



Department  
for Transport

Rail Executive

## Rail Franchising

# Passport Process Document

September 2015



## Department for Transport

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport  
Great Minster House  
33 Horseferry Road London  
SW1P 4DR  
Telephone 0300 330 3000  
Website [www.gov.uk/dft](http://www.gov.uk/dft)  
General email [PQQpassport@railexecutive.gsi.gov.uk](mailto:PQQpassport@railexecutive.gsi.gov.uk)

© Crown copyright 2015  
Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

# Important Notice

This Document is issued by the Authority pursuant to its functions and duties under the Railways Act.

This Document forms part of the future rail franchise competitions described in the Passport System Notice. Each such procurement will be conducted in accordance with relevant legal requirements including Regulation 1370/2007.

Neither this Document, nor any of the other documents to be issued as part of a rail franchise competition to which the Passport System relates, is a recommendation by the Authority, or any other person, to enter into any agreement or to make any investment decision. In considering any investment in a franchise, you should make your own independent assessment and seek your own professional financial and legal advice.

Neither this Document, nor any of the other documents to be issued as part of a rail franchise competition to which the Passport System relates, purports to contain all of the information that a prospective franchisee or shareholder may require. Neither the Authority, nor any of his employees, agents or advisers, makes any representation or warranty (express or implied), and no such representatives have any authority to make such representations and warranties, as to the accuracy or completeness of the information contained in this Document or those other documents.

The Authority expressly disclaims any and all liability (other than in respect of fraud or fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, this Document, or any of the other documents to be issued as part of a rail franchise competition to which the Passport System relates, or based on or relating to the recipient's use of this Document or those documents, or the use of this Document or those documents by any of its Affiliates or the respective representatives of any of them in the course of its or their evaluation of any franchise or the shares of any franchisee or any other decision.

The only information which will have any legal effect and/or upon which any person may rely will be such information (if any) as has been specifically and expressly represented and/or warranted in writing to a successful franchisee in the relevant franchise agreement or in any other relevant agreement entered into at the same time as the franchise agreement is entered into or becomes unconditional.

Legal, technical and financial advisers will be acting for the Authority in relation to the letting of rail franchises and will not regard any other person as their client or be responsible to anyone other than the Authority for providing the protections afforded to their client or for advising any other person on the contents of this Document, or any of the other documents to be issued as part of a rail franchise competition to which the Passport System relates, or any matter referred to in this Document or those documents.

The Authority is not and shall not be liable for any expenses, costs or liabilities

incurred by an Applicant making a Passport Application, expressing an interest, considering or responding to a Franchise EoI, or negotiating or tendering for a franchise agreement or any other agreement entered into in connection with such franchise agreement, or any such costs incurred by their associated entities or any other person.

The Authority reserves the right not to award any Passports, to make whatever changes it sees fit to the structure and timing of the Passport Application process (including issuing updates and amendments to this Passport PQQ and the Passport System), to the Application Dates or to the structure and timing of a Franchise EoI stage, to cancel the Passport System in its entirety at any stage or to use any additional or alternative method of selecting Bidders for any or all future rail franchise competitions.

The Authority also reserves the right not to award any or all franchise agreements, to make whatever changes it sees fit to the structure and timing of the procurement process for any specific franchise agreement, to cancel the process in its entirety at any stage and, where it considers it appropriate to do so, to make a direct award pursuant to Regulation 1370/2007.

# Terms and Definitions used in the Passport PQQ and Passport PPD

**“Affiliate”** means in respect of any Applicant, its Controllers, any entity or person Controlled by the Applicant, and any entity or person other than the Applicant which is Controlled by any of the Controllers of the Applicant from time to time.

**“Appendix”** means additional information submitted as part of a Passport Application using the template provided in the Passport PQQ.

**“Applicant”** means the person or entity or specific group of persons or entities which has or have submitted, or intends or intend to submit, a Passport Application.

**“Application Date”** means the date on or before which Applicants must have made their Passport Application to be guaranteed that their application will have been processed in time to compete in a particular rail franchise competition. The relevant date for each competition will be specified in the Passport System Notice or in any subsequent notice published by the Authority in the OJEU that revises an Application Date previously specified or specifies an Application Date not previously specified.

**“AQ”** means a clarification question asked of an Applicant by the Authority to clarify any element of a Passport Application.

**“Authority”** means the Secretary of State for Transport.

**“Bidder”** means a party or parties invited to respond to an ITT.

**“CJEU”** means the Court of Justice of the European Union.

**“Control”** means the power of a person or other entity (“C”) to secure that the affairs of a person or other entity are conducted in accordance with C's wishes. In relation to a body corporate Control may be secured by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate. Control shall include Control held indirectly as well as directly, negative Control (exercised by veto rights), and joint Control (where there is one or more other persons or entities in addition to C which also exercise Control, or C together with any other person or entity exercises Control).

**“Controller”** means any person or entity who has Control.

**“CQ”** means a clarification question asked of the Authority by an Applicant.

**“Document”** means this Passport PPD together with the Passport PQQ that it

supports.

**“DOTAS”** or **“Disclosure of Tax Avoidance Schemes”** means the rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as in force from time to time, as currently contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992, as each of these may change from time to time.

**“Effective Date”** means the date on which the Applicant submits a Passport Application.

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3391).

**“Franchise EoI”** means the franchise expression of interest, being the specific questionnaire for each rail franchise competition to be completed by Passport Holders expressing an interest in the relevant franchise.

**“Franchise PPD”** means the specific pre-qualification process document for each rail franchise competition that contains the supporting information for use with the Franchise EoI.

**“Franchise Letting Process Agreement”** or **“FLPA”** means the franchise specific Deed to be entered into by a Passport Holder in order to receive the Franchise EoI and the Franchise PPD for the relevant rail franchise competition including, among other obligations, confidentiality and non-collusion undertakings.

**“FOIA”** means the Freedom of Information Act 2000.

**“Funding Deed”** means the Funding Deed contained in the ITT, to be executed by the Guarantor(s), in which the Guarantor(s) undertakes to provide the Guarantee, and to procure that bonding which complies with the terms of the Funding Deed is made available to the Authority.

**“General Anti-Abuse Rule”** or **“GAAR”** means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

**“Guarantee”** means either (i) (when the financial tests to be set out in the Franchise EoI are carried out at the pre-qualification stage) the amount of the loan facilities which the Authority estimates will be required to be provided by the Guarantor(s) under the Funding Deed; or (ii) (when the financial tests to be set out in the Franchise EoI are repeated both after receipt of a Bidder’s tender and prior to contract award) the loan facilities which the Authority specifies will be required to be provided by the Guarantor(s) under the Funding Deed.

**“Guarantor(s)”** means a Controller of the Applicant which will provide financial

security to the bond provider(s) for the performance and season ticket bonds, and which will sign the Funding Deed.

**“Halifax abuse principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“ITT”** means the invitation to tender to be issued by the Authority for each rail franchise competition.

**“OJEU”** means the Official Journal of the European Union.

**“OONC”** or **“Occasion of Tax Non-Compliance”** means:

- (a) any tax return submitted to a Relevant Tax Authority on or after 1 October 2012 by the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) is found to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging it under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;
  - (ii) the failure of an avoidance scheme which the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) the tax affairs of the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion.

**“Passport”** means the confirmation to be awarded by the Authority to a successful Applicant that their Passport Application meets the requirements set down by the evaluation process outlined in this Passport PPD. This is required for participation in all rail franchise competitions.

**“Passport Application”** means a response to the Passport PQQ submitted by a person or entity (or persons or entities) wishing to be awarded a Passport.

