[redacted]
In his capacity as a Government's Representative
Commercial Manger
Intercity Market, HS1 & East Coast
Rail Passenger Services
[redacted]

Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: [redacted]
E-Mail: [redacted]

Website: www.gov.uk/dft

13 September 2019

[Sent via email]

Dear Stakeholder

Consultation: 13 to 24 September 2019 - HS1 Stations Periodic Review 2019 – Emerging thinking ahead of the Final Decision

A. Introduction

1. We wrote to you on 29th August 2019 confirming that the publication date for the Final Decision would now be 9th October 2019 to facilitate further consideration and incorporate a further consultation with stakeholders.
2. The Department's appointed Government's Representatives ("**GRs**")[1], responsible for the HS1 Stations Periodic Review and for making the Final Decision, between them have considered all responses received.
3. As a result of this feedback (including the desire expressed by stakeholders that the GRs should work more closely with the ORR to align thinking for the station and route reviews) and further analysis conducted by the GRs and their technical advisers, GHD, the GRs are proposing to make the following substantive changes to the Draft Decision:
   i. Retention of the existing 40-year look ahead and pay ahead for the annuity calculation (reverting from the proposed 'buffer' approach); and

[1] See paragraphs 1.9 to 1.10 of the *HS1 Stations Review (Control Period 3) Draft Decision* (July 2019) (the "**Draft Decision**") for further information on the role of the GRs. (the Draft Decision is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816647/hs1-stations-review-cp3-draft-decision.pdf)

ii. Inclusion of an efficiency target of 2.0% per annum (increased from the proposed 0.6%).

4. Given the substantive nature of these changes, this letter provides the opportunity for potentially impacted stakeholders to comment on these changes as outlined in further detail in the Background Section (below), **Annex A (Annuity)** and **Annex B (Efficiency Overlay).**

5. Section C of this letter sets out how to respond to this consultation by the **deadline of 17.00, on Tuesday 24 September 2019**. The GRs recognise this provides only a short period in which to respond and appreciate your on-going engagement in this process.

6. Unless stated otherwise, capitalised terms used in this letter have the same meaning as they do in the Draft Decision.

B. Background

7. Under the terms of the HS1 Station Leases[2], the GRs may only withhold approval of the Life Cycle Reports ("**LCRs**") if, in the reasonable opinion of the GRs, one of the circumstances specified in the HS1 Station Leases[3] applies. This provision gives the GRs the discretion, but not the obligation, to reject the LCRs (including any modifications to the Asset Management Strategy or Long Term Charge ("**LTC**") specified there in) if one of these conditions applies (the "**Conditions**"). For reference, the Conditions are set out at paragraph A2 (5.4) of Annex A of the Draft Decision.

8. For the purposes of this letter, the GRs would like to draw stakeholders' attention to the following Conditions, which are grounds on which the GR's may reject the LCRs:

   *"5.4.2 if the [Life Cycle] report is implemented, it will not permit the Tenant [i.e. HS1 Ltd] to comply with its obligations under clauses 4.3.1 [provided for reference in Annex C of this Letter] and 4.14 [provided for reference in Annex C of this Letter] or the Life Cycle Purpose [i.e. ensuring that each Station will be "in good and substantial repair and condition" from 1 April 2011 to 31 March 2061] to be achieved" (the "**Life Cycle Purpose Condition**");*

   5.4.4 the Forecast Life Cycle Works Cost [i.e. the estimate to be included in each Life Cycle Report of the cost of carrying out and completing the renewal and replacement works in such detail as may be reasonably required by the Government's Representative] for the next Review Period [i.e. the control period] exceeds such amount as a prudent land owner responsible for the structural integrity and maintenance of the Station [i.e. a HS1 stations] behaving with due efficiency and economy, may incur in carrying out the Forecast Life Cycle Works in the next Review Period provided that where the Tenant has subcontracted its obligations in respect

[2] Paragraph 5.4 of the HS1 Stations Lease; and Cl. 5.4 of the Ashford International Lease
[3] Paragraph 5.4 of the Stations Lease; and Cl. 5.4 of the Ashford International Lease

