

THE NETWORK RAIL INDEPENDENT STATION ACCESS CONDITIONS

2013 EDITION

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The following are the Network Rail Independent Station Access Conditions

PART 1: ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS

1. **General**

1.1 **General Interpretation:** Unless the context otherwise requires:

- (A) These Station Access Conditions: References to these Station Access Conditions mean these Network Rail Independent Station Access Conditions 2013 and the Annexes to them each as modified from time to time.
- (B) Parts, Conditions, paragraphs and Annexes: References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Station Access Conditions and references to Annexes are to Annexes to these Station Access Conditions.
- (C) References to statutory provisions: References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as from time to time amended or modified or any enactment for the time being replacing or amending it.
- (D) Interpretation Act: Words and expressions defined in the Interpretation Act 1978 shall have the same meanings in these Station Access Conditions. The words "include" and "including" shall be construed without limitation.
- (E) Definitions in the Act: Terms and expressions defined in sections 1, 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meanings in these Station Access Conditions.
- (F) Construction of agreements: Reference in any Station Access Agreement or these Station Access Conditions to an agreement or any other document includes that agreement or other document as from time to time supplemented, varied, amended or novated (any such being a "change") provided that where the document is a Station Access Agreement or these Station Access Conditions such change shall be included only if one of the following conditions shall have been satisfied:
 - (1) if the change is to any part of any Station Access Agreement other than to these Station Access Conditions the change will not result or be likely to result in a Relevant Restriction; or
 - (2) the change is one in respect of which the ORR shall have given its consent in writing; or
 - (3) the change is one which falls wholly within the terms of a general consent given by the ORR in writing for the purposes of the Station Access Agreement in question or these Station Access Conditions.

A general consent of the kind referred to in paragraph (3) above may be revoked by the ORR by notice in writing to the parties concerned unless the terms of the consent shall be that it shall not be revocable. The revocation of a general consent shall not affect the continuing validity of any change made in accordance with, and before the revocation of, that general consent.

- (G) Notices etc: Wherever in these Station Access Conditions provision is made for the giving or issuing of any notice, consent or approval by any person, that notice,

consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Station Access Agreement and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.

- (H) References to person: Any reference to a person shall be construed as including, where appropriate, a reference to a firm, company, corporation, government, state or agency of a state, any association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any of the foregoing.
- (I) Conflict: In the event of any conflict (whether as to interpretation or otherwise) between the provisions of these Station Access Conditions and the provisions of a Station Access Agreement, the following order of precedence shall apply:
 - (1) these Station Access Conditions; and
 - (2) the provisions of that Station Access Agreement.
- (J) Time Limits: Where in these Station Access Conditions any obligation of a person is required to be performed within a specified time limit, that obligation shall continue after that time limit if that person fails to comply with that obligation within the time limit.
- (K) Headings: The headings and references to headings shall be disregarded in construing these Station Access Conditions.
- (L) Companies Act definitions: The words "subsidiary", "holding company" and "company" shall have the same meanings in these Station Access Conditions as in the Companies Act 2006.
- (M) Use of present tense: Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.
- (N) Sub-Contractors: Where a party has sub-contracted its obligations under any Station Access Agreement or these Station Access Conditions references to that party in any Station Access Agreement or these Station Access Conditions shall include references to any sub-contractor so appointed.
- (O) Permission to use: References in these Station Access Conditions to the grant to a User of permission to use the Station shall, except where the context otherwise requires, be construed to mean:
 - (1) the grant of permission for the User and its Associates to use the Common Station Amenities and to obtain the benefit of the Station Services or Light Maintenance Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway, whether or not the Station Facility Owner is to provide those services itself or to secure their provision by another; and
 - (2) to the extent reasonably necessary to give full effect to the permission in Condition 1.1(O)(1) and subject to Condition 1.1(P), permission for the User and its Associates to:
 - (a) enter upon the Common Station Amenities, with or without vehicles;

- (b) bring things onto the Common Station Amenities and keep them there;
- (c) use and maintain any things kept, or buildings or other works constructed, on the Common Station Amenities (whether by the User or another);
- (d) carry out such works as shall have been approved in accordance with these Station Access Conditions;
- (e) exercise the rights over the Adjacent Property set out in Part 10; and
- (f) carry out Light Maintenance Services,

provided that the permissions in Conditions 1.1(O)(1) and 1.1(O)(2) shall be in common with, but not in priority to, any other User in respect of the Common Station Amenities or Common Station Services and shall be subject, in each case and in all respects, to:

- (3) these Station Access Conditions;
- (4) any Relevant Restriction arising under any Existing Agreement; and
- (5) whilst exercising any permissions conferred by Condition 1.1(O)(2) any other restriction on such permissions which may from time to time be reasonably imposed by the Station Facility Owner in accordance with the Station Access Agreement.

(P) Permission to use under Condition 1.1(O)(2): In relation to the permissions specified in Condition 1.1(O)(2):

- (1) the User shall and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Station Facility Owner (which consent shall not be unreasonably withheld or delayed);
- (2) the User shall promptly remove any vehicle or other thing so brought onto the Common Station Amenities when reasonably directed to do so by the Station Facility Owner; and
- (3) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Station Facility Owner shall specify.

(Q) Good Faith: The Station Facility Owner and all Users shall, in exercising their respective rights and complying with their respective obligations under these Station Access Conditions, (including when conducting any discussions or negotiations arising out of the application of these Station Access Conditions or exercising any discretion under them) at all times act in good faith.

(R) "an after tax basis": References in these Station Access Conditions to an after tax basis shall be construed to mean payments of the monies which are the subject of the indemnity after:

- (1) first, if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the

indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumptions set out below) by the beneficiary by virtue of the relief;

- (2) secondly, if the indemnity is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under Condition 1.1(R)(1) such that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity payment equals the amount of the payment after any reduction under Condition 1.1(R)(1),

and in applying the above, it shall be assumed that:

- (3) for the purposes of Condition 1.1(R)(1), the amount of tax saved shall be the difference between:
 - (a) the amount of tax which would have been payable by the beneficiary in respect of the accounting period of the beneficiary in which relief arises, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and
 - (b) the amount of tax which would have been payable by the beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such relief;

and, if the beneficiary's Taxable Profits in the relevant accounting period are less than such relief, it shall be assumed for the purposes of both calculations that the Taxable Profits in such accounting period are equal to such relief;

- (4) for the purposes of Condition 1.1(R)(2), the amount of the deduction in respect of any tax suffered shall be the difference between:
 - (a) the amount of tax which would have been payable by the beneficiary in respect of the accounting period of the beneficiary in which the indemnity payment is taxable, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and
 - (b) the amount of tax which would have been payable by the beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such indemnity payment as increased under Condition 1.1(R)(2) (the "grossed up amount");

and, if the beneficiary's Taxable Profits in the relevant accounting period are less than the grossed up amount, it shall be assumed for the purposes of both calculations that the Taxable Profits in such accounting period are equal to the grossed up amount; and

- (5) for the purposes of applying the above clauses on each occasion that an indemnity payment falls to be made, the beneficiary's "Taxable Profits" in the relevant accounting period shall be deemed to be the beneficiary's profits in such accounting period (as defined in section 6 of the Income and

Corporation Taxes Act 1988 ("ICTA")), as reduced by all reliefs other than the relief referred to in Condition 1.1(R)(1) arising in respect of such occasion and trading losses carried back under sub-section 393A(1)(b) of ICTA but including for the avoidance of doubt charges on income, group relief and trading losses carried forward (to the extent not attributable to the relief referred to in Condition 1.1(R)(1) arising in respect of such occasion).

In any case where an indemnity payment falls to be made on an "after tax basis", the adjustments referred to above shall be calculated by the auditors of the beneficiary (acting as experts and not as arbitrators) whose calculations shall be binding on the parties in the absence of manifest error and whose costs shall be borne in equal shares by the beneficiary and the indemnifying party and, if such adjustments cannot be conclusively determined at the time when the indemnity payment is required to be made, the auditors shall provide an estimate of the adjustments which are likely to be required and the indemnity payment shall be made on the basis of such estimate and, as and when such adjustments can be conclusively determined, such payment will be made either by or to the beneficiary as may be required to give effect to the above paragraphs.

- (S) Railtrack: Any reference to Railtrack in these Station Access Conditions, the Annexes and any Relevant Agreement shall be construed to mean Network Rail as defined in these Station Access Conditions, unless the contrary intention appears.

1.2 **Definitions:** In these Station Access Conditions, unless the context otherwise requires:

"Accepted" means a notification made in response to a Material Change Proposal in which a Material Change Consultee states, or is deemed to have stated, that, so long as the scope and detail of the Proposal remain materially unaltered it does not, and will not object to the implementation of the Proposal and will sign the relevant Co-operation Agreement or be deemed to have accepted that Co-operation Agreement. The words "accept", "acceptance" and "accepting" shall be construed accordingly;

"Access Charge" has the meaning attributed to it in the Station Access Agreement;

"Access Dispute Resolution Rules" means the rules regulating the resolution of disputes between parties to access agreements entitled "The Access Dispute Resolution Rules", the current form of which is annexed to the Network Code;

"Accounting Half-Year" means a period of six months commencing at the commencement of each Financial Year;

"Accounting Period" means a period of 28 days or such other period of between 21 and 35 days as shall be determined by the Station Facility Owner on reasonable grounds;

"Accounting Year" means the First Year, the Last Year and any complete Financial Year during the term of a Station Access Agreement;

"Act" means the Railways Act 1993;

"Adjacent Property" means all or any part of the land, buildings, structures or other works (including the Network) not forming part of the Station but adjoining, above, below or near the Station belonging to the Station Facility Owner for the time being and for the purpose of Part 10, includes any other property not belonging to the Station Facility Owner but over which the Station Facility Owner has rights for the time being sufficient to permit the Station Facility Owner to confer the rights referred to in Part 10;

"Affiliate" in relation to a company means:

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

"Asset Protection Agreement" means an agreement concerned with matters such as the safe management of the works, the discharge of obligations in relation to the safety of persons on or near the Network, the protection of the operational integrity of train operations and other work being undertaken on the Network, achieving good working practices in order to protect the condition and integrity of the assets and systems that make up the Network, providing a clear definition of roles and responsibilities, and containing authorisations required to undertake the work and (if appropriate) containing a requirement to take any relevant Station and Network assets back into use once the work is complete;

"Associate" has the meaning attributed to "associate" in section 17(7) of the Act;

"Barrow Crossing" means any link across the track beyond the end of any two or more platforms at the Station designed for use by barrows, trolleys or similar apparatus or as a foot crossing;

"British Rail Telecommunications Transfer Scheme" means the transfer scheme made under section 85 of the Act by the Board in favour of BR Telecommunications Limited with an effective date of 01 April 1994 and references to that scheme (where the context requires) include any transfer scheme which affects or is made in addition to that scheme made from time to time under Section 85 of the Act by the Board with an effective date after 01 April 1994;

"Business Day" means any weekday (other than a Saturday) on which banks are open for domestic business in the City of London;

"Certificate" means a certificate issued by or on behalf of Station Facility Owner pursuant to Condition 34.1(B) or Condition 34.2(B);