**“Passport Holder”** means, during the validity period of the relevant Passport, a successful Applicant to whom a Passport has been awarded.

**“Passport System”** means the pre-qualification passport system described in this Document, in the Passport System Notice and in each Franchise EoI.

**“Passport PPD”** means this pre-qualification process document that contains the supporting information for use with the Passport PQQ.

**“Passport PQQ”** means the pre-qualification questionnaire for which this Passport PPD provides supporting information.

**“Passport PQQ Pack”** means this Document and all accompanying documents.

**“Passport System Notice”** means the qualification system notice published in the OJEU for the purpose of advertising the Passport System, including any updates to the qualification system notice published in the OJEU from time to time.

**“PIN”** means a prior information notice published in the OJEU.

**“PPA”** means the Passport Process Agreement, being the deed to be entered into by an Applicant in order to receive the full Passport PQQ Pack and gain access to the franchising procurement e-sourcing portal including, among other obligations, confidentiality and non-collusion undertakings.

**“Railways Act”** means the Railways Act 1993.

**“Regulation 1370/2007”** means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

**“Relevant Tax Authority”** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) is established.

**“Temporary Visa”** means a temporary permission granted by the Authority to a Passport Holder that enables that Passport Holder to participate in a particular rail franchise competition as part of a specific group of economic operators that is different to the single economic operator or group to whom the Passport was awarded.

**“Ultimate Controller”** means a Controller of the Applicant (and, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) which is not itself Controlled by any other person or entity.

**“Visa Applicant”** has the meaning set out in section 5.6.

In this Document, the words **“other”**, **“includes”**, **“including”**, **“for example”** and **“in particular”** do not limit the generality of any preceding words and are to be construed without limitation.

If and to the extent of any inconsistency or conflict between any of the documents in the Passport PQQ Pack, the order of priority for the purposes of construction is, in descending order:

- the PPA;



- the Passport System Notice;
- the Passport PQQ;
- the Passport PPD; and
- any other information provided or made available on the franchising e-sourcing portal.

# 1. Introduction

The Authority has developed the Passport System for use in future rail franchise competitions. The Passport System has been developed in response to feedback from participants in previous rail franchise competitions, and following formal consultations/pre-market engagement meetings with stakeholders.

The Passport System has been designed to streamline the pre-qualification process for rail franchise competitions. In particular, the Passport System is intended to reduce the time and cost involved for Applicants in providing detailed technical information for multiple rail franchise competitions.

The Authority is seeking Passport Applications from organisations, including any national or international company, consortium or not-for-profit organisation, that can demonstrate the necessary managerial capability and experience (to be assessed at this Passport Application stage), and financial strength (to be assessed at Franchise EoI stage), to be considered for the award of a franchise agreement for the effective delivery of passenger services in England and Wales and those cross-border services into Scotland for which the Authority is responsible. As well as those with a current or previous involvement, the Authority wants to encourage applications from new entrants that have an interest in the rail passenger market.

The Authority considers that to some extent the Passport System is similar to a qualification system under Directive 2014/25/EU. However, the Authority does not commit to operating the Passport System (or conducting any other element of the pre-qualification stage) in accordance with the provisions on qualification systems (or any other provision) in the Utilities Contracts Regulations 2006 (or any successor regulations), Directive 2004/17/EC or Directive 2014/25/EU.

Passenger Services has published a Rail Franchising PIN. This includes the full rail franchising schedule, details of Direct Awards, and additional information regarding the aims of the rail franchising programme.

The Rail Franchising PIN is updated annually and published in the OJEU. The updates include additional information relating to the aims of the rail franchising programme. The Rail Franchising PIN will also be available on the Authority's website:

<https://www.gov.uk/government/organisations/department-for-transport/series/rail-franchising>

The full rail franchising schedule includes dates for the planned Direct Awards to incumbent rail operators as well as the franchise competitions to give the market and the supply chain a clear picture of the Authority's planned negotiations. The Direct Awards enable a smoother arrangement of franchise competitions by ensuring continuity of service and the preservation of a rail market until the franchise competitions are held.

Passenger Services will publish individual project PINs for the Direct Awards in accordance with the requirements of Regulation 1370/2007.

The Secretary of State has duties under Section 30 of the Railways Act 1993 to maintain the operation of passenger rail services, which would come into play should Passenger Services fail to agree terms on the necessary Direct Awards.

The Passport System will be used for rail franchise competitions during its validity period (initially four years, but capable of reduction or extension by the Authority as described in section 2.4 below) as stated in the Passport System Notice. All Passports will expire at the end of that validity period, regardless of the date of award.

This Passport PPD:

- (i) outlines the letting process for rail franchise competitions using the Passport System; and
- (ii) describes the Passport Application process in detail.

The powers and duties of the Authority in relation to franchising and the letting of franchises can be found in the Railways Act and the Transport Act 2000, which can be accessed via [www.legislation.gov.uk](http://www.legislation.gov.uk)[www.opsi.gov.uk](http://www.opsi.gov.uk).

## 2. Franchise Letting Process

### 2.1 Introduction

The key stages of the letting process for rail franchise competitions using the Passport System are set out below.

The franchise letting process consists of a pre-qualification process followed by a tender phase.

Section 26(3) of the Railways Act stipulates that the Authority may not issue an ITT to any person unless it considers that such person has the appropriate financial position and managerial competence, and is otherwise suitable to be the franchisee for the relevant rail franchise.

The Authority will make that determination through the pre-qualification process, which comprises:

- (i) the Passport PQQ; and
- (ii) the Franchise EoI.

### 2.2 Pre-qualification process

The pre-qualification process enables the Authority to assess Applicants' ability to deliver (or secure the delivery of) rail franchising services. This includes assessing:

- (i) grounds for mandatory and discretionary rejection;
- (ii) the economic and financial standing of the Applicant's Guarantor;
- (iii) the Applicant's capability, competence and experience; and
- (iv) the Applicant's safety management and culture.

As stated above, the pre-qualification process comprises the Passport PQQ followed by the Franchise EoI.

### 2.3 Applicants

Passport Applications may be made by a single economic operator or a group of economic operators (in any legal form).

An economic operator may apply to be a Passport Holder in its own right and/or as part of one or more groups of economic operators.

### 2.4 Passport Application timescales

Applicants can apply for a Passport at any time during the Passport System's validity

period as stated in the Passport System Notice. The initial validity period of the Passport System is four years, at the end of which all Passports will expire, regardless of the date of award. The Authority reserves the right to reduce or extend the Passport System's validity period at any time. Any change in the validity period will be published by the Authority in the OJEU.

However, an Applicant wishing to participate in a particular rail franchise competition must have applied for a Passport (by uploading its Passport Application in accordance with section 3.4 below) on or before the relevant Application Date for that franchise. Where a Passport Application is made after the Application Date, the Applicant will not be entitled to participate in the relevant rail franchise competition.

The Authority may revise any Application Date previously specified from time to time and any revisions will be published by the Authority in the OJEU.

## **2.5 Passport PQQ**

Any Applicant interested in bidding for a future rail franchise competition will need to submit a Passport Application.

The Passport PQQ includes questions on each of the following:

Part A: Organisation and Contact Details;

Part B: Grounds for Mandatory Rejection;

Part C: Grounds for Discretionary Rejection (including past performance);

Part D: Capability and Technical Ability; and

Part E: Health and Safety Management and Culture

Passport Applications will be evaluated on a pass/fail basis in accordance with the evaluation process set out in section 4 below. Where an Applicant's Passport Application passes all of the thresholds, the Applicant will be awarded a Passport. Any scores awarded will be used solely for the purpose of that evaluation process and will not be carried forward to any subsequent step in the franchise letting process (e.g. such scores shall not be included in the scoring of responses to the Franchise EoI).

