

DATED: \_\_\_\_\_ 20[ ] ]

Between

**Heathrow Airport Limited<sup>1</sup>**  
as Station Facility Owner

- and -

**Transport for London or a railway undertaking nominated by Transport for London  
(currently MTR Corporation (Crossrail) Limited)**  
as Beneficiary

**[Central Terminals Area Station / Heathrow Terminal 4 Station]<sup>2</sup>**  
[Station Specific Annex reference]

**INDEPENDENT STATION ACCESS AGREEMENT**  
(Access by passenger operators)

---

<sup>1</sup> TfL understands that Heathrow Airport Limited (**HAL**) both owns the stations and will act as "station facility owner" and is therefore the appropriate party to grant access under a station access agreement. In a number of meetings with TfL, HAL indicated that it intends to enter into a separate Station Management Agreement with HEOC under which HAL will sub-contract the vast majority of the day-to-day management, operation and maintenance of the stations to HEOC. TfL acknowledges that the template Station Access Agreement enables HAL to sub-contract its obligations. TfL does however have material concerns as to how this structure will work in practice, specifically in relation to the following areas:

- 1 who will hold the required Safety Authorisation and be responsible for safety on a day-to-day basis;
- 2 Events of Default, including how the insolvency of HEOC and/or HEOC's failure to perform its obligations under the sub-contract will impact upon this Station Access Agreement;
- 3 charging, specifically how HAL will effectively manage HEOC's costs in the context of the overall charging structure and given that HEOC is a wholly-owned subsidiary of HAL;
- 4 ensuring that HEOC acts in a fair and non-discriminatory manner (given that it is TfL's competitor) in providing the day-to-day services; and
- 5 how day-to-day operations will be managed in practice; specifically what mechanisms will be in place to enable the Beneficiary to liaise with HEOC.

TfL has proposed amendments to the model form of Station Access Agreement where appropriate to ensure that HAL is obliged to put arrangements in place in order to address the concerns set out in points 1 to 5 above.

<sup>2</sup> TfL requires separate access agreements and charging arrangements/access charges for each of the two Heathrow stations for the purposes of access. There will therefore be a separate, cost-reflective access charge reflecting the directly incurred costs for each of the Central Terminals Area and Terminal 4 stations.

## TABLE OF CONTENTS

	<u>Page</u>
1. <u>Interpretation</u>	
1.1 Definitions .....	1
1.2 References.....	5
1.3 Sub-contractors.....	5
1.4 Station Access Conditions.....	5
1.5 Exclusive Station Services .....	5
2. <u>Conditions Precedent</u>	
2.1 Conditions Precedent.....	5
2.2 Obligation to satisfy Conditions Precedent .....	6
2.3 Entry into effect .....	6
2.4 Non-satisfaction .....	6
2.5 Warranties.....	7
3. <u>Permission to Use the Station</u> .....	7
4. <u>Station Access Conditions</u> .....	7
5. <u>Term and Termination</u>	
5.1 Term .....	7
5.2 Events of default .....	8
5.3 Suspension .....	10
5.4 Termination .....	12
5.5 Exclusion of common law termination rights.....	13
5.6 Non-operation of trains.....	14
6. <u>Charges for Permission to Use the Station</u> .....	14
7. <u>Whole Agreement, amendment and assignment</u>	
7.1 Whole agreement.....	15
7.2 Counterparts .....	15
7.3 Amendment.....	15
7.4 Assignment .....	15
7.5 Novation.....	15
7.6 Sub-contractors.....	16
7.7 Ceasing to be facility owner .....	18
8. <u>Notices and communications</u> .....	18
9. <u>Governing law and submission to jurisdiction</u>	
9.1 Governing law .....	19
9.2 Jurisdiction .....	19
10. <u>Rights of Third Parties</u>	
10.1 Application to Third Parties .....	19
10.2 Application to the Office of Rail and Road and Transport for London .....	20

Signatures..... 19

Schedules

1. Contract Particulars..... 21

2. Exclusive Station Services ..... 23

3. Addresses for Service ..... 24

**THIS AGREEMENT** is made on [                      ] day of [                      ] 20[   ]

**BETWEEN:-**

- (1) The party specified in paragraph 1 of Schedule 1 (the "Station Facility Owner"); and
- (2) The party whose name and address and other particulars are specified in paragraph 2 of Schedule 1 (the "Beneficiary").

**BACKGROUND<sup>3</sup>**

- (A) The Station Facility Owner is the owner of the Station and is therefore the party responsible for granting access to the Station.
- (B) The Station Facility Owner has or intends to enter into a station management agreement with the Stations Agent, under which the Stations Agent will be responsible for performing certain of the Station Facility Owner's obligations under this Agreement.
- (C) The Beneficiary is a passenger service operator who wishes to obtain permission to use the Station.
- (D) The Station Facility Owner has agreed to grant the Beneficiary and its Associates such permission on the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Agreement, where the context admits:

"Access Charge" has the meaning set out in Clause 6.1;

"Access Dispute Resolution Rules" means the set of rules regulating the resolution of disputes, entitled "Access Dispute Resolution Rules", annexed to the Network Rail Network Code;<sup>4</sup>

"Affiliate" means, in relation to a company:

- (a) a company which is either a holding company or a subsidiary of such company; or

---

<sup>3</sup> The Recitals have been amended to reflect the intended ownership and management structure. TfL understands that HAL both owns the stations and will act as "station facility owner" and is therefore the appropriate party to grant access under a station access agreement. HAL intends to enter into a separate station management agreement with HEOC under which HEOC will be contracted to provide management, operation and maintenance services day-to-day at the stations.