"Change" means any of the following:

- (a) Works or activities at the Station which (whether during or after their completion) would be likely:
 - (i) materially to affect:
 - (1) the operation of trains to or from the Station; or
 - (2) the ability of a User's Associates to pass to or from trains operated by or on behalf of that User which stop at the Station; or
 - (3) the operation of the Station; or
 - (ii) to change materially the condition (or working order), standard or quantum of the Common Station Amenities or the Common Station Services at the Station, other than in accordance with the provisions of Parts 4 or 13; or
 - (iii) to make any amenity or service which is not a Common Station Amenity or Common Station Service, a Common Station Amenity or a Common Station Service (as the case may be) at the Station or vice versa; or

- (iv) to alter the periods during which the whole or any part of the Station is open to the public or to any User or its Associates, other than in accordance with the provisions of Part 4; or
- (v) to result in the relocation of any Core Facility as referred to in paragraph 21 of Annex 8 or any Station Facility as referred to in paragraph 10 of Annex 1;
- (b) (except where such may arise pursuant to an Existing Agreement) the entering into of any agreement or other arrangement or the variation of an existing agreement or arrangement the purpose or effect of which involves or is likely to involve any of the matters described in paragraph (a) of this definition (excluding any agreement or arrangement entered into pursuant to the agreements referred to in paragraph 2 of Annex 9) provided that this paragraph (b) shall not prevent the entry by the Station Facility Owner into an access contract;
- (c) any change to these Station Access Conditions or the Annexes (other than a Conditions Change carried out in accordance with Part 2) including but not limited to any change to the Plan; and/or
- (d) the grant of wayleaves, dedications or easements affecting the Station

but not works or activities carried out in the performance of any obligation under these Station Access Conditions (including without limitation under Parts 4 or 13) which is not expressed in these Station Access Conditions to require compliance with Part 3 whether or not such performance would otherwise fall within this definition;

"Change in Control" means a change in control of any User ("control" for this purpose having the meaning ascribed to it in Part II of the passenger licence held by the User);

"Change of Law" means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

- (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (b) Value Added Tax;

"Commencement Date" has the meaning attributed to it in the relevant Station Access Agreement;

"Common Charges" means, in relation to each Passenger Operator, in respect of any charges payable on or after 1 April 2009, the aggregate of the following:

- (a) the relevant Passenger Operator's Proportion of the Fixed Charges; and
- (b) the Passenger Operator's Proportion of the Long Term Charge determined pursuant to Condition 41;

"Common Station Amenities" means:

- (a) in respect of a Passenger Operator, the amenities at the Station specified in paragraphs 1 and 2 of Annex 1; and

- (b) in respect of any operator of trains with permission to use the Station which is not a Passenger Operator, the amenities at the Station specified in paragraph 1 of Annex 1,

in each case where possible identified as such on the Plan, to the extent they are available as at the Commencement Date unless otherwise specified in Annex 1, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

"Common Station Services" means:

- (a) in respect of a Passenger Operator the services supplied at the Station specified in paragraphs 3 and 4 of Annex 1; and
- (b) in respect of any operator of trains with permission to use the Station which is not a Passenger Operator, the services supplied at the Station specified in paragraph 3 of Annex 1,

in each case to the extent they are available as at the Commencement Date unless otherwise specified in Annex 1 and in accordance with the specifications (if any) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 10, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

"Competent Authority" means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the Secretary of State) whether of the United Kingdom or of the European Union, which has, in respect of a Station Access Agreement or these Station Access Conditions, jurisdiction over either or both of the parties to, or the subject matter of, that agreement or these Station Access Conditions, provided that "Competent Authority" shall not include:

- (a) Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power;
- (b) the ORR, except to the extent that it shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as it shall so specify;
- (c) subject to paragraph (b) above, any court, tribunal or arbitral body exercising its powers in any reference made to it pursuant to or arising out of any access contract or any act or omission or fact, matter or thing associated with any such contract or the relationship created or evidenced by it;

"Conditions Change Proposal" means any proposal (other than a notice issued by the ORR under Condition 7) to change these Station Access Conditions or the Annexes and any material modification to that proposal as referred to in Condition 2.4, whether the proposal involves a Template Change or a change to the Station Access Conditions or the Annexes which relate only to the Station or to a specific set of Stations (save where such a change is consequent upon a physical change at such Station, which shall instead be included within the relevant Part 3 Change Proposal);;

"Conditions Change Consultation Period" means such period as is reasonable in all the circumstances, being a period of not less than [20 Business Days] from the date of the Conditions Change Proposal;

“Conditions Change Consultees” means [in the case of a Template Change, all Users of every station in England and Wales and the Station Facility Owner] [in the case of a change to the Station Access Conditions or the Annexes, all Users of the specific Station or set of Stations and the Station Facility Owner] (excluding the Conditions Change Proposer);

“Conditions Change Decision Period” means a period of [15 Business Days] following the end of the Conditions Change Consultation Period;

“Conditions Change Notice of Objection” means a notice given by a User or the Station Facility Owner during the Conditions Change Decision Period which contains a statement that the User or the Station Facility Owner (as the case may be) objects to the Conditions Change Proposal in question;

“Conditions Change Proposer” means a proposer of a Conditions Change Proposal;

"Conditions Efficacy Date" means the date set out in paragraph 19 of Annex 8;

"Conduits" means pipes, sewers, drains, ducts, conduits, downpipes, gutters, wires, cables, channels, watercourses, flues, interceptors, high pressure air systems, trunking and other conducting media and ancillary apparatus and includes any part of them;

"Consultation Period" means a period of 25 Business Days commencing on the date of submission of the Material Change Proposal or such longer period as the Proposer of the Material Change Proposal may specify in it;

"Consultees" means the Notifiable Change Consultees or the Material Change Consultees as the context may require;

“Co-operation Agreement” means an agreement relating to compensation arrangements in the form of the relevant template Co-operation Agreement being:

- (a) where the Proposer and the Material Change Consultee are railway industry parties, the template Co-operation Agreement contained in Annex [13]; and
- (b) where the Proposer is a Station Investor and the Material Change Consultee is a railway industry party the template Co-operation Agreement contained in Annex [14],

in each case customisation for the specific Proposal, to be limited to the insertion of information in areas marked by square brackets or in areas left blank for the purpose of completion; or the selection of one of various alternative words or phrases;

"Core Facilities" means the amenities which are specified in paragraph 8 of Annex 1;

"Daily Charge" means any of the User's Daily General Charge and, in respect of Passenger Operators, the Daily Long Term Charge, as the context requires;

"Daily Long Term Charge" means for the day in respect of which the calculation falls to be made, an amount calculated in accordance with the following formula:

$$\text{POP} \times \frac{\text{LTC}}{\text{D}}$$

where:

- POP = the Passenger Operator's Proportion in relation to the Passenger Operator in question;
- LTC = the Long Term Charge; and
- D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the Passenger Operator in question are due to depart from the Station as determined in accordance with Condition 41

Provided that in respect of any day on which the Passenger Operator in question has no Vehicle departures the amount shall be nil;

"Default Interest Rate" means the interest rate set out in paragraph 7 of Annex 1;

"Default Responsibility" means the causation of any default as determined in accordance with Condition 72;

"Direction" means, in respect of a Station Access Agreement, any direction, requirement, instruction or rule binding on either or both of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;

"Discretionary Third Party Works" means any work, activity or the exercise of any right of any nature which a third party may carry out or exercise (as the case may be) pursuant to any Existing Agreement, having first obtained the consent of the Station Facility Owner pursuant to its provisions;

"Dispute Resolution Procedure" means the procedure set out in Condition 53;

"Elements Inventory" means the inventory contained in Appendix 5 to Annex 1;

"Elements of the Station" means those constituent parts of the Station listed in the Elements Inventory or which form part of the Station from time to time;

"Emergency" means:

- (a) in relation to the Station, any situation or circumstance which the Station Facility Owner reasonably considers constitutes an emergency affecting the Station or railway passenger services or services for the carriage of goods by railway operating to or from the Station; and
- (b) in relation to the operation of the railway passenger services or services for the carriage of goods by railway any situation or circumstance which the User reasonably considers constitutes an emergency affecting such services,

provided that in the event of a dispute between the Station Facility Owner and any User as to what constitutes an emergency in relation to either or both the Station and the operation of such services the Station Facility Owner's determination made in good faith shall be final;

"Environmental Condition" means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage,

which (in either case) in the Station Facility Owner's reasonable opinion could result in the Station Facility Owner incurring any material liability or being subject to the Direction of any Competent Authority or could otherwise materially affect the Station Facility Owner's interest in the Station as an actual or potential railway asset for railway related uses which shall include (but not be limited to) any uses of the Station which are or may be permitted by Condition 88;

"Environmental Damage" means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

"Environmental Law" means any applicable legislation, treaty, act, regulation or common law relating to pollution or impairment of the environment or protection of the health of humans, animals or plants, but excluding, for the avoidance of doubt, those laws relating specifically to the health and safety of workers in the work place which do not relate to exposure to dangerous or hazardous substances;

"Environmental Liability" means any costs incurred in complying with any claim, judgment, order, notice, direction or injunction of any court or Competent Authority under Environmental Law in relation to Environmental Damage and includes those costs reasonably incurred in taking any action or carrying out any works to prevent, mitigate or remedy Environmental Damage where it is foreseeable that it is likely to result in the Station Facility Owner being subject to a successful claim, judgment, order, notice, direction or injunction of any court or Competent Authority under Environmental Law;

"Environmental Liability Commencement Date" means the earliest of:

- (a) the date on which the railway services provided by any User became subject to a franchise agreement; or
- (b) 3 October 2002;

"Equipment" means the items of equipment, plant, machinery and apparatus at the Station owned by the Station Facility Owner (whether or not listed in the Equipment Inventory) from time to time;

"Equipment Inventory" means the inventory contained in Appendix 4 to Annex 1;

"Excepted Equipment" means any electronic communications apparatus within the extended definition of section 151 of the Telecommunications Act 2003, owned by BR Telecommunications Limited or any other telecommunications operator licensed under that Act;

"Excluded Equipment" means:

- (a) the items of Equipment (if any) referred to in Appendix 6 to Annex 1;
- (b) electronic communications apparatus within the extended definition in section 151 of the Telecommunications Act 2003 other than Excepted Equipment and Retail Telecom Systems as defined in Equipment Inventory paragraph (10); and
- (c) any item of equipment not included in paragraphs (a) or (b) of this definition or otherwise specified in the Equipment Inventory;

- (i) which is (from time to time) used exclusively (whether by the Station Facility Owner or at its direction) for the purposes of the Station Facility Owner's railway undertaking or function; and/or
- (ii) which from time to time forms part of the infrastructure (as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I.No. 599 2006)) for which the Station Facility Owner is responsible as part of the infrastructure safety case as referred to in the above regulations;

"Exclusive Period" means in relation to any of the Exclusive Station Services, the period during which the service in question is so provided;

"Exclusive Station Services" has the meaning attributed to it in the Station Access Agreement;

"Exempt Activity" means any work or activity at the Station (or series of works or activities relating to the same project taken as a whole) which:

- (a) is not a Change including but not limited to:
 - (i) replacement in modern equivalent form of any existing Element or Equipment at the Station by the party responsible for Repair of such Element or Equipment under these Station Access Conditions; or
 - (ii) the performance of any obligation under these Station Access Conditions (including without limitation under Parts 4 and 13) which is not expressed in these Station Access Conditions to require compliance with Part 3; or
- (b) a party is obliged or entitled to carry out under a Relevant Agreement, the carrying out of which could not be expected (at the time when it is proposed to begin carrying it out) to:
 - (i) last for more than 28 consecutive days; or
 - (ii) materially diminish the number of passengers or trains that are able to use the Station on any day during the implementation period; or
- (c) any person is obliged or entitled to carry out (whether under a Relevant Agreement or otherwise) in order to prevent, remedy, mitigate the effects of:
 - (i) an Emergency or a Network Emergency; or
 - (ii) an Environmental Condition (if, and to the extent that, failure to carry out such work would have a material adverse effect on any person's business or its performance of any functions which it has in relation to railway services);

whether or not the Financial Impact Test is satisfied;

"Existing Agreements" means:

- (a) those agreements and instruments listed or described in Annex 5;
- (b) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits affecting the Station (whether or not so listed

in Annex 5) entered into or granted by the Station Facility Owner or its predecessors in title at any time before the Conditions Efficacy Date to:

- (i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and
- (ii) any other person;
- (c) agreements or instruments relating to land now owned by third parties, provided that the rights and liabilities arising under such agreements or instruments were transferred to the Station Facility Owner under the Railtrack Transfer Scheme;
- (d) all agreements and instruments completed or to be completed pursuant to any agreement referred to in paragraph 1 of Annex 8;
- (e) all rights of third parties arising, acquired or granted at any time before the Conditions Efficacy Date over or in respect of the occupation of (or the entitlement to occupy) any part of the Station;
- (f) all rights of third parties arising under Statute or by operation of law;
- (g) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;
- (h) any Superior Estate Grant; and
- (i) all other agreements entered into after the Conditions Efficacy Date the entering into of which is approved in accordance with Part 3;

"Existing Works" means the works listed in paragraph 1 of Annex 4 and insofar as such works shall have been approved from time to time in accordance with Part 3, any other works;

"Expiry Date" has the meaning attributed to it in the Station Access Agreement;

"Financial Impact Test" means a test of whether the Consultee's costs in relation to any work or activity or series of works or activities relating to the same project taken as a whole either:

- (a) at the Station; or
- (b) where similar works or activities are carried out at more than one station including the Station, at all of the stations

exceed or are likely to exceed the sum of £5,000, whether during the implementation of the relevant works or activities, or in any one of the first five years following the relevant works or activities, or both, such sum to be indexed annually in line with movements in the RPI;

"Financial Year" means each period of 12 months ending on 31 March;

"First Year" means the period beginning on the Commencement Date and ending on the last day of the Financial Year in which the Commencement Date falls;

"Fixed Charge Amenity or Service" means a Common Station Amenity or Common Station Service in respect of which in any relevant Accounting Year a Fixed Charge (other

than one determined pursuant to Condition 33.3(C)) was paid by the relevant Passenger Operator;

"Fixed Charges" means the fixed charges, if any, provided for in respect of the relevant Accounting Year in

- (i) Condition 32.5(B)(1);
- (ii) Condition 33.2(A)(1);
- (iii) Condition 33.3(B);
- (iv) Condition 33.3(C); and
- (v) Part 6B;

"Fixed Costs" means all costs, expenses and liabilities payable or incurred by the Station Facility Owner in providing or procuring the provision of the relevant amenity or service for the Accounting Year in question;

"Forum" has the meaning given to it in the Access Dispute Resolution Rules;

"Full Replacement Cost" means the cost of replacing the Station to the standard set out in Condition 26.2(B) and shall include any Value Added Tax and other taxes payable, reasonable provision for costs escalation between the commencement or renewal date of insurance cover and the date of replacement, professional and statutory fees, demolition, site clearance and shoring up;

"Implementation Notice" means a notice served by the Proposer following Registration notifying the relevant Consultees of the Proposer's intention to implement the relevant Proposal in accordance with Condition C10;

"Insured Risks" means:

- (a) (to the extent that these are normally insurable in respect of the Station on normal commercial terms with a member of the Association of British Insurers) fire, lightning, explosion, aircraft but not hostile aircraft, subterranean fire, earthquake, riot and civil commotion, malicious damage, impact (including impact by rolling stock of any type), flood, storm, tempest, subsidence and terrorism; and
- (b) such other insurable risks as the Station Facility Owner and the Users may agree in accordance with the terms of these Station Access Conditions;

"Last Year" means the period beginning on the day immediately following the last day of the last complete Financial Year prior to the Expiry Date, and ending on the earlier of the Expiry Date or the date of termination of the Station Access Agreement;

"Legal Requirement" means, in relation to any person, any of the following:

- (a) any enactment to the extent that it applies to that person;
- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding;
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

"Light Maintenance Services" means any maintenance services for trains specified in Annex 1;

"Long Term Charge" means the amount specified in paragraph 2 of Annex 8 subject to variation in accordance with Condition 42.2;

"Long Term Charge Commencement Date" means the date set out in paragraph 20 of Annex 8;

"Maintenance" means the carrying out of the following in each case in accordance with the specifications (if any) set out in Annex 11 or determined pursuant to Annex 10:

- (a) in relation to every part of the Station:
 - (i) any treatment, operation or work of a routine and foreseeable nature whether necessary at regular or irregular intervals which is required (whether by any current statutory or other code of practice or otherwise) from time to time to facilitate the efficient and safe operation and/or use in compliance with the requirements of any Statute of the relevant part for any purpose permitted by the Station Access Agreement;
 - (ii) the replacement of such parts of the Station as require, or are designed for, regular replacement; and
 - (iii) any inspection or certification required by a Statute or for the purpose of any treatment, operation or works described in this paragraph (a); and
- (b) in relation to the Equipment, all treatment, operations and works which are recommended in a current manufacturer's operating or maintenance manual (as updated from time to time) at the intervals and in the manner so recommended;

"Material Change" means a Change which is or would be the subject of a Material Change Proposal;

"Material Change Consultees" means:

- (a) in respect of a Material Change Proposal made by the Station Facility Owner or a User,
 - (i) each of the Station Facility Owner and/or any User, who is not the Material Change Proposer, and who satisfies the Financial Impact Test;
 - (ii) the Secretary of State and Scottish Ministers if they may be affected by the implementation of the Material Change Proposal;
 - (iii) the ORR;
 - (iv) the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by the implementation of the Material Change Proposal; and
 - (v) any Station Investor who
 - (1) has issued its own Material Change Proposal in relation to the Station before the Proposer makes the Material Change Proposal; or

- (2) is within the five-year period from when the Station asset(s) identified in its Material Change Proposal became operational

and who satisfies the Financial Impact Test; or

- (b) in respect of a Material Change Proposal made by a Station Investor, all of the parties in paragraphs (a)(i) to (a)(v) above regardless of whether they satisfy the Financial Impact Test,

but a Station Investor shall cease to be a Material Change Consultee:

- (i) upon notifying the Station Facility Owner that it no longer wishes to be a Material Change Consultee in relation to the Station;
- (ii) after its own intended Material Change Proposal in relation to the Station has been abandoned or lapsed; or
- (iii) five years after the Station asset(s) identified in its own Material Change Proposal became operational;

"Material Change Consultee's Costs" means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the Material Change Consultee in evaluating and responding to the Material Change Proposal (whether or not the Material Change Proposal is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue), and any net increase in Qualifying Expenditure incurred by the Material Change Consultee to the extent that the same are directly attributable to the implementation of the Material Change Proposal but taking into account and netting off against such costs, losses and expenses:

- (a) the benefit (if any) to be obtained or likely to be obtained by the Material Change Consultee as a consequence of the implementation of the Material Change Proposal; and
- (b) the ability or likely future ability of the Material Change Consultee to recoup any costs, losses and expenses from third parties including passengers and customers.

"Material Change Proposal" means either:

- (a) a Change which if implemented would satisfy the Financial Impact Test in respect of one or more Material Change Consultee(s) but excluding:
 - (i) any change to Excluded Equipment by the Station Facility Owner, and
 - (ii) the grant by the Station Facility Owner of a wayleave, dedication or easement affecting the Station

regardless of whether the Financial Impact Test is satisfied; or

- (b) a Change proposed by a Station Investor;

"Materiality Notice" means a notice served under Condition 9.2 or 9.3, or under Condition 10.2 or 10.3;

"Minimum Sum" means the sum specified in paragraph 3 of Annex 8;

"Net Fixed Charge" means in respect of any particular Fixed Charge the balance after deducting the Risk Premium from it;

"Network" means the network of which the Station Facility Owner is the facility owner and which is situated in England, Wales and Scotland;

"Network Code" means The Network Code as modified from time to time;

"Network Rail" means Network Rail Infrastructure Limited, incorporated in England and Wales under registered number 2904587;

"Network Emergency" means any situation or circumstance which the Station Facility Owner reasonably considers requires immediate or urgent action in order:

- (a) to safeguard the safety or security of persons or property on or adjacent to the Network or any part of it; or
- (b) where such situation or circumstance was unforeseen and could not reasonably have been foreseen, to maintain or restore the effective operation of the Network or any part of it;

"Non-Discretionary Change" means a Change required as a result of any Change of Law, Direction of a Competent Authority, or to comply with any Safety Obligation regardless of whether the Financial Impact Test is satisfied;

"Non-Discretionary Change Proposal" means a proposal made in accordance with Condition 13;

"Non-Discretionary Third Party Works" means any work, activity or the exercise of any right of any nature which a third party may carry out or exercise (as the case may be) pursuant to any Existing Agreement without the Station Facility Owner giving or exercising any consent, approval, waiver or discretion;

"Non-Qualifying Material Change Consultee" means each of the Station Facility Owner, any User and/or any Station Investor who is the subject of a Material Change Proposal made by the Station Facility Owner or a User, but who does not satisfy the Financial Impact Test. Such Consultee is entitled to make representations in respect of the Material Change Proposal and object to the Material Change Proposal solely on the ground set out in Condition 11.5(B), but shall not be entitled to recover any Material Change Consultee Costs incurred by that Consultee in relation to such Material Change Proposal. Such Consultee shall not have any other rights granted to a Material Change Consultee under Part 3, unless expressly stated;

"Non-Materiality Notice" means a notice served under Condition 9.2 outlining the proposed work or activity and the reason why the responsible party considers it to be an Exempt Activity;

"Notice of Dispute" has the meaning given to it in the Access Dispute Resolution Rules (ADRR);

"Notifiable Change" means any Change which is or would be the subject of a Notifiable Change Proposal;

“Notifiable Change Consultees” means any of the following parties (who is not the Proposer of the Notifiable Change Proposal):

- (a) the Station Facility Owner and/or any User; and/or
- (b) any Station Investor who has issued its Proposal in relation to the Station before the Proposer makes the Notifiable Change Proposal, or who is within the five-year period from when the Station asset(s) identified in the Station Investor’s Material Change Proposal become operational;

