

DATED _____ 2007

Between

Great North Eastern Railway Limited

as

Station Facility Owner

- and -

Grand Central Railway Company Limited

as

Beneficiary

York

SSA/06/05/11/95/01

STATION ACCESS AGREEMENT

(Access by passenger operators)

CONTENTS

Clause	Page
1	INTERPRETATION 1
1.1	Definitions 1
1.2	References..... 5
1.3	Sub-contractors 5
1.4	Station Access Conditions..... 5
1.5	Exclusive Station Services 6
2	CONDITIONS PRECEDENT 6
2.1	Conditions Precedent 6
2.2	Obligation to satisfy Conditions Precedent..... 7
2.3	Entry into effect 7
2.4	Non-satisfaction 7
3	PERMISSION TO USE THE STATION 7
4	STATION ACCESS CONDITIONS 8
5	TERM AND TERMINATION..... 8
5.1	Term 8
5.2	Events of default 9
5.3	Suspension 10
5.4	Termination 13
5.5	Exclusion of common law termination rights 15
5.6	Non-operation of trains 15
6	CHARGES FOR PERMISSION TO USE THE STATION..... 16
7	WHOLE AGREEMENT, VARIATION AND ASSIGNMENT 17
7.1	Whole agreement 17
7.2	Counterparts 17
7.3	Variation..... 17
7.4	Assignment 17
7.5	Novation..... 17
7.6	Sub-contractors 18

7.7	Ceasing to be a facility owner.....	19
7.8	Station Code Retrofit	19
8	NOTICES AND COMMUNICATIONS.....	20
9	GOVERNING LAW AND SUBMISSION TO JURISDICTION	20
9.1	Governing law.....	20
9.2	Jurisdiction.....	20
10	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	21
10.1	Application to Third Parties.....	21
10.2Application to the Office of Rail Regulation and the Secretary of State.....	20
	SCHEDULE 1.....	22
	CONTRACT PARTICULARS.....	22
	SCHEDULE 2.....	24
	EXCLUSIVE STATION SERVICES	24
	SCHEDULE 3.....	25
	ADDRESSES FOR SERVICES	25
	SCHEDULE 4.....	26
	STATIONS CODE RETROFIT	26

THIS AGREEMENT is made on 2006 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").

WHEREAS:-

- (A) The Station Facility Owner is the facility owner of the Station.
- (B) The Beneficiary is a passenger service operator who wishes to obtain permission to use the Station.
- (C) The Station Facility Owner has agreed to grant the Beneficiary and its Associates such permission on the terms and conditions of this Agreement.
- (D) This Agreement is entered into pursuant to directions given by the Office of Rail Regulation in the exercise of its powers under the Act.

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;

"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;

"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 Regulation has consented to them;

"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 Regulation 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
 - (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 1.1(a), 1.1(d) or 1.1(e), or 1.1(f) in relation to matters analogous or equivalent to the matters referred to in paragraphs 1.1(a), 1.1(d) and 1.1(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 40 Melton Street, London, NW1 2EE (formerly named “Railtrack PLC”, and referred to as “Railtrack” in the Station Access Conditions);

“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;

“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;

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

“Station Access Conditions” means, in respect of the Station:

- (a) the National Station Access Conditions 1996 England and Wales; and
- (b) the annexes relating to the Station (ORR Ref: SSA/06/08/95/01);

as each is modified in respect of the Station from time to time with the approval of the Office of Rail Regulation 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;

"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; and

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

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 Beneficiary has executed a Collateral Agreement in relation to the Station and delivered it to the Station Facility Owner for exchange thereof with Network Rail;
- 2.1.2 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;
- 2.1.3 the Station Facility Owner has obtained a safety validation certificate in respect of the Station Facility Owner's safety case in relation to the operation of the Station, which safety case has been accepted in accordance with the Railways (Safety Case) Regulations 2000;
- 2.1.4 the Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);
- 2.1.5 the Beneficiary has prepared a safety case in relation to the operation of trains, which safety case has been accepted in accordance with the Railways (Safety Case) Regulations 2000; and
- 2.1.6 an Insolvency Event not having occurred in relation to either of 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 2.1.2 and 2.1.3; and

2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.1, 2.1.4 and 2.1.5.

2.3 Entry into effect

2.3.1 Clauses 1 (other than Clause 1.5), 2, 4, 5, 7, 8 and 9 and Conditions A1, Q1 and Q3 shall come into effect and be binding on the parties immediately upon signature of this Agreement.