The Passport PQQ does not contain any questions in respect of economic and financial standing and no financial assessment of Applicants or Guarantors will be undertaken as part of the evaluation of the Passport Application. Instead, the financial assessment will be undertaken as part of the Franchise EoI when the financial requirements of each specific franchise will be confirmed.

## **2.6 Passport PQQ debrief**

As noted in section 2.5 above, where a Passport Application successfully passes all of the thresholds, the Applicant will be awarded a Passport.

Applicants will be notified of the outcome of their Passport Application in writing, together with the reasons if their Passport Application is rejected.

Applicants that are successful will be offered a face-to-face debrief with the Authority to cover the reasons for the success of their Passport Application.

Applicants that are unsuccessful will be offered a face-to-face debrief with the Authority, in addition to the written notification referred to above, to cover the reasons for rejection of their Passport Application.

Unsuccessful Applicants should note that the Passport System remains open for Applications throughout its validity period. Such Applicants may re-apply for a Passport at any time during that period, but should take note of the Application Dates.

## **2.7 Timing of notification of outcome**

Where an Applicant has applied for a Passport on or before the relevant Application Date for a particular rail franchise competition, the Authority intends to notify the Applicant of the outcome of their Passport Application on or before the date the relevant Franchise EoI is issued (see section 2.8 below).

However, exceptionally, the Authority may issue the Franchise EoI before the outcome of such Passport Applications is known, where it is unable to complete the Passport evaluation within the planned timescales. Where this is the case all Applicants who have applied for a Passport on or before the relevant Application Date, but have not yet been notified of the outcome of their Passport Application, will be issued with the Franchise EoI at the same time as the current Passport Holders as set out in section 2.8 (and all references to "Passport Holders" in section 2.8 shall be read accordingly). However, of those Applicants, only those whose relevant Passport Application is successful will be eligible to be invited to tender.

For the rail franchise competitions that are intended to commence in 2015 (as described in the Passport System Notice), the Authority is aware that it may need to issue the Franchise EoI to Applicants before the outcome of their Passport Application is known, on the basis set out above, given the time constraints and the volume of Passport Applications expected when the Passport System opens.

Where a Passport Application is made after an Application Date, the Applicant will not be entitled to participate in the rail franchise competition to which that Application Date relates.

## **2.8 Franchise EoI**

When the Authority is commencing a particular rail franchise competition it will identify the Passport Holders that submitted a Passport Application on or before the relevant Application Date.

Subject to the Passport Holders signing and returning the relevant FLPA, the

Authority will then issue a Franchise EoI to all such Passport Holders inviting them to participate in that competition.

Applicants should be aware that the Authority will not publish a contract notice in the OJEU for each rail franchise competition.

The Franchise EoI will ask Passport Holders to:

- (i) express their interest in bidding for the franchise;
- (ii) re-submit Parts A to C of their Passport Application;
- (iii) issue a declaration that Parts D and E of their Passport Application remain correct;
- (iv) complete questions in respect of economic and financial standing; and
- (v) complete further questions in respect of capability and technical ability (unless notified otherwise as described below), which may be used to further prequalify or shortlist the Passport Holders that will be invited to tender.

Interested economic operators should be aware that the Authority may impose restrictions on certain franchise competitions which may limit the number of franchise competitions which an economic operator may participate in or win. In the event that the Authority decides to impose such a restriction further details will be provided in the relevant Franchise EoI documentation.

The Authority will state in the Franchise EoI the maximum number of Passport Holders it will invite to tender.

After receipt of expressions of interest, the Authority reserves the right to notify the Passport Holders that the further questions in respect of capability and technical ability do not need to be completed and will not be evaluated. The Authority may determine that completion of those questions is not required where:

- (i) the number of expressions of interest in the relevant franchise does not exceed the maximum number to be invited to tender (as stated in the Franchise EoI) so that the Authority does not need to down-select Passport Holders to create a shortlist to be invited to tender; and/or
- (ii) the Authority does not consider it necessary to ask further capability and technical ability questions which are specific to the nature of the particular franchise in order to ensure that Passport Holders have the appropriate managerial competence and are otherwise suitable to be the franchisee.

Responses to the Franchise EoI will be evaluated on the basis described in the relevant Franchise PPD. Economic and financial standing will be evaluated on a pass/fail basis. If down-selection is required, capability and technical ability answers will be scored in order to generate a shortlist.

## **2.9 Franchise EoI debrief**

Passport Holders will be notified of the outcome of their response to the Franchise EoI in writing, together with the reasons if they are not invited to tender.

Passport Holders that are invited to tender will be offered a face-to-face debrief with the Authority to cover the reasons why they were successful.

Passport Holders that are not invited to tender will be offered a face-to-face debrief with the Authority, in addition to the written notification referred to above, to cover the reasons why they were unsuccessful.

Where a Passport Holder is not invited to tender because the Authority has down-selected Passport Holders to create a shortlist, the written reasons provided to them will include the scores awarded to them, along with the scores and rankings of all Passport Holders shortlisted to receive an ITT on an anonymised basis.

## **2.10 ITT**

The ITT for each rail franchise competition will be issued to the relevant Passport Holders that are invited to tender.



## 3. Passport Application Process

### 3.1 Registration

To register, Applicants must first email [PQQpassport@railexecutive.gsi.gov.uk](mailto:PQQpassport@railexecutive.gsi.gov.uk). They will then be asked to sign and return the PPA. The PPA signed by an Applicant must be identical to the draft deed provided by the Authority, subject only to amendments permitted by the Notes to Applicants shown in that draft deed.

Upon receipt of the signed PPA by the Authority, Applicants will receive the full Passport PQQ Pack and gain access to the franchising e-sourcing portal.

The franchising e-sourcing portal enables access to editable Word templates for each of the sections of the Passport PQQ, plus a pdf Declarations and Authorisation document. Instructions for uploading the completed documents are at section 3.4 below.

### 3.2 Structure of the Passport Application

The Passport PQQ sets out the information which is required by the Authority in order to assess the suitability of Applicants to be awarded a Passport in accordance with the evaluation process outlined in section 4 below.

The Passport PQQ comprises the following sections:

Part A – Organisation and Contact Details
Part B – Grounds for Mandatory Rejection
Part C – Grounds for Discretionary Rejection
Part D – Capability and Technical Ability
Part E – Health and Safety Management and Culture
Declarations and Authorisation

### 3.3 Response Instructions

The following conditions shall apply to the submission of Passport Applications:

- (a) Applicants must answer every question and ensure that they complete the Passport PQQ as requested. Failure to do so may result in their Passport Application being deemed non-compliant and rejected.
- (b) Where a question cannot be answered fully, Applicants should provide a relevant explanation with reasons. If the question does not apply, an Applicant should write 'Not Applicable'.