<sup>4</sup> In a number of meetings with TfL, HAL has indicated that its intention is to use the Access Dispute Resolution Rules that are attached to the Network Rail Network Code. TfL notes however that the latest version of the HAL Network Code received by TfL on 10 March 2016 includes an amended version of the Network Rail ADRR, which indicates that HAL may be intending to create its own set of Access Dispute Resolution Rules. TfL considers that it would be simpler for HAL to use the Network Rail ADRR.

- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;

"Beneficiary Event of Default" has the meaning attributed to it in Clause 5.2.1;

"Commencement Date" means, the date set out in paragraph 3 of Schedule 1;

"Confidential Information" means any information whether written or oral provided by the Beneficiary to the Station Facility Owner in connection with this Agreement;

"Event of Default" means a Beneficiary Event of Default or a Station Facility Owner Event of Default, as the context requires;

"Exclusive Charges" means the sum of the charges for the Exclusive Station Services as such charges are specified in Schedule 2 subject to such variations as satisfy both the following conditions:

- (a) the variations are agreed between the parties in writing and signed on their behalf by their duly authorised representatives or are determined in accordance with Schedule 2; and
- (b) the variations do not come into effect until the Office of Rail and Road has consented to them;<sup>5</sup>

"Exclusive Station Services" means, the services specified in Schedule 2 subject to such variations as satisfy both the following conditions:

- (a) the variations are agreed between the parties in writing and signed on their behalf by their duly authorised representatives or are determined in accordance with Schedule 2; and
- (b) the variations do not come into effect until the Office of Rail and Road has consented to them;

"Expiry Date" means, the date specified in paragraph 4 of Schedule 1;

"Insolvency Event" means, in relation to either of the parties, where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
- (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000" or such higher figure as the parties may agree from time to time in writing; and

---

<sup>5</sup> Part 6 of the Station Access Conditions sets out TfL's proposed charging principles. Exclusive Charges are payable for the provision of Exclusive Station Services, and are therefore costs that are directly incurred as a result of operating the Crossrail services. To the extent that MTR Corporation (Crossrail) Limited requests Exclusive Station Services, these will be directly incurred costs.

- (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce Security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that Security;
- (e) any step is taken by any person with a view to its winding-up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless:
  - (i) in any case, a railway administration order (or application for it) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to that party pursuant to sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
  - (ii) in the case of paragraphs (a), (d) or (e), or (f) in relation to matters analogous or equivalent to the matters referred to in paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN;

"Network Rail Network Code" means the document commonly known as the "Network Code" published by Network Rail which applies to the operation of railway vehicles on the NR Network;

"Notice of Dispute" means, a notice issued by a Resolution Service Party wishing to refer a dispute to resolution in accordance with the Access Dispute Resolution Rules;

"NR Network" means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

"Passenger Services" means, those railway passenger services provided by or on behalf of the Beneficiary pursuant to the permission to use track granted in accordance with the Track Access Agreement;

"Rail for London" means Rail for London Limited, a company registered in England and Wales under number 05465930 having its registered office at Windsor House, 42-50 Victoria Street, London, SW1H 0TL;

"Safety Authorisation" and "deemed Safety Authorisation" have the meanings given to "safety authorisation" and "deemed safety authorisation" by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Certificate" and "deemed Safety Certificate" have the meanings given to "safety certificate" and "deemed safety certificate" by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;<sup>6</sup>

"Secretary of State" means, the Secretary of State for Transport;

"Security" means, any mortgage, pledge, lien (other than a lien arising by operation of law) hypothecation, security interest or other charge or encumbrance;

"SNRP" has the meaning given to it by the Railway (Licensing of Railway Undertakings) Regulations 2005;

"Station" means the station described in paragraph 5 of Schedule 1;

"Station Access Conditions" means, in respect of the Station:

- (a) the HAL Station Access Conditions 20[16]; and
- (b) the annexes relating to the Station [as referred to in the table included in Schedule 1];<sup>7</sup>

as each is modified in respect of the Station from time to time with the approval of the Office of Rail and Road and as each is incorporated in this Agreement;

"Station Facility Owner Event of Default" has the meaning attributed to it in Clause 5.2.3;

"Stations Agent" has the meaning attributed to it in Clause 7.6.1;

"Suspension Notice" means, a notice served by one party on the other pursuant to Clause 5.3;

"Termination Notice" means, a notice served by one party on the other pursuant to Clause 5.4.1 or 5.4.2, as the case may be;

---

<sup>6</sup> References to "Scottish Ministers" have been deleted given the Heathrow stations are located in England.

