

## TRACK ACCESS

### **Application to ORR on appeal under Regulations 29 and 30<sup>1</sup> of the Railway Infrastructure (Access and Management) Regulations 2005**

#### **1. Introduction**

This form should be used to apply to ORR (as the appointed regulatory body) for the determination of an appeal under regulation 29 of the Railway Infrastructure (Access and Management) Regulations 2005 in respect of access to a terminal or port (as defined in regulation 6) or services (as defined in regulation 7). This form sets out our standard information requirements for considering appeals under regulation 29. Applicants are strongly encouraged to read ORR's guidance document setting out how it intends to assess such appeals<sup>2</sup> before making an application.

Where the level of access or service provision sought falls entirely within the scope of section 17 or 22A of the Railways Act 1993 (the Act) an applicant must, in accordance with regulation 29(3), lodge the appeal under the relevant section. Where the matter of the appeal falls outside the scope of directions which may be sought under sections 17 or 22A of the Act, the applicant seeking the right to use a railway facility or procure a service must lodge an appeal by using this form.

As ORR intends to limit itself, as far as possible, to making a determination based only upon the information presented by the parties rather than undertaking any extensive research of its own, it is very important that this application contains as many relevant details as possible.

A copy of this form in Word format, and of our guidance note on the appeals process, can be accessed electronically and downloaded via the ORR website at <http://www.rail-reg.gov.uk/server/show/nav.249>, or on disc or CD-Rom from ORR.

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<sup>1</sup> TfL notes that the ORR does not have a prescribed form for a complaint under Regulation 30 of the Regulations. TfL has therefore incorporated its Regulation 30 complaint within this Regulation 29 application.

<sup>2</sup> [Guidance on Appeals to ORR under the Railway Infrastructure \(Access and Management\) Regulations 2006](#), Office of Rail Regulation, March 2006

## 2. The application

### Title of agreement:

Track access arrangements for access to the Heathrow Rail Infrastructure (being the railway infrastructure (including stations) which forms part of the spur from the Great Western Main Line to Heathrow Airport).

### Contact details (company and named individual for queries):

<b>Company</b>	Transport for London ("TfL")
<b>Contact individual:</b>	Howard Smith
<b>Job title:</b>	Operations Director, Crossrail
<b>Address:</b>	25 Canada Square, London E14 5LQ
<b>Telephone number:</b>	0203 197 5976
<b>E-mail address:</b>	HowardSmith@crossrail.co.uk

### Licence and railway safety case

Please state whether the applicant intends to operate the services itself or have them operated on its behalf.

Please state whether the proposed operator of the services:

- (a) holds a valid train operating European licence or a licence under section 8 of the Act or an exemption under section 7; and
- (b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000.

If the answer to (a) or (b) is no, please state the point which that person has reached in their obtaining of the licence, exemption or railway safety case (as the case may be).

TfL (the applicant) is one of the sponsors of the Crossrail project. TfL or a railway undertaking nominated by TfL, currently TfL's concessionaire MTR Corporation (Crossrail) Limited ("**MTR Crossrail**") intends to operate the train services to Heathrow Airport utilising the Heathrow Rail Infrastructure. MTR Crossrail holds a valid train operating European passenger licence (with GB Statement of National Regulatory Provisions) under the Railway (Licensing of Railway Undertakings) Regulations 2005 and also has an accepted safety certificate under The Railways and Other Guided Transport Systems (Safety) Regulations 2006.

TfL is a body or undertaking with public or commercial interest in procuring infrastructure capacity on the Heathrow Rail Infrastructure as required of an applicant by Regulation 3 of the Railways Infrastructure (Access and Management) Regulations 2005 ("**the Regulations**"). Once TfL has secured the terms of access to the Heathrow Rail Infrastructure, it will procure that a railway undertaking nominated by TfL (currently MTR Crossrail) will enter into track access arrangements consistent with those terms.

### 3. The proposed agreement

#### Details of facility or service to which access is requested:

<b>Name of facility or service:</b>	Access to the track comprising the Heathrow Rail Infrastructure
<b>Facility owner:</b>	Heathrow Airport Limited (" <b>HAL</b> ")
<b>Contact individual:</b>	Simon Earles
<b>Job title:</b>	Planning and Surface Access Director
<b>Address:</b>	The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW
<b>Telephone number:</b>	0844 335 1801
<b>E-mail address:</b>	simon_earles@heathrow.com

## Executive summary

Please provide an executive summary of the proposed appeal. This should cover the type and level of rail access required (including number of train slots and timings if relevant) or any services that are required to be provided by the facility owner, the commercial terms and the applicant's reasons for seeking the contract in the terms proposed. Where possible, this application form should be accompanied by a draft agreement setting out the contractual terms that the applicant wishes to enter into with the facility owner. This section should also include an explanation of the extent to which the applicant has evaluated available capacity at the named facility in order to satisfy itself that the level and type of services being sought can be accommodated.

The Department for Transport (“**DfT**”) and TfL are the joint sponsors and co-funders of the Crossrail Project. Under the terms of the agreement between them, TfL is responsible for providing the Crossrail passenger services which are planned to operate between Shenfield/Abbey Wood and Heathrow Airport/Reading, through the new, largely tunnelled infrastructure currently under construction beneath central London. As such, TfL (on behalf of itself and a railway undertaking nominated by TfL, currently MTR Crossrail) is seeking to secure terms for access to the Heathrow Rail Infrastructure to enable it to provide a regular 4tph scheduled service between Paddington and Heathrow Airport from May 2018, and then provide a service, through the tunnel to and from the airport (Central Terminals Area and Terminal 4 stations) – expected to be from December 2019. Appendix 3 sets out in more detail the access rights sought.

The Heathrow Rail Infrastructure currently benefits from an exemption from sections 17 and 18 of the Railways Act 1993, as granted pursuant to the Railways (Heathrow Express) (Exemptions) Order 1994 (the “**Exemption**”). An application cannot therefore be lodged under section 17 of the Railways Act 1993. Hence this application is made under Regulation 29 of the Regulations and concurrently under Regulation 30 given the undesirable developments in relation to competition in the rail services market demonstrated by HAL's behaviours.

TfL has evaluated the available capacity on the Heathrow Rail Infrastructure and is satisfied that the level and type of services being sought can be accommodated. As far as TfL is aware, HAL has also accepted that the level and type of services sought can be accommodated on the track comprised in the Heathrow Rail Infrastructure.

In July 2015, HAL undertook a consultation process to enable it to bring the Heathrow Rail Infrastructure into compliance with the Regulations. HAL's proposals in that consultation process, both as to the terms of access to its infrastructure and the price it proposed to charge, are fundamentally flawed such that no reasonable party could agree to them. TfL responded comprehensively to HAL's consultation. Within that consultation response and more generally, TfL has been engaged with HAL to fix some of the deficiencies, particularly in the access documentation. Notwithstanding that TfL considers it has had grounds to apply to the ORR for some time pursuant to Regulation 29 and Regulation 30 of the Regulations (as set out in Appendix 2), TfL has sought to agree with HAL a way forward so that adequate documentation would be available in the timescales required. HAL has rejected the vast majority of the concerns of TfL and (during a period of engagement from the beginning of October until the beginning of December 2015) has failed to address the serious concerns of TfL both as to the detail of the documentation and more generally. Given the time constraints, TfL now considers it has no option but to apply to the ORR to make a determination pursuant to Regulation 29 and Regulation 30 of the Regulations, on the terms of this document.

TfL has said that it is happy to accept terms that are consistent with the current contracts and regulatory arrangements applicable to Network Rail, amended only where necessary to reflect the nature of the Crossrail service and the particular characteristics and regulatory status of the Heathrow Rail Infrastructure. As noted above, HAL has rejected that offer. HAL has offered terms that vary materially and without justification from the industry standard terms. Necessary protections relating to the management and the operation of the Heathrow Rail Infrastructure more generally have not been included. As requested by this application form, to the extent possible, TfL has provided a drafted and annotated HAL Track Access Agreement and HAL Network Code to accompany this application.

Please see Appendix 2, TfL's consultation response and TfL's comments on HAL's response to TfL's consultation response set out in Appendix 1 for more detail of TfL's complaints in this regard.

The ORR is currently consulting on its proposed decision in relation to the investment recovery charge element of the HAL charging framework for use of the Heathrow Rail Infrastructure. TfL expects the consultation to be concluded around or before the end of May 2016. TfL has responded separately to that consultation and specifically reserves its position in relation to any element of the HAL charging framework and in particular any recovery by HAL of the historic costs of constructing the Heathrow Rail Infrastructure.

TfL asks ORR, pursuant to its powers and duties under Regulation 29 and Regulation 30:

- (a) to determine that access be granted to TfL and MTR Crossrail to the track forming part of the Heathrow Rail Infrastructure:
  - (i) until May 2028 to be co-terminus with the anticipated expiry of the Exemption (before which point HAL will be required to revisit its access documentation);
  - (ii) consistent with the quantum and other access attributes set out in Appendix 3; and
  - (iii) on the terms set out in Appendix 4 in relation to the HAL Network Code and the proposed HAL Track Access Agreement, reflecting the concerns of TfL as set out in Appendix 1;
- (b) to direct HAL to issue a revised HAL Network Statement on the terms set out in Appendix 4, reflecting the concerns of TfL as set out in Appendix 1;
- (c) to direct HAL to enter into access documentation consistent with those key commercial terms. To assist the ORR and HAL, TfL is providing as part of this application a suite of access documentation which reflects a position that TfL would be able and willing to accept and which TfL asks ORR to direct HAL to enter into;

- (d) to direct HAL to provide such information as may be required to finalise the drafting of the outstanding points in the suite of access documentation referred to in (b);
- (e) to set a timeframe for HAL to comply with the above requirements to enable the terms of access to be in place as soon as possible and, in any event, by August 2016 at the latest; and
- (f) to direct HAL to reissue the HAL Network Statement by no later than 31 August 2016 in form and substance which takes into account the principles set out in the Heads of Terms documents and the suite of access documentation submitted by TfL as part of this application.

## Grounds for making this appeal

Please set out here those specific reasons for making this appeal under the Regulations (e.g. has a restriction been imposed by the facility owner, has access been refused or does the applicant consider that it has been unfairly treated or discriminated against?). Please provide copies of correspondence between the applicant and facility owner that supports any argument.

### Key areas of grievance

The access documentation proposed by HAL is defective in numerous ways, fails to provide important information and lacks transparency. Given these deficiencies, TfL considers that HAL cannot be said to have met its obligation under the Regulations to provide the minimum access package. **Appendix 2** sets out TfL's grounds for application in detail, cross-referencing other information as necessary. As this application relates to track access, TfL requests that the ORR considers the specific references to track access and charging (stations access is the subject of a separate (but linked) application).

The key areas of concern for TfL are summarised below. We would emphasise that this is not a comprehensive list.

- 1 The charging structure proposed by HAL – both: (i) proposing to have separate charging for track and stations but including all charges under the track access agreement, with only a nominal charge payable under the station access agreement; and (ii) the inherently discriminatory circumstances created thereby, whereby users of other stations subsidise the use of Terminal 5 station.
- 2 The level of access charges proposed by HAL and HAL's refusal to engage with us in relation to: (i) how it has reached the proposed levels of charges; and (ii) our valid concerns in relation to those charges.
- 3 Given HAL has used the Network Rail documentation as the starting point (which is predicated on the existence of a network licence) there is a need to include certain contractual provisions in the access documentation in place of the requirement for HAL to hold a network licence (for example, ensuring robust asset management strategies are in place to ensure the track and stations are maintained, renewed and repaired so that they operate safely and efficiently) which will have an impact on the charging system.
- 4 HAL's documentation does not explain how the process for modifying the network, stations and terms of access can operate given the charges lie in the track access contract.
- 5 There is no effective performance regime to compensate TOCs for the effects of operational disruption or planned engineering works, contrary to Regulation 14.
- 6 There is no visibility of HAL's arrangements with its key supplier, Network Rail, and what role Network Rail will play in operating the track and stations. Equally there is no clarity about HEOC's role in operating the stations.
- 7 In places the structure of the documentation enables HAL to act in a way which would favour HEOC, its subsidiary, over the Crossrail concessionaire. Regulations 12(7) and 16(3) require separation, in its legal form, organisation and decision-making functions, of the infrastructure manager role from the train operating role. HAL has refused to include contractual assurances in relation to such separation.

