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25 July 2019

To consultees:

Amey Keolis Infrastructure / Seilwaith	GB Railfreight Limited
Amey Keolis Limited	London TravelWatch
Keolis Amey Operations / Gweithrediadau	National Assembly for Wales
Keolis Amey Limited	Network Rail Infrastructure Limited
British Transport Police Authority	Rail Delivery Group
Claims Allocation and Handling	Rail Freight Group
Agreement Registrar	Rail Safety and Standards Board
Colas Rail Limited	Transport Focus
DB Cargo (UK) Limited	Transport for London
Department for Transport	Transport for Wales
Direct Rail Services Limited	Transport Scotland
First Greater Western Limited	XC Trains Limited
Freight Transport Association	
Freightliner Group	Also published on the ORR website

## **Statutory consultation on a network licence for the operator of the Core Valley Lines**

### *Introduction*

Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited (“AKIL”) has applied for a network licence. AKIL will become the infrastructure manager for the network running from Cardiff to Treherbert, Aberdare, Merthyr Tydfil, Coryton and Rhymney (known as the Core Valleys Lines (“CVL”)) once this asset transfers from Network Rail to Transport for Wales (“TfW”).

On 7 June 2019, we consulted on the scope of a network licence for AKIL’s operation of the CVL<sup>1</sup>. This letter sets out our response to the issues raised by respondents to that consultation and sets out the proposed network licence for AKIL. This forms our statutory consultation; if you wish to make a response please do so by 22 August 2019. We intend to issue a network licence by 20 September 2019.

### *Context*

As we set out in our consultation, we consider each network licence application on a case by case basis. The proposed network licence for AKIL reflects factors such as the fact that the freehold of the CVL will remain in public ownership and the terms of the Grant Agreement in place between Welsh Ministers and their Operational Delivery Partner. We have also noted the other protections operators are afforded by the Railways Act 1993 and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the 2016 Regulations”). In similar cases in future, we will consider each potential divestment on its own basis. The regulatory approach and network licence for future infrastructure managers may not be the same as that for AKIL. For example, we may wish to put in place additional

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<sup>1</sup> See <https://tinyurl.com/yvbk7mq>. Consultation closed 5 July 2019.



protections where a private body was taking ownership of a longer term interest in the land or where the divestment was for a larger part of the network.

We recognise this transaction has given rise to a number of challenges as to how the system should operate in an environment where network ownership becomes more fragmented. For example, having multiple infrastructure managers on a network presents challenges in the effective operation of the Schedule 8 performance regime across the network as a whole. This increases the cost and complexity on the network. We are currently working with Network Rail to consider the best way forward to address these issues in the long term. This will also inform our approach to the next periodic review for Network Rail. We expect to engage closely with industry in doing so, for example, through a written call for evidence and through industry workshops. We expect to commence this work later in 2019.

### **Responses to the consultation**

We received comments from nine respondents, all of whom agreed with our proposal to issue a network licence to the operator of the CVL network. Copies of the comments we received are on our website<sup>2</sup>.

Direct Rail Services Limited, Great Western Railway and Transport Focus responded either supporting our proposals or offering no further comment on the scope of the conditions or obligations we proposed. Transport Focus welcomed the inclusion of an obligation on provision of passenger information to help seamless travel and the Condition whereby ORR could require the provision of information to support transparency of information and publication of statistics.

Freight operators and the Rail Freight Group raised broadly the same views relating to the scope of the network licence and called for further obligations to be placed in the network licence, additional to those we proposed. There was broad agreement that the network licence should include a condition to ensure cooperation with other infrastructure managers, especially Network Rail. Network Rail also supported our proposal to limit the scope of the network licence to the CVL only.

The comments we received are summarised in the table at **Annex A**. We also provide our responses to those points in that table.

Having considered the responses to our initial consultation and having we are consulting formally on the draft of a network licence for AKIL. The proposed licence is at **Annex B**. Our statutory notice is at **Annex C**.

### **Responding to this consultation**

We would welcome your views on this statutory consultation. Please send your responses preferably by email to [licensing.enquiries@orr.gov.uk](mailto:licensing.enquiries@orr.gov.uk). Alternatively you can send a hardcopy response to:

Licensing Team  
Office of Rail and Road  
One Kemble Street  
London WC2B 4AN

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<sup>2</sup> The responses are available at [https://orr.gov.uk/\\_data/assets/pdf\\_file/0011/41411/responses-to-consultation-core-valley-lines-statutory-consultation.pdf](https://orr.gov.uk/_data/assets/pdf_file/0011/41411/responses-to-consultation-core-valley-lines-statutory-consultation.pdf)



In either case, please mark your response "Consultation on a CVL network licence". Please ensure your response reaches us by **no later than 22 August 2019**.

This consultation is also being published on our website.

A handwritten signature in blue ink, which appears to read "Les Waters".

**Les Waters**

We plan to publish all responses to this consultation on our website. This may include your personal data such as your name and job title.

Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

### **Consent**

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation;
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)
- Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our [privacy notice](#).