- (c) Where an Applicant has submitted supporting information in response to a question in the Passport PQQ, the relevant response must refer to the supporting information and reference any relevant Appendices. Similarly any supporting information must indicate the Part and question number in the Passport PQQ to which it refers. Supporting information submitted in response to questions in Part D and Part E will count towards the page count set out in paragraph (f) below.
- (d) The responses to specific Parts of the Passport PQQ must not include cross references to other Parts. For the avoidance of doubt, cross referencing is permissible between sub-section questions within a Part of the Passport PQQ e.g. information in D1.1 can be cross referenced when answering question D1.2, but information cannot be cross-referenced in answering D2.1 and D4.2. Any information which is cross-referenced in a manner which is contrary to this paragraph (d) will not be taken into account in the evaluation.
- (e) All responses must be in English. This requirement does not apply to any requested information which has not been created for the Passport Application, but a translation into English must be provided for any requested information submitted in a language other than English.
- (f) The response to the Capability and Technical Ability questions (Part D), including supporting information, must not exceed 60 sides of A4, and the responses to the Health and Safety Management and Culture questions (Part E), including supporting information, must not exceed 10 sides of A4, with the exception of any policy statement requested in either of those Parts, which will not be counted towards the page limit. Parts A, B and C (including, for the avoidance of doubt, any Appendices provided in response to these Parts) and any CQs and ECQs and responses shall not count towards this page limit. Any material included in the submission beyond the applicable page limit will not be taken into account in the evaluation.
- (g) The Authority expects the information supplied in Passport Applications to be concise and unambiguous.
- (h) The font size must be 11 pt minimum, font type must be Arial standard (e.g. not 'narrow') and the line spacing must be 13pt minimum. Pages must be bordered on all sides by 2cm margins. Minimum font size for any text in tables must be 10 pt. It will not be acceptable to place large sections of text into tabulated format as a means of meeting the page limit requirements.
- (i) The Authority reserves the right to clarify elements of a Passport Application with the Applicant by means of an ECQ. The Applicants will be required to respond to any ECQ within three working days, which may be extended by the Authority where the Authority considers it appropriate and reasonable to do so.
- (j) Failure to comply with any of the conditions or requirements set out in this Document may, at the Authority's discretion, result in the Passport Application being rejected.
- (k) The Authority expressly reserves the right to require an Applicant to

provide additional information supplementing or clarifying any of the information provided in its Passport Application, but is under no obligation to do so.

- (l) Where the Authority considers either that certain information has, by mistake, not been provided by an Applicant or that there are potentially unintentional errors in information that has been provided, then the Authority reserves the right to clarify these issues with the Applicant and to allow such Applicant to correct such errors or amplify their response, as necessary, before evaluating their Passport Application, but is under no obligation to do so.

### **3.4 Uploading responses via the e-portal**

The Applicant must download the electronic Word version of the Passport PQQ from the franchising e-sourcing portal for completion. Preparation for uploading and submission must be carried out as follows:

- Parts A, B, C, D and E must be completed as separate documents and converted to individual searchable pdfs, each of which must then be uploaded via the portal.
- The Declarations and Authorisation section, which requires authorising signatures, must be signed by hand (not electronically) and the document scanned to JPEG or pdf format, which must then be uploaded via the portal.

Applicants must upload a fully completed response together with the required supporting information using the Authority's franchising e-sourcing portal. No documents or information other than the Passport Application and the required supporting information should be submitted.

Applicants should take note of the Application Date for any future rail franchise competition in which they are interested.

Potential Applicants who have considered the opportunity and opted not to submit a Passport Application are requested to provide an acknowledgement and optionally provide reasons for deciding not to respond, to [PQQpassport@railexecutive.gsi.gov.uk](mailto:PQQpassport@railexecutive.gsi.gov.uk). Please note that only Passport Holders will be entitled to participate in future rail franchise competitions.

### **3.5 Clarification Questions and Clarification Meetings**

The following CQ process will be in place, allowing Applicants to clarify what is required at each stage:

- (a) each Applicant should select one person for co-ordination of its CQ process;
- (b) CQs must only be submitted via the secure messaging feature in the Authority's franchising e-sourcing portal using the subject heading provided and where possible referencing the specific Part and question number of the Passport PQQ to which the CQ relates. Only one question may be submitted per CQ. The Authority reserves the right to reject a CQ containing multiple

questions;

- (c) in general CQs, and the responses to CQs, will be shared with all other Applicants which have received a copy of the Passport PQQ Pack. However, where an Applicant indicates that a CQ, or its response, should not be shared with all other Applicants (with supporting reasoning) and the Authority agrees in its absolute discretion, the Authority will treat the CQ as confidential and will respond only to the Applicant who submitted the CQ. Conversely if the Authority considers that the CQ, and the response to the CQ, can be shared with all other Applicants, it will notify the relevant Applicant that the CQ will not be progressed and will be closed. In that case, the Applicant may (i) revise the question and its reasoning as to why the CQ and the response to the CQ should not be shared with all other Applicants – which the Authority will consider; (ii) revise the CQ and submit it as a CQ which can, along with the response, be shared with all other Applicants; or (iii) decide not to pursue a CQ on the topic. Any CQ that the Authority receives and subsequently issues to other Applicants will not identify the originator of the CQ. However, should the Applicant agree with the Authority that the question is not confidential, the question and response will be shared with all other Applicants;
- (d) the Authority will use reasonable endeavours to respond to CQs on a timely basis. Applicants should note that the Authority may take up to 5 working days to respond to CQs and Applicants should take this into account to ensure they receive responses in time to submit a Passport Application prior to any relevant Application Date;
- (e) the Authority reserves the right to reject a CQ where to respond to the CQ would involve prejudging the Authority's evaluation of any Applicant's Passport Application; and
- (f) a bulletin of CQs, and the Authority's responses, will be published on the Authority's franchising e-sourcing portal.

However, should an Applicant wish to seek further clarification of any information contained in the Passport PQQ Pack, it may request a meeting with the Authority. Requests for a meeting should be made using the following email address: [PQQpassport@railexecutive.gsi.gov.uk](mailto:PQQpassport@railexecutive.gsi.gov.uk). The subject line of the email should be "PQQ Passport – clarification meeting".

Applicants should note that the Authority cannot guarantee that it will accommodate a meeting in time for a particular Application Date where a request is made less than 5 working days prior to that Application Date.

The content of any meetings will be strictly limited to discussions regarding the meaning of the documentation contained in the Passport PQQ Pack. The Authority may publish clarifications which arise out of any bilateral meetings with Applicants where it considers this is necessary to ensure all Applicants are treated equally. Any such clarifications will be issued on the franchising e-sourcing portal.

### **3.6 Transparency and Freedom of Information**

The information provided by an Applicant in response to the Passport PQQ will be used for this exercise and for the purpose of cross-Government reporting. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement including ensuring value for money and related aspects of good procurement practice.

For these purposes, the Authority may disclose within Government any of the Applicants' documentation/information (including any that an Applicant considers to be confidential and/or commercially sensitive such as specific bid information) submitted by an Applicant to the Authority in a Passport Application and/or during any franchise competition described in the Passport System Notice. Applicants applying for a Passport consent to these terms as part of the competition process.

The information will not be shared with any other party, subject to the requirements of the FOIA and other applicable law, including environmental information covered by the EIR.

In submitting a Passport Application, Applicants are invited to identify which parts, if any, of their response are provided to the Authority in confidence or are commercially sensitive, such that they may be exempt from disclosure under FOIA and/or EIR. Applicants should provide reasons why such information should not be disclosed in response to any request and an estimate of the period of time during which the Applicant believes that such information will remain exempt from disclosure.

Applicants should note that, even where information is identified as commercially sensitive or confidential, the Authority may be required to disclose such information in accordance with the FOIA and/or EIR. The Authority is required to form an independent judgment concerning whether the information is exempt from disclosure under the FOIA and/or EIR at the time of request. In particular Applicants should be aware of the Code of Practice issued by the then Secretary of State for Constitutional Affairs under section 45 of the FOIA which limits the circumstances under which a public authority should agree to hold information in confidence. It could be the case, therefore, notwithstanding notification by Applicants that parts of a response have been provided in confidence or are commercially sensitive, that the Authority will be obliged to disclose those parts.