<sup>7</sup> The annexes for the particular Station should be referred to in Schedule 1 as part of the description of the Station. As noted in footnote 2 above, TfL requires separate Station Access Agreements for each of the Central Terminals Area and Terminal 4 Stations.

"Track Access Agreement" means, the agreement for use of track, referred to in paragraph 7 of Schedule 1; and

"Transport for London" means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body.<sup>8</sup>

## 1.2 References

References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, sub-Clauses, Schedules and paragraphs are to recitals, clauses and sub-clauses of, and schedules to, this Agreement and paragraphs of such schedules. References to this Agreement include, unless otherwise indicated, the Station Access Conditions. References to any Condition shall be construed as a reference to the relevant Station Access Condition.

## 1.3 Sub-contractors

Where a party has sub-contracted its rights or obligations under this Agreement to any third party in accordance with Clause 7.6, references to that party in this Agreement shall, with the exception of Clause 6 and without prejudice to Clause 7.6, include references to any sub-contractor so appointed.

## 1.4 Station Access Conditions

Where the context admits, words and expressions defined in the Station Access Conditions or which fall to be construed in accordance with such Conditions shall bear the same meanings and constructions in this Agreement and the rules of interpretation set out in the Station Access Conditions shall apply throughout this Agreement.

## 1.5 Exclusive Station Services

The provisions of Schedule 2 (if any) shall apply as to the terms and conditions on which the Station Facility Owner shall provide Exclusive Station Services to the Beneficiary.

## **2 CONDITIONS PRECEDENT**

### 2.1 Conditions Precedent

Subject to Clauses 2.2 to 2.4, the provisions of this Agreement shall not have effect until the following conditions precedent (so far as they are applicable to each party) shall have been satisfied in full:

2.1.1 the Station Facility Owner is authorised to be the operator of the Station by a station licence granted under section 8 of the Act or is exempt from the requirement to be so authorised under section 7 of the Act;

2.1.2 the Station Facility Owner or the Stations Agent holds a Safety Authorisation or deemed Safety Authorisation in relation to its operation of the Station;<sup>9</sup>

---

<sup>8</sup> A definition of "Transport for London" has been included given that multiple references are made to Transport for London in the Station Access Agreement.

- 2.1.3 the Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);
- 2.1.4 the Beneficiary holds a Safety Certificate or deemed Safety Certificate in relation to its operation of trains;
- 2.1.5 an Insolvency Event not having occurred in relation to either of the parties or the Stations Agent;<sup>10</sup> and
- 2.1.6 a copy of this Agreement has been sent to the Office of Rail and Road within 14 days of this Agreement being signed and dated by the parties.

## 2.2 Obligation to satisfy Conditions Precedent

The parties shall use all reasonable endeavours to secure that the following conditions precedent are respectively satisfied in full by them (and that notice of such satisfaction is promptly given by each party to the other party) as soon as practicable and, in any event, not later than the Commencement Date:

- 2.2.1 in the case of the Station Facility Owner, the conditions precedent contained in Clauses 2.1.1 and 2.1.2; and
- 2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.3 and 2.1.4.

## 2.3 Entry into effect

- 2.3.1 Clauses 1 (other than Clause 1.5), 2, 4, 5, 7, 8 and 9 and Conditions 1, 100 and 102 shall come into effect and be binding on the parties immediately upon this Agreement being signed and dated by the parties.
- 2.3.2 All other Clauses and Conditions shall come into effect and be binding on the parties on the Commencement Date.

## 2.4 Non-satisfaction

- 2.4.1 If any of the conditions precedent in Clause 2.1 shall not have been satisfied in full on or before the later of the Commencement Date and the expiry of the 14 day period mentioned in Clause 2.1.6, this Agreement (except Clause 2.4.2) shall lapse and neither party shall have any liability to the other under or in respect of it, save in respect of a pre-existing breach of any of Clauses 2, 4, 5, 7, 8 and 9.

---

<sup>9</sup> In line with our comments at footnote 1 above, the Agreement will need to clarify who is required to hold the Safety Authorisation (HAL or HEOC as sub-contractor).

<sup>10</sup> As per our comments at footnote 3 above, TfL understands that HAL intends to enter into a separate station management agreement with HEOC under which HEOC will be contracted to provide management, operation and maintenance services day-to-day at the stations. If this is the intended management structure, HEOC's insolvency will also impact on HAL's performance of its obligations under this Station Access Agreement. The Agreement should therefore lapse if HEOC suffers an Insolvency Event.

2.4.2 The obligations of confidence provided for in the Station Access Conditions shall continue in force for the period of years indicated at paragraph 8 of Schedule 1 after this Agreement has otherwise ceased to have effect.

## 2.5 Warranties<sup>11</sup>

2.5.1 The Station Facility Owner warrants as at the date of this Agreement and thereafter on a continuing basis throughout the duration of this Agreement that, as the party with an estate or interest in, or right over, the Station, it has the power to grant access to the Station in accordance with the terms and conditions of this Agreement.

## **3 PERMISSION TO USE THE STATION**

3.1 The Station Facility Owner hereby grants the Beneficiary and its Associates permission to use the Station.

3.2 In consideration of the permission granted to the Beneficiary and its Associates by the Station Facility Owner in Clause 3.1 and the performance by the Station Facility Owner of its other obligations under this Agreement, the Beneficiary shall pay the Access Charge in accordance with Clause 6 and Part 6 of the Station Access Conditions.