### **Format of responses**

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. Files in the OpenDocument format have a fully open file format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using pdf creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

## Summary of responses to initial [consultation](#) on the scope of a network licence for the CVL

1.	Issue	Respondent	Summary of views	Our view
	Financial neutrality.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Delivery Group; Rail Freight Group.	The transfer of the CVL from Network Rail to AKIL should be financially neutral to freight train operators. Suggestion this could be a licence condition.	<p>We are sympathetic to the concerns raised regarding this issue. We understand that the freight operating companies (“FOCs”) are in discussion with AKIL and Network Rail to ensure that conditions in track access contracts would not make the FOCs worse off compared with position they are currently in with Network Rail.</p> <p>The issue will need to be resolved before FOCs will agree to vary their existing Network Rail contracts to reflect the transfer and enter into new track access contracts with AKIL. In addition, the FOCs state that they will not consent to Network Rail’s proposed Network Change before resolution of these issues. The transfer will therefore not progress until this is resolved.</p> <p>We consider that, given the role of track access contracts in resolving this issue, we do not need to include an obligation in the network licence binding the licence holder to any specific action.</p>

Issue	Respondent	Summary of views	Our view
2.	Alignment of Network Rail's and AKIL's network licences.	<p>DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group; Member of public.</p> <p>The protections and entitlements over the entire Network Rail network, which are well understood, should continue on the CVL for consistency of regulatory framework. The CVL network licence should replicate Network Rail's as far as possible, where appropriate to protect the mixed use nature of the railway.</p> <p>The operator of the CVL should be subject to periodic reviews.</p>	<p>Network Rail's network licence was modified at the start of April 2019 to embed the role and accountabilities of its Routes and System Operator function. The obligations reflect Network Rail's position as the operator of the national mainline network, our requirement for information to support price reviews, and the way we can hold it to account. Therefore, not all conditions are appropriate for the CVL network licence. TfW does not require ORR to conduct periodic reviews for the CVL.</p> <p>TfW is able to hold its Operational Delivery Partner ("ODP") to account for the performance of the network and cost efficiency through the Grant Agreement ("GA"). Train operators will have the capability and condition of the CVL secured through the GA and the CVL Network Code which will form part of their track access contracts. The network licence for the CVL will ensure consistency with standard industry obligations and include particular conditions to bring it into line with Network Rail's network licence where necessary.</p> <p><i>The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016</i>, require the CVL to obtain our approval for a charging framework and a performance regime, and train operators can appeal to us over any terms they feel are discriminatory. This also provides protection for a mixed use railway.</p> <p>We therefore consider that, overall, there is sufficient protection for uses of the network and do not consider we need to widen the scope of the network licence beyond that proposed.</p>

Issue	Respondent	Summary of views	Our view
3.	The Grant Agreement between Welsh Ministers and the Operational Delivery Partner.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	<p>Freight train companies do not like to rely on protections that are only in the Grant Agreement – they are not party to the GA, were not consulted on it, and it cannot be enforced by ORR.</p> <p>TfW is a public body that will manage the GA on behalf of the Welsh Ministers and is accountable to them. Although ORR cannot enforce the GA, we consider that the nature of TfW means that we can be satisfied that it will act in the public interest and that it will enforce the GA in event that AKIL fails to deliver its obligations.</p> <p>In addition, we can take action in respect of any breaches in the licence conditions that we have set and there are protections afforded to operators through the operation of the Railways Act and the <i>Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016</i>. FOCs will also be able to enforce their track access contracts in event that they consider that AKIL is not delivering the obligations set out in that.</p>
4.	Alignment with Network Rail network licence Condition 1: Network Management Duty.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	<p>The conditions in the Grant Agreement are not sufficiently transparent for third parties and it is uncertain how or whether the GA will be enforced or changed or if third parties will be consulted. They should be added into the CVL network licence.</p> <p>The GA requires the CVL network to be maintained such that the railway can continue to run on its assets as now and that it will be handed back to TfW in a similar condition. This broad objective approximates Network Rail's Network Management Duty. We consider that the CVL's discrete and smaller area allows a less high-level and purposive approach, as given in the GA. However, should train operators consider that there are specific instances where the CVL is not being maintained properly, Part G of the Network Code, which forms a part of track access contracts, will provide a mechanism for redress.</p> <p>It remains an option for ORR to modify the network licence in future to include a network management duty if we consider that there is sufficient evidence for such a modification and that it is appropriate to do so.</p>