*of renewal and replacement of the Station to the Station Operator [i.e. Network Rail (High Speed) Limited], the Tenant shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Operator" (the "***Prudent Land Owner Condition***");*

5.4.7 a modification to the LTC proposed by the Tenant is not required or is not permitted by paragraph 5.7 [provided for reference in Annex C of this Letter]"

"5.7.4 [no modification to the LTC shall be made unless] in the case of a modification relating to the Tenant funding any Increased Life Cycle Costs, the Government's Representative is satisfied that a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, would have incurred such Increased Life Cycle Costs provided that where the Tenant has subcontracted its obligations in respect of renewal and replacement of the Station to the Station Operator, the Tenant shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Operator"

9. The GRs considers that the approach to the annuity calculations of the LTC and the efficiency overlay is essential to assessing whether the Life Cycle Purpose Condition and Prudent Land Owner Condition have been met for the following reasons:
    i. A prudent land owner behaving with due efficiency and economy would include an efficiency target when budgeting for future works; and
    ii. The Life Cycle Purpose requires HS1 Ltd to take a long-term view of their assets.

10. Therefore, in the Draft Decision the GRs proposed including the following in the calculation of the LTC:
    i. 0.6% efficiency overlay; and
    ii. A buffer approach to annuity, whereby direct costs are funded for the 40-year period, but indirect costs (such as risk) are only included for the following 2 control periods (10 years),

    This resulted in a revised LTC of c.£9million.

11. Having taken account of the efficiency benchmarking analysis (as explained in Annex B) and working with the ORR to try to ensure a consistent approach to the annuity calculation (as explained in Annex A), the GRs are instead proposing to:

    i. Include a 2.0% per annum efficiency overlay; and

ii. Retain the 40-year look ahead and pay ahead used in CP2 instead of applying the buffer approach; and

This results in a revised LTC of c.£7.1million, representing an 8% increase in charges from current CP2 levels, but lower than the CP3 figure (of c.£9m) as estimated at CP2.

12. We consider this approach strikes the appropriate balance and the need for a sustainable input into the escrow in the absence of strong underlying supporting data and models from HS1 Ltd.

13. As per paragraph 11 above, the GRs currently consider that these changes are the most appropriate way to confirm that the LCRs (if implemented) will allow HS1 Ltd to comply with the Life Cycle Purpose, whilst ensuring that forecasted works do not exceed the amounts "a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy" (per the Prudent Land Owner Condition). The rationale behind this conclusion is set out in further detail **Annex A (Annuities)** and **Annex B (Efficiency Overlay)** below.

C. Responding to this consultation and next steps

14. Your additional comments would be welcome to ensure we have addressed the issues raised by Stakeholders on the points covered in this letter, before we determine our Final Decision. The GRs are interested in evidence-based, material points in any comments invited by this letter.

15. Following this consultation, the GRs will make decisions having regard to the representations of relevant parties, any further technical advice, and the responsibilities and obligations on HS1 Ltd as set out in the HS1 Station Leases.

16. Any response you wish to make should be sent in electronic format to:

[redacted] and [redacted] in their capacity as Government's Representatives.

17. Alternatively, you may send your response in hard copy to:

[redacted]
HS1 Commercial Manager
Department for Transport
33 Horseferry Road, [redacted]
London, SW1P 4DR
Tel: [redacted]

18. This consultation **<u>closes on 24 September 2019 at 17:00,</u>** please ensure that you submit any representations that you wish to make on or before this date, otherwise it may not be possible for the GRs to take your response into account when finalising their decision.

19. We will notify stakeholders when we issue the Final Decision document, which will also be made publicly available on the Department's Website.

20. The GRs will be issuing the Final Decision by 9th October 2019.

Yours sincerely,

[redacted]

[redacted]

(in his capacity as a Government's Representative)
Commercial Manager
Department for Transport

Annex A

Annuity (calculation of the Long-Term Charge)

Background on the rationale behind the Annuity approach

A1. In the consultation on the Draft Decision we noted that the 78% increase in the Long-Term Charge ("**LTC**") from CP2 to CP3 proposed by HS1 Ltd may not be sustainable[4], particularly if repeated in future control periods. The GRs have challenged the calculation of the LTC annuity for CP3, given the draft conclusions set out in the sections of the Draft Decision relating to maturity of asset knowledge[5], and the application of risk and contingency[6] and efficiency[7].