More generally, TfL remains aggrieved at HAL's failure adequately to address the other comments set out in TfL's response to HAL's consultation (see Appendix 1).

### **Regulation 29 of the Regulations**

Given the issues described in this application, TfL: (i) considers that it has been unfairly treated and discriminated against by HAL; (ii) is aggrieved by the process that HAL has undertaken in determining the terms on which it proposes to offer access and the disregard for the valid comments and complaints made by TfL and other consultees in relation to such access arrangements and therefore the terms upon which HAL now proposes to grant access to the Heathrow Rail Infrastructure; and (iii) is in particular aggrieved by decisions taken by HAL concerning:

- (a) its network statement produced in accordance with regulation 11 of the Regulations;
- (b) the information which, by virtue of regulation 11(4) of the Regulations, must be included in such network statement;
- (c) the allocation process and its result as prescribed in Part 5 and Schedule 4 of the Regulations;
- (d) the charging scheme and charging structure established in accordance with regulation 12 of the Regulations;
- (e) the level or structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 3 of the Regulations, which TfL (through its own account or through its concessionaire) is required to pay; and
- (f) the arrangements in connection with the entitlements to access granted under Part 2 and Schedule 2 of the Regulations.

### **Regulation 30 of the Regulations**

Further, TfL believes that it has been treated unjustly, been the subject of discrimination and has otherwise been injured by HAL. This has led to undesirable developments in relation to competition in the rail services markets.



## Suitability of preferred facility

Please explain why you consider that this particular facility is competent to supply the access or service required, together with the purpose for which the access or service is required including:

- (a) a detailed explanation of any corresponding services that the applicant is providing to a third party customer (including details of any commercial arrangements that are in place in this respect);
- (b) a detailed description of the characteristics of the facility specifically required which makes it necessary to use the proposed facility;
- (c) an explanation of why it is considered that no other facility is capable of providing these services (including comments regarding the commercial viability of any possible alternative arrangements);
- (d) an explanation of why the services required cannot be provided by the applicant; and
- (e) a description of any other facilities that provide similar access or services to that required, and an explanation of why these are not considered to be viable in this particular instance (either from an operational or commercial point of view).

TfL wishes to provide a 4tph service between Heathrow Airport and Paddington in the first instance as part of the Crossrail Services, replacing and supplementing the existing Heathrow Connect services from May 2018. The Heathrow Rail Infrastructure is the only rail infrastructure available for this service. Viable alternatives for this service in market conditions do not exist.

## 4. Other

### Associated applications to ORR

Please provide details of any other applications that are being made to ORR in parallel with this application (e.g. under sections 17, 18 or 22 of the Act).

TfL submitted a detailed response to the consultation issued by HAL prior to the ORR determination of the charging framework for access to the Heathrow Rail Infrastructure pursuant to Regulation 12 of the Regulations. The ORR was copied into such response and a further copy was provided to the ORR as part of TfL's consultation response on the ORR's proposed "charging framework for the Heathrow Spur". Further copies are available on request.

The DfT (as joint sponsor of the Crossrail project) and MTR Crossrail (as TfL's current concessionaire of the Crossrail services) support this Regulation 29 and Regulation 30 application. Letters of support from each of them are included with this application (as an Appendix to the cover letter).

TfL is making a separate (but linked) appeal to the ORR in relation to accessing the stations comprised in the Heathrow Rail Infrastructure.

## Supporting information

Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application).

TfL refers to:

- (a) its response, the DfT's response and MTR's response to HAL's consultation, all of which support an application for access to the Heathrow Rail Infrastructure on fair, reasonable and transparent terms (copies of these responses are included with this application);
- (b) Appendix 1, which sets out TfL's comments on certain parts (relevant to this application) of HAL's response to TfL's initial consultation response;
- (c) Appendix 2 which sets out TfL's specific grounds of appeal, cross-referencing the consultation responses where appropriate;
- (d) Appendix 3 containing details of the access rights sought by TfL;
- (e) Appendix 4 containing key commercial terms for the access arrangements sought by TfL;
- (f) the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code (marked to show differences from Network Rail "model form" equivalent documents);
- (g) letters of support for this application from DfT and MTR Crossrail at Appendix 4 to the covering letter to this application; and
- (h) the covering letter to this application, including certain information appended thereto, which summarises TfL's proposals.

Appendix 5 of the cover letter to this application sets out all supporting information in full.

## Side letters and collateral agreements

Please confirm here that, where applicable, the whole of the proposed agreement between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed application.

TfL asks ORR, pursuant to its powers and duties under Regulation 29 and Regulation 30:

- (a) to determine that access be granted to TfL and MTR Crossrail to the track forming part of the Heathrow Rail Infrastructure:
  - (i) until May 2028 to be co-terminus with the anticipated expiry of the Exemption (before which point HAL will be required to revisit its access documentation);
  - (ii) consistent with the quantum and other access attributes set out in Appendix 4; and
  - (iii) on the terms set out in Appendix 1 and Appendix 4 in relation to the HAL Network Statement, the HAL Network Code and the proposed HAL Track Access Agreement;
- (b) to direct HAL to issue a revised HAL Network Statement on the terms set out in Appendix 4, reflecting the concerns of TfL as set out in Appendix 1;
- (c) to direct HAL to enter into access documentation consistent with those key commercial terms. To assist the ORR and HAL, TfL is providing as part of this application a suite of access documentation which reflects a position that TfL would be able and willing to accept and which TfL asks ORR to direct HAL to enter into;
- (d) to direct HAL to provide such information as may be required to finalise the drafting of the outstanding points in the suite of access documentation referred to in (b);
- (e) to set a timeframe for HAL to comply with the above requirements to enable the terms of access to be in place as soon as possible and, in any event, by August 2016 at the latest; and
- (f) to direct HAL to reissue the HAL Network Statement by no later than 31 August 2016 in form and substance which takes into account the principles set out in the Heads of Terms documents and the suite of access documentation submitted by TfL as part of this application.

No side letters or other documents qualify or otherwise affect the proposed application.

Confidentiality exclusions

Please indicate clearly any elements in the application and the proposed agreement that the parties would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Act, and provide a full justification for each instance by reference to those statutory grounds. Subject to our decision on such exclusions, it is our intention to publish this application and the proposed agreement on the ORR website.

None.

5. Certification

**Warning:** Under section 146 of the Act, any person who, in giving any information or making any application under or for the purposes of any provision of the Act (including section 17), makes any statement which they know to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution.

I certify that the information provided in this form is true and complete to the best of my knowledge and that Transport for London is willing to enter into an agreement based on the commercial terms appended to this Regulation 29 appeal.



Signed:

Date: 29 April 2015 .....

Name (in caps): HOWARD SMITH.....

Job title: Operations Director, Crossrail.....

For (company): Transport for London .....

## 6. Submission

### What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft agreement (where appropriate), copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information. Please also supply the application, the proposed agreement and, insofar as it is possible, any other supporting information, in electronic form, by e-mail or on disc, in plain Microsoft Word format (i.e. excluding any macros, auto-paragraph or page numbering, or other auto-formatting).

### Where to send it:

E-mail: [david.robertson@orr.gsi.gov.uk](mailto:david.robertson@orr.gsi.gov.uk)

or by post to:

David Robertson,  
Head of Track Access  
Directorate of Access Planning and Performance  
Office of Rail Regulation  
One Kemble Street  
LONDON  
WC2B 4AN

**Appendix 1 – TfL response to HAL’s comments on TfL’s initial consultation response**

## Appendix 2 – Grounds for Application

The following table sets out the grounds for application or complaint under Regulations 29 and 30 of the Railways Infrastructure (Access and Management) Regulations 2005 and provides examples from the TfL Consultation response to HAL in support of those grounds for application. Capitalised terms have the same meaning as set out in the TfL Response.

Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
<p>unfairly treated (Regulation 29(1))</p> <p>treated unjustly (Regulation 30(2))</p>	<p>TfL considers overall that it has been unfairly treated and treated unjustly. The proposed access documentation and terms of the access documentation from HAL are deficient and show a lack of information, missing information and lack of transparency. As set out in the consultation response, TfL also considers that HAL has not undertaken a proper or adequate consultation. There has also been a lack of engagement by HAL with TfL (who will be a key beneficiary of access on the Heathrow Rail Infrastructure) and an unwillingness on the part of HAL to reach agreement on – or in some cases even discuss – key issues.</p> <p>The behaviours demonstrated by HAL as part of the constructive engagement have neither been constructive nor have demonstrated a willingness to progress matters expeditiously. HAL has continually sought to exploit its dominant position as infrastructure manager of this key facility to its own advantage.</p> <p>HAL has used the Network Rail templates as the starting point for its documentation. This assumes an entity regulated in the same way as Network Rail (which is not the case for HAL due the existence of an exemption from the requirement to hold network and station licences). HAL has been unwilling to consider the inclusion of additional key provisions for accessing the Heathrow Rail Infrastructure in lieu of licence provisions.</p> <p>TfL refers the ORR to its duties under the Railways Act 1993 and invites the ORR to consider those duties in making any determination of an application (see Schedule 5 of the Response which highlights some particular areas for ORR consideration).</p> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents).</p>

Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
<p>discriminated against (Regulation 29(1))</p> <p>subject of discrimination (Regulation 30(2))</p>	<p>We raise a number of areas across the Response where TfL considers that it has been discriminated against, including:</p> <ul style="list-style-type: none"> <li>(a) Paragraph 6.1 (proposal inherently discriminatory due to favouring HEOC);</li> <li>(b) Paragraph 25.3 (FTAC inherently discriminatory due to the fact that it has never been charged to HEOC);</li> <li>(c) Paragraph 29.1.2 (charging discriminatory due to not taking account of rolling stock characteristics);</li> <li>(d) Paragraphs 32 and 59.1.2 (paying for infrastructure that is not being used);</li> <li>(e) Paragraph 49.1.4 (capacity allocation favouring HEOC);</li> <li>(f) Paragraph 50.6 (discrimination in capacity allocation criteria);</li> <li>(g) Paragraph 54.3 (TAC is tailored for HEOC and therefore discriminatory);</li> <li>(h) Paragraph 55.1 (discrimination in the TAA); and</li> <li>(i) Paragraph 61 (general discrimination).</li> </ul> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents).</p>
<p>any other way aggrieved (Regulation 29(1))</p> <p>injured in any other way (Regulation 30(2))</p>	<p>As well as the specific grounds of application elsewhere in this table, TfL is also aggrieved by the behaviour of HAL, including the following examples from the Response:</p> <ul style="list-style-type: none"> <li>(a) Abuse of dominant position by HAL (Part 10 in particular);</li> </ul>



Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
	<p>(b) Lack of clarity around jurisdictional issue with the CAA (Part 3); and</p> <p>(c) Lack of an effective change mechanic e.g. in the track access agreement and network code.</p> <p>TfL also refers to the comments and points made in the "unfairly treated" and "treated unjustly" category above.</p> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents).</p>
<p>the network statement produced in accordance with Regulation 11 (Regulation 29(2)(a))</p>	<p>See Part 6 of the Response which contains specific issues regarding the quality and contents of the network statement. Some specific points include:</p> <p>(a) <b>Consultation:</b> Regulation 11 requires that the network statement must be published following consultation. TfL considers that to satisfy this requirement, the consultation must follow a defined process and adequately take into account comments raised as part of the consultation. This has not been satisfied by HAL. See also Part 2 of the Response.</p> <p>(b) <b>Related documentation:</b> The HAL Network Statement does not stand on its own – documents that are referred to in and incorporated into the HAL Network Statement also need to be settled (or a process in place to ensure that they are settled). For example the access arrangements and disputes procedures should be established. See comments generally in this note and the Response regarding inadequacy of the wider documentation.</p> <p>(c) <b>Lack of clarity around role of Network Rail:</b> TfL cannot understand how the HAL Network Statement can be said to be settled and final when there is no clarity around the role of Network Rail and, it seems, no current agreement or arrangement with Network Rail regarding what its role will be in relation to the operation of the track comprised in the Heathrow Rail Infrastructure.</p>

Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
	<p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents). Those documents also set out what TfL considers to be a fair, reasonable and non-discriminatory position in relation to charging and the performance regime (that would also need to be reflected in the Network Statement).</p>
<p>the information which, by virtue of Regulation 11(4), must be included in that network statement (Regulation 29(2)(b))</p>	<p>This is covered in Part 6 of the Response, in particular paragraph 49 which gives some specific examples of where the network statement is inadequate and fails to meet the requirements in the Railways Infrastructure (Access and Management) Regulations 2005.</p> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents). Those documents also set out what TfL considers to be a fair, reasonable and non-discriminatory position in relation to charging and the performance regime (that would also need to be reflected in the Network Statement).</p>
<p>the allocation process and its result as prescribed in Part 5 and Schedule 4 (Regulation 29(2)(c))</p>	<p>As ORR will be aware, HAL has not yet allocated any capacity to Crossrail. However, it has allocated capacity to HEOC and since the track access agreement and HAL Network Code are key to allocation of capacity there are grounds for application here on both a current and a prospective basis i.e. that HAL has not established capacity allocation rules for the process of allocating capacity between parties seeking access.</p> <p>See also the following paragraphs of the Response:</p> <ul style="list-style-type: none"> <li>(a) Paragraph 50.6 (discriminatory access principles);</li> <li>(b) Paragraph 50.17 (process for gaining access); and</li> <li>(c) Paragraph 50.29 (capacity allocation generally).</li> </ul>

Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
	<p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents).</p>
<p>the charging scheme and charging system established in accordance with Regulation 12 (Regulation 29(2)(d))</p>	<p>There are a number of grounds of application that TfL would like to raise – all of which are raised in our Response. Examples include:</p> <ul style="list-style-type: none"> <li>(a) The failure to establish a charging regime under the Regulations despite being required to by law and under the Deed of Undertaking (see paragraphs 2, 11 and 12 of the Response in particular);</li> <li>(b) The failure of the charging regime/scheme to comply with the Regulations (see below); and</li> <li>(c) The inconsistency of the charging regime/scheme with other infrastructure managers (see also the PwC report which covers benchmarking of the HAL proposals against other infrastructure managers of similar infrastructure).</li> </ul> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents) and the charging principles prepared by PwC, which are appended to this application and set out in those documents. Those documents also set out what TfL considers to be a fair, reasonable and non-discriminatory position in relation to charging and the performance regime (that would also need to be reflected in the Network Statement).</p>
<p>the level or structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 3, which it is, or may be, required to pay (Regulation 29(2)(e))</p>	<p>In addition to the grounds above regarding the establishment of the charging system, TfL would like to raise specific issues around the proposed charging structure generally – and the proposed FTAC (investment recovery charge), although TfL notes that the FTAC is the subject of a separate consultation process currently being undertaken by the ORR (and therefore TfL expressly reserves its position in relation to the FTAC pending the outcome of such consultation process). Examples from the Response (and subsequent follow on</p>

Grounds for application/complaint	Examples from TfL Consultation Response (the "Response")
	<p>questions from the ORR) include:</p> <ul style="list-style-type: none"> <li>(a) The whole of Part 4 of the Response on the investment recovery charge;</li> <li>(b) The whole of Part 5 dealing with comments on the charging arrangements generally;</li> <li>(c) The analysis in Schedule 4 dealing with directly incurred costs;</li> <li>(d) The further paper prepared by TfL on the applicability of the mark-up provisions; and</li> <li>(e) PwC work and report on the establishment, level and structure of fees proposed by HAL.</li> </ul> <p>TfL also refers to the drafted and annotated versions of a HAL Track Access Agreement and HAL Network Code that it has prepared, which shows the position that TfL is willing and able to accept (marked to show differences to Network Rail equivalent documents) and the charging principles prepared by PwC, which are appended to this application and set out in those documents. Those documents also set out what TfL considers to be a fair, reasonable and non-discriminatory position in relation to charging and the performance regime (that would also need to be reflected in the Network Statement).</p>

### Appendix 3 – Access rights sought

#### Passenger Train Slots

This table sets out the passenger train slots required for the Crossrail passenger services from May 2018. Please see the detailed provisions of Schedule 5 of the Track Access Agreement submitted with this application in relation to quantity and quality of access rights sought (which also includes a limited provision for driver training). Please also see the footnote to Table 2.2 of the HAL Track Access Agreement in relation to other access rights which may be sought in due course.

1						2					
Service Group : Heathrow Terminal 4 to Heathrow Tunnel Junction											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak Times (1)		Off peak (2)	Weekday	Saturday	Sunday
						Morning Peak	Evening Peak				
Heathrow Terminal 4	Heathrow Tunnel Junction	N/A	All Stations	[To be confirmed]	345	12	12	52	76	76	75
Heathrow Tunnel Junction	Heathrow Terminal 4	N/A	All Stations	[To be confirmed]	345	12	12	52	76	76	75

Notes:

- (1) Peak times – arriving at Heathrow Terminal 4 Station between 0635 and 0934 hours 1535 and 1834 and departing from Heathrow Terminal 4 Station between 0722 and 1021 and 1622 and 1921 hours.
- (2) Off-Peak times – arriving at and departing from Heathrow Terminal 4 Station outside of Peak times.

## Appendix 4 – Key commercial terms relating to access

### Part I – Network Statement Heads of Terms

This Part I of Appendix 4 is intended to set out the key terms and areas that will need to be reflected in HAL's Network Statement published in early September 2015 (the "**HAL Network Statement**"). It is not intended to be an exhaustive exposition of all comments which Transport for London ("**TfL**") may have on the documentation.

HAL Network Statement	Provision to be reflected or amended
<b>General Information</b>	
<b>Parties</b>	It is for HAL to issue the HAL Network Statement <sup>3</sup> .
<b>Level of detail - general</b>	Information should be included to ensure that a prospective user of the Heathrow Rail Infrastructure knows how to apply for and gain access. See particular examples below.
<b>Structure</b>	The HAL Network Statement should more closely follow the RailNetEurope structure. The structure should also more closely follow Network Rail's network statement in terms of structure and, in many places, content.
<b>Rail Regulations 2005</b>	To ensure the HAL Network Statement is fully compliant with the Regulations, information should be included on demonstrating compliance with the separation and business planning requirements as between HAL and Heathrow Express Operating Company (including details of who takes decisions on capacity allocation and charging). This should also include a schematic representation to address the interfaces with the rail parts of Heathrow airport that fall outside of rail regulation, such as the PODs and Terminal 5 track transit system.
<b>Infrastructure Manager</b>	Information should be included on the respective roles and responsibilities of HAL, Network Rail (in the case of track) and Heathrow Express Operating Company (in the case of stations) in relation to the Heathrow Rail Infrastructure, with confirmation on who will be the infrastructure manager (see also the "Interface with Network Rail" section below).
<b>Interface with Network Rail</b>	Information should be included on the relationship with Network Rail in two capacities: <ul style="list-style-type: none"> <li>(i) as subcontractor to HAL (in Network Rail's role of operating the track comprised in the Heathrow Rail Infrastructure); and</li> <li>(ii) as adjoining infrastructure manager (in Network Rail's role of operating the Network Rail network which adjoins the Heathrow Rail Infrastructure).</li> </ul> Examples of where information will need to be included are: (1) how HAL will coordinate its own timetabling process for use of the Heathrow Rail Infrastructure; (2) how HAL's timetabling process will interface with Network Rail's timetabling process to obtain contiguous train paths across multiple networks (i.e. ensuring cooperation between infrastructure managers) <sup>4</sup> ;

<sup>3</sup> We note that in general the HAL Network Statement will need to be updated to reflect: (1) the outcome of the ORR's consultation on the charging framework for the Heathrow Spur; (2) the further work which will need to be undertaken by HAL as a consequence thereof; and (3) the principles set out in this regulation 29/30 application (as maybe determined by the ORR in due course).

<sup>4</sup> In particular, reference should be made to the proposed obligation in relation to this point which is set out in Part D of the HAL Network Code forming part of this regulation 29/30 application. We note that HAL has included certain additional information in this respect in the version of the HAL Network Statement circulated on 10 March 2016.

HAL Network Statement	Provision to be reflected or amended
	<p>(3) how HAL's performance regime will operate independently of Network Rail's as a standalone regime complying with the Regulations<sup>5</sup>;</p> <p>(4) how HAL's performance regime will interface with issues on Network Rail's network (and vice versa); and</p> <p>(5) development of and consultation on train regulation policies for the Heathrow Rail Infrastructure.</p>
<p><b>Other documents</b></p>	<p>In order to summarise the purpose of such documents in the HAL Network Statement, the following documents will need to be produced:</p> <p>(i) Engineering Access Statement (with an appropriate process set out in the HAL Network Code and reflected in the HAL Network Statement for agreeing this document between HAL and users of the Heathrow Rail Infrastructure);</p> <p>(ii) Timetable Planning Rules (with an appropriate process set out in the HAL Network Code and reflected in the HAL Network Statement for agreeing this document between HAL and users of the Heathrow Rail Infrastructure);</p> <p>(iii) Emergency Access Code;</p> <p>(iv) Performance Data Accuracy Code;</p> <p>(v) Operational Resilience Plan; and</p> <p>(vi) Railway Systems Code.</p> <p>In addition, we note that in the most recent version of the HAL Network Code published by HAL, there is reference to a Heathrow Emergency Plan. This is an additional document which we will need to see and there will need to be a consultation process set out in the HAL Network Code and reflected in the HAL Network Statement for agreeing this document between HAL and users of the Heathrow Rail Infrastructure.</p>
<p><b>Revisions</b></p>	<p>Information should be included on the process for consulting upon and then revising the HAL Network Statement each year.</p>
<p><b>Other points</b></p>	<p>Steps should be taken to ensure the HAL Network Statement reflects the suite of contractual documentation which HAL proposes to use as the template.</p> <p>In addition, further general "tidying up" of the HAL Network Statement will need to be undertaken.</p>
<p><b>Access Conditions</b></p>	
<p><b>Regulation</b></p>	<p>Refers primarily to the Rail Regulations 2005 and may need to be updated in due course for the Rail Regulations 2016, depending on when the revised HAL Network Statement is published following on from the regulation 29/30 application.</p> <p>Clarity should be included in the HAL Network Statement on the relevant regulatory regime for the Heathrow Rail Infrastructure, together with information on how this differs from the general approach on the UK rail network (with which prospective users may be more familiar).</p> <p>This should include references to both the Railways Act 1993 and the Rail Regulations 2005, where applicable, together with relevant exemptions from the 1993 Act regime which HAL enjoys. It should also refer to the forthcoming 2016 regulations as part of the first railway package "recast" wherever forthcoming changes are proposed which will place additional obligations on HAL (such as the need to consult on and publish a business plan for its regulated rail business) and / or have an impact on users of the Heathrow Rail Infrastructure.</p>

<sup>5</sup> Principles for the proposed performance regime have been prepared by TfL, working with PwC, and are set out in schedule 8 of the HAL Track Access Agreement forming part of this regulation 29/30 application.