Issue	Respondent	Summary of views	Our view	
5.	Alignment with Network Rail network licence Condition 1: Stakeholder Engagement Duty.	DB Cargo (UK) Limited; Freightliner Group Limited; Network Rail; Rail Delivery Group	Support for ORR's proposal to include a licence obligation that requires cooperation with other infrastructure managers. This needs to cover access, pathing, timetabling, performance management and the need to maintain a network connection. Network Rail's network licence should be modified to include the same obligations and ensure consistency with adjoining infrastructure managers.	The Stakeholder Engagement Duty is drafted widely so that the licence holder engages appropriately with stakeholders' reasonable requirements. We are including obligations in the CVL network licence in the areas of capacity allocation and timetabling. Track access agreements will include the details of a performance regime that will incentivise the CVL network operator to minimise any causes of delay on its network.
6.	Alignment with Network Rail network licence Condition 3: Sufficient Resources.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	Having sufficient resources to carry out licensed activities is critical for the protection of train operators.	The GA sets out the network management obligations to which the ODP. TfW considered the financial standing of its ODP as part of its procurement process. ORR also makes checks into financial fitness as part of the licensing process.
7.	Alignment with Network Rail network licence Condition 5: Asset Management and Asset Information.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	Asked that we place obligations on AKIL, similar to Network Rail, so that it has and must make accessible appropriate and accurate asset information and asset management policies for managing the network, as this is crucial for train operators to plan their businesses with a reasonable degree of assurance.	<p>In addition to Network Rail's network licence obligations, train operators, in their track access agreements with Network Rail, can ask for relevant information to be provided to them under Part K of the Network Code.</p> <p>Although the GA requires AKIL to maintain asset information and provide it to TfW through direct reporting and online access, the proposed CVL Network Code will not include a similar Part K.</p> <p>Given this omission and the importance of the availability of accurate asset information, we are proposing to add such an obligation under the Network Management condition of the CVL network licence.</p> <p>We note that TfW is requiring AKIL to maintain the CVL to a broadly similar condition over its 15-year tenure. Given this limited timeframe, we consider that asset management policies do not have the same role to play</p>

Issue	Respondent	Summary of views	Our view
			for the CVL as they do for Network Rail's management of its own network, which has no time limit
8.	Alignment with Network Rail network licence Condition 7: Timetable Planning and Timetable Disputes.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group; Member or public.	<p>It is important that the licence holder is obligated to produce timetables and have processes in place to resolve relevant disputes. Freight or Open Access operators may want increased access in future.</p> <p>We consider this is covered in Condition 2 of the proposed network licence and Part D of the CVL Network Code.</p> <p>We note that the GA sets the obligation for the ODP to co-operate with other Train Operators in respect of their timetable development rights.</p>
9.	Alignment with Network Rail network licence Condition 15: Rail Delivery Group.	DB Cargo (UK) Limited.	<p>The CVL infrastructure manager would benefit from membership of Rail Delivery Group, given the CVL's connection with the national network.</p> <p>Rail Delivery Group's full/Licensed membership category does not capture non-Network Rail networks. Although the licence holder may choose to request associate membership, we do not think it is appropriate to impose a licence requirement requiring associate membership, with a lower status and fewer rights.</p> <p>Rail Delivery Group did not press for membership in its response.</p>
10.	Alignment with Network Rail network licence Condition 16: Restrictions on Activities.	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	<p>There should be clear and transparent conditions around inter-company dealings, given the group structure of KAWCL and its railway operations.</p> <p>We consider that this is covered under the prohibition of cross-subsidy in the proposed network licence.</p> <p>In Network Rail's network licence, the purpose of <i>Restriction of activities</i> is to prevent resources that are allocated for network activities (through periodic reviews, where funding is determined) from being diverted to non-core activities. The funding context for AKIL is not the same and we consider that it is appropriate for TFW to manage this.</p>

Issue	Respondent	Summary of views	Our view	
11.	Alignment with Network Rail network licence Condition 17: Land Disposal.	DB Cargo (UK) Limited; Freightliner Group Limited; NR; Rail Freight Group.	Since the CVL is connected with the national network, land disposal restrictions are an important protection to safeguard against disposal for non-rail use.	The freehold of the land transferred from Network Rail will be owned by TfW, not the licence holder. The licence holder will be granted a short (15) year lease of the land. The disposal of land is controlled by TfW and Welsh Ministers; the licence holder will not have the right to dispose of the asset.
12.	Alignment with Network Rail network licence Condition 18: Interests in Railway Vehicles	DB Cargo (UK) Limited; Freightliner Group Limited; Rail Freight Group.	<p>Call for the inclusion of a licence condition similar to Condition 18 (Interests in railway vehicles) in Network Rail’s network licence. This is because AKIL forms part of the Keolis Amey Wales Cymru Limited (“KAWCL”) group of companies, as does Keolis Amey Operations / Gweithrediadau Keolis Amey Limited (“KAOL”), the provider of franchised rail services on the CVL and in Wales and the Borders. A similar licence condition would make it clear that AKIL should not have Interests in railway vehicles for non-network purposes through inter-company dealings</p>	<p>Network Rail has this condition in its network licence mainly to reinforce the principle that the operator of the national mainline should not become a player in passenger or freight train sectors.</p> <p>We consider that AKIL’s ability to form a ‘vertically integrated’ company is very limited compared to Network Rail. However, the principle of keeping network operations separate from commercial rail operations is an important one, which AKIL has acknowledged.</p> <p>We also note that the way KAWCL has organised its group structure means that AKIL does have an indirect relationship with KAOL, so some of the wording of Network Rail’s Condition 18 would not be appropriate to AKIL, as applying that condition to its network licence could immediately place it in a position of non-compliance. As the requirements for vertical separation have been complied with, we do not consider we should place further restrictions on AKIL in this way.</p> <p>We are therefore proposing a form of prohibition that restricts AKIL from having direct interests in railway vehicles that are not required for network operations, unless our consent is granted.</p>