## **4 STATION ACCESS CONDITIONS**

4.1 The Station Access Conditions are incorporated in and shall form part of this Agreement.

4.2 <sup>12</sup>The Station Facility Owner shall ensure that all operators of trains having permission to use the Station agree to comply with the Station Access Conditions.

4.3 During the term of this Agreement, each of the parties shall duly and punctually perform, observe and comply with its obligations set out in the Station Access Conditions as incorporated in this Agreement pursuant to Clause 4.1.

## **5 TERM AND TERMINATION**

### 5.1 Term

This Agreement shall continue in force until the earliest to occur of:

- (a) lapse pursuant to Clause 2.4;
- (b) termination pursuant to this Clause 5 or Condition 42 of the Station Access Conditions;
- (c) the Expiry Date; and

---

<sup>11</sup> TfL understands that HAL owns the freehold land on the Heathrow stations and will act as is the "station facility owner" for the purposes of this Station Access Agreement. TfL has not seen relevant title documentation to confirm this and therefore seeks a warranty from HAL under this Station Access Agreement confirming that HAL is empowered to grant access to the Heathrow stations and is what could be the "station facility owner" under the Railways Act 1993.

<sup>12</sup> This wording is not relevant in the context of the Heathrow stations given HAL is exempt from sections 17 and 18 of the Railways Act 1993.

- (d) upon the closure of the Station <sup>13</sup>following compliance with any statutory requirements for such closure.

## 5.2 Events of default

### 5.2.1 Beneficiary Events of Default

The following shall be Beneficiary Events of Default:

- (a) Insolvency: An Insolvency Event occurs in relation to the Beneficiary;
- (b) Breach of the Agreement: The Beneficiary commits a material breach of its obligations under this Agreement;
- (c) Force Majeure: The Beneficiary fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure;
- (d) Loss of Licence: The Beneficiary ceases to be authorised to be the operator of trains by a licence granted under section 8 of the Act or by a licence or SNRP granted or recognised under the Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;
- (e) Loss of Safety Certificate: The Beneficiary ceases to hold a Safety Certificate or deemed Safety Certificate whether because it has been revoked or otherwise;
- (f) Track Access Termination: Termination of the Track Access Agreement unless the Beneficiary shall become a party to an access agreement in relation to track which is contiguous to the Station on or before the date which is not later than 30 days after the termination of the Track Access Agreement (any such agreement being thereafter treated as the Track Access Agreement);
- (g) Non-operation: No trains operated by the Beneficiary or on its behalf depart from the Station for a continuous period of more than 270 days; and
- (h) Concession Agreement Termination: Termination of the concession agreement pursuant to which the Beneficiary provides railway passenger services to or from the Station unless the Beneficiary and Rail for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) shall have entered into a further concession agreement on or before the date of such termination.<sup>14</sup>

---

<sup>13</sup> This wording is not relevant in the context of the Heathrow stations.

<sup>14</sup> TfL has prepared this Agreement on the basis that it will apply only in relation to the Crossrail services. Crossrail services are let by TfL/Rail for London under a concession agreement. This clause has therefore been updated to reflect the Crossrail operation. TfL acknowledges that franchising could be relevant in the future for any franchise services which use the Heathrow spur.

5.2.2 The Beneficiary shall notify the Station Facility Owner promptly on becoming aware of the occurrence of a Beneficiary Event of Default.

5.2.3 Station Facility Owner Events of Default

The following shall be Station Facility Owner Events of Default:

- (a) Insolvency: An Insolvency Event occurs in relation to the Station Facility Owner;
- (b) Breach of the Agreement: The Station Facility Owner commits a material breach of its obligations under this Agreement;
- (c) Force Majeure: The Station Facility Owner fails, for a continuous period of 90 days, to perform its obligations under this Agreement to any material extent as a result of an event of Force Majeure;
- (d) Loss of Licence:
  - (i) The Station Facility Owner ceases to be authorised to be the operator of the Station by a licence granted under section 8 of the Act (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act; or
  - (ii) if the Station Facility Owner is exempt from the requirement to be authorised under section 7 of the Act and such exemption expires or is otherwise withdrawn, either:
    - (A) the Station Facility Owner fails to obtain a licence authorising it to be the operator of the Station under section 8 of the Act prior to the exemption expiring or being withdrawn; or
    - (B) the Station Facility Owner obtains a licence authorising it to be the operator of the Station under section 8 of the Act prior to the exemption expiring or being withdrawn but subsequently ceases to be authorised to be the operator of the Station by such licence (either by revocation or otherwise);<sup>15</sup>
- (e) Loss of Safety Authorisation: The Station Facility Owner [or Stations Agent] ceases to hold a Safety Authorisation or deemed Safety Authorisation whether because it has been revoked or otherwise.<sup>16</sup>

5.2.4 The Station Facility Owner shall notify the Beneficiary promptly on becoming aware of the occurrence of a Station Facility Owner Event of Default.