HAL Network Statement	Provision to be reflected or amended
<b>Recast</b>	In addition to implementation of the “recast” of the Rail Regulations above reference should also be made to the Framework Agreements Implementing Act which is effective from December 2016 and will include provisions to publish Framework Capacity Statements indicating how much capacity is let under Framework Access Agreements.
<b>Grant of access</b>	Information should be included on how a prospective user of the Heathrow Rail Infrastructure should seek access and what will be taken into account in assessing an application. Information should also be included on when an access option will be granted for use of the Heathrow Rail Infrastructure: in particular, where there is investment in either/both infrastructure (Heathrow Rail Infrastructure and other railway infrastructure) and non-infrastructure investment.
<b>Other information</b>	Information which should also be included in the HAL Network Statement includes insurance should be held on a £155 million “per incident” basis.
<b>Disputes</b>	Information should be included on how HAL will resource disputes services/where they will be purchased from. TfL understands from discussions with HAL that HAL intends to use the Network Rail ADRR. The HAL Network Statement should set out how HAL intends to become a party to those arrangements and what (if anything) a user or prospective of the Heathrow Rail Infrastructure would need to do to become party to the arrangements. In addition, information should be included on how disputes relating to train regulation policies will be addressed, along the lines used by Network Rail. How payment is made for disputes-related services should also form part of this section <sup>6</sup> .
<b>Infrastructure</b>	
<b>Plan</b>	The plan set out in the HAL Network Statement needs to provide an overview of the infrastructure.
<b>Traction Electricity</b>	Information should be included on how the Train Operator should interface with HAL or Network Rail to procure the traction power, the anticipated charges for it, how these will be paid and what agreement will be required to do so. TfL understands from HAL that its intention is for the provision and charging for traction electricity usage to be made by Network Rail under the Network Rail track access contract for the Great Western Main Line, whereas charges for the electricity assets will be under the HAL Track Access Agreement. The practical arrangements should be made clear in the HAL Network Statement. <sup>7</sup>
<b>Interface with Network Rail</b>	Please also see “Interface with Network Rail” section above.
<b>Other information</b>	Information which should also be contained in the HAL Network Statement includes: (i) line gradient; (ii) maximum train length; (iii) tunnel restrictions; (iv) train regulation;

<sup>6</sup> We think payment should form part of the overheads of HAL as these services will need to be available on standby in any event if a dispute arises (and therefore would not form “directly incurred” costs). Please see the principles set out in schedule 7 of the HAL Track Access Agreement forming part of this regulation 29/30 application for further information on the proposed charging arrangements and Appendix 1 of the covering letter to this regulation 29/30 application for further information.

<sup>7</sup> Whilst TfL has no objection in principle to this approach, for the purposes of the documentation appended to this regulation 29/30 application (including these Heads of Terms) we have assumed that HAL will remain responsible, as infrastructure manager for the purposes of the Regulations, for the provision of traction electricity. This is to ensure that if HAL fails to reach agreement with Network Rail in relation to traction electricity provision, HAL will remain contractually responsible to provide traction electricity to users of the Heathrow Rail Infrastructure.



HAL Network Statement	Provision to be reflected or amended
	(v) environmental restrictions; (vi) anticipated changes to service levels – the detail of what these might be; (vii) whether dangerous goods are allowed on the Heathrow Rail Infrastructure; (viii) gauging and axle weight restrictions; and (ix) use of non-electrically powered rolling stock.
<b>Performance</b>	Information should be included in the HAL Network Statement in relation to how the performance regime for the Heathrow Rail Infrastructure required by the Regulations will operate. This should reflect the principles set out in the HAL Track Access Agreement submitted as part of this regulation 29/30 application <sup>8</sup> . The process by which the performance regime will be reviewed, the level of consultation and agreement with the industry and with the ORR should also be set out in this document.
<b>Maintenance</b>	Information in relation to HAL's maintenance and renewals plan, asset management strategy and asset management plan should be set out in the HAL Network Statement, with the current documents being provided for review (as well as describing the process for consulting on amendments to those plans and strategies). Information should be included on when maintenance work takes place, the standard to which the Heathrow Rail Infrastructure will be maintained and the restrictions of use required to facilitate this. <sup>9</sup>
<b>Standards and compatibility</b>	Information should be included on which Network Rail (or, if applicable, any HAL-specific) standards must be complied with to access the Heathrow Rail Infrastructure. An objective process for assessing rolling stock capability for the Heathrow Rail Infrastructure should also be set out in the document, including relevant dimensions and compliance with relevant technical standards to make clear the requirements with which potential users of the Heathrow Rail Infrastructure must comply.
<b>Capacity Allocation</b>	
<b>Rail Regulations 2005/ Implementing Act on Framework Agreements</b>	To ensure the HAL Network Statement is fully compliant with the Regulations, information should be included on: (i) a non-discriminatory set of capacity allocation principles (not prioritising incumbents), together with information on the capacity allocation process, rules for the allocation of capacity, capacity requirements for maintenance and how these will be agreed by operators <sup>10</sup> ; and (ii) the timetabling process for accessing the Heathrow Rail Infrastructure (rather than the Network Rail infrastructure – albeit that there may be some degree of coordination between HAL and Network Rail) and how this will interface with the Network Rail timetabling processes. In particular, we understand from discussions with HAL that where Network Rail has been appointed as HAL's sub-contractor to operate the track comprised in the

<sup>8</sup> Please see schedules 4 and 8 of the draft HAL Track Access Agreement forming part of this regulation 29/30 application for more information on the proposed performance regime principles for the Heathrow Rail Infrastructure. In meetings with HAL, HAL confirmed that there will never be a Restriction of Use of the Heathrow Rail Infrastructure outside of the "white period" (and it therefore proposed not including a Schedule 4 equivalent). TfL considers that this could work provided that any Restrictions of Use which are actually required by HAL outside of the "white period" are taken into account for the purposes of the schedule 8 regime and that TfL/MTR Crossrail is adequately protected.

<sup>9</sup> Please see footnote 8 which sets out what TfL has been told about HAL's proposals for Restrictions of Use on the Heathrow Rail Infrastructure (and the implications thereof).

<sup>10</sup> As currently drafted, the criteria in the HAL Network Statement amount to little more than priority being given to services that connect into the Network Rail network, for example, an inter-terminal service. There is no indication of how competing requests for capacity which both run onto the Network Rail network should be assessed. The reference to "existing track capacity allocation" is not clear – existing rights should not be protected simply because they came first – this is not how the timetabling process works.

HAL Network Statement	Provision to be reflected or amended
	Heathrow Rail Infrastructure, users will in practice be able to make a single Access Proposal to Network Rail for both the Network Rail network and the Heathrow Rail Infrastructure. HAL should also take into account the implementing act on Framework Agreements which will have an impact.
<b>Interface with Network Rail</b>	Please also see “Interface with Network Rail” section above.
<b>Services</b>	
<b>Rail Regulations 2005</b>	To ensure the HAL Network Statement is fully compliant with the Regulations, information should be included on accessing and the supply of services at stations (see also the “Stations” section below). This should include information on the services HEOC will be providing at the various stations and the interface with such station manager. Information also needs to be included on how HAL will ensure it has steps in place to ensure that the relationship (and contractual arrangements, in the context of stations operation) with HEOC are at arm's length and HAL does not make commercially sensitive information about another railway undertaking available to HEOC.
<b>Stations</b>	Information should be included on: (i) who is responsible for granting access to/operating the stations (from discussions with HAL, TfL believes this will be HAL granting access and HEOC operating); (ii) who maintains/renews each station (this is not yet clear to TfL); (iii) the charges for accessing stations (and how these will be calculated/reviewed) <sup>11</sup> ; and (iv) staffing arrangements for each station. More information should be included on the impact that the works programme during 2015/2016/beyond (including platform-train interfaces) will have on introduction of new services.
<b>Other information</b>	Information which should also be included in the HAL Network Statement includes: (i) contacts at Network Rail and HEOC for issues relating to those companies (in their capacity as sub-contractor to HAL); and (ii) how the “One Stop Shop” service offered by RNE will apply in relation to the Heathrow Rail Infrastructure, which seems to be relevant in a multi-infrastructure manager environment.
<b>Charges</b>	
<b>Rail Regulations 2005</b>	To ensure the HAL Network Statement is fully compliant with the Regulations, information should be included on: (i) how the charging methodology has been determined, how the charges have been devised, any exceptions and the availability of any discounts – this should also refer to (and be updated to take into account) the outcome of the ORR's consultation on the charging framework for the Heathrow Spur; and (ii) charges for accessing the services listed in schedule 2 of the Regulations <sup>12</sup> .
<b>Charging</b>	A transparent charging framework and methodology will need to be included together with a statement as to how this is considered compliant with the Regulations <sup>13</sup> . This section of the HAL Network Statement will need to be updated to reflect the outcome of the ORR's decision on the charging

<sup>11</sup> We set out our proposed charging principles and sums in Part 6 of the HAL Station Access Conditions forming part of this regulation 29/30 application and summarised in the covering letter.

<sup>12</sup> We set out in schedule 7 of the HAL Track Access Agreement and Part 6 of the HAL Station Access Conditions forming part of this regulation 29/30 application our views on charging principles and amounts. These are also summarised in Appendix 1 to the covering letter to this regulation 29/30 application.

<sup>13</sup> Please see footnote 12 above.

HAL Network Statement	Provision to be reflected or amended
	<p>framework, as well as the principles and values set out by TfL as part of this regulation 29/30 application.</p> <p>The interface with the aviation charges setting framework should also be set out in the HAL Network Statement, together with a diagram describing how the outputs from the setting of aviation charges feed in to the rail charging and how rail charges feed into the aviation single till.</p> <p>In particular, details of how station access will be charged separately from track access should be included in this section and how the charges will be determined<sup>14</sup>. TfL understands that HAL is not currently proposing this but believes that charges should be calculated on a facility-by-facility basis.</p>
<b>Review of charges</b>	<p>Information should be included on the process for undertaking the review of charges, how the charges will be determined and where users and prospective users will be consulted upon the proposed changes. TfL has proposed that all charges are fixed until the end of the Exemption in 2028<sup>15</sup>. It will be key in any event to ensure that there is transparency over the level of charges and the process/factors which will be followed to review them. The level of involvement of the ORR in supervising/approving revised charges as part of the review should also be set out.</p>
<b>Other information</b>	<p>Depending on the outcome of the ORR's consultation on the charging framework for the Heathrow Rail Infrastructure, information which should also be included in the HAL Network Statement includes:</p> <ul style="list-style-type: none"> <li>(i) how the current value of the infrastructure assets has been calculated; and</li> <li>(ii) calculation of the forecast depreciation.</li> </ul>

<sup>14</sup> As set out in Part 6 of the HAL Station Access Conditions and Appendix 1 to the covering letter forming part of this Regulation 29/30 application, in accordance with the Regulations, the charges for stations should reflect only the directly incurred costs of the Crossrail services being operated.

<sup>15</sup> HAL proposed an annual review of charges, which we disagree with as offering no certainty. Instead, we propose a review following a material change (see the Appendix to the cover letter).

## Part II – HAL Network Code Heads of Terms

This Part II of Appendix 4 is intended to set out the key terms and areas that will need to be reflected in HAL's Network Code published in early September 2015 and as subsequently republished in a slightly updated form in March 2016 (the "**HAL Network Code**"). It is not intended to be an exhaustive exposition of all comments which Transport for London ("**TfL**") may have on the documentation. Headings are those used in the Network Rail Network Code.