Issue	Respondent	Summary of views	Our view
<b>13.</b>	Connection agreement between the CVL and Network Rail networks.	DB Cargo (UK) Limited.  Licence obligation is needed to ensure a connection agreement is maintained.	<p>We do not consider there is a need for a licence obligation. There is no such obligation in Network Rail's licence with respect to HS1, TfL or Heathrow Airport Ltd.</p> <p>If one of the infrastructure managers refuses to enter into a connection agreement with the other, we can direct them to do so under section 17 of the Railways Act.</p> <p>Section 16A of the Railways Act allows us to direct the operator of a network to provide such a facility.</p> <p>In the first instance the obligations in Stakeholder Engagement Duty in both the CVL and Network Rail's network licence will facilitate the engagement to maintain a connection, as required.</p>

**Network Licence**

granted to

**Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited**

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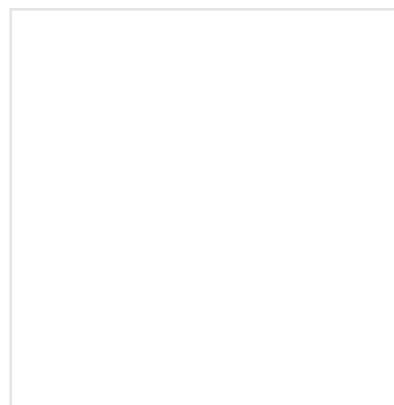
# Part I - Scope

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1. The Office of Rail and Road (“ORR”), in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) (“the Act”), hereby grants to Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited (company registration number 11389544), a licence authorising the licence holder:
  - (a) to be the operator of the Core Valley Lines Network;
  - (b) to be the operator of a train being used on any Network for any purpose comprised in the operation of the Core Valley Lines Network; and
  - (c) to be the operator of a train being used on any Network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (b) abovesubject to the Conditions set out in Part III.
  
2. This licence shall come into force on [date] and shall continue in force unless and until revoked in accordance with Part IV.

[Date]

Signed by authority of the  
Office of Rail and Road



# Part II - Interpretation

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## *Definitions*

1. In this licence:

- “Access Charge” means any amount payable or proposed to be paid under an access contract or an installation access contract;
- “Affiliate” in relation to the licence holder means any holding company or subsidiary of the licence holder or any subsidiary of a holding company of the licence holder, in each case within the meaning of sections 1159, 1160 of and Schedule 6 to the Companies Act 2006;
- “Capacity Allocation Process” has the meaning set out in Condition 2.1;
- “Code” means the Railway Group Standards Code established by RSSB;
- “Comply” is to be interpreted in accordance with ORR’s most recently published licensing guidance;
- “Constitution Agreement” means the contract of that name which sets out the purpose and governance of RSSB and to which members of RSSB must be a party;
- “Control”
- (a) A person is taken to have control of the licence holder if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the licence holder’s affairs, and in particular if he possesses or is entitled to acquire:
    - (i) 30% or more of any share capital or issued share capital of the licence holder or of the voting power in the licence holder; or
    - (ii) such part of any issued share capital of the licence holder as would, if the whole of the income of the licence holder were in fact distributed among the participators (without

regard to any rights which he or any other person has as a loan creditor), entitle him to receive 30% or more of the amount so distributed; or

- (iii) such rights as would, in the event of the winding-up of the licence holder or in any other circumstances, entitle him to receive 30% or more of the assets of the licence holder which would then be available for distribution among the participators.
- (b) Subsections (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988, and the legislative provisions referred to in those subsections, apply to the interpretation of paragraph (a) in the same way that they apply to the interpretation of subsection (2) of section 416 of that Act;

“Core Valley Lines Network”

means the Core Valley Lines railway infrastructure, including the following railway lines (stations are inclusive unless specified otherwise):

- (a) Rhymney to Cardiff Queen Street;
- (b) Coryton spur;
- (c) Ystrad Mynach to Cwmbargoed;
- (d) Merthyr Tydfil to Cardiff Queen Street;
- (e) Aberdare to Cardiff Queen Street;
- (f) Aberdare to Hirwaun (not in use);
- (g) Treherbert to Cardiff Queen Street;
- (h) Radyr to Ninian Park (exclusive);
- (i) Cardiff Queen Street to Cardiff Central (exclusive); and
- (j) Cardiff Queen Street to Cardiff Bay,

and connects with Network Rail’s railway network to the north of Cardiff Central Station (exclusive) and to the north of Ninian Park (exclusive), and includes any extensions to the Core Valley Lines Network which have been notified to ORR and in respect of which ORR has consented.