---

<sup>15</sup> TfL understands that HAL's exemption from the requirement to hold a licence is limited to a period of 30 years ("**Licence Exemption Period**"). TfL expects HAL to obtain a licence either prior to or on the expiration of the Licence Exemption Period and considers that a failure to do so should be treated as a Station Facility Owner Event of Default.

<sup>16</sup> Please see our comments in footnote 1 above. TfL considers that the Events of Default will need to be considered in the context of the proposed sub-contracting arrangements.

## 5.3 Suspension

### 5.3.1 Right to suspend

- (a) The Station Facility Owner may serve a Suspension Notice where a Beneficiary Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.
- (b) The Beneficiary may serve a Suspension Notice where a Station Facility Owner Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

### 5.3.2 Contents of a Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on the Beneficiary, reasonable restrictions imposed on the grant to the Beneficiary and its Associates of permission to use the Station while the Suspension Notice is in force;
- (d) in the case of a Suspension Notice served on the Station Facility Owner, details of any suspension on the grant to the Beneficiary of the permission to use the Station while the Suspension Notice is in force;
- (e) the steps reasonably required to remedy the relevant Event of Default; and
- (f) a reasonable grace period for the defaulting party to remedy it (and where the relevant Event of Default is a failure to pay any part of the Access Charge, seven days shall be a reasonable grace period).

### 5.3.3 Effects of a Suspension Notice served by the Station Facility Owner

Where the Station Facility Owner has served a Suspension Notice on the Beneficiary:

- (a) the Beneficiary shall comply with any reasonable restriction thereby imposed on it;
- (b) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Station Facility Owner to the Beneficiary pursuant to Clause 5.3.5(d); and
- (c) service of a Suspension Notice shall not affect the Beneficiary's continuing obligation to pay the Access Charge.

### 5.3.4 Effect of a Suspension Notice served by the Beneficiary

Where the Beneficiary has served a Suspension Notice on the Station Facility Owner:

- (a) it shall have the effect of suspending the permission to use the Station to the extent specified in such Suspension Notice;
- (b) the amount of the Access Charge payable shall be abated to the extent that it corresponds to the suspended part of the Beneficiary's permission to use the Station;<sup>17</sup> and
- (c) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Beneficiary to the Station Facility Owner pursuant to Clause 5.3.5(d).

#### 5.3.5 Suspension to be proportionate to breach

- (a) A Suspension Notice served pursuant to Clause 5.3.1 in respect of any Beneficiary Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:
  - (i) those Station Services; and
  - (ii) those Common Station Amenities,(or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (b) A Suspension Notice served pursuant to Clause 5.3.1 in respect of any Station Facility Owner Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:
  - (i) those Station Services; and
  - (ii) those Common Station Amenities,(or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.

---

<sup>17</sup> TfL notes that this clause does not work under the documentation currently proposed by HAL (whereby station access charges are levied under the Track Access Agreement and a nominal charge of £1 is specified for station access under the Station Access Agreement). TfL requires that access to each Station is charged separately on a facility-by-facility basis and that an abatement regime will apply under the Station Access Conditions, meaning that this clause 5.3.4(6) will apply under TfL's documentation (as set out in the Regulation 29 application). Given that TfL's proposed charging principles are based on the costs directly incurred as a result of the Crossrail services accessing the station, if TfL is unable to call at a station as a result of a Suspension Notice then TfL will not pay the amount of Access Charge for that station call. Only to the extent that Access Charges are paid in arrears or in advance will there be an abatement of the amount of the Access Charge.

- (c) The party served with a Suspension Notice shall, with all reasonable diligence, take such steps as shall be reasonable and necessary to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- (d) Where a party served with a Suspension Notice has complied with its obligations under Clause 5.3.5(c) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which shall have served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question, by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

#### 5.4 Termination

##### 5.4.1 The Station Facility Owner's right to terminate

The Station Facility Owner may serve a Termination Notice on the Beneficiary where:

- (a) the Beneficiary fails to comply with any material restriction in a Suspension Notice;
- (b) the Beneficiary fails to comply with its obligations under Clause 5.3.5(c); or
- (c) except during the period of a Suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing.

##### 5.4.2 The Beneficiary's right to terminate

The Beneficiary may serve a Termination Notice on the Station Facility Owner where:

- (a) the Station Facility Owner fails to comply with its obligations under Clause 5.3.5(c); or
- (b) except during the period of a Suspension Notice relating to it, a Station Facility Owner Event of Default has occurred and is continuing.

##### 5.4.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which termination is to take effect, which shall not be earlier than the later of 30 days after such notice is given and the expiry of any grace period under Clause 5.4.3(c)(ii);
- (c) where the relevant Event of Default is capable of remedy:

- (i) the steps reasonably required to remedy the Event of Default; and
- (ii) a reasonable grace period within which such steps may be taken (and where the Event of Default is a failure of the Beneficiary to pay the Access Charge, seven days shall be a reasonable grace period).

