

Crossrail Central Operating Section

Request for views on template contractual documents
for use of the RfL(I) Stations

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1 Background

1.1 The Crossrail Project

The Crossrail project will improve journey times across London, ease congestion and offer better connections, changing the way people travel around the capital. It will offer crowding relief on the Underground and DLR networks, as well as at congested stations. Crossrail services will connect Reading and Heathrow to the west of London with Shenfield and Abbey Wood to the east, running through a new 13 mile (21km) twin-bore tunnel under central and east London. The tunnel under London (and associated infrastructure) will be the Crossrail Central Operating Section (CCOS), with ten stations located adjacent to the CCOS. The CCOS has been designed to facilitate high capacity metro passenger rail services, moving large numbers of people more easily, more quickly and more directly across London.

1.2 Transport for London

Transport for London (TfL) is a statutory body created by section 154 of the Greater London Authority Act 1999 (the GLA Act). Section 154(3) of the GLA Act requires TfL to exercise its functions to facilitate the discharge of the general transport duty set out in section 141. This duty includes:

- in respect of the Mayor of London, a requirement to develop and apply policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within Greater London; and
- in respect of the Greater London Authority, an obligation to use its powers to secure the transport facilities and services mentioned above.

1.3 Rail for London (Infrastructure) Limited, the CCOS and the CTOC Stations

The CCOS largely comprises that part of the Crossrail route that is not part of the existing NR network. It runs from Portobello Junction (exclusive) in the West to Abbey Wood Sidings (including Plumstead Sidings) in the South East and Pudding Mill Lane Junction (exclusive) in the East. Please refer to Appendix 1 for a route map of Crossrail, where the CCOS is highlighted in red.

TfL currently owns or will own (see further below) the land comprising the CCOS and the infrastructure affixed to it. TfL has established a new wholly-owned subsidiary, Rail for London (Infrastructure) Limited (RfL(I)), which will be the infrastructure manager of the CCOS for the purposes of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (Rail Regulations 2016) and, with the exception of stations (see further below), The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) .

There are ten stations served by the CCOS infrastructure which will be divided as follows:

- **LUL Stations: Bond Street, Tottenham Court Road, Farringdon, Liverpool Street and Whitechapel.** These are stations where the CCOS interfaces with existing stations on the London Underground network. The

stations are to be owned and operated by London Underground Limited (LUL) and, in relation to the part(s) of the station from which TfL procured services operate, benefit from an exemption from the access provisions of the Railways Act 1993 (the Act)¹.

- **RfL(I) stations: Paddington (CCOS); Canary Wharf; Custom House; Woolwich and Abbey Wood.** These are new stations constructed as part of the Crossrail project where there is no (or very limited) direct interface with the London Underground network and from which there is no exemption from the access provisions of the Act. Any station access agreement in respect of an RfL(I) Station must therefore be approved by the ORR before it is entered into, else it will have no legal effect.

TfL notes that Network Rail Infrastructure Limited (NR) is the owner of Abbey Wood station and certain land at the Paddington (CCOS) station. In both cases TfL is in discussions with NR regarding the transfer of ownership / granting of a long term proprietary interest to TfL².

The Crossrail Train Operating Concessionaire (CTOC)³ will be responsible (through an operator agreement with RfL(I)) for the day-to-day safe operation and maintenance of the RfL(I) Stations and will be the infrastructure manager for the purposes of ROGS. RfL(I) will enter into regulated station access agreements with access beneficiaries (see 1.4).

