bidders to propose survey methodology

15. Bidders will have to propose for this purpose, in their bid delivery plan, a condition survey methodology suitable for capturing data for use with the existing Network Rail SSM evaluation methodology. The survey methodology proposed in the bid should be sufficiently developed to enable acceptance in principle by the ORR.

Calculation of initial baseline SSM scores

16. The survey outputs¹ will be used by the franchisee, with the Network Rail SSM evaluation methodology, to calculate the SSM score for each category of station. These scores, supported by a validated and independently audited calculation model, will have to be reported to the ORR by 31st December 2013. These scores will be the initial “baseline” scores.

Bidders to propose development of SSM methodology

17. Bidders will have to propose improvements to the Network Rail SSM evaluation methodology and additional survey and validation methodologies as necessary to make the overall SSM approach robust. As a minimum the improvements must include control in the way assets are broken down into elements, and the introduction of a weighting factor for the relative value of assets. The proposals should be sufficiently developed to enable acceptance in principle by the ORR.

18. Bidders may propose further improvements and refinements and are in any event strongly recommended to discuss their proposed methodology improvements with the ORR during the development of their bids.

Ascertainment of final baseline SSM scores

19. The franchisee will be required to recalculate the baseline SSM scores for each category of station using the improved SSM methodology agreed by the ORR. This would be produced using the survey results obtained in the first 12 months, together with any additional data required, and applying the revised methodology. The revised SSM baseline scores would be submitted to the ORR for acceptance supported by a re-validated and independently audited calculation model. The accepted scores would be substituted for the initial baseline SSM scores and become the final baseline SSM scores.

Required SSM scores

20. The franchisee will be required to maintain a minimum SSM score throughout the franchise period for each category of station it maintains. Those scores are likely to be, as a minimum, the final baseline SSM scores. But bidders are encouraged to consider what uplift to those baseline scores they expect to achieve over the life of the franchise. The required scores will be accepted, monitored and enforced by the ORR.

Documentation

21. The SSM system is to be set out in the franchisee’s Station Asset Management Policy required by the Station Licence. In particular this document is to include the assessment and calculation methodologies, the accepted condition survey methodology, the accepted development of the evaluation methodology to make the overall SSM approach robust, the requirements for the establishment of the initial and final baseline SSM scores, and the SSM target scores required by the ORR. Apart from those components which can’t be added until after franchise commencement (which must be

¹ The survey outputs must include the improved condition of assets resulting from the Network Rail renewals for 2013/14.

added as soon as possible) the SSM system will have to be documented in the franchisees' Station Asset Management Policy to the station licence before franchise commencement. The required Station Asset Management Plan is to set out the timetables for setting and updating the required SSM scores.

Timescales

22. The initial baseline scores are to be reported to the ORR by 31st December 2013. The latest date for completing the final baseline scores is 31st December 2015. Although the initial baseline scores are to be established in the first 12 months of the franchise, the franchisee may wish to develop the SSM methodology, obtain the required additional data needed for it, and produce the final baseline scores concurrently.

Adjustment of SSM scores during franchise term

23. During the franchise term, following the completion of any significant enhancements², the ORR may consider an adjustment to a required SSM score is appropriate, and require the accepted Station Asset Management Policy and Plan to be adjusted accordingly.

Works in first 12 months

24. Whilst the initial baseline SSM scores are being established the franchisee is to carry on implementing a renewals programme in accordance with their accepted Station Asset Management Policy and Plan to their station licence. This programme should, as a minimum, comprise Network Rail's plan of renewals for 2013/14. The impact of the implementation of these works must be reflected in the initial baseline SSM survey.

Specific maintenance, renewal and enhancement schemes

Detailed in the station asset management plan

25. Bidders should indicate in their bid delivery plan, for subsequent inclusion in their Station Asset Management Plan, details of any particular maintenance, renewal and enhancement schemes it proposes to implement in relation to stations. This will include the proposed works in the first 12 months, as referred to above. In addition to any such schemes specifically identified the final Station Asset Management Plan is to include short and long term rolling plans for maintenance, renewals and enhancements.