Applicants' attention is drawn to the relevant provisions of the PPA and each FLPA, which permits in certain circumstances disclosure of information by the Authority, as well as the provisions of section 145(2) of the Railways Act.

The Authority complies with the central government transparency agenda programme, details of which can be found at <http://www.dft.gov.uk/publications/dft-transport-sector-transparency-board> and Cabinet Office guidance on this in relation to procurement and contracts which can be found at <https://www.gov.uk/government/publications/procurement-andcontracting-transparency-requirements-guidance>

### **3.7 Guidance on specific parts of the PQQ**

#### ***Part A – Organisation and Contact Details***

- Applicants that are not incorporated, or part of a corporate group structure, should respond as fully as possible based on their proposed structure.

#### ***Part B – Grounds for Mandatory Rejection***

No further guidance.

#### ***Part C – Grounds for Discretionary Rejection***

##### *Tax Compliance*

- Both the GAAR and the “Halifax” abuse principle are, as their names indicate, aimed at abusive tax schemes. These are schemes which involve contrived or abnormal transactions which serve no purpose other than to achieve a tax saving. The tax saving is also one that is contrary to the intentions of Parliament in relation to the legislation. The “Halifax” abuse principle relates to a CJEU case involving Halifax. Broadly, the CJEU ruled that whilst the tax authority cannot consider the motives of taxpayers when considering whether or not a transaction is structured primarily to avoid tax, if there is no commercial substance to the relevant transaction(s) that will, unless proved otherwise, amount to abuse.
- The DOTAS rules apply to transactions which contain certain “hallmarks” where one of the main aims is to achieve a tax saving. The aim of the DOTAS regime is to provide HMRC with information on new schemes as they arise and on the users of those schemes. By their nature, the DOTAS rules can capture transactions which, while partly motivated by a tax saving, may still be regarded as acceptable by HMRC. An OONC only arises when a DOTAS scheme is shown to have failed and this will typically cover a wider range of scenarios than the GAAR or “Halifax” abuse principle. “Shown to have failed” will generally mean that the taxpayer has accepted the arrangement does not achieve the tax saving anticipated and this may be shown by his amending the return; accepting a tax assessment; or failing in litigation and not appealing any further.
- If the Applicant, or any of the other entities or individuals referred to in question C.2 of the Passport PQQ, is a Non-UK entity or individual, or has international tax obligations, please respond in relation to the

equivalent foreign tax rules.

- If any of the circumstances under question C.2 of the Passport PQQ of the PQQ apply to the Applicant, or any of the other entities or individuals referred to in question C.2, please provide details including mitigating factors where there has been an OONC. This may include:
  - a brief description of the occasion, the tax to which it applied, and the type of “non-compliance” e.g. whether the Relevant Tax Authority has challenged pursuant to the GAAR, the “Halifax” abuse principle etc;
  - where the OONC relates to a DOTAS, the number of the relevant scheme;
  - the date of the original “non compliance” and the date of any judgment against the Applicant, or relevant entity or individual, or date when the return was amended;
  - the level of any penalty or criminal conviction applied;
  - whether there have been any changes in personnel or ownership since the OONC;
  - whether there have been any changes in accounting, audit or management procedures since the OONC;
  - corrective action undertaken to date; and
  - planned corrective action to be taken.
- The Authority will have regard to Cabinet Office guidance when assessing whether mitigating factors are adequate and appropriate, and may take advice on such factors from the Cabinet Office and/or HMRC.

#### ***Part D – Capability and Technical Ability***

- The Applicant should provide all of the information requested for each question including the information requested in the sub-text of each question.
- Marks will be allocated to the Applicant’s response to each question as a whole, rather than by reference to each element of a question’s sub-text.
- In providing examples of capability, competence and past experience, Applicants should state whether the work was undertaken by the Applicant or another person the Applicant is relying on as part of their Passport Application.
- If the Applicant is a group of economic operators (i.e. a joint venture or consortium), the Applicant should indicate which member of the joint venture or consortium undertook the work, and if any of the work was undertaken

jointly by the members of the joint venture or consortium.

- In all cases the Applicant should make clear, when providing examples of capability, competence and past experience, the identity of the person on whom the Applicant is relying, the role of the relevant person(s) in undertaking the work, whether they had management control over the work, and, where possible, which specific elements of the work they undertook.
- The source of the example used in response to each question in Part D of the Passport PQQ must be the person that the Passport Holder proposes will perform the relevant element of franchise operations.

### ***Part E – Health and Safety Management and Culture***

- The Applicant should provide all of the information requested for each question including the information requested in the sub-text of each question.
- Marks will be allocated to the Applicant's response to each question as a whole, rather than by reference to each element of a question's sub-text.
- Where, on responding to questions in Part E, the Applicant is relying on the experience, expertise or resources of another person that the Passport Holder proposes will perform the relevant element of franchise operations, the Applicant should use examples provided by that person.



# 4. Passport Evaluation Process

## 4.1 Objectives

The objectives of the Passport evaluation process are:

- to evaluate Passport Applications in accordance with the criteria set out in this Passport PPD;
- to provide a robust and objective means for awarding Passports; and
- to enable identification of the Passport Holders to whom the Franchise EoI will be issued.

## 4.2 Evaluation process

The table below provides an overview of the evaluation process that the Authority will apply to each section of the Passport Application.

**Table 1 – overview**

Evaluation Criteria and Weightings			
Evaluation Section		Evaluation Method	Pass/Fail Threshold
Part A	Organisation and Contact Details	Not Assessed	Information provided will be reviewed but will not be scored.
Part B	Grounds for Mandatory Rejection	Pass/Fail	Information provided will be reviewed and assessed and a fail will result in the Applicant being excluded and its Passport Application will be rejected.
Part C	Grounds for Discretionary Rejection	Discretionary Pass/Fail	Information provided will be reviewed and assessed and the Authority will use its discretion to determine whether the response is a pass or a fail. A fail will result in the Applicant being excluded and its Passport Application will be rejected.

Part D	Capability and Technical Ability	Pass/Fail  (Fail where total score is less than 40%)	Information provided in response to each question will be reviewed and evaluated against the ratings in Table 2 below and assigned one of the corresponding scores as shown below (i.e. exact scores of 0, 20, 40, 60, 80 or 100 only can be assigned – intermediate scores are not permitted). Scores will be weighted using the question weightings in section 4.3 below to give the total score for this part.
Part E	Health and Safety Management and Culture	Pass/Fail  (Fail where total score is less than 50%)	Information provided in response to each question will be reviewed and evaluated against the ratings in Table 3 below and assigned one of the corresponding scores as shown below (i.e. exact scores of 0, 25, 50, 75 or 100 assigned per question – intermediate scores are not permitted). Scores will be weighted using the question weightings in section 4.3 below to give the total score for this part.

In the event that an Applicant is marked 'fail' for any of the Pass/Fail criteria their Passport Application will be rejected.

**Table 2 – Capability and Technical ability marking scheme**

Part D questions will be scored against the assessment criteria below. The marking characteristic will be used to assess the response to the question in full including the sub-text of the question.

Marks	Characteristics
100	Evidence submitted shows the ability to deliver, very strongly supported by relevant and transferable past experience and achievements.