“Notifiable Change Notice” means a notice served under Condition 10.2 outlining the proposed Change and the reason why the Proposer considers it to be a Notifiable Change;

“Notifiable Change Proposal” means a Change which if implemented

- (a) by any Proposer would not satisfy the Financial Impact Test; or
- (b) by the Station Facility Owner would result in any change to Excluded Equipment regardless of whether the Financial Impact Test is satisfied;

“Online Application Process” means the process to be administered via an industry shared web application (if available) using standard formats to which all Notifiable Change Consultees, Material Change Consultees and Station Investors will have access;

“ORR Asset Protection Policies and Guidelines” means the policies and guidelines issued by the ORR in relation to the development of template forms of Asset Protection Agreement within the rail industry (and approved by the ORR as noted in the Investment Framework Consolidated Policy and Guidelines published by the ORR in October 2010 as amended from time to time) but in relation to asset protection requirements where the proposal relates to the commercial exploitation of land on or adjacent to the Network and/or the Station as opposed to primarily passenger enhancements to the Station, then such policies or guidelines are deemed to be amended so that the Station Facility Owner is fully indemnified or otherwise held harmless (at the option of the Station Facility Owner) by the Proposer in respect of those risks, costs and liabilities that would otherwise be subject to the Industry Rail Fund or the Network Rail Fee Fund (as those expressions are defined in the template forms of Asset Protection Agreement referred to in this definition);

"Passenger Information Systems" means any equipment, notice-boards, visual display units or other media used at the Station to communicate train service information or customer service information to persons at the Station;

"Passenger Operator" means a passenger service operator with permission to use the Station pursuant to a Station Access Agreement;

"Passenger Operator's Departures" means, as at any particular time by reference to which the Passenger Operator's Proportion may be calculated, the number of Vehicles operated by or on behalf of the Passenger Operator which have departed from the Station during a period of the same duration and comprising the same days of the week (including public holidays, if applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 41;

"Passenger Operator's Proportion" means, save as provided in Condition 41.5, as at any time, the proportion which the number of Passenger Operator's Departures bears to the

number of Total Departures, as calculated pursuant to Condition 41 for the purposes of the Station Access Agreement;

"Performance Bonus" has the meaning attributed to it in Condition 67;

"Performance Rebate" has the meaning attributed to it in Condition 67;

"Plan" means the plan in Appendix 2 to Annex 1;

"Planning Acts" means the "Planning Acts" as defined in section 336 Town and Country Planning Act 1990 and the Planning and Compensation Act 1991 and any other Statute of a similar nature;

"Property Agreement" means an agreement between the Station Investor and the Station Facility Owner for the creation or transfer of an estate or interest in land or for the grant or reservation of an easement, right or privilege in or over land which is required by the Proposer in connection with a Material Change Proposal (such agreement to include, where appropriate, provision for a value payment to be made where any increase or potential increase in the market value of the land of the Proposer or any other financial benefit accruing to the Proposer is attributable wholly or in part to the grant or transfer of such estate or interest, or the grant of easement, right or privilege, over or in respect of the Station);

"Proposal" means a Notifiable Change Proposal, a Material Change Proposal or a Non-Discretionary Change Proposal as the case may be;

"Proposer" means a proposer of either a Notifiable Change Proposal, a Material Change Proposal or a Non-Discretionary Change Proposal as the context may require;

"Qualifying Expenditure" means, in respect of any Accounting Year or Accounting Half-Year, the aggregate of the costs, expenses and fees described in paragraph 1 of Annex 2 which are incurred during that Accounting Year or Accounting Half-Year, calculated in accordance with paragraphs 2 and 3 of Annex 2;

"Quoted Fixed Charges" means the fixed charges, if any, proposed to a Passenger Operator by the Station Facility Owner in respect of the relevant Accounting Year pursuant to Condition 32.2(B) or Condition 32.4(A);

"Railtrack" means Railtrack PLC, a public limited company incorporated in England and Wales under registered number 2904587, and now known as Network Rail as defined in these Station Access Conditions;

"Railtrack Transfer Scheme" means the transfer scheme made under section 85 of the Act by the Board in favour of Railtrack PLC with an effective date of 1st April 1994 and references to that scheme (where the context requires) include any transfer scheme which affects or is made in addition to that scheme made from time to time under Section 85 of the Act by the Board with an effective date after 01 April 1994;

"Railway Group Standards" means the national technical rules and national safety rules applicable to the mainline railway system which are produced under the procedures set out in the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of that Code) that defines mandatory requirements in respect of the mainline railway system;

"Railway Substructure" means any bridge, viaduct, railway arch, raft, tunnel, passageway or substructure which is either shown unhatched on the Plan or identified pursuant to Appendix 7 of Annex 1;

"Railway Superstructure" means such part of any bridge which belongs to the Station Facility Owner, viaduct, railway arch, raft or overlying structure which is either shown unhatched on the Plan or identified pursuant to Appendix 7 of Annex 1;

"Registration" means Registration of a Notifiable Change Proposal, a Material Change Proposal or a Non-Discretionary Change Proposal as the case may be or any consequential amendment to these Station Access Conditions on the ORR's official register;

"Relevant Agreement" means any agreement or other instrument incorporating these Station Access Conditions;

"Relevant Date" means the date upon which the first Station Access Agreement in respect of the Station is or was entered into;

"Relevant Restriction" means any material restriction, limitation or other impairment of the User's permission to use the Station;

"Relevant Undertaking" means:

- (a) the offer of an indemnity; or
- (b) an undertaking to procure and provide evidence of insurance,

by the Proposer in favour of each Material Change Consultee who may be affected by the implementation of the Material Change Proposal (up to such maximum total amount in respect of all such Material Change Consultees as is specified in the Proposal), to compensate that Material Change Consultee for

- (i) any damages, losses, liabilities, costs and expenses incurred or suffered by it as a result of the Material Change Proposal not being implemented in accordance with its terms; and
- (ii) any other material adverse effect which the failure to implement the Material Change Proposal in accordance with its terms has on its existing and future business;

"Repair" means in relation to every part of the Station the carrying out, in accordance with the specifications (if any) set out in Annex 11 or determined pursuant to Annex 10, of:

- (a) any work required to keep the Station in no worse a state than evidenced by the Statement of Condition; and
- (b) any work required so that the Station is safe for operation and/or use in compliance with the requirements of any Statute for any purpose permitted by the Station Access Agreement;

but does not include the carrying out of:

- (c) any Maintenance;

- (d) any work to the Station which is the responsibility of any third party now or in the future entitled to occupy any part of the Station under any of the Existing Agreements; or
- (e) renewal of any item for so long as repair may still reasonably be undertaken and the costs of Maintenance are not in consequence increased above a reasonable level;

“Representation Period” means a period of 25 Business Days commencing on the date of submission of the Notifiable Change Proposal, or such longer period as the Proposer of the Notifiable Change Proposal may specify in it;

“Requisite Consents” means all approvals, permissions and consents (whether statutory or otherwise) required from time to time from parties other than the Consultees in respect of the works or activities covered by a Proposal;

"Requisite Majority" means, as at any particular time, Passenger Operators whose Vehicle departures from the Station, expressed as a percentage of Total Departures, as at the relevant date, together are at least equal to the percentage specified in paragraph 4 of Annex 8 (or such other percentage as the ORR may specify by notice to the Station Facility Owner and to each Passenger Operator as the new percentage which is to apply for these purposes following the entry into, variation, amendment or termination of an access contract permitting a passenger service operator to use the Station, a Change in Control of any Passenger Operator or any event which results in a material change to the proportion of the Total Departures made by trains operated by or on behalf of any Passenger Operator);

"Residual Variable Charge" means such part or whole of the Total Variable Charge in respect of which a Passenger Operator shall have elected or be deemed to have elected to pay pursuant to Condition 33.1;

“Response Period” means a period of 20 Business Days following the end of the Consultation Period;

"Risk Premium" means in respect of any particular Fixed Charge (other than one determined pursuant to Condition 33.3(C)), the amount referred to in (as the case may be)

- (i) Condition 32.5(B)(2), where that Fixed Charge is provided for pursuant to Condition 32.5(B)(1);
- (ii) Condition 33.2(A)(2) where that Fixed Charge is provided for pursuant to Condition 33.2(A)(1); or
- (iii) Condition 33.3(B) where that Fixed Charge is provided for pursuant to that Condition,

which is part of the Fixed Charge and reflects the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges (and references to Risk Premium in respect of any Quoted Fixed Charges shall be construed accordingly);

“RPI” means the Retail Prices Index as defined in Condition 42 of these Station Access Conditions;

"Safety Obligations" means all applicable obligations and laws concerning health and safety (including any duty of care arising at common law, arising under Statute, statutory instrument, and codes of practice compliance with the provisions of which is mandatory) in Great Britain;

"Sample Period" means, in respect of any Accounting Year, the period specified in paragraph 4 of Annex 2, or such other period as may be agreed between the Station Facility Owner and all Passenger Operators;

"Scottish Ministers" has the meaning given in section 44 of the Scotland Act 1998;

"Secretary of State" means the Secretary of State referred to in section 4 of the Act;

"Services" means the supply and, as necessary, disposal of water, surface water, sewage, drainage, soil, gas, electricity, telecommunications and other services or supplies;

"SFO Environmental Indemnity" means the indemnity given by the Station Facility Owner pursuant to Condition 78.2;

"SFO's Surveyor" means the person from time to time appointed by the Station Facility Owner in respect of the Station which person shall be a member of the Royal Institution of Chartered Surveyors of England and Wales and may be a person employed by or otherwise connected with the Station Facility Owner or any Affiliate of the Station Facility Owner;

"Statement of Condition" means the report of the condition of the Station structure and parts of it contained in Appendix 3 to Annex 1;

"Station" means the Station described in paragraph 6 of Annex 1 and includes:

- (a) the buildings, structures, fixtures, fittings, the Station Facility Owner's Conduits, and other works for the time being at the Station, any alteration or additions to the Station and anything which is part of the Station pursuant to paragraphs 1 and 2 of Appendix 7 to Annex 1;
- (b) any canopies of the Station which project beyond the black edging on the Plan 2; and
- (c) the Equipment;

but excluding:

- (d) the Excluded Equipment; and
- (e) the Excepted Equipment;

"Station Access Agreement" means any particular access contract, whether or not entered into pursuant to the directions of the ORR under the Act incorporating these Station Access Conditions;

"Station Facilities" means the amenities which are specified in paragraph 10 of Annex 1;

"Station Investor" means any person, other than the User or the Station Facility Owner, who makes a Proposal, a grant, loan or other payment for the enhancement or alteration of the Station in connection with related schemes of development, regeneration or corporate adoption which would involve a capital expenditure which is at least the equivalent to the Station Investor's Qualification;

"Station Investor's Qualification" means the sum of £50,000 (exclusive of Value Added Tax) such sum to be indexed annually in line with movements in the RPI;

"Station Register" means a register maintained in accordance with Part 9;

"Station Services" means the Common Station Services or Exclusive Station Services;