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 Commencement Date, 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.

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.

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 F 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 Except where the Office of Rail Regulation shall have directed otherwise in the exercise of its powers under the Act, 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 F11 of the Station Access Conditions;
- (c) the Expiry Date; and
- (d) upon the closure of the Station following the expiry of any period of experimental operation of the Station (or its related passenger services) under s56A of the Transport Act 1962 or s48 of the Act or 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 (whether by revocation or otherwise) to be the operator of trains by a licence granted under the Railways Licensing Regulations 2005 or under section 8 of the Act unless it is exempt from the requirement so to be authorised under section 7 of the Act;
- (e) 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);
- (f) 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
- (g) Franchise Agreement Termination: Termination of the franchise agreement pursuant to which the Beneficiary provides railway passenger services to or from the Station unless the Beneficiary and the Secretary of State shall have entered into a further franchise agreement on or before the date of such termination.

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; and
- (d) Loss of Licence: The Station Facility Owner ceases to be authorised (whether by revocation or otherwise) to be the operator of the Station by a licence granted under section 8 of the Act unless it is exempt from the requirement so to be authorised under section 7 of the Act.

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.

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; 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 thereof) and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(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 5.3.5.3.5(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 5.3.55.3.5(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 Regulation.
- (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving it to:
 - (i) the Secretary of State at the address set out in paragraph 6 of Schedule 1, or such other address as shall be notified by it to the parties from time to time; 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**

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

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; and

6.1.2 the Exclusive Charges,

provided that the percentage referred to in paragraph (c) 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.

6.2 All invoices, other than VAT invoices which shall be supplied in accordance with Condition Q2.3, 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 F2.3 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 are set out in Part F of the Station Access Conditions.

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 **Variation**

No variation of this Agreement (including, without limitation, any variation made pursuant to any provision of this Agreement (whether as a result of the exercise of a party's discretion or otherwise howsoever) which would, apart from that provision, require the Office of Rail Regulation's approval under section 22 of the Act) shall be effective unless it is in writing, signed by the parties and the Office of Rail Regulation has consented to it unless:

7.3.1 the variation is made pursuant to the Station Access Conditions; or

7.3.2 this Agreement expressly contemplates otherwise in which event the parties shall promptly notify the Office of Rail Regulation of the variation.

7.4 **Assignment**

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 Regulation.

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 the Secretary of State or its nominee, if and to the extent necessary to enable the Secretary of State to perform

its 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 Regulation pursuant to the Act and shall be on terms that:

7.5.1 the Secretary of State or its nominee 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 arbitration 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 the Secretary of State or its nominee 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 the Secretary of State nor its nominee 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**

7.6.1 Subject to Clause 7.6.3, the Station Facility Owner may subcontract the performance of any of its obligations under this Agreement.

7.6.2 Subject to Clause 7.6.3 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.

7.6.3 Nothing in this Clause 7.6 shall operate so as to relieve the Station Facility Owner or the Beneficiary of its obligations under this Agreement and each party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

7.7 **Ceasing to be a facility owner**

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 Regulation.

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 Regulation 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.

7.8 **Station Code Retrofit**

The provisions set out in Schedule 4 shall apply to this Agreement.

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:

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 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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 under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

10.2 Application to the Office of Rail Regulation and the Secretary of State

The Office of Rail Regulation and the Secretary of State shall have the right under the Contracts (Rights of Third Parties) Act 1999 to directly enforce such rights as have been granted to them under this Agreement.

IN WITNESS whereof this Agreement has been duly executed.

SCHEDULE 1
CONTRACT PARTICULARS

1 Station Facility Owner:

Name: Great North Eastern Railway Limited

Registered office: Sea Containers House, 20 Upper Ground, London SE1 9PF

2 Beneficiary:

Name: Grand Central Railway Company Limited.

Registered office: 5 The Crescent, York, YO24 1AW

3 Commencement Date:

2:00 am on .

4 Expiry Date:

2:00 am on.

5 Station:

The station known as York, as more particularly defined in the Station Access Conditions

6 Address of Secretary of State:

The Secretary of State for Transport

76 Marsham Street

London

SW1P 4DR

7 Track Access Agreement:

Access contract dated 18 January 2007 between Network Rail and the Beneficiary or such agreement as may from time to time replace the same 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 six years.