HAL Network Code	Provision to be reflected or amended
<b>General</b>	
<b>Discrimination</b>	All parties to the HAL Network Code and any HAL Track Access Agreement should be treated consistently otherwise there could be discrimination between access parties. In particular, all operators including HEOC should be bound by the HAL Network Code. <sup>16</sup>
<b>Multi-lateral</b>	Individual track access agreements will set out the specifics of access to the Heathrow Rail Infrastructure. The HAL Network Code will be a multi-lateral agreement consisting of practical arrangements which will apply to all train operators using the infrastructure. As a result, the HAL Network Code should be drafted in such a way that it will apply to all train operators and that all operators will be bound by decisions made under the HAL Network Code.
<b>Network licence</b>	As HAL is currently exempt from the requirement to hold a network licence, equivalent provisions to those typically set out in a network licence should be included in the HAL Network Code or the HAL Track Access Agreement. Examples include requirement to hold insurance, asset stewardship, disputes resolution, customer facing obligations, restrictions on cross-subsidisation. <sup>17</sup> In addition, if the exemption is either withdrawn or expires, HAL should be required to make modifications to the access documentation to take into account the fact that it would then be required to hold a network licence (and generally more closely align the documents with Network Rail's access documentation).
<b>Contractual relationship</b>	The HAL Network Code should be drafted in such a way that it is a standalone document which could be incorporated into a track access agreement and form part of the contractual relationship between HAL and the train operator. As currently envisaged, Network Rail will not be party to the track access contract; therefore the HAL Network Code should avoid relying on any principles/drafting set out in Network Rail's Network Code. Whilst TfL can accept, in principle, the decision to use certain Network Rail documentation (such as the Delay Attribution Guide) in an unamended form for the purposes of the HAL Network Code, it must be acknowledged that this means that modifications to those documents can only be made in accordance with the Network Rail processes. Therefore, the modification provisions in the HAL Network Code can apply only to HAL-specific documents, with an alternative process required either where the Network Rail documents are being amended under the Network Rail Network Code or a user of the Heathrow Rail Infrastructure wishes to propose an amendment to any of the Network Rail documents. HAL is the key interface

<sup>16</sup> In its consultation response, HAL commented that any discrimination is unintentional and, where found, will be amended. In certain respects, HAL has sought to reflect this in its revised HAL Network Code provided on 10 March 2016.

<sup>17</sup> In its consultation response, HAL has commented that references to the network licence will be removed. Whilst TfL accepts that an exemption from the requirement to hold a network licence is currently in place, certain additional contractual terms (or "surrogate licence conditions") are required given that HAL has used the Network Rail documents as the starting point. These have been reflected either in the HAL Network Code or the HAL Track Access Agreement submitted as part of this regulation 29/30 application.

HAL Network Code	Provision to be reflected or amended
	with Network Rail in this respect, given it has or intends to sub-contract the operation of the Heathrow Rail Infrastructure to Network Rail. Therefore, HAL should procure the necessary interfaces and rights to ensure it can do this.
<b>Concession/ franchise</b>	References to “franchises” and “franchising authority” should be updated to include “concessions” and “concessioning authority” given the Crossrail services are let under a concession by TfL or an affiliate of TfL and HEOC is exempt from franchising. <sup>18</sup> It is therefore appropriate to refer to TfL or an Affiliate of TfL rather than the Secretary of State in certain instances in the access documentation generally (including the HAL Network Code).
<b>References to TfL</b>	There are a number of places in the Network Rail Network Code where TfL has the right to receive notifications/be consulted. These should be reflected in the same places in the HAL Network Code. For example, notices given by the ORR, notification of Vehicle Change, notice of a proposed variation to the Heathrow Rail Operational Code and TfL giving notice it wishes to be consulted on any matter relating to such document. <sup>19</sup>
<b>Other</b>	<p>A general review to pick up on internal inconsistencies and typos will need to be undertaken. For example:</p> <ul style="list-style-type: none"> <li>- “light maintenance depot” is referred to in the HAL Network Code but the HAL Network Statement indicates that no such depot exists<sup>20</sup>;</li> <li>- text in Condition J2.4.2 should be updated to reflect the Network Rail Network Code<sup>21</sup>;</li> <li>- references to “the Network” or the “HAL infrastructure” should be used consistently throughout the HAL Network Code;</li> <li>- references to “D nn” should be updated to refer to “D-nn”;</li> <li>- text in Conditions D1.1.11 and D5.4.2 should be updated to reflect the Network Rail Network Code;</li> <li>- Transport Focus and London Travelwatch should be included as consultees in paragraph D7.2.2;</li> <li>- certain defined terms need to be defined;</li> <li>- references to “Access Conditions” should be to the HAL Station Access Conditions<sup>22</sup>;</li> <li>- reinstating Parts B and C of the HAL Network Code may correct existing cross references to non-existent provisions<sup>23</sup>; and</li> <li>- the definition of access disputes resolution rules should make clear that for the purposes of the HAL Track and Station Access Agreement, the ADRR are the same as the Network Rail ADRR, albeit that in this context,</li> </ul>

<sup>18</sup> In its consultation response, HAL indicated that this would be reviewed. This has not been reflected in the revised version of the HAL Network Code circulated by HAL on 10 March 2016, without providing an explanation as to why.

<sup>19</sup> In its consultation response, HAL indicated that it has no plans to amend this at the current time. TfL disagrees as these are key provisions from the Network Rail documentation to allow it to feed in as authority responsible for transport in London (which is particularly important given the location of the Heathrow Rail Infrastructure).

<sup>20</sup> In its consultation response, HAL indicated that this would be reviewed. No amendments appear to have been made in the revised version of the HAL Network Code circulated by HAL on 10 March 2016 to reflect this comment, without an explanation as to why.

<sup>21</sup> In its consultation response, HAL indicated that this would be reviewed. No amendments appear to have been made in the revised version of the HAL Network Code circulated by HAL on 10 March 2016 to reflect this comment, without an explanation as to why.

<sup>22</sup> In its consultation response, HAL indicated that this would be reviewed. No amendments appear to have been made in the revised version of the HAL Network Code circulated by HAL on 10 March 2016 to reflect this comment, without an explanation as to why. TfL has submitted proposed HAL Station Access Conditions as part of this regulation 29/30 application.

<sup>23</sup> In its consultation response, HAL indicated that this would be reviewed. HAL produced a draft of Parts B and C, upon which TfL provided comments in December 2015. In the draft of the HAL Network Code circulated on 10 March 2016, HAL has not taken into account any of our comments either on Part B or Part C (including where we pointed out simple typographical or grammar errors). No explanation has been given as to why our comments have not been taken into account.

HAL Network Code	Provision to be reflected or amended
	those rules will be applied to disputes in connection with the Heathrow Rail Infrastructure. This is because we understand from HAL that HAL intends to use Network Rail's ADRR (without amendment) to resolve disputes on the Heathrow Rail Infrastructure. As the Network Rail ADRR will be used for the Heathrow Rail Infrastructure, the two documents should be identical; however, HAL has sought to make amendments to the Network Rail ADRR in its draft issued on 10 March 2016. This is not reflective of what we have been informed to date.
<b>Part A: General Provisions</b>	
<b>HAL</b>	References to HAL should be to Heathrow Airport Limited as the infrastructure manager for the purposes of the Regulations.
<b>HAL infrastructure</b>	This definition should make clear that it relates to the rail-related aspects of the Heathrow infrastructure rather than the wider airport assets.
<b>ORR</b>	The role of the ORR should be made clear in the HAL Network Code (and access documentation more widely). HAL anticipates that the ORR will have a role to play in certain aspects of its contract and we understand from discussions with HAL that it has reached agreement with the ORR to perform these functions. Given this representation that the ORR has accepted this role, we would therefore suggest giving the ORR certain responsibilities under the HAL access documentation. However, the ORR should confirm that it has agreed with HAL to perform certain obligations under the HAL access documentation. <sup>24</sup>
<b>Statutory references</b>	Statutory references will need to be updated to be current – for example, references to the Companies Act 1985 should be updated to refer to the Companies Act 2006. <sup>25</sup>
<b>Part B: Performance Monitoring</b>	
<b>Absence of Part B</b>	A performance monitoring regime specific to the Heathrow Rail Infrastructure (and not the Network Rail infrastructure) should be included in the HAL Network Code to enable performance monitoring information to be generated for the Heathrow Rail Infrastructure (which was not included in the June 2015 draft proposed by HAL). This will then feed into the track access agreement performance regime. <sup>26</sup> HAL has included a Part B in the HAL Network Code, loosely based on the Network Rail Part B. <sup>27</sup>
<b>Performance scheme</b>	In order to be able to have a performance regime in a track access contract (as required by the Regulations) there need to be obligations on the infrastructure manager to monitor performance and attribute delays (with a need to incorporate the Delay Attribution Guide) <sup>28</sup> . As a result, an equivalent to Part B of Network Rail's Network Code, appropriately tailored

<sup>24</sup> In the HAL Network Code circulated by HAL on 10 March 2016, this also gave the ORR various roles and responsibilities under the HAL Network Code. Given HAL envisages this, we consider that there is scope for the ORR to have a role under the HAL access arrangements, although acknowledge that this is something the ORR will no doubt have a view on.

<sup>25</sup> In its consultation response, HAL indicated that this would be updated. In general, this has now been updated in the revised version of the HAL Network Code provided by HAL on 10 March 2016.

<sup>26</sup> In relation to the HAL Track Access Agreement performance regime, please see the principles set out in schedule 8 of the HAL Track Access Agreement submitted as part of this regulation 29/30 application and summarised in the covering letter.

<sup>27</sup> In its consultation response, HAL commented that Network Rail will manage the reporting of all performance management on HAL's behalf. HAL and Network Rail are to establish the exact processes and procedures to be resolved prior to the start of the Crossrail services. TfL notes that this engagement with Network Rail has been brought forward. At the meeting on 28 October, HAL acknowledged that an equivalent of Part B will be required in the HAL Network Code, it being intended to draw upon standard industry processes. HAL provided a draft Part B, upon which TfL provided feedback. HAL has not taken into account any of TfL's comments (including typographical errors) in the revised HAL Network Code circulated by HAL on 10 March 2016.

<sup>28</sup> HAL has confirmed that it intends to use the Network Rail Delay Attribution Guide (without amendment).

HAL Network Code	Provision to be reflected or amended
	to reflect the Heathrow Rail Infrastructure, should be included in the HAL Network Code <sup>29</sup> . Whilst not included in HAL's original draft of the HAL Network Code published in June 2015, a Part B has now been included in the revised draft published in March 2016. This was based on a Part B discussed with HAL in autumn 2015, although TfL's comments on the HAL draft have not been taken into account in the latest version of the document.
<b>Delay Attribution</b>	How delay will be attributed should be made clear in the HAL Network Code. In particular, it will be important to articulate that the Network Rail Delay Attribution Guide (either in an amended or unamended form) will apply to the attribution of delays on the Heathrow Rail Infrastructure. TfL understands that it is the intention of HAL to adopt the Network Rail Delay Attribution Guide (and Delay Attribution Board, without becoming party to the governance arrangements) <sup>30</sup> .
<b>Boundary issues</b>	The HAL Network Code will need to describe how its performance monitoring arrangement/performance regime interfaces (or otherwise) with that used by Network Rail on the adjacent network. It will also need to be made clear what happens if a delay occurs on or around the boundary between the Heathrow Rail Infrastructure and the Network Rail network <sup>31</sup> .
<b>Part C: Modifications</b>	
<b>Absence of Part C</b>	Amendments will be required to the HAL Network Code from time to time. A defined process should therefore be included in the HAL Network Code by which either train operators or HAL can make/approve proposals for amending the document (which was not included in the June 2015 draft of the HAL Network Code). A consultative/collaborative process should be included in anticipation of those changes being made. This acknowledges that the access contract will be between HAL and the train operator and Network Rail will not be a party to it. The role of the ORR to propose/make changes should also be set out. It should not be a "notification" right of HAL to make changes unilaterally but instead reflect the outcome of the consultative process <sup>32</sup> . HAL may wish to do this based on Network Rail's form of Network Code, although amendments (such as to the "Class Representative Committee" process) may be needed in the HAL Network Code to reflect the size and likely number of train operators using the Heathrow Rail Infrastructure. Instead, HAL may wish to consider adopting an equivalent to the HS1

<sup>29</sup> We note that HAL shared some illustrative scenarios for how its performance regime may operate on 14 April 2016. However, we have not been provided with any detail of the actual performance regime proposed by HAL; therefore the principles set out in schedule 8 of the HAL Track Access Agreement submitted as part of this regulation 29/30 application should be considered by the ORR.