"Statute" includes (with the exception of the Act) every existing or future Act of Parliament or regulation made by the Council or the Commission of the European Union, or a binding decision of the Commission of the European Union and every existing or future instrument, scheme, rule, regulation, bye-law, order, notice, direction, licence, consent or permission made or given under any of them and reference to a Statute includes any amendment, extension or re-enactment of it for the time being in force;

"Substantial Damage" means damage or destruction of a building on or at the Station or of any of the Equipment which is so extensive that repair or reinstatement of that building or that Equipment to its original form would not be economically viable;

"Superior Estate Grant" means the agreement or instrument granting any estate right or interest of any nature:

- (a) under which the Station Facility Owner for the time being holds the Station; or
- (b) for the time being expectant (whether or not immediately) on the expiry or sooner determination of an estate right or interest referred to in paragraph (a); or
- (c) out of which (whether or not immediately) an estate right or interest referred to in paragraph (a) was derived;

"Superior Estate Owner" means any person for the time being entitled to an estate right or interest referred to in paragraph (b) or paragraph (c) in the definition of Superior Estate Grant;

"Template Change" means any change to the template generic form of the Independent Station Access Conditions 2013 or the template generic form of the Annexes to the Independent Station Access Conditions 2013 (but not a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations);

"Third Party Works" means Discretionary Third Party Works and Non-Discretionary Third Party Works;

"Total Departures" means, as at any particular time by reference to which the Passenger Operator's Proportion may be calculated, the number of Vehicles operated by or on behalf of all Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 41 and a reference to a person "representing" Total Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

"Total Variable Charge" means, in respect of each Passenger Operator, the Passenger Operator's Proportion of the Qualifying Expenditure, provided that if the Passenger Operator's Proportion changes during an Accounting Year, an amount equal to the aggregate of the Passenger Operator's Proportion of the Qualifying Expenditure for each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC_n = A/365 \times POP_n \times QE_n$$

where:

- VC_n is the Total Variable Charge for the relevant period in question
- A is the number of days in the relevant period in question
- POP_n is the Passenger Operator's Proportion during the relevant period in question
- QE_n is the Qualifying Expenditure for the Accounting Year in question

"relevant periods" means:

- (a) the period beginning on the first day of the Accounting Year to the first change date;
- (b) each period from each change date in the Accounting Year to the next following change date in the Accounting Year; and
- (c) the period between the last change date in the Accounting Year and the last day of the Accounting Year; and

"change date" means the date upon which the Passenger Operator's Proportion changes in the Accounting Year pursuant to Part 6;

"Track Litter" means matter of whatever nature on:

- (a) track of which the Station Facility Owner is the facility owner and which is within one hundred metres of the Station;
- (b) land adjoining such track (other than the Station and any land not comprising the permanent way of the railway) of which the Station Facility Owner is the facility owner; or
- (c) land under platforms at the Station adjoining such track,

where the presence of that matter is contrary to the provisions of the Environment Protection Act 1990 (or would be so contrary if such track or land were relevant land of a principal litter authority as defined by the said Act);

"User" means a person (whether or not an operator of trains) who is a beneficiary in respect of a Station Access Agreement;

"User's Daily General Charge" means, for the day in respect of which the calculation falls to be made, an amount calculated in accordance with the following formula:

$$\frac{AC(1-A)}{D}$$

where:

AC = the Access Charge for the Accounting Year in question;

A = (in the case of a User which is Passenger Operator) the Passenger Operators' Proportion of the Long Term Charge for the User in question or (in the case of any other User) nil; and

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the User in question are due to depart from the Station as

determined in accordance with Condition 41 in the case of a Passenger Operator or, in any other case, in accordance with the Station Access Agreement

Provided that in respect of any day on which the User has no Vehicle departures the amount shall be nil;

"Value Added Tax" means value added tax within the meaning of the Value Added Tax Act 1994, and "VAT" shall be construed accordingly;

"Vehicles" means railway vehicles (including non-passenger carrying vehicles) comprised in trains used for the purpose of providing services for the carriage of passengers by railway, excluding locomotives which are not capable of the carriage of passengers; and

"Welsh Government" means the Welsh Government referred to in section 45 of the Government of Wales Act 2006.

- 1.3 **Severall Liability:** Each User and the Station Facility Owner shall be severally responsible for its own acts, omissions, costs and liabilities and for the acts, omissions, costs and liabilities of its employees, agents and subcontractors and shall not be responsible for the acts, omissions, costs and liabilities of any other person.
- 1.4 **Relevant Special Conditions:** These Station Access Conditions incorporate the provisions (if any) set out in paragraph 18 of Annex 8.

PART 2: MODIFICATIONS TO THE INDEPENDENT STATION ACCESS CONDITIONS

2. Notification of a Conditions Change Proposal

- 2.1. Any User of any station in England and Wales or the Station Facility Owner shall be entitled to make a Conditions Change Proposal. The Conditions Change Proposer shall submit any such proposal to each of the Conditions Change Consultees, the Station Facility Owner (unless made by the Station Facility Owner) and the Secretary of State (and the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by such proposal) and shall:
- (A) be in writing;
 - (B) contain reasonable particulars of the change proposed;
 - (C) contain the proposed text of those Conditions affected by the change if the change were approved pursuant to this Part 2;
 - (D) be supported by an explanation in reasonable detail of the purpose of the proposed change; and
 - (E) specify the date on which the Conditions Change Consultation Period ends.
- 2.2. The Conditions Change Consultees and the Secretary of State may make representations on the Conditions Change Proposal to the Conditions Change Proposer during the Conditions Change Consultation Period.
- 2.3. The Conditions Change Proposer shall, within 5 Business Days following the end of the Conditions Change Consultation Period, notify the Conditions Change Consultees and the Secretary of State of the date on which the Conditions Change Decision Period ends and at the same time supply to each of them:
- (A) copies of all representations received pursuant to Condition 2.2; and
 - (B) if the Conditions Change Proposer consents, any modification to that proposal,
- provided that no such documents shall be supplied, if the Conditions Change Proposer materially modifies it.
- 2.4. If at any time a Conditions Change Proposal is materially modified, the Conditions Change Proposer shall treat the modified proposal as a new Conditions Change Proposal.
- 2.5. The Conditions Change Proposer shall promptly comply with all reasonable written requests for reasonable further clarification of the proposal.

3. Approval or rejection of a Conditions Change Proposal

- 3.1. Without prejudice to Condition 7, a Conditions Change Proposal shall have been approved only if:
- (A) in the case of such a proposal which relates to a Template Change, at the end of the Conditions Change Decision Period not less than 80% of all Users of every managed station in England and Wales shall have consented in writing to the Conditions Change Proposal; or

- (B) in the case of such a proposal which relates to a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations, the Requisite Majority shall have consented in writing to the Conditions Change Proposal (provided that the failure of a User to provide a written response shall be deemed to be a consent to that proposal);

And in each case

- (C) where the implementation of the Conditions Change Proposal is likely to have a material and adverse effect on the Station Facility Owner's interest in relation to the Network or any Station or Stations, the Station Facility Owner shall not have notified the Conditions Change Proposer of its objection to that proposal within the Conditions Change Decision Period.

3.2. The Conditions Change Proposer shall, as soon as reasonably practicable following a reasonable request by any User, the Station Facility Owner or the Secretary of State (or the appropriate PTE, Transport for London or Welsh Government as the case may be) to carry out further consultation in respect of any Conditions Change Proposal, carry out further reasonable consultation.

4. **The ORR's Approval or Rejection of a Conditions Change Proposal**

4.1 **Decision to Approve:**

- (A) The Conditions Change Proposer shall, as soon as reasonably practicable following the approval of a Conditions Change Proposal, submit the proposal to the ORR, together with a written memorandum:

- (1) explaining the reasons for the proposed change;
- (2) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition 2.2 which shall have been neither accepted nor withdrawn); and
- (3) stating the reasons for any objections to the proposed change by any User or the Station Facility Owner.

- (B) The Users and the Station Facility Owner shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Conditions Change Proposal by the ORR.

- (C) No Conditions Change Proposal shall have effect unless the ORR gives notice to the Conditions Change Proposer in writing that it approves the proposal pursuant to section 22 of the Act.

- (D) If the ORR gives its approval of the Conditions Change Proposal, the Conditions Change Proposer shall notify all Conditions Change Consultees within the period of 14 days following receipt by the Conditions Change Proposer of the ORR's notice of approval.

4.2 **Decision to Reject:** The Conditions Change Proposer shall, following the rejection of a Conditions Change Proposal by the ORR, notify all other Users and the Station Facility Owner of that decision within 14 days of the decision.

5. **Notification of a Conditions Change Proposal**

- 5.1. The Conditions Change Proposer shall notify any change made in accordance with this Part 2 other than Condition 7 to all Users and the Station Facility Owner as well as to the ORR and the Secretary of State. Save as otherwise provided in Condition 7, the change in question shall have effect on the expiry of 21 days from the date of that notification.
- 5.2. The Conditions Change Proposer shall, following approval of a Conditions Change Proposal by the ORR and in any event prior to that Conditions Change Proposal having effect, supply to all Users, the Station Facility Owner, the ORR and the Secretary of State a revised version of these Station Access Conditions incorporating the change.
6. **Appeal procedure**
- 6.1. If the Station Facility Owner shall have exercised its veto, any User shall be entitled to give a notice of appeal against it.
- 6.2. A notice of appeal shall:
- (A) be given to the ORR, the Station Facility Owner, the Conditions Change Proposer and each User not later than 35 days after the exercise of the Station Facility Owner veto;
 - (B) contain the reasons why the User in question considers that the Station Facility Owner veto should not have effect; and
 - (C) request the ORR to determine the matter.
- 6.3. No notice of appeal may be given unless:
- (A) the User shall be satisfied that the Station Facility Owner is entitled to exercise the Station Facility Owner veto; or
 - (B) the entitlement of the Station Facility Owner to exercise its veto shall have been established pursuant to the Access Dispute Resolution Rules,
- and evidence satisfactory to the ORR shall have been provided to it to that effect.
- 6.4. Without prejudice to Condition 6.5, the Station Facility Owner and the Users shall use their respective reasonable endeavours to procure that the ORR is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.
- 6.5. In relation to any such appeal, the ORR shall, in determining it, have the power:
- (A) to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
 - (B) to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;
 - (C) to determine whether the Station Facility Owner veto shall have effect; and
 - (D) to make such orders as it shall think fit in relation to the proportions of the costs of the appeal which shall be borne by any of the parties.
- 6.6. Where any party shall have given a notice of appeal, the ORR shall:

- (A) be entitled to decline to determine the appeal if, having consulted the parties concerned, it shall determine that the appeal should not proceed, including on the grounds that:
 - (1) the matter in question is not of sufficient importance to the industry;
 - (2) the reference to it is frivolous or vexatious; or
 - (3) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
 - (B) not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the appeal.
- 6.7 The determination of the ORR shall be final and binding on the Station Facility Owner, the Conditions Change Proposer and every User.
- 6.8. In this Condition 6:
- "the exercise of the Station Facility Owner veto" means the reasonable giving by the Station Facility Owner of a notice of objection as provided for in Condition 3.1(C), and cognate terms and expressions shall be construed accordingly; and
- "notice of appeal" means a notice given pursuant to Condition 6.2.
- 7. Changes to the Station Access Conditions initiated by the ORR**
- 7.1 These Station Access Conditions shall have effect with the modifications (being the equivalent of either a Conditions Change or a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations) specified in any notice given by the ORR for the purposes of this Condition 7, provided that the ORR shall be satisfied as to the need for the modification as provided in Condition 7.2, the procedural requirements of Condition 7.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition 7.4.
- 7.2 A notice given by the ORR under Condition 7.1 shall have effect:
- (A) in the case of a notice given on or before the date six months after the Relevant Date, if it is satisfied on reasonable grounds that it is necessary or expedient that the modifications specified in the notice in question be made; and
 - (B) in the case of a notice given after the date six months after the Relevant Date, if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
 - (1) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
 - (2) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.
 - (C) For the purposes of Condition 7.2(B)(2):

- (1) "relevant person" means a User, the Station Facility Owner, an Access Option Holder and any other person who, in the opinion of the ORR, shall be likely to become a User; and
- (2) "Access Option Holder" means any person who has an access option in respect of the Station (as defined in section 17(6) of the Act).