“Environmental Policy”	has the meaning set out in Condition 5.1(a);
“Financial Year”	means a 12 month period beginning on 1 April;
“Land”	includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land;
“Licensed Activities”	means things authorised to be done by the licence holder in its capacity as operator of a network or trains under this licence;
“Network”	means the network of which the licence holder is the operator under this licence and includes any station or light maintenance depot in which the licence holder has an estate or interest, or over which the licence holder has a right;
“Network Business”	<p>means:</p> <p>(a) the business of providing and operating the Network, including the maintenance, renewal, replacement, improvement, enhancement and development of the Network; and</p> <p>(b) any ancillary service related to the business and activities in paragraph (a);</p> <p>and (without limitation) includes:</p> <p>(i) the purpose of financing the business referred to in paragraph (a) and the services referred to in paragraph (b);</p>
“Network Rail”	means Network Rail Infrastructure Limited, a private limited company incorporated in England and Wales (company registration number 02904587);
“ODP”	means Keolis Amey Wales Cymru Limited, a private limited company incorporated in England and Wales (company registration number 11391059);
“Passenger Information Duty”	has the meaning set out in Condition 1.2;

“Potential Funder”	<p>means any person who has expressed to the licence holder in writing a serious and credible interest in providing or intention to provide finance for or in connection with:</p> <ul style="list-style-type: none"> <li>(a) services relating to railways; or</li> <li>(b) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;</li> </ul>
“Potential Provider”	<p>means any person who has expressed to the licence holder in writing a serious and credible interest in providing or intention to provide:</p> <ul style="list-style-type: none"> <li>(a) services relating to railways; or</li> <li>(b) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;</li> </ul>
“Protected Information”	<p>means any information which:</p> <ul style="list-style-type: none"> <li>(a) relates to the affairs of a particular person; and</li> <li>(b) has been provided to or obtained by the licence holder in the course of its dealings in connection with any actual or proposed agreement which is in a class of agreement referred to in the Act,</li> </ul> <p>but excluding information that is in or enters into the public domain otherwise than as a consequence of disclosure by the licence holder (or any person to whom it is disclosed by the licence holder) which will breach Condition 14;</p>
“Rail Industry Standards”	has the meaning set out in the Standards Manual, established by RSSB;
“Railway Group Standards”	means standards authorised under the Code;
“Related Undertaking”	in relation to the licence holder means any undertaking in which the licence holder has a participating interest (and for this purpose “undertaking” has the meaning given by section 1161 of the Companies Act 2006, and “participating interest” is to be construed in accordance with paragraph 8 of Schedule 8 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008;

“Relevant Assets”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any Land;</li> <li>(b) any railway assets; and</li> <li>(c) any other assets (including information technology systems) which have, or are designed to have, a dedicated use in the operation, maintenance, renewal, replacement, improvement, enhancement or development of the Network, <p>in which the licence holder has an interest, whether legal or beneficial, including as owner, occupier, operator, lessee (of whatever rank) or as the holder of any other right, but excluding the purposes of any provision assets falling within a description or class which ORR determines to be subject to an exclusion from the application of that provision;</p> </li></ul>
“Relevant Claims Handling Arrangements”	has the meaning set out in Condition 8.1;
“Relevant Person”	means each train operator, each holder of an access option and each other person who has been allowed to participate in the procedure for developing the timetable under the Network Code, as amended from time to time;
“Relevant Industry Processes”	means arrangements, whether contractual, regulatory or voluntary, to which the licence holder is a party, or is subject, which involve establishing, or making changes to, a timetable;
“Resources”	includes (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities;
“RSSB”	means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675), and its successors and assigns;

“Stakeholder”	means any person:
	(a) who has, or in the future is likely to have, a significant relationship with the licence holder;
	(b) who may be impacted by the activities of the licence holder;
	(c) who is a Potential Funder; or
	(d) who is a Potential Provider;
“Stakeholder Engagement Duty”	has the meaning set out in Condition 1.4;
“TfW”	means Transport for Wales, a private limited company incorporated in England and Wales (company registration number 09476013.)

*Definitions and rules of interpretation in legislation*

2. The Interpretation Act 1978 shall apply to this licence as if it were an Act of Parliament.
3. Terms and expressions defined in the Act, the Transport Act 2000 and the Railways Act 2005 shall, unless the context requires otherwise, have the same meanings in this licence.

*General rules of interpretation*

4. Any reference in this licence to a numbered paragraph is a reference to the paragraph bearing that number in the condition in which the reference occurs.
5. In interpreting this licence, headings shall be disregarded.
6. In this licence, where there is an overlap between two or more provisions:
  - (a) compliance with any more specific obligations shall not be regarded as exhaustive of compliance with more general obligations; and
  - (b) in complying with these more specific obligations, the licence holder shall at all times comply with the more general obligations.

### *Time limits*

7. Where in this licence the licence holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the licence holder fails to comply with that obligation within that time limit.
8. Where this licence provides for anything to be done by any person within a particular period of time or on or by a particular day or date, ORR may vary that period, day or date by giving notice to the licence holder and such other persons as it considers are likely to be affected by the variation.

### *Provision of information*

9. Where a condition of this licence requires the licence holder to produce a document or to provide information, this shall not require it to produce a document or to provide information:
  - (a) for any purpose referred to in section 58 of the Act which the licence holder could not be compelled to produce or provide under that section; or
  - (b) which the licence holder could not be compelled to produce or to give in evidence in civil proceedings in any court.