<sup>30</sup> If this is the case, then because the Network Rail Delay Attribution Guide is a Network Rail document, it can only be modified in accordance with the Network Rail processes. This therefore means that Part B of the HAL Network Code cannot purport to amend it (as it can only be amended under Part B of the Network Rail Network Code). There therefore needs to be a process whereby users of the Heathrow Rail Infrastructure can make proposals and agree changes to the Delay Attribution Guide. As HAL is the party with the link to Network Rail (as its sub-contractor) HAL will need to procure the necessary rights to ensure that Network Rail sponsors a change approved by users of the Heathrow Rail Infrastructure. HAL can make representations on behalf of those users to Network Rail if the process has instead been instigated under the Network Rail Network Code (given the potential impact on users of the Heathrow Rail Infrastructure).

<sup>31</sup> Please see footnote 29 above.

<sup>32</sup> Please see footnote 30 above, which applies equally in respect of any documents used by HAL which are Network Rail documents which can only be modified in accordance with the relevant Network Rail processes (which may be under Part C of the Network Rail Network Code or otherwise). The standard Part C modification arrangements can only apply to documents which are specific to the Heathrow Rail Infrastructure.

<b>HAL Network Code</b>	<b>Provision to be reflected or amended</b>
	Network Code, which does not have an equivalent to the Class Representative Committee. <sup>33</sup>
<b>ADRR</b>	Part C only relates to HAL specific documents. As the ADRR is a Network Rail document, the Network Rail processes would need to be used to make modifications to that document. <sup>34</sup>
<b>Part D: Timetable Change<sup>35</sup></b>	
<b>Process</b>	Annex 1 to Part D should be updated to reflect the process set out in the main body of Part D.
<b>One Stop Shop</b>	The Network Rail Network Code includes a number of references to the RNE "One Stop Shop" process. Equivalent references should be included in the HAL Network Code. <sup>36</sup>
<b>Possessions, Calendar of Events</b>	A proportionate approach (which may differ from the Network Rail approach, given the size of the Heathrow Rail Infrastructure) should be taken to possessions strategy notices, Calendar of Events and Event Steering Groups, Expedited Procedure, Strategic Planning Route and Local Output provisions in the HAL Network Code. It may be that these concepts are not required for the Heathrow Rail Infrastructure. <sup>37</sup>
<b>Part E: Environmental Protection</b>	
<b>Absence of Part E</b>	The environment is important in the context of any railway. Part E of the Network Rail Network Code sets out what happens if environment-related events happen. HAL should adopt an equivalent Part E to that in the Network Rail form. <sup>38</sup>
<b>Part F: Vehicle Change</b>	
<b>Consultative process</b>	The Network Rail form of Part F should be more closely followed. Vehicle Changes should be accepted by both HAL and other access beneficiaries whom they will affect.
<b>Part G: Network Change</b>	
<b>Status of network licence</b>	References to the network licence may need to be removed in their entirety as it is not envisaged that HAL will hold a licence. In their place, a parallel reference to equivalent standard of a competent and prudent infrastructure manager should be included to ensure information is made available to facilitate changes of this type.

<sup>33</sup> In its consultation response, HAL noted that this was subject to review. At the meeting on 28 October 2015, it was acknowledged that some form of process would need to be included in the HAL Network Code to facilitate changes to the document, it being agreed that the HS1 Part C (rather than the Network Rail Part C) may be a better starting point, although the question of "what happens if parties cannot agree" remains to be considered. TfL remains of the view that if the modification cannot be agreed, it is not made (on the basis of general principles of contract, requiring parties to agree) unless of course the ADRR process (where applicable) dictates otherwise. HAL has since provided a draft Part C which TfL has provided comments on – particularly in relation to the interfaces with Network Rail documents and processes (as Network Rail documents can only be modified under Network Rail processes). Very few of TfL's comments have been taken into account in the revised draft HAL Network Code provided by HAL on 10 March 2016.

<sup>34</sup> At the meeting on 28 October 2015, it was acknowledged that as the intention is to become party to the Network Rail ADRR, the modification process in the HAL Network Code may only be to the HAL Network Code itself and not the ADRR – as the ADRR could only be amended through the Network Rail Network Code processes. Please also see footnote 32 above.

<sup>35</sup> As part of a series of meetings in autumn 2015, HAL provided a draft Part D of the HAL Network Code, which TfL provided comments on in December 2015. Very few of these comments have been taken into account by HAL when it produced its revised version of the HAL Network Code in March 2016.

<sup>36</sup> In its consultation response, HAL noted that it does not plan to change its current offering. TfL believes the "One Stop Shop" service is relevant, particularly given that Network Rail will be HAL's sub-contractor for the operation of the track comprised in the Heathrow Spur (and is also the national "One Stop Shop" contact).

<sup>37</sup> In its consultation response, HAL indicated that this would be reviewed with references being checked. HAL has said in meetings that it would use Network Rail's Calendar of Events for any HAL Events – this has been reflected in the HAL Network Code being submitted as part of this regulation 29/30 application (as HAL did not reflect it in their revised version of the HAL Network Code circulated on 10 March 2016, despite TfL's comments).

<sup>38</sup> In its consultation response, HAL indicated it had no plans to include a Part E at this stage. We have proposed a Part E which closely reflects the Network Rail equivalent.



<b>HAL Network Code</b>	<b>Provision to be reflected or amended</b>
<b>Closures provisions</b>	As the Heathrow Rail Infrastructure has been exempted from the closures provisions set out in the Railways Acts, references to those procedures in Part G will need to be updated to reflect an appropriate equivalent. <sup>39</sup>
<b>Part J: Changes to Access Rights</b>	
<b>Revised Part J</b>	Part J of the HAL Network Code should follow the latest version of the Network Rail Network Code, including the "better use" provisions which reflect requirements of the Regulations.
<b>Compensation</b>	In particular, provisions relating to the payment of compensation for exercising Part J rights should be included in the HAL Network Code. <sup>40</sup>
<b>Part L: Performance</b>	
<b>Absence of Part L</b>	TfL accepts that does not need to be a Part L, but would need to be assured that any alternative will ensure continuous performance improvement and taking steps to avoid/manage perturbation will be important. <sup>41</sup>
<b>Access Disputes Resolution Rules</b>	
<b>General</b>	The general approach to access disputes resolution should be confirmed – we understand it is intended that the Network Rail version of the document will apply. <sup>42</sup> Questions such as accession to the identified procedure, whether decisions made in relation to the Network Rail network are binding and the constitution of the committee/panels will need to be considered further. <sup>43</sup>
<b>Governance</b>	As it is not proposed to include any concept of "Class Representative Committee" in Part C, the constitution of the access disputes committee under these rules will not differ for the Heathrow Rail Infrastructure.
<b>Delay Attribution</b>	It is intended to use the same Delay Attribution Board and Delay Attribution Guide as on the Network Rail network and to be bound by decisions made in relation to the Network Rail network. <sup>44</sup>
<b>Charging</b>	Information relating to how the dispute resolution services will be paid for should be set out in the HAL Network Code or track access agreement (and should be reflected in the HAL Network Statement). <sup>45</sup>

<sup>39</sup> In its consultation response, HAL commented that this will be reviewed. No further response has been received from HAL on this point.

<sup>40</sup> In its consultation response, HAL indicated that it has no plans to change this at this time. TfL considers that this should be revisited. We have updated this to more closely reflect the Network Rail Network Code in relation to compensation and other Part J arrangements in the HAL Network Code submitted as part of the regulation 29/30 application. Compensation should be paid if access rights are sacrificed by another TOC or HAL – and the "better use" provisions reflect the Rail Regulations 2005.

<sup>41</sup> In its consultation response, HAL commented that it expects to have local arrangements. It was agreed at a meeting on 21 October that a Part L would not be required and local arrangements for JPIPs would instead be put in place, which would not be contractualised in the HAL Network Code.

<sup>42</sup> At the meeting on 28 October 2015, HAL confirmed that the intention is to become party to the Network Rail form of the ADRR, without amendments. However, in the revised draft of the HAL Network Code issued by HAL on 10 March 2016, this approach has not been followed and HAL appears to be proposing amendments to the Network Rail ADRR. For the purposes of this regulation 29/30 application, we have assumed that what HAL has repeatedly informed us in meetings (rather than what it has drafted) is correct.

<sup>43</sup> In its consultation response, HAL indicated that it expects to adopt the Network Rail process, with discussion between Network Rail and HAL required. How this will be done (see "Governance") should be considered and confirmed. TfL provided comments on this in the context of Part C for modifications in future to the HAL Network Code (in contrast to making amendments to Network Rail documents, which will need to be done in accordance with the Network Rail processes).

<sup>44</sup> In its consultation response, HAL indicated that this was to be reviewed. TfL understands that HAL intends to generally use the Network Rail Delay Attribution Guide and Delay Attribution Board. Therefore, any amendments to the Delay Attribution Guide can only take place under the Network Rail processes – with a process included whereby HAL can feed into Network Rail any representations from users (where the process is instigated under the Network Rail Network Code) or instigate changes where proposed by a user of the Heathrow Rail Infrastructure. As Network Rail is HAL's sub-contractor (and adjacent infrastructure manager) TfL expects HAL to procure these rights.

<sup>45</sup> In its consultation response, HAL indicated that this was to be reviewed. No further response has been received from HAL (although the provision has not been amended in the latest draft of the HAL Network Code circulated by HAL on 10 March 2016). TfL considers that given HAL will need to have dispute resolution services on standby in any event

HAL Network Code	Provision to be reflected or amended
ORR	Clarity should be included in the HAL Network Code in relation to whether the ORR has accepted the extended role under the Network Rail ADRR by virtue of the same set of rules being used by HAL for the Heathrow Rail Infrastructure. <sup>46</sup>

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(regardless of how many users use the Heathrow Rail Infrastructure) these costs should form part of HAL's overheads as they are not a cost "directly incurred" as a consequence of the Crossrail services using the Heathrow Rail Infrastructure.

<sup>46</sup> This was simply "noted" in HAL's consultation response and no further response has been received. Please also see the "ORR" section under Part A above.

### Part III – HAL Track Access Agreement Heads of Terms

This Part III of Appendix 4 is intended to set out the key terms and areas that will need to be reflected in HAL's Track Access Agreement published in early September 2015 (the "HAL Track Access Agreement"). It is not intended to be an exhaustive exposition of all comments that Transport for London ("TfL") may have on the documentation. Headings are those used in the Model Clauses Track Access Agreement from the ORR website<sup>47</sup>.

HAL Track Access Agreement	Provision to be reflected or amended
<b>General</b>	
<b>Discrimination</b>	All parties to the Network Code and any HAL Track Access Agreement should be treated consistently; otherwise there could be discrimination between access parties. TfL proposes that this be addressed explicitly in the HAL Track Access Agreement.
<b>Interface with Network Rail</b>	<p>Generally, the interface arrangements with Network Rail need to be dovetailed into the access arrangements for HAL. Some particular areas that will need to be considered include:</p> <ul style="list-style-type: none"> <li>(i) the performance regime (including delay attribution)<sup>48</sup>;</li> <li>(ii) procurement of traction electricity;<sup>49</sup></li> <li>(iii) whether there needs to be a new HAL Railway Code or if the Network Rail Railway Code will be adapted to apply to HAL<sup>50</sup>;</li> <li>(iv) what services Network Rail will be performing for HAL (and therefore what services will be retained by HAL to perform);</li> <li>(v) charging, specifically how HAL will effectively manage Network Rail's costs;</li> <li>(vi) the distinction between the role of Network Rail as infrastructure manager for the Great Western Main Line and the role of Network Rail as sub-contractor to HAL and responsible for the operation of the Heathrow Rail Infrastructure<sup>51</sup>;</li> <li>(vii) day to day processes for liaising with Network Rail and HAL and on what issues (as HAL has confirmed that Network Rail will be acting as its agent);</li> <li>(viii) how the Network Rail documentation proposed to be used by HAL for the Heathrow Rail Infrastructure and incorporated into the HAL contractual arrangements will be subject to modification by HAL and users of the Heathrow Rail Infrastructure and how HAL will procure that Network Rail sponsors changes to these documents under the Network Rail Network Code<sup>52</sup>; and</li> <li>(ix) whether HAL or Network Rail will hold the required safety authorisation in</li> </ul>

<sup>47</sup> This table reflects the consultation response of TfL and the further principles reflected in the HAL Track Access Agreement submitted as part of this Regulation 29 / Regulation 30 application. We understand that further changes are proposed to the HAL Track Access Agreement as discussed with HAL, but TfL has had no sight of the revised version of the document. TfL further notes that additional contractual terms have been included in the HAL Track Access Agreement given HAL currently benefits from an exemption from the requirement to hold a network licence. Please see the Annex to the HAL Station Access Agreement Heads of Terms which sets out a list of what TfL is seeking.