7.3. The procedural requirements which shall require to have been followed for the purposes of Condition 7.1 are:

- (A) in its consideration of the matters referred to in Condition 7.2, the ORR shall have consulted all Users, the Station Facility Owner, the Secretary of State (and the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by the modification), together with any other persons whom the ORR shall consider ought properly to be consulted, in relation to the modification which it proposes to make;
- (B) in the consultations referred to in Condition 7.3(A), the ORR shall have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
- (C) the ORR shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the modification to be made;
- (D) the ORR shall have notified each person consulted pursuant to Condition 7.3(A) as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and
- (E) in effecting the notifications required by Condition 7.3(D), the ORR shall have treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to the ORR or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

7.4. A notice under Condition 7.1 shall come into effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances come into effect:

- (A) in the case of a notice given on or before the date six months after the Relevant Date:
 - (1) earlier than 30 days after the date upon which it shall have been given; or
 - (2) later than the date seven months after the Relevant Date; and
- (B) in the case of a notice given after the date six months after the Relevant Date, earlier than 180 days after the date upon which it shall have been given.

7.5. A notice under Condition 7.1 shall not have effect in relation to any proposed modification of Conditions 7.1 to 7.4 (inclusive) or this Condition 7.5.

PART 3: CHANGES TO THE STATION OR TO THE STATION ACCESS CONDITIONS

8. Change

- 8.1 No User or the Station Facility Owner shall take any action falling within the definition of Change save in accordance with this Part 3.
- 8.2 Any User or the Station Facility Owner shall be entitled to make a Proposal and any Station Investor shall be entitled to make a Material Change Proposal.
- 8.3 Any party who is a Consultee under this Part 3 shall act reasonably in its dealings with the Proposer of any Change.
- 8.4 Any party who is the Proposer of any Change under this Part 3 shall act reasonably in its dealings with all Consultees to that Change.
- 8.5 Under this Part 3, each Station Investor or named User at a Station shall have the right (whether by virtue of any enactment that is part of the applicable law of the Station Access Agreement or otherwise) to enforce directly such rights as have been granted (or expressed to be granted) to it as a third party or relevant Consultee under the Station Access Agreement.

9. Exempt Activities

- 9.1 Each of the Station Facility Owner and/or any User shall be entitled to undertake an Exempt Activity for which that party is responsible without complying with the requirements for Change in this Part 3.
- 9.2 If the responsible party is unsure of whether the relevant work or activity is an Exempt Activity it shall before undertaking such work or activity serve on each of the other Notifiable Change Consultees a Non-Materiality Notice and if any of the Notifiable Change Consultees believes the relevant work or activity is not an Exempt Activity it shall serve a Materiality Notice on the responsible party within 5 Business Days of receipt of the Non-Materiality Notice.
- 9.3 If any of the Notifiable Change Consultees believes that any work or activity undertaken without a Non-Materiality Notice having been served is not an Exempt Activity it shall serve on each of the others a Materiality Notice within 20 Business Days of the work or activity being undertaken.
- 9.4 If a Materiality Notice is served under Condition 9.2 or 9.3 the responsible party may elect either to
 - (A) treat the relevant work or activity as a Notifiable Change and proceed accordingly;
or
 - (B) treat the relevant work or activity as a Material Change and proceed accordingly;
or
 - (C) commence the Dispute Resolution Procedure.
- 9.5 If no Materiality Notice is served under Condition 9.2 or 9.3 within the relevant time limit then the relevant work or activity shall be an Exempt Activity.

10. **Notifiable Change**

- 10.1 The Proposer of a Notifiable Change Proposal shall submit that Proposal, together with any associated documentation, to each of the Notifiable Change Consultees. The Proposal must set out details of the proposed change, any proposed changes to the Station Access Conditions and Annexes and the reason why it is intended to deal with it as a Notifiable Change. The Proposal must also specify the date on which the Representation Period ends.
- 10.2 If the responsible party is unsure of whether the proposed Change is a Notifiable Change it shall before submitting the Proposal serve on each of the Notifiable Change Consultees a Notifiable Change Notice and if any of the Notifiable Change Consultees believes the proposed Change is not a Notifiable Change it shall serve a Materiality Notice on the responsible party within 5 Business Days of receipt of the Notifiable Change Notice.
- 10.3 If, when a Notifiable Change Proposal is submitted, any of the Notifiable Change Consultees believes that any work or activity to which that Proposal relates is not a Notifiable Change it shall serve on each of the others a Materiality Notice at any time within the Representation Period.
- 10.4 If a Materiality Notice is served under Condition 10.2 or 10.3 the responsible party may elect either to
- (A) treat the relevant work or activity as a Material Change and proceed accordingly;
 - or
 - (B) commence the Dispute Resolution Procedure,
- and if it fails to do either within 10 Business Days following the later of the end of the Representation Period and the further period referred to in Condition 10.8 (if any) then it shall be open to the relevant Notifiable Change Consultee to commence the Dispute Resolution Procedure.
- 10.5 If no Materiality Notice is served under Condition 10.2 or 10.3 within the relevant time limit then the relevant work or activity shall be a Notifiable Change.
- 10.6 If a Notifiable Change Proposal is made, and no Materiality Notice is served under Condition 10.3, the Notifiable Change Consultees may make representations on the Notifiable Change Proposal to the Proposer during the Representation Period.
- 10.7 The Proposer must consider any representations made and in doing so have due regard to the relevant Consultee's interests in the Station and its use and enjoyment of the Station.
- 10.8 The Proposer must advise the Notifiable Change Consultees within a further 10 Business Days following the end of the Representation Period of any revisions to the Notifiable Change Proposal as a result of any representations made and provide the Notifiable Change Consultees with written reasons for rejection where they are not incorporated into the final Notifiable Change as implemented.
- 10.9 If no representations are received during the Representation Period then the Notifiable Change Consultees are deemed to have accepted the Notifiable Change at the end of the Representation Period.

- 10.10 All the Notifiable Change Consultees may agree by notice to the Proposer at any time that the Representation Period shall be a shorter period than that specified in the Notifiable Change Proposal.
- 10.11 In accordance with the requirements set out in Conditions 15 and 17, the Proposer will forward all documentation (including any representations made during the Representation Period and the Proposer's response) to the ORR to enable Registration of the Notifiable Change and of any consequential amendment of the Station Access Conditions.
- 10.12 Registration of a Notifiable Change shall be in accordance with the requirements set out in Condition 17, but such Registration does not remove the requirement to obtain other associated approvals either under any Relevant Agreement or under any standard industry procedures such as detailed technical approvals, method statements, lease amendments, etc. which, wherever possible, should be progressed as part of the Notifiable Change consultation process.

11. **Material Change**

- 11.1 The Proposer of a Material Change Proposal shall submit that Proposal, together with any associated documentation, to each of the Material Change Consultees. The Proposal must specify the date on which the Consultation Period ends and must include (in as much detail as is available at the time of the Proposal, recognising that it will not always be possible to give more than outline or generic information at the time of the Proposal):
- (A) an explanation of why the change is being made;
 - (B) broad details of those parts of the Station which will be affected both during and after the implementation of the Proposal;
 - (C) the nature and outline specification of the proposed work including (where appropriate and where details are available):
 - (1) Alternative Station Facilities;
 - (2) Alternative Accommodation if required;
 - (3) Changes to any Common Station Amenities and Common Station Services;
and
 - (4) Estimated timetable for commencement and completion of the work;
 - (D) information on any consents needed;
 - (E) an irrevocable offer to become, where it is not already, a Resolution Service Party in accordance with Chapter J of the Access Dispute Resolution Rules;
 - (F) an irrevocable offer (conditional on the relevant Material Change Consultee having Accepted the Proposal) to enter into a Co-operation Agreement with each of the relevant Material Change Consultees in the relevant form applicable to the Proposer and to that Material Change Consultee;
 - (G) proposed changes to plans and any other proposed changes to the Station Access Conditions and Annexes and to any Relevant Agreement as a result of the Material Change Proposal;
 - (H) a proposal in respect of a Relevant Undertaking;

- (I) if the Proposer is a Station Investor, it shall execute a deed in the form of Annex [15] (Template Station Investor Participation Deed) and send a copy of that deed to each Material Change Consultee;
 - (J) pursuant to Condition 11.8, who (other than the Material Change Proposer) it is proposed should pay the costs of implementation and any increase in running costs; and, if it is proposed that a party should pay a proportion of such costs, what proportion it is proposed that such party should pay; and
 - (K) information on any wayleaves or easements requests (where necessary).
- 11.2 The Proposer of a Material Change Proposal shall submit, together with any associated documentation, the same Proposal as required under Condition 11.1 to each Non-Qualifying Material Change Consultee, except it shall not include any documentation as required under Conditions 11.1(F) and 11.1(H).
- 11.3 Although the information contained in the Material Change Proposal may be of an outline or generic nature it must nevertheless contain such detail as is reasonably necessary and appropriate to enable the Material Change Consultees and Non-Qualifying Material Change Consultees to determine whether such Proposal if implemented would put that Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be).
- 11.4 During the Consultation Period, the Material Change Consultees may do one of the following:
- (A) give a response Accepting the Material Change Proposal unconditionally and agreeing to enter into the Co-operation Agreement; or
 - (B) give a response objecting to the Material Change Proposal; or
 - (C) give no response; and
 - (D) in addition, if the Material Change Consultee is the Station Facility Owner, the Station Facility Owner may give a response Accepting the Material Change Proposal conditionally pursuant to Condition 12;
- 11.5 During the Consultation Period, the Non-Qualifying Material Change Consultees may do one of the following:
- (A) make representations in respect of the Material Change Proposal;
 - (B) give a response objecting to the Material Change Proposal on the ground that the Material Change Proposal if implemented would put the Non-Qualifying Material Change Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be); or
 - (C) give no response.
- 11.6 If no response is made by a Material Change Consultee during the Consultation Period then the relevant Material Change Consultee is deemed to have Accepted the Material Change and to have agreed to enter into the Co-operation Agreement at the end of the Consultation Period.