9 Percentage of Common Charges payable pursuant to Clause 6.1

The User's Daily General Charge payable by the Beneficiary shall be abated by five percent (5%) for each day or part thereof after the expiry of the first 48 hours of any period during which the Station Facility owner fails to provide a fully operational customer information systems screen on Platform 3.

SCHEDULE 2
EXCLUSIVE STATION SERVICES

None

SCHEDULE 3
ADDRESSES FOR SERVICES

1 Address for service on the Station Facility Owner:

(Attention: Procurement Manager)

Main Headquarters, Station Road, York, YO1 6HT

[Fax No.] 01904 523827

[Tel No.] 01904 524285

2 Address for service on the Beneficiary:

(Attention: Operations Director)

Grand Central Railway Co. Ltd. 5 The Crescent, York, YO24 1AW

Fax No. 01904 466066

Tel No. 01904 633307

SCHEDULE 4

STATIONS CODE RETROFIT

1 AUTOMATIC EFFECT

1.1 General

This Agreement shall have effect

1.1.1 with the modifications; and

1.1.2 from the date

specified by the Office of Rail Regulation in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 MODIFICATION NOTICE

2.1 Meaning

A modification notice is a notice given by the Office of Rail Regulation to the parties for the purposes of this Agreement which modifies this Agreement (other than this Schedule 4) by:

2.1.1 the replacement of specified provisions of this Agreement with provisions in the Stations Code; and/or

2.1.2 the inclusion of additional provisions into this Agreement based on the Stations Code; and/or

2.1.3 the restatement of this Agreement, with any modifications under paragraphs 2.1.1 or 2.1.2, in the Stations Code.

2.2 **Contents of modification notice**

A modification notice shall state:

- 2.2.1 the modifications which are to be made to this Agreement;
- 2.2.2 the date from which specified modifications are to have effect, and, if any such modifications are to have effect from different dates, the dates applicable to each modification;
- 2.2.3 which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question; and
- 2.2.4 the date from which any restatement of this Agreement in the Stations Code is to have effect.

3 **ADAPTATION PROCEDURE**

3.1 **Application**

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

3.2 **Negotiation of adaptations**

In respect of the modifications in each modification notice:

- 3.2.1 within 14 days of the date of service of the modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;
- 3.2.2 each party shall ensure that:
 - (a) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice;
 - (b) the Office of Rail Regulation's criteria are applied in the negotiations; and

- (c) the negotiations shall not continue after the backstop date.

3.3 **Agreed adaptations – notice to the Office of Rail Regulation**

If the parties have agreed the requisite adaptations on or before the backstop date, not later than 7 days after the backstop date the agreed requisite adaptations shall be sent by the parties to the Office of Rail Regulation for its consent, together with a statement, signed by or on behalf of both parties:

- 3.3.1 stating the reasons for the agreed requisite adaptations:
- 3.3.2 stating the extent to which and ways in which the Office of Rail Regulation's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- 3.3.3 giving such other information as the Office of Rail Regulation may have requested.

3.4 **Agreed adaptations – Office of Rail Regulation's consent**

If the Office of Rail Regulation is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

3.5 **Agreed requisite adaptations – Office of Rail Regulation's refusal of consent**

If the Office of Rail Regulation gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- 3.5.1 require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- 3.5.2 determine the requisite adaptations itself.

3.6 Requisite adaptations – failure to agree or submit

If the parties have failed to submit agreed requisite adaptations to the Office of Rail Regulation for its consent on or before the backstop date, it may determine the requisite adaptations itself.

3.7 Notice of determined requisite adaptations

A notice of determined requisite adaptations is a notice:

3.7.1 given by the Office of Rail Regulation to the parties for the purposes of this paragraph 3 following the failure of the parties to send to the Office of Rail Regulation on or before the backstop date requisite adaptations to which it gives his consent; and

3.7.2 which states the requisite adaptations which the Office of Rail Regulation has determined should be made using its powers to do so under paragraph 3.5. or 3.6.

3.8 Effect of requisite adaptations

Requisite adaptations established either:

3.8.1 by agreement of the parties and in respect of which the Office of Rail Regulation has given a notice of consent to requisite adaptations under paragraph 3.4; or

3.8.2 by the determination of the Office of Rail Regulation under paragraph 3.5 and 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as the Office of Rail Regulation states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

4 PROCEDURAL MATTERS

4.1 More than one notice

More than one modification notice may be given.