Committed obligations under the franchise agreement

26. Any enhancement scheme (as a single project at an individual station) offered by the successful bidder, the estimated cost of which equals or exceeds £10m, will also be included in the Franchise Agreement as a committed obligation.

² Typically committed obligations under the franchise agreement.

Exceptional renewals

27. Bidders should indicate in their bid delivery plan, for subsequent inclusion in their station asset management policy for the station licence, how they would address exceptional renewals (i.e. renewals to address material and unforeseeable latent defects, environmental contamination, exceptional adverse weather conditions or third party damage.)

28. Where exceptional renewals result from latent defects and/or uninsured risks where damage is likely to exceed £10m, the Franchisee can put options and, following discussion with the ORR, make a recommendation to the Secretary of State for repairs using an alternative funding arrangement. Such arrangements may include, for example, an adjustment to the asset management policy and plan.

Incremental options for additional station investment

29. Bidders should include station enhancement initiatives with a payback within the period of the franchise length within their Base Case bids. Where Bidders have identified station enhancement initiatives, which they consider to be of merit, but which have failed to achieve the Bidder's financial criteria for inclusion in the Base Case bid, they are encouraged to submit the initiatives as Incremental Options, if they can be proven to be value for money and affordable within a 30 year period. The Department will consider purchasing the Incremental Options offered subject to affordability constraints and economic appraisal criteria.

30. For investment schemes proposed during the franchise term provision is made in the Franchise Agreement (the Annex to Appendix 3 of Schedule 9.1) for the franchisee to propose investment schemes from time to time to the Secretary of State and for the Secretary of State to consider if the scheme should be pursued and if it should be supported in some way.

Passenger satisfaction

31. Bidders will be required to demonstrate how they will improve passenger satisfaction over the life of the franchise. The franchise will be monitored against a number of disaggregated National Passenger Survey (NPS) targets based on three attribute measures for the following service metrics:

- Stations
- Trains
- Customer Service and Information

32. The NPS attributes included in each metric and the associated methodology are contained within the data site. Each element is based on a number of aggregated NPS scores.

33. Bidders will be required to set their own targets for each metric taking into account the improvements being sought as part of this ITT.

34. It is expected that current performance levels for Trains and current performance levels for Customer Service and Information will at least be maintained, unless good

evidence can be provided as to why this is not achievable. It is expected that performance levels for Stations will at minimum improve from current levels. Targets will be assessed on an annual basis.

35. Where the targets are not achieved Bidders will be required to set out an improvement plan, with a level of expenditure of up to £250,000 per annum index linked for each target not achieved.

Station surveys

36. Survey data from Network Rail and the incumbent operator is available in the data site. Bidders have agreed to collectively commission their own joint survey at their own cost of the ICWC franchise managed stations for the purpose of informing their bid proposals.

Long term charge

37. The franchisee (as Station Facility Owner) will not pay long term charge for the stations it manages as Network Rail will no longer be responsible for maintenance. But other train operators using those stations will have to pay long term charges to the franchisee as SFO to cover their due contribution to that element of the station maintenance and renewal costs to be taken over by the SFO from Network Rail. This long term charge payment will be in addition to the usual “Qualifying Expenditure” charged to station users.

38. Bidders must charge the station long term charge (in Station Access Agreements and the corresponding Station Access Conditions) at the Control Period 4 determination level with:

- (i) adjustment, where applicable, for the estimated values provided for agreed “Access for All” and “National Stations Improvement Programme” schemes as identified in the data site as and when those schemes are delivered;
- (ii) adjustment for any subsequent station changes; and
- (iii) future indexation as provided for in the Station Access Conditions.

39. This charging requirement should be documented in the station asset management policy for the stations licence (as referred to above in the section headed “Guidance on expectations for Station Asset Management Policy, Plan, and indicative renewal and replacement timetables”.)