### *Disclosure of information*

10. Where in this licence there is a requirement relating to the disclosure of information by the licence holder, references to the disclosure of information shall include authorising disclosure of, or access, to such information.

### *ORR consent*

11. Where in this licence there is a provision for ORR to give its consent:
  - (a) ORR may give such consent subject to conditions; and
  - (b) any consent given shall be in writing and may be expressed in general or specific terms.

### *Service of documents*

The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.

# Part III - Conditions

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## *Part A - Core Duties and network management*

### **1 Core Duties**

#### *Passenger Information Duty*

- 1.1 The “Passenger Information Purpose” is to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the Network (including when there is disruption) to enable train operators to meet their information obligations to passengers and prospective passengers (including obligations to enable railway passengers to plan and make their journeys with a reasonable degree of assurance).
- 1.2 The licence holder shall:
- (a) achieve the Passenger Information Purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available; and
  - (b) cooperate with train operators and Network Rail whenever necessary to achieve the Passenger Information Purpose
- (the “Passenger Information Duty”).

#### *Stakeholder Engagement Duty*

- 1.3 The “Stakeholder Engagement Purpose” is to ensure that the licence holder treats Stakeholders in ways appropriate to their reasonable requirements in their capacity as Stakeholders.
- 1.4 The licence holder shall achieve the Stakeholder Engagement Purpose and, in particular, shall, to the greatest extent reasonably practicable:
- (a) deal with stakeholders with due efficiency and economy, in a timely manner and with the degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network facility owner and operator; and

- (b) ensure that its engagement with Stakeholders is:
  - (i) effective in supporting the licence holder's achievement of the Passenger Information Purpose, including by ensuring Stakeholders' views are duly taken into account;
  - (ii) inclusive, in that the licence holder seeks to involve all relevant Stakeholders in a fair and proportionate manner, including by adopting different approaches to reflect Stakeholders' different capabilities and interests;
  - (iii) well-governed, in that it is underpinned by effective processes and governance arrangements; and
  - (iv) transparent, in that sufficient information is made available to enable effective engagement with Stakeholders

(the "Stakeholder Engagement Duty").

## **2 Network Management**

### *Capacity allocation*

- 2.1 The licence holder shall to the greatest extent reasonably practicable:
- (a) establish and maintain an efficient and effective process for managing the allocation of capacity on the Network (the “Capacity Allocation Process”), which:
    - (i) reflects best practice; and
    - (ii) clearly assigns responsibilities for all parts of the process;
  - (b) keep the Capacity Allocation Process under review and where necessary and appropriate, make changes to it;
  - (c) comply with any other responsibilities which are set out for it in the Capacity Allocation Process;
  - (d) promptly and duly respond to any requests for information in relation to the allocation of capacity, taking all reasonable steps to ensure that information provided is accurate; and
  - (e) promptly and duly respond to any requests for advice on the allocation of capacity, ensuring that such advice is given by persons with appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination).
- 2.2 In complying with this Condition, the licence holder shall cooperate with Network Rail and any Potential Provider, Potential Funder and appropriate franchising authority so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the Network may be satisfied.

### *Timetable planning*

- 2.3 The licence holder shall to the greatest extent reasonably practicable:
- (a) run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it;

- (b) where necessary and appropriate, initiate changes to Relevant Industry Processes; and
- (c) where necessary and appropriate, cooperate with Network Rail to achieve the requirements of this Condition.

so as to enable persons providing railway services and other Relevant Persons to plan their businesses with a reasonable degree of assurance and to meet their obligations to railway users.

- 2.4 The licence holder shall secure that the decisions in respect of timetabling on the Network are made by persons with appropriate expertise and in a transparent and impartial manner (including ensuring that there is no undue discrimination).
- 2.5 The licence holder shall respond expeditiously to any timetabling matter which a train operator reasonably considers to be urgent

#### *Timetable disputes*

- 2.6 The licence holder shall use reasonable endeavours to resolve promptly any timetabling disputes.

#### *Maintaining asset information*

- 2.7 The licence holder shall maintain:
  - (a) appropriate information about the Relevant Assets, including information about their condition, capability and capacity; and
  - (b) appropriate collated information about the Relevant Assets on a Network-wide basis.
- 2.8 The information maintained under Condition 2.6 must be accurate and readily accessible on request.

## ***Part B - Industry obligations***

### **3 Information on Stakeholder dealings**

3.1 The licence holder shall:

- (a) publish information, by code of practice or otherwise, on the principles and procedures by which it will comply with the Stakeholder Engagement Duty;
- (b) ensure that the information which is published is sufficient in form and content to facilitate efficient and effective dealings between the licence holder and its Stakeholders; and
- (c) from time to time and whenever directed by ORR review and, if necessary, revise the information so that it may better facilitate such dealings.

## **4 Safety and standards**

4.1 Except where ORR consents otherwise, the licence holder shall:

- (a) be a member of RSSB and a party to the Constitution Agreement;
- (b) comply with its obligations under the Constitution Agreement and the articles of association of RSSB; and
- (c) exercise its rights under the Constitution Agreement and the articles of association of RSSB so as to ensure that RSSB acts in accordance with the Constitution Agreement.