4.2 **Differences etc as to requisite adaptations**

Any difference or question as to whether any thing is a requisite adaptation shall be determined by the Office of Rail Regulation:

4.2.1 on the application of either party; and

4.2.2 in accordance with such procedure (including as to consultation) as the Office of Rail Regulation may by notice to the parties determine.

4.3 **Co-operation and information**

If the Office of Rail Regulation gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

4.3.1 the party of whom the request is made shall provide the requested information promptly and to the standard required by the Office of Rail Regulation; and

4.3.2 if that party fails timeously to do so, the Office of Rail Regulation shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 **Office of Rail Regulation's criteria**

In relation to the negotiation of any requisite adaptation, the Office of Rail Regulation shall be entitled to:

4.4.1 give to the parties any criteria of its which it requires be applied in the negotiations;
and

4.4.2 modify the criteria after consultation.

4.5 **Procedural modifications**

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the time within which any step or thing requires to be done or achieved):

4.5.1 such procedure may be modified by the Office of Rail Regulation by a notice of procedural modification given by it to the parties; but

4.5.2 the Office of Rail Regulation may only give a notice of procedural modification if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if it is requested by both parties.

4.6 **Dates**

In this Schedule 4:

4.6.1 where provision is made for a date to be specified or stated by the Office of Rail Regulation, it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and

4.6.2 any notice given by the Office of Rail Regulation which states a date may state different dates for different purposes.

4.7 **Requirement for prior consultation**

No relevant notice shall have effect unless:

4.7.1 the Office of Rail Regulation has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;

4.7.2 in the consultations referred to in paragraph 4.7.1, the Office of Rail Regulation has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as he considers are necessary so as properly to inform them of its contents;

4.7.3 the Office of Rail Regulation has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;

4.7.4 the Office of Rail Regulation has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and

4.7.5 in effecting the notifications required by paragraph 7.7.4, the Office of Rail Regulation has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to the Office of Rail Regulation or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 **Consolidated contract**

Subject to paragraph 4.9 not later than 21 days after the giving of the last of:

4.8.1 a modification notice; and

4.8.2 a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

the Station Facility Owner shall prepare and send to the Beneficiary, the Office of Rail Regulation and the Secretary of State a copy of this Agreement as so modified.

4.9 **Restatement in the Stations Code**

If a modification notice states that this Agreement is to be restated in the Stations Code:

4.9.1 the parties shall enter into such accession or other agreement as may be necessary to give effect to such restatement;

4.9.2 the parties shall give effect to the restatement no later than the date stated in the modification notice; and

4.9.3 the restatement shall not affect the other provisions of this Schedule 4 concerning requisite adaptations.

4.10 **Saving**

Nothing in this Schedule 4 affects:

4.10.1 the right of either party to approach and obtain from the Office of Rail Regulation guidance in relation to the requisite adaptations; or

4.10.2 the right of the Office of Rail Regulation at any time to effect modifications to the Stations Code under that code.

5 **DEFINITIONS**

In this Schedule 4:

“**backstop date**” means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.7.1 or 4.6);

“**Stations Code**” means model clauses for access to stations to be entered into by station facility owners, beneficiaries and other interested persons published by the Office of Rail Regulation under section 21 of the Act, and any special provisions relating to particular stations which may form an annexure to such model clauses;

“**modification notice**” has the meaning ascribed to it in paragraph 2.1;

“**notice of consent to requisite adaptations**” means a notice given by the Office of Rail Regulation under paragraph 3.4;

“**notice of determined requisite adaptations**” has the meaning ascribed to it in paragraph 3.7;

“notice of procedural modifications” means a notice given by the Office of Rail Regulation to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 4 for the agreement or establishment of requisite adaptations;

“Office of Rail Regulation’s criteria” means the criteria established by the Office of Rail Regulation for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;

“relevant notice” means a modification notice, notice of determined requisite adaptations, notice of procedural modifications or modification of the Office of Rail Regulation’s criteria;

“requisite adaptations” in relation to specified modifications, means the amendments (including the addition of information) to the model clauses in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and

“specified” means specified in a modification notice.

SIGNED by [])
on behalf of **Grand Central Railway Company Limited**
Dated [] 2007)

SIGNED by [])
on behalf of **Great North Eastern Railway Limited**)
Dated [] 2007)