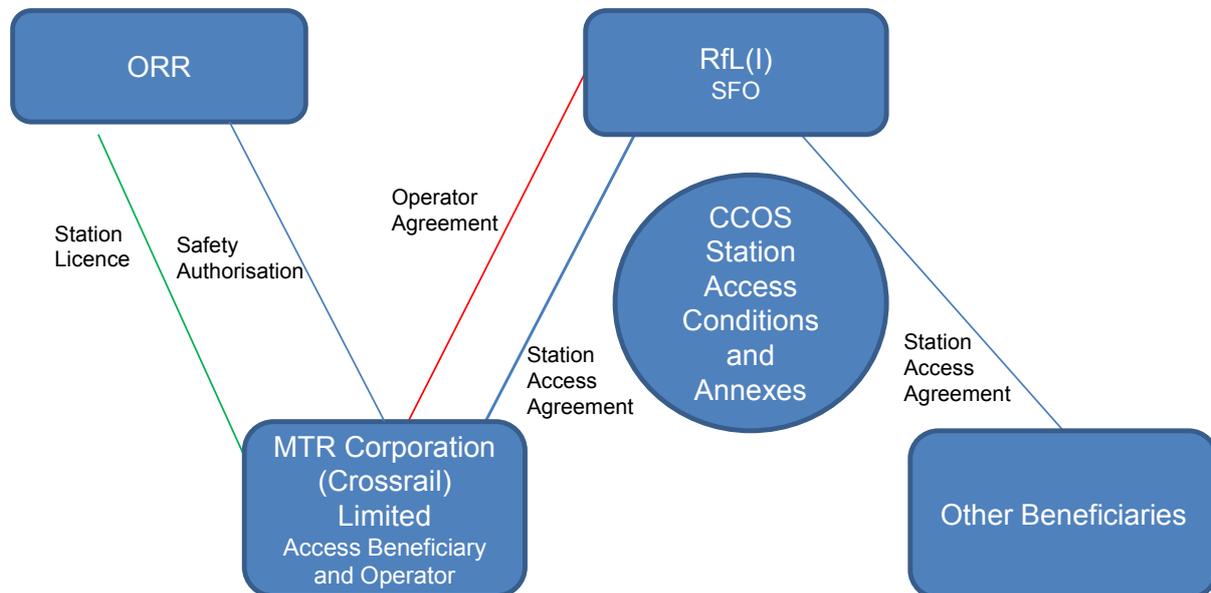
¹ Pursuant to The Railways (London Regional Transport) (Exemptions) Order 1994.

² For the purposes of this consultation document it is assumed NR will grant a long lease in respect of Abbey Wood station to RfL(I).

³ Currently MTR Corporation (Crossrail) Limited (MTR).

1.4 Proposed RfL(I) Stations structure

The proposed ownership structure for the RfL(I) Stations can be summarised as follows:



RfL(I) will undertake the station facility owner (SFO) role and enter into regulated station access agreements with the CTOC (MTR Corporation (Crossrail) Limited (MTR)) and with any other access beneficiaries. RfL(I) will appoint MTR as the operator of the RfL(I) Stations under an operator agreement. MTR will assume full responsibility for the safe operation and management of the RfL(I) Stations.

This structure differs from that noted as part of the background information in the consultation on CCOS Station Charging Proposals in October 2016⁴ (the Charging Consultation). Since then TfL has reflected upon the structure for station access, reviewing all models currently adopted in the industry and believes the structure now proposed is better suited to its requirements and those of users of the RfL(I) Stations. The change of structure for the RfL(I) Stations has no bearing on the Charging Consultation or its conclusions.

2 Consultation on draft template Station Access Documentation

2.1 Introduction

Train operators who wish their services to call at an RfL(I) Station will need to seek permission from RfL(I). Permission to use the RfL(I) Stations will be granted to train operators under a station access agreement. The station access agreement will incorporate a set of station access conditions which set out the detailed terms and conditions of access to the RfL(I) Stations.

⁴ <https://consultations.tfl.gov.uk/rail/ccos-station-charging/>

Drafts of the RfL(I) Station Access Agreement and the RfL(I) Station Access Conditions (RfL(I) SACs) have been prepared and form part of this consultation and are referred to collectively as the Consultation Documents in what follows.

Links to the Consultation Documents can be found on the consultation page for this consultation on the TfL website.

2.2 Basis of preparation

This consultation only relates to the terms of access to the RfL(I) Stations and not to the LUL Stations.

The Consultation Documents have been prepared to reflect what TfL/RfL(I) expects the prevailing position to be when services are anticipated to commence on the CCOS. In particular, the Consultation Documents assume that:

- Construction and testing of the CCOS has been completed and it is available for train services from the Principal Change Date in 2018 (i.e. 9th December 2018); and
- RfL(I) will have a proprietary interest across the whole of the CCOS and in particular that the transfer of the interests listed in section 1.3 from NR to TfL / RfL(I) take place as planned.

If any of these assumptions prove invalid then TfL/RfL(I) are likely to need to reconsider certain proposals set out in this consultation and associated contractual documentation.

2.3 Industry Equivalents

There are equivalent documents to the Consultation Documents elsewhere in the industry and these have been carefully considered in preparing the Consultation Documents

The reference point was NR's equivalent for its managed stations, namely the:

- Independent Station Access Agreement; and
- Independent Station Access Conditions (England and Wales) 2013.

However, in relation to certain areas regard has been had to other models, principally the RfL Station Access Conditions 2015 and the Bromsgrove Station Access Conditions 2016 (in the latter case there was an equivalent split between the SFO and operator roles).