4.2 The licence holder shall comply with:

- (a) the Code;
- (b) such Railway Group Standards as are applicable to its Licensed Activities; and
- (c) subject to Condition 4.3, such Rail Industry Standards (or parts thereof) as are applicable to its Licensed Activities.

4.3 The licence holder is not required to comply with an applicable Rail Industry Standard (or part thereof) where:

- (a) it has, following consultation with such persons as it considers are likely to be affected, identified an equally effective measure which will achieve the purpose of the standard; and
- (b) it has adopted and is complying with that measure.

## **5 Environment**

### *Environmental Policy*

5.1 The licence holder shall establish and maintain:

- (a) a written policy designed to protect the environment from the effect of licensed activities (the “Environmental Policy”); and
- (b) operational objectives and management arrangements to give effect to the Environmental Policy,

taking due account of any relevant guidance issued to it by ORR from time to time.

5.2 The licence holder shall review and if necessary revise the Environmental Policy, the operational objectives and the management arrangements periodically and otherwise as appropriate having regard to all relevant circumstances.

5.3 Where it makes a material modification to the Environmental Policy, operational objectives or management arrangements, the licence holder shall promptly send to ORR a copy of the Environmental Policy and a general description of the operational objectives and management arrangements.

5.4 The licence holder shall have regard to the Environmental Policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

### *Extent of this condition*

5.5 Nothing contained in this condition shall require the undertaking of any action that entails excessive cost, taking into account all relevant circumstances including the nature and scale of operations of the type carried out by the licence holder.

## ***Part C - Corporate matters***

### **6 Fees**

- 6.1 In each Financial Year, the licence holder shall make a payment to ORR which is the aggregate of:
- (a) the annual fee for this licence, as determined by ORR; and
  - (b) an amount which ORR has determined is a fair proportion of the amount estimated by ORR (following consultation with the Competition and Markets Authority) as having been incurred by the Competition and Markets Authority in the calendar year immediately preceding the end of the Financial Year in connection with references made to it under section 13 of the Act relating to:
    - (i) this licence; or
    - (ii) any class of licence of which ORR determines that this licence forms part.
- 6.2 The licence holder shall make the payment determined under Condition 6.1 by such date as ORR requires, being not less than 30 days after the day on which ORR notifies the licence holder of the amount of the payment.

## **7 Insurance**

7.1 The licence holder shall:

- (a) maintain insurance against third party liabilities in respect of the Licences Activities; and
- (b) ensure that such insurance is on terms to which ORR has consented.

## **8 Claims allocation and handling**

8.1 Except where ORR consents otherwise, the licence holder shall at all times be a party to the agreements or arrangements relating to:

- (a) the handling of claims against operators of railway assets; and
- (b) the allocation of liabilities among operators of railway assets,

which have been approved by ORR from time to time (the “Relevant Claims Handling Arrangements”).

8.2 Except with the consent of ORR, the licence holder shall not, in relation to any of the Relevant Claims Handling Arrangements, enter into any agreement or arrangement with any other party to the Relevant Claims Handling Arrangements:

- (a) under which the licence holder agrees not to exercise any rights which it has under any of the Relevant Claims Handling Arrangements; or
- (b) varying the Relevant Claims Handling Arrangements,

other than as provided for under the terms of the Relevant Claims Handling Arrangements.

## **9 Change of Control**

- 9.1 The licence holder shall, if any person obtains Control of the licence holder, notify ORR as soon as practicable thereafter.

## **10 Information for ORR**

- 10.1 The licence holder shall provide to ORR on request any information which ORR reasonably requires for the purpose of carrying out any of its functions under Part I of the Act, subject to Condition 10.2.
- 10.2 This condition shall not require the provision of information to ORR for the purposes of any function of ORR under sections 69 and 71 of the Act.
- 10.3 Information required to be provided under this condition shall be provided in such form and manner and at such times as reasonably requested by ORR.

## **11 Emergency access**

- 11.1 During any emergency affecting the railway, the licence holder shall, to the extent that it is legally entitled to do so, grant to any person requesting it such permission to use any Network of which the licence holder is the operator pursuant to this licence as is necessary or expedient to alleviate the effects of the emergency.

## ***Part D - Restrictions***

### **12 Non-discrimination**

12.1 The licence holder shall not in its Licensed Activities, or in carrying out any other function contemplated by this licence, unduly discriminate between particular persons or between any classes or descriptions of person.

12.2 In particular, for these purposes the licence holder shall not unduly discriminate against:

- (a) freight operators; or
- (b) passenger operators in respect of passenger services which cross more than one Network.

## **13 Cross-subsidy**

### *Prohibition of cross-subsidy*

- 13.1 The licence holder shall, except in so far as ORR otherwise determines:
- (a) not give any unfair cross-subsidy to, nor receive any unfair cross-subsidy from, any Affiliate or Related Undertaking of the licence holder; and
  - (b) ensure that there is no unfair cross-subsidy as between the Network Business and any other business or activity of the licence holder or of any Affiliate of the licence holder,
- subject to Condition 13.2.