80	Evidence submitted shows the ability to deliver, supported by relevant and transferable past experience and achievements.
60	Evidence submitted shows the ability to deliver in most areas, but the Authority has concerns in a few areas, about the relevance and transferability of past experience and achievements and/or about the approach described.
40	Evidence submitted shows the ability to deliver in some areas, but the Authority has concerns in some areas, about the relevance and transferability of past experience and achievements and/or about the approach described.
20	Evidence submitted shows the ability to deliver in a few areas, but the Authority has concerns in most areas, about the relevance and transferability of past experience and achievements and/or about the approach described.
0	Evidence submitted does not show the ability to deliver.

**Table 3 – health and safety management and culture marking scheme**

Part E questions will be scored against the assessment criteria below. The marking characteristic will be used to assess the response to the question in full including the sub-text of the question.

<b>Marks</b>	<b>Characteristics</b>
--------------	------------------------

100	<ul style="list-style-type: none"> <li>• Evidence of ensuring and improving safety, supported by a comprehensive programme of safety education which exceeds the applicable requirements</li> <li>• Demonstrates the capability to operate safely, fully supported by transferable safety management systems and very positive safety performance trends</li> <li>• Demonstrates an excellent safety culture throughout the organisation, supported by industry recognition of achievements</li> <li>• Demonstrates a fully developed strategy for identifying, managing and mitigating safety risks</li> </ul>
75	<ul style="list-style-type: none"> <li>• Evidence of ensuring safety, supported by a programme of safety education which exceeds the applicable requirements</li> <li>• Demonstrates the capability to operate safely, appropriately supported by transferable safety management systems and positive safety performance trends</li> <li>• Demonstrates a pro-active safety culture throughout the organisation, supported by evidence of achievements</li> <li>• Demonstrates a strategy for identifying, managing and mitigating safety risks</li> </ul>
50	<ul style="list-style-type: none"> <li>• Evidence of ensuring safety, supported by safety education which meets the applicable requirements</li> <li>• Demonstrates the capability to operate safely, appropriately supported by transferable safety management systems and adequate safety performance trends</li> <li>• Demonstrates a pro-active safety culture throughout the organisation</li> <li>• Demonstrates processes for identifying, managing and mitigating safety risks</li> </ul>

25	<ul style="list-style-type: none"> <li>• Provides evidence of ensuring safety but the Authority has concerns</li> <li>• Demonstrates some capability to operate safely, partially supported by transferable safety management systems, and/or the Authority has concerns with the approach described</li> <li>• Demonstrates a culture of safety awareness through some of the organisation, and/or the Authority has concerns with the approach described</li> <li>• Demonstrates processes for identifying, managing and mitigating some safety risks, and/or the Authority has concerns with the approach described</li> </ul>
0	<ul style="list-style-type: none"> <li>• Fails to provide evidence of ensuring safety or provides some evidence of ensuring safety but the Authority has major concerns</li> <li>• Fails to demonstrate the capability to operate safely, or partially demonstrates the capability to operate safely but the Authority has major concerns</li> <li>• Fails to demonstrate a culture of safety awareness or partially demonstrates a culture of safety awareness but the Authority has major concerns</li> <li>• Fails to demonstrate processes for identifying, managing and mitigating safety risks or partially describes processes for identifying, managing and mitigating safety risks, but the Authority has major concerns with the approach described</li> </ul>

### 4.3 Evaluation Methodology

The Authority may reject a Passport Application in the event that an Applicant provides inaccurate information in the Passport Application, or in response to any other request for information by the Authority, or an Applicant fails to provide any such information.

#### General Compliance Check

The Authority checks whether the Applicant has submitted the required information for Parts A – E on time and the response is fully complete in accordance with the Passport PQQ return checklist.

#### Part A – Organisation and Contact Details

Information provided will be reviewed. The Authority may request additional information from the Applicant to its satisfaction.

#### Part B – Grounds for Mandatory Rejection

Part B is a pass/fail section and is not scored.

If an Applicant has provided an unequivocal 'no' to all of the questions contained in B1, this will be marked as a 'pass'. If an Applicant has answered 'yes' to any question contained in B1, then the Applicant shall fail and their Passport Application shall be rejected, unless the Authority determines otherwise in accordance with the following principles:

- The Authority may decide not to exclude the Applicant, on an exceptional basis, for overriding reasons relating to the public interest;
- In respect of questions B1.1 to B1.14, an Applicant may provide evidence (in a separate Appendix as requested in the Passport PQQ) to the effect that measures taken by the Applicant (or relevant joint venture or consortium member, as applicable) are sufficient to demonstrate its reliability despite the existence of a relevant ground for rejection. If the Authority considers such evidence to be sufficient, the Applicant's Passport Application shall not be rejected. The measures taken by the Applicant (or relevant joint venture or consortium member, as applicable) shall be evaluated by the Authority taking into account the

gravity and particular circumstances of the criminal offence or misconduct. Where the Authority considers such measures to be insufficient and that the Applicant's Passport Application should be rejected, the Authority shall give the Applicant a statement of the reasons for that decision;

- In respect of question B1.15, the Authority may decide not to reject the Applicant's Passport Application where rejection would be clearly disproportionate, in particular:
  - where only minor amounts of taxes or social security contributions are unpaid, or
  - where the Applicant (or relevant joint venture or consortium member, as applicable) was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of fulfilling its obligations in a manner described below before the Effective Date; and
- In respect of question B1.15, the Authority shall not have the right to reject the Applicant's Passport Application if the Applicant (or relevant joint venture or consortium member, as applicable) has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

## Part C – Grounds for Discretionary Rejection

Part C is a pass/fail section and is not scored.

If an Applicant has provided an unequivocal 'no' to all of the questions in C1 and C2 then, subject to the following, this will be marked as a 'pass' . If an Applicant has:

- answered 'yes' to any question contained in C1 or C2; or
- irrespective of the Applicant's response:
  - in respect of questions C1.1, C1.3 or C2, the Authority can demonstrate by any appropriate means that the relevant ground for discretionary rejection has arisen; or
  - in respect of question C1.4, the Authority has sufficiently plausible indications that the relevant ground for discretionary rejection has arisen; or
  - in respect of question C1.5, there is a conflict of interest in respect of the Passport System; or
  - in respect of question C1.6, there has been a distortion of competition in respect of the Passport System,

then the Applicant may fail and the Authority may reject the Applicant's Passport Application. In exercising its discretion to reject an Applicant's Passport Application, the Authority shall apply the following principles:

- in respect of questions C1.1 to C1.10, an Applicant may provide evidence (in a separate Appendix as requested in the Passport PQQ) to the effect that measures taken by the Applicant (or relevant joint venture or consortium member, as applicable) are sufficient to demonstrate its reliability despite the existence of a relevant ground for discretionary rejection. If the Authority considers such evidence to be sufficient, the Applicant's Passport Application shall not be rejected. The measures taken by the Applicant (or relevant joint venture or consortium member, as applicable) shall be evaluated by the Authority taking into account the gravity and particular circumstances of the criminal offence, misconduct or other relevant situation. Where the Authority considers such measures to be insufficient and that the Applicant's Passport Application should be rejected, the Authority shall give the Applicant a statement of the reasons for that decision;
- in respect of questions C1.5 and C1.6, the Applicant's Passport Application shall only be rejected if there are no other means to ensure the Authority's compliance with its duty to treat all economic operators equally and to act fairly and transparently;
- in respect of question C2.1, C2.2 and C2.3, in exercising its discretion to exclude an Applicant, the Authority may take into consideration any relevant mitigating factors of which the Applicant has provided details;
- in respect of question C3.1, the Authority may reject the Applicant's



Passport Application where such prohibition notices or orders or their equivalent have been received unless the Applicant can demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.