A2. In the consultation on the Draft Decision we asked for comments on how a modification of the annuity calculation could seek to ensure there are sufficient funds in the station escrow accounts to deliver the renewals and replacements required to meet the asset stewardship obligations, for example by mitigating cost shocks for future review periods[8].

A3. HS1 Ltd presented a number of options in their Final Submission to vary the annuity calculation in order to address affordability issues raised by stakeholders. The GRs have reviewed each of these options, and have discussed this with the ORR to try to ensure consistency of approach with the annuity calculation for the route charges.

A4. One of the options put forward was the 'buffer' approach which retains the 40-year look ahead but limits the application of the risk mark-up to the first 10 years only and not the remaining 30 years, therefore buffering the impact of risk so it steps up over time reflecting the following 2 control periods only. This option was considered in the Draft Decision to have merit[9].

A5. The key principle all parties (Train Operators, ORR, and HS1 Ltd and the GRs) are generally agreed on is that the 40-year look ahead as set out in paragraph 2.1(c) of Schedule 10 of the Concession Agreement[10] is the most appropriate timeframe for asset stewardship. Although HS1 Stations are excluded from this provision of the Concession Agreement, the stakeholders appear to agree that adopting the 40-year look ahead approach will ensure that the Life Cycle Purpose is met. This is because it is essential that the whole life cost of the asset is considered in the context of future control periods when renewals and replacements are expected to be more substantial. This should ensure an appropriate level of funding is accrued in

[4] Draft Decision paragraph 3.52
[5] Draft Decision paragraph 3.33
[6] Draft Decision paragraphs 3.34-3.35
[7] Draft Decision paragraph 3.48
[8] Draft Decision Question 4
[9] Draft Decision paragraph 3.27
[10] Available here: https://highspeed1.co.uk/media/282500/supplement-to-concession-agreement-december-2017-2.pdf

advance to smooth the profile of costs to protect stakeholders from the risk that costs will significantly increase in future control periods.

A6. The GRs support this view, as it reduces the risk that costs will significantly increase in future control periods. There will always be infrastructure renewal and replacement requirements beyond this time horizon, but a 40 year look ahead remains appropriate for the Life Cycle Purpose (and the asset stewardship obligations in relation to HS1 Railway Infrastructure).

A7. Additionally, retaining the rolling 40-year view used in CP2 and proposed by HS1 Ltd for CP3, will mean that HS1 Ltd will act as if it is retaining the HS1 concession for a further 40 years at each review period. HS1 Ltd and the GRs believe that this approach presents the best option for ensuring asset stewardship of the HS1 stations and achieving the Life Cycle Purpose. It was agreed at CP2 the LTC calculation would move to a rolling 40-year Life Cycle Period.

Reasons for change

A8. The GRs note stakeholder concerns regarding pre-funding the annuity in an efficient manner (40 year pay ahead), recognising the difference between a forward look at asset management in the long term (40 year look ahead) does not necessarily have to mean that pre-funding is calculated across the same 40 year period of time. The GRs continue to consider the 40-year period to be the most appropriate because:

i. It aligns to the engineering timeframe underlying the LCRs and LTC; and
ii. It takes into account the substantial higher level of renewal and replacement costs forecast in the later years of the 40-year period. Using a shorter time frame would mean operators would not be paying for the full renewal and replacement cost of the stations based on the engineering timeframe required for the route by the Concession Agreement.

A9. The GRs need to ensure that risk and contingency is set at appropriate levels. Having analysed the level of contingency proposed by HS1 Ltd[11] in its Final 5 Year Asset Management Strategy, the GRs have formed the view that risk should be set at a level that aligns with the costs at the time incurred. We believe this approach to risk is consistent with the current thinking of the ORR. Whilst it is recognised that when estimating costs 20-40 years ahead there is an inherent level of uncertainty, it is thought there is no need to increase the contingency (and therefore accrue unnecessary LTC) to reflect this risk, as when the specific renewal or replacement is procured, the value of risk will be applied at that time with greater certainty.