#### 5.4.4 Effects of a Termination Notice

Where either party has served a Termination Notice on the other:

- (a) the service of the Termination Notice shall not affect the parties' continuing rights and obligations under this Agreement up to the date of termination as specified in the Termination Notice;
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that the relevant Event of Default has been remedied;
- (c) this Agreement shall terminate on the later of:
  - (i) the date and time specified in the Termination Notice; and
  - (ii) 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail and Road.
- (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving it to:
  - (i) Rail for London (or such other Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) with a copy to Transport for London at the addresses set out in paragraph 6 of Schedule 1, or such other addresses as shall be notified by either of Rail for London (or such other Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) or Transport for London to the parties from time to time;<sup>18</sup> and
  - (ii) the passenger transport executive (if any) or its successors within whose region the Station is situated.

5.4.5 The lapse or expiry of this Agreement or the termination of this Agreement by either party shall be without prejudice to any right of action that may have arisen prior to, or may arise in consequence of, such lapse, expiry or termination.

#### 5.5 Exclusion of common law termination rights

---

<sup>18</sup> As TfL through its subsidiary Rail for London Limited lets the Crossrail services by way of a concession agreement, Rail for London Limited is the appropriate entity to serve a copy of the Termination Notice to (along with a copy to TfL).

The suspension and termination rights set out in this Clause 5 shall be the parties' only rights to suspend or terminate this Agreement, whether pursuant to its terms, at law or otherwise.

5.6 Non-operation of trains

5.6.1 The Beneficiary shall notify the Station Facility Owner whenever it reasonably expects a material interruption to, or material change in, the Passenger Services (by reference to the then current published timetable for provision of such services). Any such notice shall, to the extent reasonably practicable, state the details of any such interruption or change.

5.6.2 Subject to the Station Access Conditions, no interruption to the Passenger Services shall affect the Beneficiary's obligation to pay the Access Charge.

**6 CHARGES FOR PERMISSION TO USE THE STATION**<sup>19</sup>

6.1 The Access Charge shall, in respect of each Accounting Year, be the sum of the following in respect of that Accounting Year:

6.1.1 the [Common Charges]<sup>20</sup>; and

6.1.2 the Exclusive Charges,

[provided that the percentage referred to in paragraph (b) of the definition of Common Charges in the Station Access Conditions shall be the percentage indicated at paragraph 9 of Schedule 1 as at the Commencement Date.]<sup>21</sup>

6.2 All invoices, other than VAT invoices which shall be supplied in accordance with Condition 101.3(A), shall be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the address for service of the recipient set out in Schedule 3 with a copy to the bank or other financial institution providing the payment facility referred to in Clause 6.3 and (save as provided in Condition 33.6 in respect of the Access Charge) all invoices shall be paid within 28 days of their receipt.

6.3 All amounts payable under this Clause 6 shall, except as may otherwise be agreed by the parties from time to time, be paid by direct debit mandate or standing order mandate to such bank account in the United Kingdom as may be nominated by the Station Facility Owner from time to time.

6.4 Further detailed provisions relating to the [Common Charges]<sup>22</sup> are set out in Part 6 of the Station Access Conditions.

---

<sup>19</sup> As noted at footnote 2 above, TfL has drafted this Station Access Agreement on the basis that each station is an independent facility and will therefore be independently charged for access, whereas HAL's proposal is to levy station access charges under the Track Access Agreement and specify a nominal charge of £1 for station access under the Station Access Agreement. Information should also be provided in the Schedules on station boundaries – specifically, which assets form part of the Station for the purpose of station access charges.

<sup>20</sup> The definition of Common Charges will need to reflect TfL's proposed charging principles as set out in Part 6 of the Station Access Conditions.

<sup>21</sup> Please see our comments at footnote 20 above.

<sup>22</sup> Please see our comments at footnote 20 above.

## **7 WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

### **7.1 Whole agreement**

This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements. This Clause 7.1 shall not have the effect of excluding any term implied by law.

### **7.2 Counterparts**

This Agreement may be executed in counterparts, each of which will constitute one and the same document.

### **7.3 Amendment**

7.3.1 No amendment of any provision of this Agreement shall be effective unless:

(a) such amendment is in writing and signed and dated by, or on behalf of, the parties; and

(b) if it is an amendment which requires the Office of Rail and Road's approval under section 22 of the Act, the amendment has been approved by the Office of Rail and Road.

7.3.2 Clause 7.3.1(b) does not apply to an amendment made by virtue of a general approval issued by the Office of Rail and Road under section 22 of the Act.

7.3.3 A copy of any amendment to this Agreement shall be sent to the Office of Rail and Road within 14 days of such amendment being made.

### **7.4 Assignment<sup>23</sup>**

Subject to Clause 7.5, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assigns or assignees but neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party and the Office of Rail and Road.

### **7.5 Novation**

Each party agrees to take all such steps as may be necessary to give effect to the novation of either party's rights and obligations under this Agreement by and in favour of Transport for London or Rail for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station)<sup>24</sup>,

---

<sup>23</sup> Further drafting should be included to address a change in effective control of the Station. This drafting should ensure that HAL procures the transfer of this Agreement to any successor operator/infrastructure manager of the Station. TfL has proposed that a restriction be placed on the Land Register on HAL's title so that if HAL proposes to dispose of the Station, the party to whom it is being transferred would be required to enter into an equivalent access agreement before the land transfer could take place.