## Part D – Capability and Technical Ability

Part D checks Applicants' technical ability and experience. Applicants will be scored using the marking scheme in Table 2 above.

The Authority will reject a Passport Application if the Applicant fails to score a minimum of 40% of the available marks in Part D (meaning a minimum of 36 out of the 90 marks available).

The following weightings apply to the questions in Part D:

D1 Capability, Assets and Resources		
Question	Question Weighting	Section Weighting
D1.1	7%	20%
D1.2	6%	
D1.3	7%	

D2 Improving Customer Satisfaction		
Question	Question Weighting	Section Weighting
D2.1	9%	16%
D2.2	7%	

D3 Improving Market Growth		
Question	Question Weighting	Section Weighting

D3.1	13%	13%
------	-----	-----

D4 Maintaining High Levels of Performance		
Question	Question Weighting	Section Weighting
D4.1	9%	21%
D4.2	7%	
D4.3	5%	

D5 Improving Sustainability		
Question	Question Weighting	Section Weighting
D5.1	6%	6%

D6 Collaboration and Community		
Question	Question Weighting	Section Weighting
D6.1	7%	14%
D6.2	7%	

## Part E – Health and Safety Management and Culture

Part E checks Applicants' health and safety arrangements, capability, management and culture. Applicants will be scored using the marking scheme in Table 3 above.

The Authority will reject a Passport Application if the Applicant fails to score a minimum of 50% of the available marks in Part E (meaning a minimum of 5 out of the 10 marks available).

The following weightings apply to the questions in Part E:

Health and Safety Management and Culture		
Question	Question Weighting	Section Weighting
E1.1	3%	10%
E1.2	4%	
E1.3	3%	

# 5. Operation of Passport System

## 5.1 Validity of Passport

Subject to the remainder of this section 5 below, a Passport shall be valid from the date that it is awarded for the remainder of the Passport System's validity period.

## 5.2 Periodic updating of Passport Application information

The Authority may require a Passport Holder to update the information provided in their Passport Application periodically and/or where the Authority otherwise considers this is necessary for any reason.

Without limiting the generality of the paragraph above, the Authority reserves the right to validate a Passport Holder's Passport Application at any time, including as part of the Franchise EoI, to confirm that the information in it has not changed and remains correct. If the Authority considers that any of the information in a Passport Application has changed or is no longer correct, with the effect that the Applicant no longer continues to meet the Passport requirements (i.e. that a Passport would not be awarded on the basis of the evaluation process outlined in this Passport PPD if a fresh Passport Application was made at the relevant time), the Authority may exclude the Applicant from further participation in any rail franchise competition and will consider cancellation of the Passport in accordance with section 5.4.

## 5.3 Changes to the criteria and rules applicable to the Passport System

The Authority also reserves the right to change the criteria and rules applicable to the Passport System from time to time. Any such changes will be notified to all Passport Holders and Passport Holders may be required to confirm that Passport Applications remain accurate and/or provide additional information in order to maintain the validity of their Passport.

## 5.4 Changes to information provided or circumstances

Passport Holders are required to notify the Authority if any event occurs that changes or impacts upon the information provided in its Passport Application, immediately upon becoming aware of the relevant change in circumstances. Failure to do so may result in the cancellation of the Passport and/or any subsequent Franchise EoI response or bid by the Applicant being rejected when the changes become apparent.

Such events include, but are not limited to, the following:

- any change to their group structure or the structure of the Passport Holder from that set out in their Passport Application. This includes the grant of any options to acquire shares, any agreement relating to the exercise of rights attaching to such shares, and any amendments to a shareholders' agreement, articles of association or similar constitutional documents;

- a change in the number or identity of persons the Passport Holder proposes to rely on in their relevant franchise operations, or whose resources the Passport Holder proposes to use in their relevant franchise operations, or which use the same resources that the Passport Holder proposes to use in their relevant franchise operations; and
- any other changes to their circumstances, or the basis of their Passport Application, which may be expected to influence the Authority's decision on the suitability of the Passport Holder.

Any such notification shall provide full details of the change or proposed change, including (if subsequently requested by the Authority) final form copies of the documentation required to put such change into effect.

In the context of each rail franchise competition, and changes occurring after receipt of the Franchise EoI and Franchise PPD, Passport Holders should refer to the PPA and the relevant FLPA they have entered into for full details of their obligations in relation to informing the Authority if there has been a change in circumstances or a change to information provided. Failure to comply with these obligations may result in the cancellation of the Passport and/or any subsequent Franchise EoI response or bid by the Applicant being rejected when the changes become apparent.

If the Authority determines at any time that the Passport Holder no longer continues to meet the Passport requirements (i.e. that a Passport would not be awarded on the basis of the evaluation process outlined in this Passport PPD if a fresh Passport Application was made at the relevant time), the Authority reserves the right to cancel the Passport Holder's Passport.

Where a temporary change to the bidding model is proposed to be made to respond to a particular Franchise EoI, the Authority will consider this in accordance with sections 5.5 and 5.6 below.

## **5.5 Combination of Passport Holders**

The Authority is aware that two or more Passport Holders may wish to submit a combined response to a Franchise EoI and participate jointly in a particular rail franchise competition. Such a combined response will be permitted by the Authority, provided that the Passport Holders have jointly notified the Authority of this intended approach prior to responding to the Franchise EoI. Where the Passport Holders are intending to participate through a bid vehicle that is a separate entity, that notification should include the applicable organisation and contact details (Part A of the Passport PQQ) and responses to the mandatory and discretionary grounds for rejection (Parts B and C of the Passport PQQ) for the separate entity.

A combined response for a particular rail franchise competition will not affect the validity of the Passports as held by each of the Passport Holders involved.

A combined response does not create a new, combined Passport. A separate joint notification will need to be made for each subsequent rail franchise competition.

Alternatively, the relevant Passport Holders may submit a new, combined Passport Application (which, for the avoidance of doubt, will be evaluated afresh on the basis of the process outlined in this Passport PPD). In common with all other Passport Applicants, the new Passport Holder will only be entitled to participate in a particular rail franchise competition if the new, combined Passport Application is received by the relevant Application Date.

## **5.6 Minor changes to Passport Holders and Temporary Visas**

Subject to the following, a Passport can only be relied upon by the specific economic operator or specific group of economic operators (i.e. the joint venture or consortium as originally constituted) which made the original Passport Application. For this reason, the Authority advises Applicants interested in bidding as a group for particular future rail franchise competitions to consider potential partners in plenty of time so that the relevant group can obtain a Passport.

An economic operator may be a Passport Holder in its own right and/or as part of one or more groups of economic operators.

As described in section 2.8 above the Franchise EoI can only be issued to current Passport Holders. The respondent to the Franchise EoI must be the Passport Holder. However, the Authority may also consider a response for a particular rail franchise competition from a specific group of economic operators that is issued with a Temporary Visa in the limited circumstances described below.

Temporary Visas are designed to accommodate economic operators who do not hold a Passport but who might make a relatively minor, non-critical contribution to a franchise bid, as well as other minor changes to a Passport Holder. This may include:

- in the case of a Passport Holder that is a consortium or joint venture made up of a specific group of economic operators:
  - where changes are proposed to be made to that group (including the addition of one or more new economic operators); and/or
  - where changes are proposed to be made to the respective contributions of the economic operators in that specific group for a particular rail franchise competition;
- where a Passport Holder that is a single economic operator wishes to combine with another economic operator, or other economic operators, in order to participate jointly in a particular rail franchise competition, and the proposed contribution(s) of the other economic operator(s) will be minor.