A10. Similarly, HS1 Ltd did not include risk and contingency in the LTC calculation in their Draft Submission of February 2019. However, risk was subsequently applied in HS1 Ltd's Final Submission of May 2019. HS1 Ltd stated their specialist cost consultants had suggested a risk allowance of 20% to 30%,

[11] Draft Decision paragraphs 3.24, 3.34 and Table 3.3

and, given the lack of views provided by stakeholders to its own consultation on this matter, had applied this rate.

A11. GHD, in its analysis, found that a risk and contingency allowance had been incorporated into the LTC model, assessed as a weighted average of 13.9%. GHD had reservations about the approach that had been taken by HS1 Ltd, however, GHD's view was that the overall figure was not unreasonable when compared with the ORR's determination for the Network Rail PR18 renewals portfolio (10.7% risk allowance on £21bn maintenance and renewals portfolio), given that Network Rail's portfolio is a mix of stations and route, with a smaller contingency, and taking into consideration the relative size of the HS1 Concession portfolio. Whilst NRIL is not a perfect comparator, it is considered to be the closest industry comparator.

A12. The GRs support this view and consider it is reasonable given the c.£422m HS1 concession portfolio has less ability to absorb "shocks", particularly compared to the much larger Network Rail portfolio.

A13. The GRs are additionally reassured by HS1 Ltd's response to the Draft Decision where it has committed to exploring the use of QCRA (a project management tool used to estimate risk provisions) in future periodic reviews which will be supported by improved HS1 asset knowledge.

GRs Revised Conclusion

A14. The GRs are minded to move away from the buffer approach outlined in the Draft Decision and instead retain the existing 40-year annuity approach used in CP2*.*

A15. The retention of a 40-year annuity, together with the application of an efficiency overlay (see **Annex B**) gives protection to, and smooths the long-term accrual of funds for future renewals and replacements, whilst incentivising a reduction in risk and improving efficiency, as the asset management strategies and IS0 55000 principles are embedded in the short term.

A16. This is in line with the current understanding between the GRs and the ORR regarding their emerging annuity approach for Route, and addresses the issues presented by the application of risk and contingency coupled with the lack of evidence impacting confidence in the costs presented by HS1 Ltd.

A17. **Comments are invited on the additional consideration set out here regarding the annuity (calculation of the LTC), and the revised view of the GRs.**

Annex B

Efficiency Overlay

B1. In the consultation on the Draft Decision we concluded that it would be appropriate to retain an efficiency overlay for CP3[12]. This would act as both an incentive to HS1 Ltd to seek substantial efficiencies, for example through implementing robust asset monitoring such that a more evidence based approach is adopted for CP4. As its asset monitoring information and intelligence develops over time, HS1 Ltd will acquire greater certainty on asset costs and lifecycles, and improvements in efficiency to reduce costs. As noted in the Draft Decision[13], this will be subject to further review at CP4.

Consideration

B2. The GRs' consultation sought views on a target level of efficiency, proposing reinstatement of the 0.6% overlay used for CP2. The GRs also asked GHD to conduct some additional benchmarking of efficiency targets as well as taking into account the feedback provided by stakeholders. The GRs are minded to revise their decision on efficiency in light of this new evidence.

B3. The GRs continue to believe that in the light of HS1 Ltd having not included efficiency targets in its July 2019 Submission, that a robust efficiency overlay is needed to drive HS1 Ltd to seek adequate levels of efficiency in CP3.

B4. The GRs believe a higher level of efficiency is needed than the 0.6% p.a. used at CP2 and proposed in the Draft Decision because:

a) the CP2 approach excluded catch up efficiencies where savings are achieved from implementing current best industry practice; and

b) the frontier shift targets expected from technological improvements and other innovations in recent regulatory exercises e.g. 1.5% proposed by Ofwat for CP19, exceed the 0.6% used in CP2.