Station facility charges

40. Bidders should be aware of the ongoing RAB loan facility payments to Network Rail expected for the stations they inherit and make appropriate provision. The franchisee will have to take over the loan payments until paid off or until franchise end whichever is the earlier. Details of the loan payments are in the data site.

Rents

41. The new lease arrangements no longer require the sharing of benefits with Network Rail from commercial activities at stations.

Parent Company Guarantee

42. The ITT will advise bidders of the requirement for the franchisee's parent company to provide, and maintain for the duration of the franchise, and thereafter until any outstanding liability there may be is satisfied, a parent company guarantee in the form contained in the Data Site. The guarantee shall give security to support the franchisee's franchise agreement obligation (Schedule 6.2 – non compliance with station maintenance licence condition) to pay compensation at franchise end to the Secretary of State for non compliance with the station asset stewardship condition of the station licence.

2. FRANCHISE AGREEMENT

The following paragraphs describe provisions of the Franchise Agreement that have been introduced or amended as a consequence of the stations asset stewardship proposition.

Definition of Change

1. The definition of Change has been amended by the addition of two additional Changes as follows:
 - a) The ORR may undertake a consultation of industry parties on the level of long term charge payable under station access agreements which are subject to the 99 year Lease station access conditions. As the implementation by the ORR of its conclusions following such consultation will not fall within the definition of a Charging Review (as amended for Stations at which the Franchisee is the station facility owner), and so would not constitute a Change under the Franchise Agreement, the Change in paragraph (h) of the definition of Change is to protect the Franchisee from any changes to the amount of the long term charge payable in respect of access agreements which the subject of the 99 year Station Access Conditions following any such ORR consultation.
 - b) The second Change in paragraph (i) of the definition of Change is to protect the Franchisee (to the extent that it is not already taken account of in any ORR consultation referred to above) in respect of a change in the level of the long term charge which the Franchisee may be required to pay under any new access agreement entered into with a station facility owner who is moving away from the National Station Access Conditions 1996 (England and Wales).

Definitions of Charging Review/Charge Variation

2. The ORR will not have the locus³ to review the Long Term Charges payable in respect of Stations Access Agreements are subject to the Stations Access Conditions 2011 (FRI Leases) (England and Wales). For this reason the following changes have been made to the definition of Charging Review and Charge Variation:

³ Condition F11.5 of SACs 1996 is not contained in SACs 2011 nor is there any equivalent provision, and under Schedule 4 of the Railways Act 2005 the ORR only has the power to undertake a review of the terms of charging etc under any agreement if that agreement provides for it to do so.

- a) the definition of Charging Review has been amended to remove Stations where the Intercity West Coast Franchisee would be the station facility owner from the ambit of paragraph (a) (ii) of the definition of Charging Review.
- b) Amendments have also been made to the definition of Charge Variation so that station leases where the franchisee is the station facility owner are not Relevant Agreements for the purposes of that definition.

Schedule 2.1 (Asset Vesting and Transfer)

3. Bidders should note that Schedule 2.1 requires the Franchisee to enter into the leases in respect of Stations in the agreed terms marked SL. The agreed terms SL, to be initialled by the Secretary of State and the winning bidder on the date of execution of the Franchise Agreement, are contained in the data site.

Schedule 6.1 (Committed Obligations)

Enhancement schemes £10m or greater

4. Any enhancement scheme (as a single project at an individual station) offered by the successful bidder, the estimated cost of which equals or exceeds £10m, will be included in the Franchise Agreement as a committed obligation. Schedule 6.1 would include key details of the scheme and its proposed value. Bidders are expected to mark up Schedule 6.1 of the Franchise Agreement to include their proposed Committed Obligation in this respect (including a proportionate Committed Obligation Payment Adjustment) as instructed in paragraph 4.2.5 of the ITT.