The Authority recognises that some, limited, flexibility is required for the above circumstances. Passport Applications are preferred and should be made where possible, even where this will result in multiple Passport Applications from similar specific groups of economic operators.

Any Temporary Visa will be valid only for the particular rail franchise competition to which it relates. If it is anticipated that the same group is to be used for another rail franchise competition then a Passport Application should be made. A single Temporary Visa will not be valid in respect of multiple rail franchise competitions.

Passport Holders should not assume that a Temporary Visa will be issued.

Therefore, where a Passport Holder requires a Temporary Visa for a particular rail franchise competition, it is recommended that an application be made to the Authority on or before the Application Date for the franchise to which it relates.

An application for a Temporary Visa must be made to the Authority using the application form in the Appendix to this Passport PPD. The application should be sent to [PQQpassport@railexecutive.gsi.gov.uk](mailto:PQQpassport@railexecutive.gsi.gov.uk) (stating "Visa Application" in the subject line) and should contain full details of the changes that are proposed and the particular rail franchise competition to which those changes relate. This must include details of the economic operators that will be applying for a Temporary Visa (**Visa Applicants**) including any new economic operators (if any), the economic operators that are part of the group constituting the Passport Holder that are not proposed to be part of its bid for the particular rail franchise competition and/or any other changes to the respective contributions of those economic operators. The Temporary Visa application should include:

- the details required by Part A of the Passport PQQ (organisation and contact details), for all new economic operators and for the temporarily constituted, franchise specific group;
- responses to Parts B and C of the Passport PQQ (grounds for rejection) for all new economic operators;
- a mark up of the responses to the questions in respect of capability and technical ability (Part D of the Passport PQQ), along with a clear description of the impact of the proposed changes on those responses; and
- a mark up of the responses to the questions in respect of health and safety management and culture (Part E of the Passport PQQ), along with a clear description of the impact of the proposed changes on those responses.

When complete the Passport Holder should upload the Temporary Visa application to the franchising e-sourcing portal.

Following receipt of a Temporary Visa application, the Authority will determine whether the changes proposed by the Applicant constitute only relatively minor changes concerning non-critical elements of a Passport Application. If the Authority determines that the changes proposed meet this requirement, the Applicant will be granted a Temporary Visa. If the Authority determines that the changes represent a significant change then the Applicant will not be granted a Temporary Visa.

This may include an assessment of the following factors:



<b>Factor</b>	<b>Likely outcome</b>
Are the changes of such significance that re-testing and re-evaluation is required to ensure suitability?	If yes, a Temporary Visa will not be awarded and a new Passport Application will be required.
Do the changes involve a new economic operator joining the Passport Holder in order to take on responsibility for a significant operational element (for example, taking responsibility for the train service plan)?	If yes, a Temporary Visa will not be awarded and a new Passport Application will be required.
Do the changes involve any re-allocation of responsibility for health and safety?	If yes, a Temporary Visa will not be awarded and a new Passport Application will be required.
Do the changes involve a new economic operator joining the Passport Holder in order to take on sole responsibility for a significant operational element?	If yes, a Temporary Visa will not be awarded and a new Passport Application will be required.
Do the changes amount to only a partial change in responsibility for an activity? Does this result in an overall enhancement of the Passport Holder's capability?	If yes to both, a Temporary Visa may be awarded.

Where a Passport Holder proposes to make a permanent, structural change, this should be notified to the Authority in accordance with section 5.4 above. It is not expected that such changes will be a suitable basis for award of a Temporary Visa.

If a Temporary Visa is not awarded, the Visa Applicants will not be entitled to participate in the relevant rail franchise competition unless a separate Passport is obtained.

The Passport of a Passport Holder remains unaffected regardless of the outcome of a Temporary Visa application.

Where changes of the type described in this section 5.6 are proposed by a Passport

Holder that is invited to tender for a rail franchise competition after the ITT is issued, such changes will be assessed in accordance with the process outlined in the ITT. For the avoidance of doubt, that process will include a determination of whether or not the tenderer continues to meet the Passport requirements (i.e. that a Passport would be awarded on the basis of the evaluation process outlined in this Passport PPD if a fresh Passport Application was made at the relevant time).

## **5.7 Wholly owned subsidiaries**

A Passport Holder is permitted to participate in a particular rail franchise competition through a special purpose bid vehicle, provided that:

- the special purpose bid vehicle is:
  - a wholly owned subsidiary of the Passport Holder; or
  - where the Passport Holder is an unincorporated joint venture or consortium, wholly owned by the members of the joint venture or consortium in exactly the same proportions as envisaged by the Passport Application; and
- the Passport Holder proves to the satisfaction of the Authority that the special purpose bid vehicle will have at its disposal all of the following resources referred to in the Passport Application:
  - the capability and technical abilities relied on in the responses to the questions in respect of capability and technical ability (Part D of the Passport PQQ); and
  - the health and safety management and culture relied on in the responses to the questions in respect of health and safety management and culture (Part E of the Passport PQQ); and
- the approach proposed is otherwise consistent with the Passport Holder's Passport Application.

In these circumstances only, the special purpose bid vehicle may rely on the Passport Holder's Passport and does not need to obtain a separate Passport or Temporary Visa.

## **5.8 Cancellation of a Passport**

In addition to the specific circumstances outlined in this section 5, the Authority may cancel a Passport where the Passport Holder no longer continues to meet the Passport requirements (i.e. that a Passport would not be awarded on the basis of the evaluation process outlined in this Passport PPD if a fresh Passport Application was made at the relevant time), as revealed by updated information provided by the Passport Holder or other objectively verifiable information made available to, or obtained by, the Authority.

In the event of cancellation, the Authority will notify the Passport Holder in writing accordingly together with the reasons for that cancellation.

## **5.9 Suspension of a Passport**

The Authority may suspend the validity of a Passport in the following circumstances:

- where the Authority is entitled to cancel a Passport, in accordance with this Passport PPD; and/or
- where the Authority is exploring concerns about continued compliance with the requirements of the Passport.

The suspension may apply for a set period or until certain steps have been taken (for example, steps taken by or on behalf of the Authority to investigate the relevant circumstances).

The Authority reserves the right to attach conditions to the continued validity of a Passport or lifting of a suspension.

A Passport Holder will not be entitled to participate in rail franchise competitions during the suspension period.

## **5.10 Expiry of Passports**

The Passport System will be used for rail franchise competitions during its validity period (initially four years, but capable of reduction or extension by the Authority as described in section 2.4 above) as stated in the Passport System Notice. All Passports will expire at the end of the validity period.

## Appendix: Application Form for Temporary Visa

Passport Holder name:
Details of the proposed changes:
<i>[Provide details]</i>
Rail franchise competition to which this application relates (one per application):
<i>[Insert name of competition]</i>
Please attach to this application a completed response to Part A (organisation and contact details) of the Passport PQQ for the temporarily constituted, franchise specific group for which a Temporary Visa is sought and for all new economic operators within it.
<i>[Confirm attached]</i>
Please attach to this application a completed response to Parts B and C (grounds for rejection) of the Passport PQQ for all new economic operators.
<i>[Confirm attached]</i>
Please describe any changes to the responses in your Passport Application to the questions in respect of capability and technical ability in Part D of the Passport PQQ. You should attach to this application a mark-up of those responses showing the changes described.

*[Provide description and confirm attached]*

Please describe any changes to the responses in your Passport Application to the questions in respect of health and safety management and culture in Part E of the Passport PQQ. You should attach to this application a mark-up of those responses showing the changes described.

*[Provide description and confirm attached]*

Please provide any other relevant information to explain your application for a Temporary Visa:

*[Provide information or "None"]*