B5. The GRs consider the most relevant comparator data to be the PR18 final determination for Network Rail (NRIL) CP6 efficiency targets. For renewals these were set a target of 13% cost reduction through efficiency including a frontier shift for new technology and innovation over the course of their control period i.e. 2.5% per annum. We found that the NRIL efficiency target was benchmarked with other rail infrastructure managers across the globe, and also with other regulated industries. The 13% cost reduction covers the whole of NRIL's asset base, incorporating stations and route. It has not been possible to disaggregate this figure further to make a more direct comparison to HS1 station assets. However, given that NRHS has access to the NRIL procurement framework it can reasonably be expected that HS1 Ltd should be pushing NRHS to achieve similar efficiency savings. However, the GRs

[12] Draft Decision paragraphs 3.44 to 3.48
[13] Draft Decision paragraphs 3.7 and 3.50

consider it significant that the HS1 station portfolio is smaller and that the assets are newer, reducing the potential for savings.

B6. The GRs also considered evidence from regulatory reviews of other industries. Most of these related to Opex which are less directly comparable but do provide insight. The Civil Aviation Authority in regulating charges at Gatwick Airport identified a catch-up efficiency target of 0.75% p.a. plus a target of 9% frontier shift efficiencies totaling an overall efficiency target of 1.65%. Gatwick Airport was considered to provide useful insight as it is similar to St Pancras International Station in having a large associated retail business. Ofwat in its CP 2015-2020 determination set out that water and sewerage companies be targeted with a 1.9% efficiency target. As Ofwat uses Totex which contains a substantial element of Capex, this was also considered to provide useful insight.

B7. In the absence of directly comparable benchmarks, the GRs have considered the efficiency targets primarily for NRIL and to a lesser extent Gatwick Airport and the water companies:

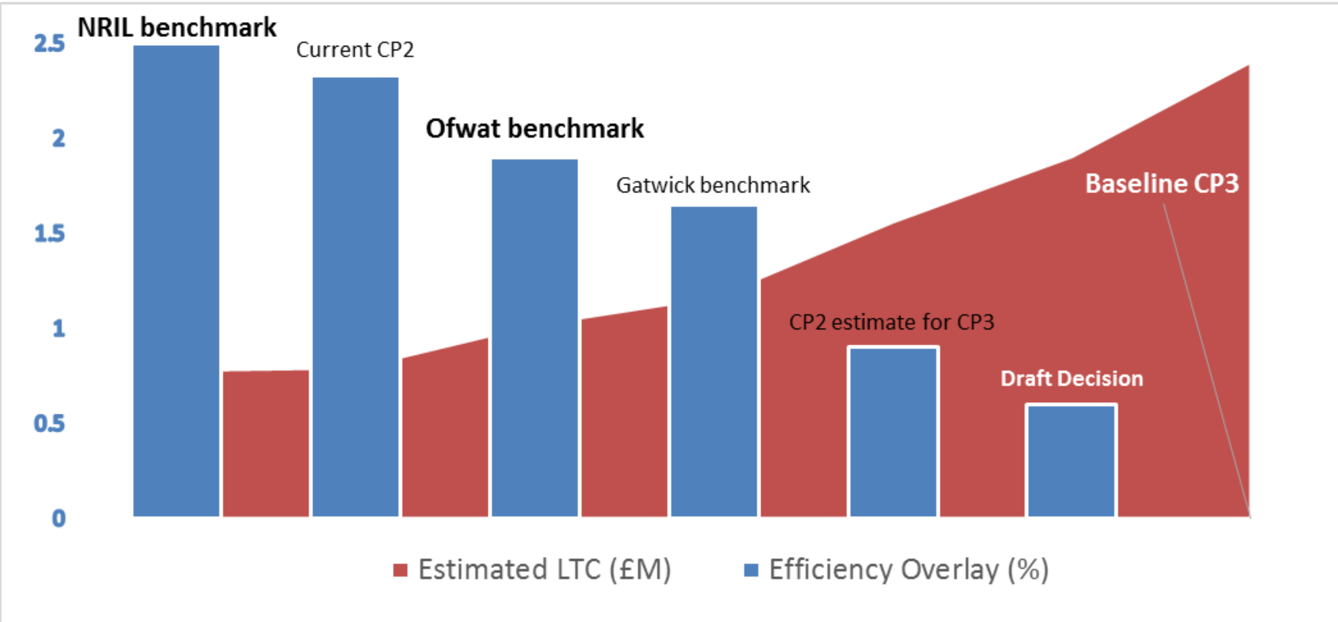

Figure 1. Estimated LTC for range of efficiency targets

Note: In the graph above ‘Current CP2’ refers to the current CP2 LTC charge. The ‘CP2 estimate for CP3’ refers to the estimate of CP3 costs made at the time of the CP2 process. For both the efficiency values are the overlays needed in the CP3 model to deliver this level of LTC as shown in the above graph.

A target of above c. 2.4% p.a. would result in an LTC lower than the current CP2. This is not considered appropriate given the acknowledgement that unit costs are in the correct range, and the frequency and volume of renewals and replacements is expected to rise.

B8. Recognising:

a) the limited benchmarks available;

b) the limited evidence behind HS1 Ltd's cost estimates (which are based mainly on cautious manufacturer warranty life cycles);

c) the need for a robust efficiency overlay to drive HS1 to seek adequate levels of efficiency in CP3; and

d) the ability to revisit the efficiency level in CP4 once HS1 Ltd has developed its delivery and efficiency plans for CP3,

the GRs have made use of available benchmarks from within the rail sector and in reasonably comparable regulated sectors and consider the most relevant to be the 2.5% efficiency overlay for NRIL in CP6. However, the GRs also consider this to be too high for HS1 given its substantial smaller asset base and newer assets. Lacking a granular analysis of the NRIL assets and associated efficiencies, the GRs have assessed a reasonable reduction to be 20% **giving an efficiency overlay of 2.0%**.This is slightly above the 1.9% for Ofwat Totex in 2015-2020 and 1.65% for Gatwick reflecting a greater perceived scope for catch up efficiency given the lack of evidence provided by HS1 for efficiencies in CP2.

B9. This conclusion is further supported by the following:

a) GHD were assured by the benchmarking of unit rates by Pell Frischman with very few outliers found and being comparable to GHD's own database, and therefore are deemed reasonable.

b) HS1 Ltd acknowledged that material rates had not been changed from CP2, and was an area to be reviewed as the new asset management strategy is implemented.

B10. To be clear the efficiency overlay will be applied to the LTC (not to individual renewals and replacements projects). This will ensure that HS1 Ltd are "*behaving with due efficiency and economy"*[14] as set out in paragraph 5.4 of the HS1 Station Leases.

B11. The GRs are also engaged with HS1 Ltd to review the Concession Agreement and HS1 Station Leases with the objective to support improved service delivery, efficiency and outcomes for passengers. This review is intended to assist HS1 Ltd to extract more value from their supply chain and key contractor, Network Rail (High Speed).

GRs Revised Conclusion:

B12. The GRs are therefore minded to include an efficiency target of 2.0% to be applied to the LTC. This will ensure that HS1 Ltd are "*behaving with due*

[14] See paragraph 5.7.1 in Annex C of this letter

efficiency and economy"[15] as set out in paragraph 5.4 of the HS1 Station Leases.

B13. The GRs have looked at other regulated industries and how the linked issues of low confidence in the evidence provided in HS1 Ltd's submission, is balanced with the need for price control and therefore how efficiency has been treated. Using similar methodologies and reasoning the GRs have considered the following in reaching its conclusion:

i. stakeholder feedback;
ii. low confidence in forecasts provided by HS1 Ltd;
iii. inclusion of risk and contingency;
iv. lack of evidence around efficiency achieved in CP2 or projected for CP3;
v. recognition of the implementation of ISO55000;
vi. recognition that volumes for material asset categories have increased;
vii. move towards a delivery plan based upon data on asset conditions; and
viii. additional benchmarking evidence and analysis.

B14. The GRs expect HS1 Ltd to produce a cost efficiency plan, that deals with both catch-up and frontier shift as part of the delivery plan for CP3.