<sup>48</sup> HAL has proposed a performance regime based upon the freight regime, which TfL has raised concerns on. TfL remains to be persuaded that a freight regime designed for low frequency, less time critical transportation is appropriate for the high frequency, time critical nature of the services operating on the Heathrow Rail Infrastructure and has set out an alternative proposal in Schedule 8 of the HAL Track Access Agreement that TfL considers to be more appropriate in the context of the Heathrow Rail Infrastructure and the services to be operated thereon.

<sup>49</sup> See section on Traction Electricity below.

<sup>50</sup> HAL advised TfL by email dated 24 March 2016 that it has amended the Network Rail systems code to reflect the characteristics of the Heathrow Rail Infrastructure but has not provided this document to TfL for review.

<sup>51</sup> TfL's concerns relate to decisions which Network Rail could take in its capacity as sub-contractor to HAL which are in fact made to benefit its role as infrastructure manager of the Great Western Main Line – for example, due to differential payment rates for poor performance. Protections need to be built into the arrangements to capture this concern.

<sup>52</sup> TfL provided comments and drafting to HAL in relation to Part C of HAL's proposed HAL Network Code. It has received no feedback or revised drafting from HAL in relation to this (HAL did not take into account TfL's comments in the draft circulated on 10 March 2016 but has not explained why) and has therefore incorporated these comments and drafting into the draft HAL Network Code submitted as part of this Regulation 29 / Regulation 30 application.

HAL Track Access Agreement	Provision to be reflected or amended
	this context (and so be the infrastructure manager for the purposes of The Railways and Other Guided Transport Systems (Safety) Regulations 2006).
<b>Consultation with TfL</b>	<p>As TfL will ultimately be a beneficiary of a track access contract from HAL (through its Crossrail concession operator), the HAL Track Access Agreement should reflect this. In particular, the following points should be included:</p> <ul style="list-style-type: none"> <li>(i) TfL should be added as a party to whom confidential information can be divulged;</li> <li>(ii) the HAL Track Access Agreement should be modified to reflect TfL's role as concessioning authority (in place of the Secretary of State as franchising authority);</li> <li>(iii) TfL should be consulted in relation to Journey Time Review Notices in Schedule 5;</li> <li>(iv) prior consultation with TfL should be required under Schedule 10 of the HAL Track Access Agreement as TfL is the concessioning authority (instead of the Secretary of State); and</li> <li>(v) TfL (in addition to the Secretary of State) should have rights under the Contracts (Rights of Third Parties) Act 1999.</li> </ul> <p>To future proof the contract, references to TfL in the above contexts should also reference affiliates of TfL that are responsible for the procurement of passenger rail services on the Network in the event that another entity takes on TfL's concessioning responsibilities.</p>
<b>Regulations and statutory references</b>	<ul style="list-style-type: none"> <li>(i) The HAL Track Access Agreement should contain limited references to the Railways Act 1993 as the Heathrow Rail Infrastructure is exempt from Railways Act regulation (including references to Network Licence, sections 17/18 of the Railways Act and to ORR consent). Other references may well remain appropriate.</li> <li>(ii) All reference to statutes (such as the Companies Act 2006) will need to be amended to reflect the position in the model clauses, any updates since the model clauses were published, as well as references to the Office of Rail and Road, rather than the Office of Rail Regulation<sup>53</sup>.</li> <li>(iii) The interpretation section should also reference the Railways Infrastructure (Access and Management) Regulations 2005<sup>54</sup>.</li> </ul>
<b>CAHA</b>	HAL will need to have an arrangement for dealing with claims allocation and handling <sup>55</sup> .
<b>Terminology</b>	<p>The terminology used in the HAL Track Access Agreement should be consistent with the Heathrow Rail Infrastructure, particular examples include:</p> <ul style="list-style-type: none"> <li>(i) references to "franchises" are not appropriate as primarily services will be open access (HEOC) or TfL concessions<sup>56</sup>;</li> <li>(ii) the references to Contract Date should be the same across all track access contracts or be aligned with the position in the model clauses;</li> <li>(iii) references to freight services will need to be appropriate for the Heathrow Rail Infrastructure or deleted (we understand from HAL that its intention was not to include specific references to freight). There is currently confusion (e.g.</li> </ul>

<sup>53</sup> HAL has indicated that it intends to update cross references – TfL has not yet seen a revised version of the documentation reflecting this.

<sup>54</sup> This should be updated to reflect the applicable legislation at the time the HAL Track Access Agreement is to be entered into, noting that the DfT proposes to introduce replacement regulations.

<sup>55</sup> HAL confirmed in its 21 September 2015 response that it will use the industry standard CAHA. However, HAL does not confirm how this may be amended (if at all) to reflect HAL being included. HAL has confirmed that it simply intends to accede – and use on the Heathrow Rail Infrastructure – the industry standard CAHA and is in the process of acceding (clearly, users of the Heathrow Rail Infrastructure should also be required to accede). TfL will require confirmation from HAL that it has acceded to CAHA; the applicable collateral agreement in Schedule 3 of the model clauses should be included on this basis.

<sup>56</sup> Some limited updating by HAL of the HAL Track Access Agreement has taken place to remove the concept of franchises in the 21 September 2015 version. In many cases, these should instead refer to concessions rather than simply deleting the references to franchising.

<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
	an assumption there will be no freight, yet freight terms are contained in the HAL Track Access Agreement); and (iv) a number of definitions cross refer to the HAL Network Statement – these definitions should reflect the definitions in the model clauses where appropriate.
<b>Insurance</b>	HAL should be required to hold the standard industry levels and types of insurance notwithstanding that it does not have a licence. TfL also requires ongoing assurance from HAL that the required insurances are being maintained.
<b>Interpretation</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Network Code and Traction Electricity</b>	
<b>Traction Electricity</b>	As Network Rail is not a party to the HAL Track Access Agreement, HAL will need to take responsibility for traction electricity <sup>57</sup> .
<b>Modifications</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Network Code Interface</b>	Further to amendments to the HAL Network Code to add in Parts B, C and E <sup>58</sup> , consequential changes will be required throughout the HAL Track Access Agreement.
<b>Conditions Precedent and Duration</b>	
<b>General</b>	The HAL Track Access Agreement should not lapse if HAL fails to satisfy its conditions precedent before the effective date for Clause 5 (Permission to Use). TfL proposes that Clause 5 instead come into effect on a specified date with an Event of Default arising if a party has not satisfied its conditions precedent on or before such date. <sup>59</sup>
<b>Standard of Performance</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>General</b>	TfL proposes that additional obligations be included in Clause 4 (Standard of Performance) in lieu of the requirement for HAL to hold a network licence. <sup>60</sup>
<b>Permission to Use</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Operation and Maintenance of Trains and Network</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual

<sup>57</sup> In its response on 21 September 2015, HAL suggests that operators will obtain traction electricity directly from Network Rail and therefore references to traction electricity had been removed from the HAL Track Access Agreement. In early April 2016, HAL and Network Rail circulated a proposal for how traction electricity and electrification asset usage charges for the Heathrow Rail Infrastructure were to operate. TfL has identified a number of potential issues with this proposal and the details and suitability of this proposal are still being worked through with the relevant parties. References to traction electricity and the Traction Electricity Rules have therefore been retained in TfL's draft HAL Track Access Agreement submitted as part of this Regulation 29 / Regulation 30 application pending resolution on these arrangements, given that ultimately HAL should be required to provide traction electricity for the use of its infrastructure. To the extent that the arrangements proposed by HAL and Network Rail are not viable, traction electricity will need to be provided and paid for pursuant to this contract.

<sup>58</sup> TfL has agreed with HAL that an equivalent of Part L will not be required in the HAL Network Code and local arrangements will instead be put in place.

<sup>59</sup> Given the unwillingness of HAL to meaningfully engage with TfL in negotiating the HAL Track Access Agreement (leading to the need for this Regulation 29 / Regulation 30 application to be brought), it is not acceptable to TfL that this contract would lapse if HAL was not to satisfy its conditions precedent by the relevant date; indeed TfL considers this to be a likely outcome if HAL would incur no liability by doing so. HAL therefore needs to be incentivised to satisfy the conditions precedent.

<sup>60</sup> HAL is exempt from the requirement to hold a network licence in respect of the Heathrow Rail Infrastructure and is therefore not subject to the obligations that are imposed by such licences (for example obligations in respect of non-discrimination, cooperation and the provision of information). TfL is concerned that, without such obligations in place, there is a risk that HAL will not act in a prudent manner as the infrastructure manager of the Heathrow Rail Infrastructure. This is of particular concern to TfL given HEOC is a subsidiary of HAL and a competing railway undertaking on the Heathrow Rail Infrastructure. TfL considers that "surrogate" licence provisions should be included contractually. These are industry standard and accepted by every other body working within the railways industry (whether licenced or not).

<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
	amendments.
<b>Asset Stewardship</b>	TfL proposes that additional obligations be included in Clause 6 (Operation and Maintenance of Trains and Network) in lieu of the requirement for HAL to hold a network licence. <sup>61</sup>
<b>Track Charges and Other Payments</b>	
<b>General</b>	See comments on Schedule 7. There will need to be a clause 7 referring to Schedule 7 that deals with charging arrangements.
<b>Periodicity of payments</b>	There needs to be clear provision relating to when charges are (i) calculated; and (ii) paid. The principles for the proposed Schedule 7 are set out in the HAL Track Access Agreement as part of this Regulation 29 / Regulation 30 application.
<b>Deductions from payments</b>	Charging arrangements and deductions from payments should be determined objectively (e.g. any Schedule 8 deductions).
<b>Characteristics of charging</b>	Charging should: (i) be expressed on a per movement basis and a formula included in Schedule 7 to work out overall amounts payable <sup>62</sup> ; (ii) vary with usage and should reflect the characteristics of the train in question and its impact on the infrastructure; and (iii) be reviewed subject to parameters, with an agreed process for dispute resolution and allowing for ORR supervision of charging – there should be no right to unilaterally review charges by HAL (see principles set out in Schedule 7).
<b>Review</b>	(i) The process of periodic review of track charges cannot refer to Schedule 4A of the Railways Act 1993 as this does not apply to HAL (it only applies to Network Rail) <sup>63</sup> ; and (ii) for certainty, TfL has proposed that track access charges are fixed until 2028 with a review only if there is a material change. <sup>64</sup>
<b>Stations Charging Arrangements</b>	See the Heads of Terms for Stations Arrangements. Charges for station access should not be incorporated into the HAL Track Access Agreement. Access to stations should be granted by separate station access contracts, with separate payments being made for station usage under each agreement and the payments reflecting the costs of operating that particular facility.
<b>Cross-Subsidy</b>	As HEOC is a subsidiary of HAL, TfL requires contractual assurance that no cross-subsidy will be made between the two entities, as required by the Regulations.
<b>Accounting Records</b>	TfL requires transparency in the way HAL accounts for its infrastructure management activities and therefore assurance in relation to its track and station charging.
<b>Liability – Other Matters</b>	
<b>Limitation on Liability</b>	This should follow more closely the model clauses approach to limitations on liability – liability under Schedules 4, 5, 7 and 8 should not fall within the cap

<sup>61</sup> HAL's exemption from the requirement to hold a network licence means it is not subject to the obligations that are imposed by such licences (for example obligations in respect of renewal and replacement of track, railway group standards, maintenance strategies and delivery plans). TfL is concerned that, without such obligations in place, there is a risk that HAL will not put in place the necessary processes and safeguards to ensure a smooth and safe operation of the Heathrow Rail Infrastructure.