- 11.7 All the Material Change Consultees and the Non-Qualifying Material Change Consultees may agree by notice to the Proposer at any time that the Consultation Period shall be a shorter period than that specified in the Material Change Proposal.
- 11.8 The cost of implementing an Accepted Material Change Proposal, and any increase in the running costs of the Station resulting directly from such implementation, may be apportioned between the Proposer and the Material Change Consultees in accordance with the terms set out in the Proposal.
- 11.9 If a Material Change Consultee wishes to object to a Material Change Proposal it may only do so on one of the grounds set out in this Condition by giving notice to the Proposer during the Consultation Period and stating the grounds for its objection with supporting evidence of those grounds in such detail as is reasonably necessary and appropriate to enable the Proposer to evaluate it properly having regard to the grounds of the objection. The only grounds on which a Material Change Consultee may object to a Material Change Proposal are that:
- (A) the information to consider the Material Change Proposal is incomplete or inaccurate having regard to:
 - (1) the nature of the Material Change Proposal; and
 - (2) the information required to accompany a Material Change Proposal (as set out in Condition 11.1 which to avoid doubt need only comprise outline or generic details of the Proposal having regard to the information available at the time the Proposal is made); and/or
 - (B) the Material Change Proposal if implemented would put the Material Change Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be); and/or
 - (C) the Material Change Proposal is not consistent with the ORR's Investment Framework Policy and Guidelines as published from time to time; and/or
 - (D) a Material Change Consultee considers that the completed Material Change Proposal would be contrary to the safe and efficient operation of the Station; and/or
 - (E) implementation of the Material Change Proposal will result, or will be more likely than not to result, in a material adverse effect, whether permanent or temporary on
 - (1) the operation of the Station or the Network; or
 - (2) the use of the Station by any Material Change Consultee's passengers; or
 - (3) the Material Change Consultee's ability to perform any obligations or exercise any discretions which it has in relation to railway services; and/or
 - (F) in a manner specified by the Material Change Consultee, the implementation of the Material Change Proposal will, or will be more likely than not to, materially disrupt, interfere with, or otherwise be incompatible with the implementation of other specified works on or at the Station; and/or
 - (G) the amount or other terms of the Relevant Undertaking offered by the Proposer are in some other respect insufficient or inappropriate for reasons specified by the Material Change Consultee; and/or

- (H) the Material Change Consultee who is required to pay a proportion of the costs of a Material Change Proposal believes that the additional revenue which that Material Change Consultee expects to gain as a result of implementation of the Proposal will be, or is more likely than not to be less than it is proposed will cost the Material Change Consultee to pay for, or contribute to, such implementation; and/or
 - (I) in addition, if the Proposer of the Material Change is a Station Investor:
 - (1) the Material Change Proposal does not provide a significant improvement to Common Station Service or Common Station Amenities; and/or
 - (2) if the Material Change Proposal is an offer to fund or contribute to the cost of carrying out works or to pay a sum of money for investment in the railway industry, the Material Change Proposal does not provide a cash contribution which is at least equivalent to the Station Investor's Qualification (which the Station Facility Owner or the User agree to invest in the railway industry by acceptance of the Material Change Proposal) to the Station Facility Owner or a User; and/or
 - (3) the Material Change Proposal is not accompanied by an undertaking in the terms referred to in Condition 11.1(H).
- 11.10 If a Material Change Consultee purports to object to a Material Change Proposal on any other ground, including but not limited to an objection solely on the grounds of entitlement to compensation, such objection shall be void and (unless it has also objected on one of the grounds set out in this Condition) the Material Change Consultee shall be deemed to have Accepted the Material Change at the end of the Consultation Period.
- 11.11 When objecting on any grounds as set out in Conditions 11.9(E), 11.9(F), 11.9(G), 11.9(H) or 11.9(I), the Material Change Consultee shall demonstrate, with supporting evidence, in its objection that the compensation payable under the Co-operation Agreement is in some respect insufficient or inappropriate. If the Proposer disagrees with the Material Change Consultee on such compensation, the Proposer may refer the matter to the Dispute Resolution Procedure.
- 11.12 At the end of the Consultation Period, if any objections have been received, the Proposer must give them due consideration and respond to the relevant Material Change Consultee(s) within the Response Period. If the Proposer considers that an objection made on one of the grounds set out in Conditions 11.5(B) or 11.9 (as the case may be) is not valid it may within the Response Period refer the question of the validity of the objection for resolution under the Dispute Resolution Procedure.
- 11.13 If any objection (whether accepted or determined pursuant to the Dispute Resolution Procedure as having been validly made) requires any amendment to the Material Change Proposal the Proposer shall issue an amended Material Change Proposal incorporating such amendment or amendments and identifying the changes to the original Proposal, and the provisions of Conditions 11.1 to 11.12 inclusive shall apply as if set out again in full and the Consultation Period in respect of the amended Material Change Proposal (the "Second Consultation Period") shall be 20 Business Days (or longer if the Proposer so elects).
- 11.14 If during the Second Consultation Period a Material Change Consultee or Non-Qualifying Material Change Consultee objects to the amended Material Change Proposal then the Proposer may refer the question of the validity of the objection for resolution under the Dispute Resolution Procedure as soon as practicable after receiving that objection.

- 11.15 Any procedure for the agreement or determination of compensation pursuant to the provisions of a Co-operation Agreement shall not prevent or delay the Registration or implementation of the Material Change.
- 11.16 If the Material Change Consultee does not raise a valid objection, or it is determined that it did not raise a valid objection, to the Material Change Proposal under Condition 11.9 at the end of the Consultation Period or (if applicable) the end of the Second Consultation Period, the Material Change Consultee shall have Accepted and shall sign the Co-operation Agreement as proposed in the Material Change Proposal, and if it fails to do so it shall be deemed to have Accepted the Co-operation Agreement as proposed in the Material Change Proposal.
- 11.17 Registration of a Material Change does not remove the requirement to obtain other associated approvals either under any Relevant Agreement or under any standard industry procedures such as detailed technical approvals, method statements, lease amendments, etc. which, wherever possible, should be progressed as part of the Material Change consultation process.
- 11.18 The Proposer shall pay to each Material Change Consultee all costs reasonably incurred by that Consultee in evaluating and responding to the Material Change Proposal during the Consultation Period after which time such costs shall be dealt with in accordance with the Co-operation Agreement (if any). Where such costs are not dealt with under the Co-operation Agreement, these shall be agreed between the parties or in the event of dispute shall be determined on the application of either party under the Dispute Resolution Procedure and shall be paid within 20 Business Days of the agreement or determination of such amounts.
- 11.19 If at any time after the end of the Consultation Period or (if applicable) any Second Consultation Period a Material Change Proposal is materially modified for any reason (including without limitation because it is only partially implemented or is withdrawn following commencement of implementation) then the Proposer shall treat the modification as a Change or (as the case may be) an Exempt Activity to which the provisions of this Part 3 shall apply.

12. **Conditional Acceptance of a Material Change Proposal by the Station Facility Owner**

- 12.1 Where the Station Facility Owner is a Material Change Consultee it shall be entitled to require as a condition of its acceptance of a Material Change Proposal that the implementation of the Proposal (or any part or parts of it) is subject to:

- (A) the Proposer having entered into an Asset Protection Agreement; and
- (B) (where the Proposal is made by a Station Investor) the Proposer having entered into a Property Agreement,

but it shall not be entitled to require any other condition of its consent in its role as landlord under any lease of the Station.

- 12.2 The Station Facility Owner and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Asset Protection Agreement required under Condition 12.1(A) but the Station Facility Owner shall be entitled to require adherence to the current ORR Asset Protection Policies and Guidelines in relation to settling the form of the Asset Protection Agreement.

12.3 The Station Facility Owner and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Property Agreement required under Condition 12.1(B).

12.4 In the event of failure to agree on any of the terms and conditions of any Asset Protection Agreement or Property Agreement required under Condition 12.1(A) or 12.1(B) either party may refer the matter to the Dispute Resolution Procedure.

13. **Non-Discretionary Change**

13.1 A party who is required to undertake an action which constitutes a Non-Discretionary Change shall submit a Proposal, together with any associated documentation, to each of the Notifiable Change Consultees as if that Proposal had been a Notifiable Change Proposal. The Proposal must set out the proposed change and the reason why it is a Non-Discretionary Change.

13.2 The Proposer of a Non-Discretionary Change shall be entitled to implement the relevant Non-Discretionary Change at any time whether or not the Representation Period has ended and regardless of whether it has received any representations if failure to do so would or would be reasonably likely to result in any breach of any relevant Legal Requirement, Direction or Safety Obligation, or would result in a breach of any provision of the Station Access Conditions. Under this Condition 13.2, the Proposer shall be entitled to implement the Non-Discretionary Change without regard to Conditions 14 (other than 14.1(A)), 15, 16 or 17.

13.3 Other than as set out in Condition 13.2 the Non-Discretionary Change shall be treated as though it had been a Notifiable Change.

13.4 The provisions of Condition 96 shall have effect in relation to any costs of complying with or in consequence of any Non-Discretionary Change referred to in Condition 13.1.

14. **Approval by the ORR**

14.1 No Proposal to change these Station Access Conditions or Annexes whose implementation would:

- (A) require consequential amendments to a Station Access Agreement; or
- (B) materially diminish for a period in excess of 28 consecutive days the number of passengers or trains that are able to use the Station,

shall take effect or be implemented unless and until the ORR shall have notified its approval of any such Proposal and any such consequential amendments (unless they fall wholly within a general approval given by the ORR pursuant to sections 22(2) or 22(3) of the Act).

14.2 ORR may choose to give an approval in principle only of a Proposal where it thinks it appropriate.

15. **Submission of a Proposal to the ORR**

15.1 On acceptance of a Notifiable Change, Material Change or Non-Discretionary Change in accordance with the procedures referred to in this Part the Proposer shall (subject to Condition 15.2) submit any Proposal requiring approval under Condition 14.1 to the ORR for its approval, together with a written memorandum explaining the reasons for the proposed change and setting out details of the conduct and outcome of the representation

or consultation process (as the case may be) provided that no such approval shall be sought if and to the extent that (or, if applicable, for so long as):

- (A) the change in question shall fall wholly within a relevant general approval given by the ORR pursuant to sections 22(2) or 22(3) of the Act;
- (B) the Proposal requires the implementation and completion of any procedure pursuant to Part F or Part G of the Network Code, and the result of that procedure is pending; or
- (C) any other consents or approvals are required by any Statute to or from any third party to enable the implementation of the Proposal, and have not yet been obtained.

15.2 The Proposer shall submit details of a Proposal accepted in accordance with this Part but withheld in accordance with Condition 15.1 to the ORR for approval on satisfaction of the relevant conditions in Conditions 15.1(B) and 15.1(C).

15.3 The Proposal requiring approval shall be submitted within 20 Business Days (which period may be extended with the consent of the Proposer and all relevant Consultees) following acceptance of a Proposal submitted under Condition 15.1 or satisfaction of a Proposal submitted under Condition 15.2, otherwise it shall lapse and no longer be effective.

16. **Notification of the ORR's decision**

16.1 The Proposer shall, as soon as reasonably practicable after it receives notice of the ORR's decision on an application for approval of an amendment pursuant to Condition 15, notify each Consultee of such decision.