B15. Given the monitoring of escrow balances, and the governance in place for the various gate stages of project approvals, which includes input to the procurement stages to review quotes received for works, the GRs will work with HS1 Ltd to ensure that renewals and replacements are not deferred as a result of implementing efficiency initiatives, and that on-going service quality is maintained through improved asset condition monitoring and performance data. This is reviewed through the quarterly station renewal and replacement portfolio meetings.

B16. The GRs recognise this is a blunt instrument, however, until such time as HS1 Ltd can produce sufficient evidence around risk, efficiency and greater asset knowledge the GRs consider it important to include a mechanism by which HS1 Ltd is encouraged to pursue efficiency savings in the short term.

B17. **Comments are invited on the revised approach to the efficiency overlay presented here, including the proposed new figure of 2.0% per annum.**

[15] See paragraph 5.7.1 in Annex C of this letter

Annex C

References from HS1 Station Leases

4.3 **Repair**

4.3.1 Subject to clause 4.3.3, to keep the Stations and Temple Mills Depot in good and substantial repair and condition and to maintain the remainder of the Premises in accordance with the obligations on the Tenant's part contained in clause 7.1 of the Concession Agreement.

4.3.2 Subject to clause 4.3.3, to the extent that the Premises provide necessary support protection and shelter to the Landlord's Remaining Land to keep the Premises in such repair and condition as is necessary to retain such support shelter and protection.

4.3.3 In relation to any part of the Premises which is the subject of an Inferior Lease the Tenant shall only be obliged to comply with clauses 4.3.1 and 4.3.2 if and to the extent that the relevant Inferior Lease obliges the tenant of the relevant part of the Premises to comply with equivalent provisions.

4.14 **Yield up**

At the expiration or sooner determination of the Term to yield up to the Landlord the Premises together with the buildings or structures which may at such time be erected thereon or on some part thereof maintained and kept in accordance with the covenants contained in clause 4.3 and schedule 10.

5. **Long Term Charge**

...

5.7 No modification to the LTC in respect of a Station shall be made unless:

5.7.1 in the case of a modification following a Relevant Change of Law the amount of the modification is such reasonable amount as:

> (a) a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, may incur in (or save by reason of) complying with requirements resulting directly and necessarily from the Relevant Change of Law in question provided that where the Tenant has subcontracted its obligations in respect of renewal and replacement of the Station to the Station Operator, the Tenant shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Operator; and
>
> (b) it is fair and reasonable to be borne by the Users;

5.7.2 the modification is required as a result of the distribution of a Life Cycle Works Saving or a Deferred Life Cycle Works Saving proposed by the Tenant in relation to the Station, which the Government's Representative has approved;

5.7.3 the modification reflects an arrangement the Tenant has reached with the Users of the Station;

5.7.4 in the case of a modification relating to the Tenant funding any Increased Life Cycle Costs, the Government's Representative is satisfied that a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, would have incurred such Increased Life Cycle Costs provided that where the Tenant has subcontracted its obligations in respect of renewal and replacement of the Station to the Station Operator, the Tenant shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Operator;

5.7.5 in the case of a modification relating to the Tenant suffering or incurring costs in connection with any Station Safety Works carried out by the Station Operator, the Government's Representative is satisfied that the Tenant has used reasonable endeavours to minimise such costs;

5.7.6 in the case of any other modification, the Government's Representative is satisfied that:

(a) any of the assumptions about costs or revenues underlying the setting of the LTC for the Station; or

(b) any assumption as to the recoverability of or amount of any item of cost incurred by the Tenant or Subsequent Operators which is not recoverable under the LTC for the Station

is materially inaccurate or has changed in such a way as would, in the opinion of the Government's Representative:

(c) have led the Government's Representative to arrive at materially different conclusions as to the appropriate level of the LTC for the Station; and

(d) if the Government's Representative were not to approve modifications of the kind contemplated by this paragraph 5.7.6, have a material and adverse effect on the interests of the Tenant to an extent that it would be likely that the Tenant would find it unduly difficult to finance its activities.