2.4 Other factors relevant to the scope and content of this consultation

2.4.1 Anticipated services on the CCOS and to/from the RfL(I) Stations

Initially, it is envisaged that only one operator, CTOC (currently operated by MTR), will provide services through CCOS and to/from the RfL(I) Stations. This is because of: (1) the limited available capacity on NR's Great Eastern Main Line and Great Western Main Line, meaning that connecting train paths onto the CCOS are unlikely to be available in the short term; and (2) the technical requirements for trains operating on the CCOS, TfL/RfL(I) not being aware of other compatible trains currently in use.

In future, other operators may have aspirations to operate other services through CCOS and to/from the RfL(I) Stations and if connecting paths can be secured on NR's network, RfL(I) may be able to accommodate such services. Accordingly, the contractual and regulatory framework for use of the RfL(I) Stations (as well as the other CCOS infrastructure) is being prepared in such a way to facilitate future access, in compliance with the Rail Regulations 2016 and the Act.

2.4.2 Regulatory, contractual and charging frameworks and the impact of Brexit

The contractual, regulatory and charging frameworks described in this consultation document are being prepared on the basis that the current legal requirements (both domestic and European in origin) will continue to apply. If this should change (whether as a result of the UK's decision to withdraw from the European Union or otherwise) TfL/RfL(I) reserve the right to revisit the regulatory and contractual framework.

In particular, it is anticipated that the requirements of the Fourth Railway Package of European legislation will be introduced into English law at or around the time that services are expected to commence on the CCOS. The contractual, regulatory and charging frameworks are therefore being designed accordingly to be in compliance with the Fourth Railway Package. If, as a result of the United Kingdom's withdrawal from the European Union, the requirements of the Fourth Railway Package are not implemented into English law, TfL/RfL(I) also reserve the right to revisit these frameworks (and the associated contractual documentation).

3 Overview of documents forming part of this consultation

For each of the Consultation Documents, this section sets out a summary of some of the key areas of change from the nearest industry equivalent document(s).

3.1 RfL(I) Station Access Agreement

The RfL(I) Station Access Agreement is modelled on NR's Independent Station Access Agreement. The principal changes made are to:

- replace NR with RfL(I); and
- reflect that RfL(I) will subcontract its role of operator of the RfL(I) Stations.

3.2 RfL(I) SACs

3.2.1 General

The RfL(I) SACs are based on the NR's Independent Station Access Conditions (England and Wales) 2013. The principal changes made are:

- to replace NR with RfL(I);
- to reflect that RfL(I) will subcontract its role of operator of the RfL(I) Stations;
- to reflect NR's ongoing interests as owner of the freehold of Abbey Wood station and as operator of an adjacent network;

- the inclusion of a mechanism to recover an Investment Recovery Charge (IRC) from users, being an element of the cost of construction of the RfL(I) stations (excluding Abbey Wood) (see 3.2.2 below); and
- the inclusion of provisions for the periodic review of charges and an interim review of charges in the event of a change in circumstances (see 3.2.3 below).

3.2.2 Charges

The charges for use of the RfL(I) Stations shall comprise:

- an IRC (other than for the use of Abbey Wood station)
- a Long Term Charge; and
- a Qualifying Expenditure recovery.

As noted above the inclusion of an IRC is a departure from the NR Independent Station Access Conditions. The Charging Consultation set out TfL's proposals for an IRC including the principles for the calculation of such a charge⁵. It also noted that, subject to ORR approval at the relevant time, that any future enhancement to an RfL(I) Station would generate a further IRC calculated in accordance with these principles. Respondents were supportive of the proposals and they have been reflected in the RfL(I) SACs.

NR noted TfL's proposed approach to amortisation of station assets differs from their approach. In particular, unlike NR, TfL is proposing not to amortise long life civils assets on the basis of their 120 year design life adding long-term economic value to the CCOS. NR questioned whether this approach is appropriate given assets with a design life of 120 years will depreciate and will require works to maintain them in a steady state.

Whilst we understand Network Rail's query, we remain of the view that long life civils assets should not be amortised, even over their long design life of 120 years. The CCOS is a small simple network which is largely tunnelled and thus much of the capital expenditure associated with its construction is in respect of boring tunnel and station cavities. We expect these cavities to be in place in perpetuity, that is we do not expect new tunnels and/or subterranean station cavities to be bored at the end of the 120 notional design life. Whilst we accept that there will be a degree of ongoing maintenance and renewals of assets associated with the tunnel and station cavities (e.g. replacement of tunnel linings and station walls), for purposes of simplicity, inter-generational equity and to avoid 'cliff-edge' changes in charges in future, our proposal continues to be to not amortise these assets.