### *Exceptions*

- 13.2 For the purposes of this condition:
- (a) any Access Charge;
  - (b) any investment capital provided by the licence holder for any new enterprise or project which does not or is not likely to have an initial rate of return at normal commercial levels; and
  - (c) anything which the licence holder is required to do or not do pursuant to any other condition of this licence or otherwise by or under any enactment,
- shall not constitute an “unfair cross-subsidy”.

### *Accounting records*

- 13.3 The licence holder shall:
- (a) maintain accounting records for the Network Business which are separate from those of the other businesses and activities of the licence holder and its Affiliates; and
  - (b) maintain such other accounting records as ORR reasonably requires for the purpose of monitoring compliance with this condition.

- 13.4 The licence holder shall ensure that any accounting records referred to in Condition 13.3 comply with such accounting policies as ORR reasonably requires.
- 13.5 The licence holder shall, on ORR's request, allow such records and information to be audited (at the expense of the licence holder) by a person approved by ORR for the purpose of assessing compliance with this condition.

## **14 Restricted use of Protected Information**

14.1 The licence holder shall not disclose Protected Information other than:

- (a) with the consent of the person to whose affairs the Protected Information relates;
- (b) to employees, agents, consultants, advisers and contractors of the licence holder to the extent necessary for the effective conduct of licensed activities;
- (c) to TfW, the Secretary of State, Scottish Ministers, the Welsh Assembly Government, the ODP or ORR;
- (d) to Network Rail; or
- (e) in compliance with the duties of the licence holder under the Act, conditions of any licence, any other enactment, any requirement of the London Stock Exchange or any regulatory authority or pursuant to any judicial or arbitral process.

14.2 Where the licence holder discloses Protected Information to a person in a manner which is permitted under Condition 14.1, the licence holder shall take all reasonable steps to ensure that the person:

- (a) does not use the Protected Information for any purpose other than that for which it was provided to that person; and
- (b) does not disclose the Protected Information other than in accordance with the provisions of this condition.

## **15 Interests in railway vehicles**

- 15.1 The licence holder shall not hold any direct interest in the ownership or operation of any railway vehicle in Great Britain, except where:
- (a) ORR has consented to the licence holder holding the interest; or
  - (b) the railway vehicle is used wholly or mainly for undertaking the Licensed Activities.
- 15.2 For the purposes of Condition 15.1, the licence holder holds a direct interest in the ownership or operation of a railway vehicle where the licence holder has:
- (a) any legal or beneficial interest in any railway vehicle (in whole or in part); or
  - (b) the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.

## Part IV - Revocation

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1. ORR may revoke this licence at any time if agreed in writing by the licence holder.
2. ORR may revoke this licence by not less than three months' notice to the licence holder:
  - (a) if a final order has been made, or a provisional order has been confirmed under section 55 of the Act, in respect of any contravention or apprehended contravention by the licence holder of any Condition, and the licence holder does not comply with the order within a period of three months beginning with the day on which ORR gives notice to the licence holder stating that this licence will be revoked pursuant to this term if the licence holder does not so comply; provided that ORR shall not give any such notice before the expiration of the period within which an application could be made under section 57 of the Act in relation to the order in question or before any proceedings relating to any such application are finally determined; or
  - (b) if the licence holder has not commenced carrying on Licensed Activities within one year beginning with the day on which this licence comes into force or if the licence holder ceases to carry on Licensed Activities for a continuous period of at least one year; or
  - (c) if the licence holder is convicted of an offence under section 146 of the Act in making its application for this licence; or
  - (d) if any person obtains Control of the licence holder and:
    - (i) ORR has not approved that obtaining of Control;
    - (ii) within one month of that obtaining of Control coming to the notice of ORR, ORR serves notice on the licence holder stating that ORR proposes to revoke this licence in pursuance of this paragraph unless the person who has obtained Control of the licence holder ceases to have Control of the licence holder within

the period of three months beginning with the day of service of the notice; and

- (iii) that cessation of Control does not take place within that period.



**Notice of proposal to grant licences**

**The Railways Act 1993 (the Act)**

**Application by:**

**Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited (the applicant)**

**Company Registration Number:**

**11389544**

**Registered Address:**

**The Sherard Building  
Edmund Halley Road  
Oxford  
OX4 4DQ**

**Company Officers:**

**Sherard Secretariat Services Limited  
Martin James Baynham-Knight  
Paul Leonard Robinson  
Andrew Robert Joy  
Kelvin Holder  
Alex Gilbert**

The Office of Rail and Road gives notice in accordance with section 8(4) of the Act that it proposes to grant the applicant a network licence to be used in Great Britain, subject to all legal requirements being fulfilled by the applicant.

The network licence will authorise the applicant to be the operator of the Core Valley Lines Network.

We propose to grant the licence on the grounds that the applicant has shown itself to be a fit and proper person.

**Please send any comments on this proposal by 22 August 2019 to:**

**Mute Mowoe  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN  
[licensing.enquiries@orr.gov.uk](mailto:licensing.enquiries@orr.gov.uk)**