<sup>62</sup> The response from HAL on 21 September 2015 does make some changes that suggest payments will be made on a per movement basis. However, the fundamental basis of charging remains a matter of contention – particularly points relating to it being on a facility-by-facility basis.

<sup>63</sup> Some of the references to Schedule 4A were removed in the 21 September 2015 version, although the comments remain about the need for a review mechanism.

<sup>64</sup> See Appendix 1 to the cover letter that explains the proposed approach.

<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
	on liability set out in Schedule 9 – these matters are generally within HAL’s control. See also comments on Schedule 9. <sup>65</sup>
<b>HAL Indemnities</b>	HAL should provide an indemnity in respect of its asset stewardship obligations <sup>66</sup> (see comments on Operation and Maintenance of Trains and Network above).
<b>Restrictions on Claims</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Governing Law</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Dispute Resolution</b>	
<b>ADRR</b>	Comments on the ADRR as set out in the Network Code heads of terms will apply equally to the HAL Track Access Agreement. <sup>67</sup>
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Confidentiality</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>TfL as a party</b>	As a TfL entity will be a beneficiary of a HAL Track Access Agreement from HAL, the track access contract should reflect this. TfL should be added as a party to whom confidential information can be divulged.
<b>Exclusion of HEOC</b>	HAL should not be entitled to disclose information of TfL / the Train Operator to HEOC (a subsidiary of HAL and a competing railway undertaking on the Heathrow Rail Infrastructure).
<b>Assignment and Novation</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Role of TfL</b>	As a TfL concessionaire will be a beneficiary of a track access contract from HAL (and TfL will be funding the Crossrail services), the HAL Track Access Agreement should be modified to reflect TfL's role as concessioning authority.
<b>Sub-contracting</b>	TfL is aware of HAL’s intention to sub-contract the majority of its obligations under the HAL Track Access Agreement to Network Rail and is comfortable in principle provided that Network Rail continues to hold a network licence and operate the wider Great Britain national rail network. HAL should not otherwise be entitled to sub-contract its rights and obligations under the HAL Track Access Agreement without first consulting and obtaining the consent of TfL, and should in all circumstances (including in respect of the obligations sub-contracted to Network Rail) retain ultimate responsibility for the performance of its obligations.
<b>Disposal of the Network</b>	HAL should be under an obligation not to dispose of the land that comprises the track / stations <sup>68</sup> .

<sup>65</sup> We note that in the 21 September 2015 version of the HAL Track Access Agreement, liability in Schedules 5, 7 and 8 has been carved out of the cap. However, this remains subject to agreeing final versions of the HAL Track Access Agreement; TfL has not yet had sight of an updated version of this document.

<sup>66</sup> HAL’s licence exemption means that it is not otherwise subject to asset stewardship obligations and there is therefore no assurance that the Network will be properly and safely maintained. If HAL was subject to a network licence then the ORR would have recourse for breach of these conditions. TfL requires similar means of recourse and therefore proposes that HAL should be required to provide an indemnity in relation to failures to comply with the asset stewardship obligations proposed to be incorporated into the HAL Track Access Agreement.

<sup>67</sup> At a meeting on 28 October 2015, HAL confirmed that the intention is to become party to the disputes resolution arrangements for the Network Rail network but is considering the mechanisms for doing so further. HAL has not yet outlined what the process/timelines for reaching agreement on becoming party to the Network Rail ADRR processes. TfL considers that it would be simpler for HAL to use the standard Network Rail ADRR (as has been suggested by HAL) and has reflected this in the draft HAL Network Code submitted as part of this Regulation 29 / Regulation 30 application.

<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
<b>Payments, Interest and VAT</b>	
<b>Invoicing</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Force Majeure</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Miscellaneous</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>TfL Rights of Third Parties</b>	As a TfL concessionaire will be a beneficiary of a track access contract from HAL (and TfL will be funding the Crossrail services), TfL (rather than or in addition to the Secretary of State) should have rights under the Contracts (Rights of Third Parties) Act 1999.
<b>Transition</b>	
<b>Generally</b>	There should not be a need for transition arrangements to be included in the HAL Track Access Agreement given that these are brand new arrangements.
<b>Schedule 1- Contract Particulars</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Schedule 2- Routes</b>	
<b>General</b>	The concept of Routes is not applicable to the HAL Track Access Agreement because access to the whole Network is required by TfL. Paragraphs 3 to 5 of the model clauses (which relate to Ancillary Movements, Stabling railway vehicles and the application of the HAL Network Code) are still relevant and should follow model clauses with only minor contextual amendments. Paragraphs 1 and 2 (which define the Routes) are not applicable in the context of the Heathrow Rail Infrastructure.
<b>Schedule 3 - Collateral Agreements</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments. References to Terminal 5 should not be included in any TfL agreement as TfL is not seeking access to Terminal 5. Separate agreements are needed for Central Terminal Areas and Terminal 4.
<b>Schedule 4 - Engineering Access, Timetable Planning, Restrictions of Use</b>	
<b>Restrictions of Use</b>	HAL will be selling and a user will be buying rights to use the Heathrow Infrastructure under the HAL Track Access Agreement. This contract should deal with arrangements for when HAL prevents a customer from using those rights and compensation will be required for additional costs and loss of revenue. <sup>69</sup> HAL proposed not to include an equivalent of Schedule 4 within the HAL Track Access Agreement and instead deal with Restrictions of Use in Schedule 8. TfL could accept the removal of Schedule 4, provided that equivalent and necessary protections are included within Schedule 8.
<b>Schedule 5 - Services and Specified Equipment</b>	
<b>Definition of Rights</b>	These clauses should broadly follow model clauses with only minor contextual amendments. This Schedule will define the rights which TfL is seeking to buy

<sup>68</sup> TfL is concerned in the absence of a licence obligation requiring the ORR's consent to the disposition of land, HAL could transfer the track/ stations to a third party and render the HAL Track Access Agreement redundant. This creates uncertainty for TfL and ultimately passengers who intend to use the Crossrail services to access Heathrow Airport.

<sup>69</sup> The 21 September 2015 version of the HAL Track Access Agreement exacerbates concerns over the removal of Schedule 4 and compensation for Restrictions of Use as all references now throughout the contract to that concept have been removed. TfL notes that as part of the discussions with HAL, HAL has indicated that it does propose to include an equivalent of Schedule 4 for Restrictions of Use. HAL has not, as yet, articulated this, except for a brief mention in the context of the Schedule 8 discussions. TfL has set out its proposed principles (albeit it is envisioned that these will be incorporated into Schedule 8 and Schedule 4 will be marked as not used) which TfL considers contains the equivalent and necessary protections from Schedule 4.



<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
	from HAL.
<b>Consultation with TfL</b>	As a TfL concessionaire will be a beneficiary of a track access contract from HAL (and as TfL is funding the Crossrail services), TfL should be consulted in relation to Journey Time Review Notices in Schedule 5.
<b>Schedule 6 - Events of Default, Suspension, Termination</b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Failure to satisfy Conditions Precedent</b>	New Events of Default should be included that arise where either party does not satisfy their respective conditions precedent by the specified date. See comments on Conditions Precedent above.
<b>Licence Exemption</b>	TfL considers that, in the event that HAL's exemption from obtaining a network licence expires, HAL should be obligated to gain another exemption or obtain a network licence and an Event of Default should arise if HAL fails to do so.
<b>Insolvency of Network Rail</b>	As HAL intends to sub-contract the majority of its obligations under the HAL Track Access Agreement to Network Rail, the solvency of Network Rail is essential to HAL fulfilling its obligations and should be recognised through an additional Event of Default.
<b>Disposal of the Network</b>	HAL's continued ownership of the Network is integral to the provision of track access and a failure by HAL to comply with its non-disposal obligations should be treated as an additional Event of Default. See comments on Disposal of the Network above.
<b>Schedule 7 - Track Charges</b>	
<b>General</b>	The charging arrangements for access should be transparent and certain. See specific comments on Clause 7 – arrangements either need to be in the clause or this schedule <sup>70</sup> . TfL's proposal for the charging regime is set out in Schedule 7 of the HAL Track Access Agreement.
<b>Schedule 8 - Performance Regime<sup>71</sup></b>	
<b>General</b>	The proposed regime needs to comply with the Regulations. In particular, it needs to cover the whole of the Heathrow Rail Infrastructure and not stop at CTA. The regime also needs to be consistent with the Network Rail performance regime. TfL's proposed principles for the performance regime are set out in Schedule 8 of the HAL Track Access Agreement.
<b>Tailored approach</b>	The regime for HEOC is not always appropriate and the regime needs to be tailored for the specific circumstances of the Heathrow Rail Infrastructure (and Crossrail services thereon).
<b>Consistency</b>	The performance regime needs to be consistent with the proposals set out in the HAL Network Statement (or the HAL Network Statement updated accordingly).
<b>Clarity</b>	There are a number of concepts that have not been defined in the current HAL Track Access Agreement which will need to be explained properly once the proposition has been agreed, including: (i) "performance achieved" which triggers performance payments; and (ii) the "Railway Period" concept needs to be introduced for payments and calculations as this is the process more generally adopted across the industry.
<b>Payments</b>	The performance regime should be structured so as to be calculated each day and paid on a per Reporting/Railway Period basis (and not annually).
<b>Attribution of Delay</b>	(i) Any delay should be allocated on the basis of pre-agreed delay attribution principles and a delay attribution guide – not assumed to be the fault of a train

<sup>70</sup> Please also see the covering letter of this Regulation 29 / Regulation 30 application and in particular, Appendix 1 to the cover letter.

<sup>71</sup> Please see footnote 2 above in relation to HAL's proposals for a performance regime and TfL's concerns on what has been proposed. In particular, TfL sets out its proposals for Schedule 8 (including for Restrictions of Use) in the HAL Track Access Agreement submitted as part of this Regulation 29 / Regulation 30 application.

<b>HAL Track Access Agreement</b>	<b>Provision to be reflected or amended</b>
	operator automatically unless proved otherwise; and (ii) a delay (caused by either party) should not constitute an Event of Default as this can lead to suspension of track access rights and ultimately termination.
<b>Restrictions of Use</b>	HAL has proposed that Restrictions of Use be addressed in Schedule 8 instead of Schedule 4 (see comments on Restrictions of Use above). TfL could accept the removal of Schedule 4, provided that equivalent and necessary protections are included within Schedule 8.
<b>Cancellations</b>	The concept of cancellations needs to be thought through in detail – particularly in relation to a high capacity metro operation such as Crossrail. The assumption that a cancellation is any train that is late by more than 10 minutes will not work in this context.
<b>Schedule 9 - Limitations of Liability<sup>72</sup></b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Retail Prices Index</b>	This term needs to be defined so that there is clarity on how it will work in relation to Limitations of Liability (it is defined in Schedule 7 in the Model Clauses).
<b>Limits on Liability</b>	The overall limits on liability need to be sized appropriately for a network the size of the Heathrow Rail Infrastructure. HAL's proposed liability cap of £155m is acceptable to TfL.
<b>Schedule 10 - Network Code and Traction Electricity<sup>73</sup></b>	
<b>Model Clauses</b>	These clauses should broadly follow model clauses with only minor contextual amendments.
<b>Environmental Damage</b>	There is no definition of environmental damage in the HAL Track Access Agreement. This will need to interface with Part E of the HAL Network Code (which was not included in the draft HAL Network Codes provided by HAL in September 2015 and March 2016) and the environmental provisions in the code and indeed across the access documentation.
<b>Consultation with TfL</b>	As a TfL concessionaire will be a beneficiary of a track access contract from HAL (and as TfL will fund the Crossrail services), prior consultation with TfL is required under Schedule 10 of the HAL Track Access Agreement (as well as the Secretary of State).

<sup>72</sup> HAL has amended this liability to £155m in the 21 September 2015 version of the HAL Track Access Agreement. A definition of RPI has also been inserted.

<sup>73</sup> Please see comments on Traction Electricity set out above.