There is objective empirical evidence, within the TfL Group and elsewhere, of assets constructed over a 100 years ago still subject to intensive use.

⁵ These principles are summarised in the draft 2019 Network Statement which is being consulted on at or around the time of this consultation

We would stress that the approach that we have taken does not result in over-recovery of initial capital expenditure. Indeed, whilst it can be shown that our approach involves recovering the same present value as an approach in which civils assets are amortised, the approach we are adopting means that full recovery does not occur until the very distant (in fact infinite) future. It follows that, if anything, the approach that we have adopted could result in a lower overall recovery of the initial capex than an approach in which the assets are amortised.

Whilst we consider that our proposed approach is likely to be suitable for the foreseeable future, we acknowledge that it may be appropriate to adopt alternative amortisation assumptions as part of future periodic reviews of access charges. Moreover, we note that Network Rail's asset portfolio is very different to that of RfL(I), and do not consider that our approach to amortisation should in any way constrain – or otherwise set a precedent for – the manner in which Network Rail assets are treated.

3.2.3 Review of charges

3.2.3.1 Periodic Review The Charging Consultation proposed that the RfL(I) SACs contain provisions whereby the charges can be reviewed on a periodic basis and that these provisions be similar to Condition F13 of the RfL Station Access Conditions 2015 with a review every five years with the exceptions that:

- the initial review period (defined as First Review Period in the RfL Station Access Conditions 2015) will cover a shorter period; and
- the scope of the review will include the inputs to the IRC, notably the setting of the Weighted Average Cost of Capital used in its derivation.

The shorter initial review period is to cover the period from 9th December 2018 (the date the CCOS is expected to be available for revenue-earning railway services) to 31st March 2022 reflecting the fact that the CCOS is new infrastructure and, as such, charges are based on prospective cost information and thus it will allow emerging deviations from expectation to be considered and reflected in the charges where appropriate at the earliest practicable opportunity.

Respondents were supportive of these proposals and they have been incorporated in the RfL(I) SACs.

3.2.3.2 Interim Review The Charging Consultation proposed that the RfL(I) SACs contain provisions similar to those in Condition F13 of the RfL Station Access Conditions 2015 whereby the charges may be amended on the occurrence of a “material” change in circumstances which beneficially or adversely affects the cost of delivering RfL(I)'s asset management strategy for one or more RfL(I) Stations. It further proposed that this provision be amended to allow for the revision of the IRC in the event of:

- a significant increase or decrease in the utilisation (ie number of station calls) at one or more RfL(I) Stations; and/or
- an enhancement at an RfL(I) Station coming into use.

Respondents were supportive of these proposals and they have been incorporated in the RfL(I) SACs.

3.2.4 Billing Arrangements

The charging consultation proposed that payment of the IRC will be four weekly in advance. No objections were raised by respondents in relation to this proposal and it is has been incorporated in the RfL(I) SACs.

3.2.5 Credit Protection

The Charging Consultation noted that RfL(I) reserves the right to require anyone applying for access to a RfL(I) Station to provide credit protection directly to RfL(I) where the prospective access beneficiary's credit rating suggests that it may have difficulties in effecting regular payments for station access charges.

RfL(I)'s proposals in this regard are set out in the 2019 CCOS Network Statement⁶. The template documentation (ie the Consultation Documents) may require specific amendments to reflect any requirement for credit protection.

4 How to Respond to the Consultation

We would like to know what you think about our proposals. Please give us your views before Friday 8th December by completing the online consultation survey⁷.

5 Next Steps

TfL / RfL(I) plan to issue Station Specific Annexes for consultation later this year and the final station access documentation early in the new year. The final documentation will reflect:

- any changes to those proposals arising from this consultation and the subsequent consultation on the Station Specific Annexes;
- the Office of Rail and Road's (ORR's) establishment of the charging framework for the CCOS under the Rail Regulations 2016; and
- final charges reflecting the above and based on the then extant forecasts of the final construction cost of the RfL(I) Stations, the cost of capital and the costs of operating, maintaining and renewing the RfL(I) Stations infrastructure.

6 Other Consultations

In parallel with this consultation, TfL is consulting on behalf of RfL(I) in respect of the draft CCOS 2019 Network Statement and consultees are advised to consider both sets of proposals together.

⁶ Being consulted on at or around the time of this consultation.

⁷ Alternatively, you can:

- Email us at consultations@tfl.gov.uk
- Write to us at FREEPOST TFL CONSULTATIONS

Appendix 1 - Crossrail Route