<sup>24</sup> As TfL, through its subsidiary Rail for London, procures the Crossrail services, it would be required to step in to provide the services if the Beneficiary is no longer in a position to do so. This drafting is

if and to the extent necessary to enable the Secretary of State to perform his duty to secure the provision of services for the carriage of passengers by railway pursuant to section 30 of the Act, provided that any such novation shall have been approved by the Office of Rail and Road pursuant to the Act and shall be on terms that:

- 7.5.1 Transport for London or Rail for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) shall have satisfied all relevant conditions precedent which are specified in Clause 2.1 (unless and to the extent that such conditions precedent shall have been waived);
- 7.5.2 the party whose rights and obligations are being novated shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of dispute resolution under the Access Dispute Resolution Rules or litigation between the parties or any liability in respect of any act or omission under or in relation to this Agreement prior to, or as at the date of, any such novation (except to the extent that Transport for London or Rail for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- 7.5.3 neither Transport for London nor Rail for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause 7.5.2.

## 7.6 Sub-contractors<sup>25</sup>

- 7.6.1 Subject to Clause 7.6.2, the Station Facility Owner shall be entitled to sub-contract the performance of all or any part of its obligations and the exercise of all or any part of its rights under this Agreement relating to the management, operation, maintenance, repair and/or renewal of the Station to a suitably qualified and competent sub-contractor (the "Stations Agent"), who shall act as the Station Facility Owner's agent for such purposes. References in this Agreement to the Station Facility Owner exercising certain rights or performing certain obligations shall include the Station Facility Owner procuring that the Stations Agent exercises such rights or performs such obligations.

---

based on the same principles as other Station Access Agreements that MTR Corporation (Crossrail) Limited has in place for other stations which it accesses.

<sup>25</sup> As noted in footnote 1 above, HAL's intention is to enter into a separate station management agreement with HEOC under which HEOC will be contracted to provide management, operation and maintenance services day-to-day. This Agreement needs to ensure that HAL remains entirely responsible for the acts of whoever it appoints as Stations Agent and that TfL is provided with assurance that when it deals with the Stations Agent, the Stations Agent is entitled to be exercising the rights and performing the obligations of HAL. TfL also requires assurance that whoever the Stations Agent is from time to time is suitably competent and experienced to manage the day-to-day operations at the Heathrow Stations and that HAL is taking all appropriate steps to ensure that the necessary practical arrangements are in place to manage the relationship between the Stations Agent, HAL and TfL. Please see footnote 1 above for further details of TfL's specific concerns with HAL's proposed sub-contracting arrangements.

- 7.6.2 Any sub-contracting by the Station Facility Owner to a Stations Agent of all or any part of the Station Facility Owner's obligations or rights under this Agreement relating to the management, operation, maintenance, repair and/or renewal of the Station shall require the prior written approval of the Beneficiary (such approval not to be unreasonably withheld or delayed). In seeking the prior written approval of the Beneficiary, the Station Facility Owner shall provide to the Beneficiary:
- (a) reasonable supporting evidence of the competence and experience of the proposed Stations Agent;
  - (b) details of the services to be sub-contracted to the Stations Agent;
  - (c) details of the standards to which the Stations Agent will be expected to provide the services;
  - (d) if the proposed Stations Agent is an Affiliate of the Station Facility Owner, details of how the Station Facility Owner will effectively manage the costs incurred by the Stations Agent in performing the services;
  - (e) if the proposed Stations Agent is a railway undertaking:
    - (i) details of how the Station Facility Owner will ensure that the Stations Agent treats the Beneficiary in a fair and non-discriminatory manner; and
    - (ii) confirmation that the Station Facility Owner will not share any Confidential Information with the Stations Agent;
  - (f) details of the mechanisms that will be put in place to enable the Beneficiary to liaise with the Stations Agent as reasonably necessary; and
  - (g) a draft of the proposed sub-contracting arrangement (which may be redacted only to take into account any commercially sensitive information).
- 7.6.3 Unless the Station Facility Owner notifies the Beneficiary otherwise in writing, the Beneficiary shall be entitled to assume that in its dealings with the Stations Agent, the Stations Agent is acting within the scope of its sub-contracting arrangements with the Station Facility Owner and is accordingly acting on behalf of the Station Facility Owner for such purposes.
- 7.6.4 Subject to Clause 7.6.5, the Beneficiary shall not, without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed), sub-contract the performance of any of its obligations under this Agreement.
- 7.6.5 Nothing in this Clause 7.6 shall relieve the Station Facility Owner or the Beneficiary of any liability which it would otherwise have, had it performed (or omitted to perform) the obligation or other action itself and each party shall in all circumstances remain responsible for the acts and omissions of any sub-contractor or the Stations Agent (as applicable).

## 7.7 Ceasing to be a facility owner<sup>26</sup>

7.7.1 In this Clause 7.7:

- (a) "a relevant disposal" means the disposal or the creation of any estate, interest, right or title in or to the Station which, whether or not with the passage of time or the giving of notice, may result in another person becoming the facility owner in respect of the Station but does not include the creation of Security over the Station; and
- (b) "Security" means any mortgage, pledge, lien (other than a lien arising by operation of law), hypothecation, security interest or other charge or encumbrance.