Schedule 6.2 (Intercity West Coast Franchise Specific Obligations)

Registration of station leases

5. The franchisee is to have each station title duly registered at HM Land Registry.

Non compliance with station maintenance licence condition

6. If the franchisee does not comply with the station asset stewardship condition of the station licence, then at the end of the franchise the ORR will make a determination as to the value of the default and the franchisee will be obliged to pay that amount to the Secretary of State. This amount is to be guaranteed by the Parent under the Parent Company Guarantee.

British Transport Police Accommodation

7. The franchisee will be obliged to give due consideration to any request from the British Transport Police to provide suitable accommodation or facilities at stations to enable them to effectively perform the services they owe to the franchisee under any contract or arrangement between the franchisee and the British Transport Police.

Development at Stations -Prohibition on extraction of future franchise value

8. The Franchisee will not be permitted, without the Secretary of State's prior written consent, to enter into any lease, development agreement or any other agreement or arrangement in relation to a Station which can reasonably be regarded as providing any payment or benefit in any form to the Franchisee which can be attributed to the rights granted to the counterparty in respect of any period after the end of the franchise term.

Uninsured events and latent defects liability

9. Paragraph 3.5 of Schedule 6.1 includes provisions on the protections available to the Franchisee under the Franchise Agreement in relation to Uninsurable Risks and Latent Defect Liabilities (as each such term is defined under the Franchise Agreement) which arise in respect of Stations. The intention is that the Franchisee should not be liable for reinstatement costs in the prescribed circumstances.

Station Charge Adjustments –Schedule 8.4

10. As Long Term Charges are no longer to be payable to Network Rail, these provisions would no longer be relevant to stations for which the franchisee is the Station Facility Owner or stations where the franchisee's passenger services call and which are subject to the Station Access Conditions 2011 (FRI Leases) (England and Wales).

Schedule 10 (Remedies, Termination and Expiry)

11. As the obligations of the Franchisee in relation to the station stewardship measure is to be enforced by the ORR through the Station Licence a new paragraph 2.7(c) of Schedule 10.3 has been added so that it is an event of default of the Franchise Agreement if the Franchisee fails to comply with any provisional order, final order or any other order made pursuant to section 55 of the Act, in each case made by the ORR and relating to a contravention of the station stewardship licence condition.

Schedule 14 (Preservation of Assets)*Maintenance of Operating Assets – Schedule 14.2*

12. Paragraph 1 of Schedule 14.2 has been amended to carve out Stations from the requirement on the Franchisee to maintain, preserve and protect assets employed by the Franchisee in the performance of its obligations under the Franchise Agreement. This is because the maintenance, protection and preservation of Station assets would be enforced by the ORR under the Station Licence.

Key contracts – Schedule 14.3

13. The contracts for maintenance and renewal works at stations, including any framework delivery contracts for the provision of building and civil engineering works, mechanical works and electrical works at Stations are now Key Contracts under the Franchise Agreement. The DfT will accordingly require the winning bidder to ensure that the supplier of these services enters into a Direct Agreement with the Secretary of State

as a condition precedent to the commencement of the Franchise Agreement (see paragraphs 5 and 6 of the Conditions Precedent Agreement).

Schedule 15.1 (Reletting Provisions)

Inspection Rights at Stations prior to the end of the Franchise Period

14. The Franchisee, if requested, is to permit the Secretary of State or nominee (including bidders for future franchises) to have access to the stations to inspect them, take inventories, and carry out condition surveys.

3. CONDITIONS PRECEDENT AGREEMENT

The following paragraphs describe provisions of the Conditions Precedent Agreement that have been introduced or amended as a consequence of the stations asset stewardship proposition.

A new paragraph 1.3 has been added which requires the Franchisee to ensure that its application for a station licence, and associated documentation including station asset management policy, station asset management plan, and indicative renewal and replacement timetables, reasonably and properly reflect its bid proposals regarding the stations. The Franchisee is also required to use all reasonable endeavours to ensure that any such licence and associated documentation will so reflect and mandate those bid proposals.

4. PARENT COMPANY GUARANTEE

The parent company of the franchisee will be required to provide, and maintain for the duration of the franchise, and thereafter until any outstanding liability there may be is satisfied, a parent company guarantee, in the form attached to the ITT, to give security to support the franchisee's franchise agreement obligation (Schedule 6.2 – non compliance with station maintenance licence condition) to pay compensation to the Secretary of State at franchise end for non compliance with the station asset stewardship condition of the station licence.

5. STATION LICENCE

Copy draft available on Data Site.

6. REGULATORY STATEMENT

Copy draft available on Data Site.

7. LEASE

1. Copy draft available on Data Site.
2. Schedule 5 (asset protection) is currently being reviewed by ATOC and Network Rail with the aim of simplifying the provisions. Should a revised Schedule 5 be settled in time before franchise let it is proposed to offer bidders the option to use it in place of the existing version.
3. Under the station asset stewardship arrangements the SFO will be an infrastructure manager under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, S.I. 2006 No. 599 (ROGS). The SFO will need to operate under a safety authorisation with associated safety management system that covers the station infrastructure. The new station asset management responsibilities are such that bidders cannot rely on adopting the safety management system of the incumbent operator.
4. ORR advice on safety certificates and authorisation, including information on the application process and assessment criteria, can be found on its website via the following link: <http://www.rail-reg.gov.uk/server/show/nav.1520>

8. STATION ACCESS AGREEMENTS

Copy templates on ORR website.

9. STATION ACCESS CONDITIONS

SACs 2011 (FRI Leases) (England and Wales) available on the Data Site.

10. SUPPLEMENTARY AGREEMENTS

Bidders need to include for the assumption from the outgoing franchisee of any outstanding loan facility charges payable to Network Rail in relation to stations where enhancements have been funded through Network Rail's Regulatory Asset Base. Facility charge capital and interest repayments for such loans made by Network Rail to enhance stations under the current franchise will be transferred to the new franchisee who will continue to make the payments. Such charges may be documented in Supplementary Agreements.

Details of loan facility charges are available on the Data Site.

11. DIRECT AGREEMENT

The Secretary of State will expect to have a Direct Agreement with Network Rail in relation to the station leases, as Key Contracts.

12. WORKING ARRANGEMENT LETTER WITH ORR

The ORR and the Department have agreed to document the proposed working arrangements between them in relation to station asset stewardship.

NOTES ON CONDITIONS PRECEDENT AGREEMENT

This agreement is entered into with the Secretary of State by the appointed franchisee and sets out the conditions precedent which must first be satisfied before the franchise may be commenced. As far as station asset stewardship is concerned the key conditions precedent are that:-

(1) the Secretary of State receives a notice from the ORR indicating that the franchisee has, or will be, granted a station licence to take effect no later than the start date;

(2) the Secretary of State receives satisfactory evidence, on or before the start date, showing that the licence conditions are satisfactory (i.e. not such as the Secretary of State would not have let the franchise agreement had those terms been known to her in advance, or would not have let it on the terms agreed) and that the conditions are reasonably likely to be satisfied;

(3) the franchisee ensures that its application for a station licence (and associated documentation including station asset management policy, station asset management plan, and indicative renewal and replacement timetables) shall reasonably and properly reflect its bid proposals regarding the stations and uses all reasonable endeavours to ensure that any licence issued by the ORR, and associated documentation, will so reflect and mandate those bid proposals;

(4) the Secretary of State receives, on or before the start date, a notice from the ORR indicating that relevant safety certification has been issued;

(5) the franchisee certifies to the Secretary of State that it is, or will be, a party to any station access agreements and station leases necessary for the implementation of the franchise agreement in terms approved by the Secretary of State;

(6) the franchisee is a party, at the Start Date, to relevant key contracts in terms approved by the Secretary of State which, in addition to station access agreements and station leases, include :-

(i) any contract for maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works and mechanical and electrical works at Stations;

(ii) any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, and cash management or ticket issuing systems administration; and

(7) any required Direct Agreements are entered into with the Secretary of State in relation to key contracts.

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