7.7.2 The Station Facility Owner shall not make a relevant disposal otherwise than to a person holding a station licence in respect of the Station who prior to the making of the relevant disposal has novated the access agreements of all Users on terms approved by the Office of Rail and Road.

7.7.3 The Station Facility Owner shall not create or permit to subsist Security over the Station otherwise than on terms to which the Office of Rail and Road has consented.

7.7.4 A relevant disposal made in breach of Clause 7.7.2 and Security created or permitted to subsist in breach of Clause 7.7.3 shall be void and of no effect and shall not be binding upon or confer rights exercisable against any User.

7.7.5 Neither the disposal nor the creation of any estate, interest, right or title in or to the Station shall release the Station Facility Owner from any accrued but unperformed obligation, the consequences of any breach of a Station Access Agreement or the Station Access Conditions or any liability in respect of any act or omission under or in relation to a Station Access Agreement or the Station Access Conditions arising prior to another person becoming the facility owner in respect of the Station.

## 8 NOTICES AND COMMUNICATIONS

8.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by facsimile, to the party on whom the notice is to be served at the relevant address for service set out in Schedule 3, or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.

8.2 Any such notice or other communication shall be, or shall be deemed to have been, received by the party to whom it is addressed as follows:

---

<sup>26</sup> This Clause should be revised to clarify what the position will be if in the future HAL transfers ownership of the Stations to a third party or if the decision is taken to close a Station. Some form of protection will be required for existing and potential users of the particular Station, as well as other interested parties (such as the Mayor of London). TfL has proposed that HAL be restricted from disposing of its proprietary interest in the Stations to a third party until that third party enters into a new Station Access Agreement with TfL. Please also see footnote 23 above.

- 8.2.1 if sent by hand or recorded delivery when so delivered or in the case of prepaid first class post, 2 days after posting; and
- 8.2.2 if sent by facsimile, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

**9 GOVERNING LAW AND SUBMISSION TO JURISDICTION**

9.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

9.2 Jurisdiction

Subject to the Station Access Conditions, the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

**10 RIGHTS OF THIRD PARTIES**

10.1 Application to Third Parties

Except as provided in this Clause 10 or as expressly provided elsewhere in this Agreement, no person who is not a party to this Agreement shall have any right (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to enforce any term of this Agreement.

10.2 Application to the Office of Rail and Road and Transport for London<sup>27</sup>

The Office of Rail and Road and Transport for London shall have the right (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to directly enforce such rights as have been granted to them under this Agreement.

**IN WITNESS** whereof this Agreement has been duly executed.

SIGNED on behalf of  
the Station Facility Owner

.....  
(Company name)

.....  
(Signature)

.....  
(Signatory full name)

---

<sup>27</sup> TfL is the appropriate entity to include here given that it procures the Crossrail services. This drafting is consistent with other Station Access Agreements that MTR Corporation (Crossrail) Limited has in place for other stations which it accesses.

SIGNED on behalf of  
the Beneficiary

.....  
(Date)

.....  
(Company name)

.....  
(Signature)

.....  
(Signatory full name)

.....  
(Date)



42-50 Victoria Street  
London  
SW1H 0TL

7 Track Access Agreement:

Access contract [dated [ ]] between Heathrow Airport Limited and the Beneficiary or such agreement as may from time to time replace it providing permission for the Beneficiary to use track in order to operate trains to and from the Station for the purpose of operating railway passenger services.

8 Obligations of Confidence:

The period for which obligations of confidence shall apply referred to in Clause 2.4.2 shall be [6]<sup>31</sup> years.

9 NOT USED<sup>32</sup>

---

<sup>31</sup> This period is consistent with the confidentiality periods that MTR Corporation (Crossrail) Limited has in place in its Track Access Agreements with Network Rail.

<sup>32</sup> Part 6 of the Station Access Conditions sets out TfL's proposed charging principles. As TfL will only pay costs that are directly incurred as a result of operating the Crossrail services, TfL will not pay a percentage of Common Charges (as is the case where the ordinary "Qualifying Expenditure" and "Long Term Charge" model applies). This paragraph has therefore been deleted.

**SCHEDULE 2**

**EXCLUSIVE STATION SERVICES<sup>33</sup>**

[            ]

---

<sup>33</sup> This needs to give specific details of the Exclusive Services for the particular Station required by TfL/MTR Corporation (Crossrail) Limited, in order to appropriately determine Exclusive Charges for each Station on a facility-by-facility basis.

**SCHEDULE 3**

**ADDRESSES FOR SERVICE**

1 Address for service on the Station Facility Owner:

(Attention: [                      ] )

The Compass Centre  
Nelson Road  
Hounslow  
Middlesex  
TW6 2GW

Tel: [                      ] ]

Fax: [                      ] ]

2 Address for service on the Beneficiary:

(Attention: Director of Legal and Compliance)

Transport for London or a railway undertaking nominated by Transport for London  
(currently MTR Corporation (Crossrail) Limited)  
42-50 Victoria Street  
London  
SW1H 0TL

Tel: [                      ] ]

Fax: [                      ] ]