17. **Registration, Requisite Consents and Implementation**

17.1 Any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted (including a conditional acceptance under Condition 12) under the procedures referred to in this Part (including without limitation approval by the ORR under Condition 15) shall be registered with the ORR by Registration by:

- (A) the Proposer; or
- (B) any User or the Station Facility Owner if the relevant Proposer fails to do so following acceptance of such Proposal under the procedures referred to in this Part,

but in the event that no party takes the necessary steps to achieve Registration within two months (which period may be extended with the consent of the Proposer and the relevant Consultee(s)) following acceptance of the relevant Proposal, then such Proposal shall lapse and no longer be effective.

17.2 Any documentation required as a consequence of any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted under the procedures referred to in this Part shall be settled between the relevant parties each acting reasonably in relation to the settlement of the terms and conditions of any such document and in the event of failure to agree on any of the terms and conditions of any such document either party may refer the matter to the Dispute Resolution Procedure. This Condition 17.2 shall not impede or delay the registration requirement referred to in Condition 17.1.

- 17.3 The Proposer shall use its reasonable endeavours to obtain all Requisite Consents as soon as practicable having regard to the nature of that consent and the matter to which it relates and in any event prior to implementation of the Notifiable Change, Material Change or Non-Discretionary Change (as the case may be) or (if the relevant Requisite Consent relates to a phase of the Notifiable Change, Material Change or Non-Discretionary Change or can only be obtained after the commencement of the Notifiable Change, Material Change or Non-Discretionary Change) the relevant part of the Notifiable Change, Material Change or Non-Discretionary Change and the requirement to obtain Requisite Consents (if any) shall not impede or delay the procedures referred to in this Part nor be used as a ground for objection to any Proposal.
- 17.4 Following Registration and before implementing the Notifiable Change, Material Change or the Non-Discretionary Change (as the case may be), the Proposer will issue an Implementation Notice to all the relevant Consultees and the ORR.
- 17.5 If no Implementation Notice is issued within three years of Registration (which period may be extended by the Proposer with the consent of all relevant Consultees) the relevant Notifiable Change, Material Change or the Non-Discretionary Change shall lapse and no longer be effective.
- 17.6 If an Implementation Notice is issued the Proposer must implement the relevant Proposal and then proceed diligently with it and if the Proposer does not commence implementation of the Relevant Proposal within 20 Business Days (which period may be extended by the Proposer with the consent of all relevant Consultees) following the issue of the Implementation Notice the relevant Notifiable Change, Material Change or the Non-Discretionary Change shall lapse and no longer be effective.
- 17.7 If before the Notifiable Change, Material Change or (where applicable) the Non-Discretionary Change is implemented the Proposer wishes to withdraw it it may do so by notice to the relevant Consultees and to the ORR.
18. **Notices**
- 18.1 Any notice to be served or information to be shared under this Part shall be in writing and served by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or in accordance with the notice provisions of the Relevant Agreement until such time (if any) as the Online Application Process is available after which time the Online Application Process shall be used instead.

PART 4: WORKS, REPAIRS AND MAINTENANCE

19. Existing Works, Third Party Works and Emergencies

- 19.1 Subject to Condition 21, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary:
- (A) to permit the carrying out of Existing Works or Non-Discretionary Third Party Works, provided that in the case of Existing Works the Station Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in Annex 4;
 - (B) to safeguard the safety or security of persons or property in an Emergency at or affecting the Station; or
 - (C) in a Network Emergency.

20. Repairs and Maintenance and other works

- 20.1 Subject to Conditions 20.3 and 21.1, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary to:
- (A) permit Repair, Maintenance, Discretionary Third Party Works or Exempt Activities to be made or carried out at or in relation to the Station without complying with the requirements for change in Part 3 (save, in relation to Exempt Activities, the requirements of Condition 9);
 - (B) permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part 13 subject to compliance with the provisions of Part 3 insofar as such action is not an Exempt Activity and falls within the definition of Change (save where otherwise provided for in Part 13);
 - (C) permit any works conducted in accordance with an obligation under Part 5, to be made or carried out, subject to compliance with the provisions of Part 3 where such works are undertaken to remedy Substantial Damage;
 - (D) permit any works which fall within the definition of Non-Discretionary Change subject to compliance with the provisions of Condition 13; and
 - (E) permit any works carried out in accordance with the provisions of Condition 68.3 without complying with the requirements for change in Part 3..
- 20.2 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in accordance with Condition 20.1 when reasonably requested to do so by any User in order to enable such User either to comply with its obligations under Part 13 or to exercise its rights under Condition 68.3.
- 20.3 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station in accordance with Condition 20.1 (otherwise than in a trivial respect) and a User shall, if it requests the Station Facility Owner to impose such a restriction, suspension or alteration (otherwise than in a trivial respect) pursuant to Condition 20.2:
- (A) provide at least 10 Business Days notice in writing to each User (and the Station Facility Owner where a User so requests) of:

- (1) the date and time proposed for the restriction, suspension or alteration; and
 - (2) a reasonable programme of works for the carrying out of the works in question; and
- (B) use all reasonable endeavours timeously to consult with each User (and the Station Facility Owner where a User so requests) in relation to such restriction, suspension or alteration and, as far as reasonably practicable, shall minimise the extent and period of any such restriction, suspension or alteration, having regard to the likely effect of the relevant works on the business of each User (or as the case may be the Station Facility Owner) who may be affected.
- 20.4 The Station Facility Owner shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Conditions 19 and 20.
- 20.5 Where any works are proposed to be carried out under the terms of any Existing Works:
- (A) where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts 3 and 4 as if the exercise of the discretion in question were a Proposal for Change; and
 - (B) where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition 21.

21. **Alternative Arrangements**

21.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Conditions 19 or 20, it shall, to the extent reasonably practicable, make timeous and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Station provided for in the Station Access Agreement, for:

- (A) suitable alternative arrangements in respect of access to and egress from the highway;
- (B) each User's Associates to pass to and from trains operated by or on behalf of that User which stop at the Station and for any Passenger Operator's passengers to buy tickets for railway passenger services; and
- (C) the provision of up-to-date train running information and toilet amenities,

and the Station Facility Owner shall use all reasonable endeavours to make timeous and adequate provision for suitable alternative arrangements in respect of all other Common Station Amenities and Station Services so as to enable each User and its Associates to use the Station with minimum disruption, difficulty or inconvenience.

21.2 Each User shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition 21.1 as a result of a request by it pursuant to Condition 20.2.

22. **Station Facility Owner's obligations**

22.1 The Station Facility Owner shall ensure that:

- (A) Maintenance and/or Repair (as the case may be) is carried out to all Equipment and all parts of the Station and that renewal shall be undertaken where it is reasonably necessary and the most economic method of repair; and

- (B) any Element of the Station or item of Equipment specified in Annex 9 the Repair of which is listed in the Elements Inventory or the Equipment Inventory as being Qualifying Expenditure, shall insofar and to the extent that it is as at the Conditions Efficacy Date in a state of actual disrepair (or, as the case may be, not in working order) be brought into a proper state of repair (or, as the case may be, working order) as soon as reasonably practicable and otherwise in accordance with the terms of Annex 9.
- 22.2 The Station Facility Owner's obligations in Condition 22.1 shall extend to adequately painting and decorating (which shall include the application of preservative treatments where appropriate) the interior and exterior of any buildings forming part of the Station.
- 22.3 The Station Facility Owner shall not be in breach of its obligations under Conditions 22.1 and 22.2 if the Station or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Conditions 22.1 and 22.2, the Station Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.
23. **Equipment**
- 23.1 The Station Facility Owner shall use all reasonable endeavours to procure that the Equipment (other than the Excluded Equipment) is used and operated competently and properly.
24. **General Upkeep**
- 24.1 The Station Facility Owner shall, so far as practicable:
- (A) keep the Station (and any adjoining road frontage where litter emanates from the Station) free from refuse, and in a clean and tidy condition; and
- (B) clean all windows and glass comprised in the Station.
25. **Conduits free from obstruction**
- 25.1 The Station Facility Owner shall keep all Conduits protected from frost (where necessary and where practicable at reasonable cost) and free from obstruction.

PART 5: INSURANCE

26. Responsibility for effecting insurance

- 26.1 The Station Facility Owner shall insure and keep insured the Station against:
- (A) property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent station operator would effect and maintain insurance (other than the Insured Risks); and
 - (B) the Insured Risks with a member of the Association of British Insurers or with Lloyds of London underwriters upon reasonable commercial terms provided that the terms of such insurance shall not unreasonably restrict any User's use of the Station.
- 26.2 The Station Facility Owner shall, in respect of any insurance effected pursuant to Condition 26.1(B), use all reasonable endeavours to procure that:
- (A) such insurance is effected for the Full Replacement Cost (less such excess as shall constitute the Minimum Sum) provided that such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one station at which the Station Facility Owner is the facility owner (being referred to in this Part 5 collectively as the "Affected Major Stations" and separately as an "Affected Major Station") such excess shall apply only once in respect of that occurrence to the Affected Major Stations as a whole; and
 - (B) such insurance is effected so that in the event of Substantial Damage to the Station, it shall be replaced with a modern equivalent building of a size and specification to meet modern requirements (unless exact replacement of the Station is required by any public body pursuant to listed building or other legislation or by a Superior Estate Owner).
- 26.3 Each User shall, if it is not a public service operator, effect and maintain appropriate insurance with a member of the Association of British Insurers or with Lloyds of London underwriters against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.
- 26.4 Each User shall, in respect of any insurance policy to which Condition 26.3 applies, provide that Station Facility Owner with suitable evidence, promptly upon receipt of a request from the Station Facility Owner for such evidence, that such insurance policy is in full force and effect, that all premiums have been paid up to date and that no circumstances exist which might lead to that policy being avoided.

27. Destruction or Damage to the Station

- 27.1 If the Station is destroyed or damaged by an Insured Risk then:
- (A) an amount up to the Minimum Sum; and
 - (B) all monies payable under insurance policies effected by the Station Facility Owner pursuant to Condition 26.1(B),
- shall be applied by the Station Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Station, subject to:
- (C) agreement pursuant to Condition 27.2; and

- (D) the Station Facility Owner obtaining all necessary permissions and approvals which the Station Facility Owner shall use all reasonable endeavours to obtain as soon as reasonably practicable,

provided that if any occurrence of an Insured Risk shall affect the Station and one or more Affected Major Stations then any monies applied by the Station Facility Owner pursuant to Condition 27.1(A) shall be required to be applied to the Station only in the same proportion as the amount of insured damage suffered at the Station from the occurrence of the Insured Risks bears to the total amount of insured damage so suffered at all Affected Major Stations.

27.2 As soon as practicable following any destruction of or damage referred to in Condition 27.1, the Station Facility Owner shall consult with the Users and shall use all reasonable endeavours to agree:

- (A) the necessary reinstatement works, which in the case of Substantial Damage (and save where required by reason of the listed building or similar status of the Station or by a Superior Estate Owner) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed; and

- (B) the programme for the carrying out of such reinstatement works,

and, subject to this, the Station Facility Owner shall proceed as soon as reasonably practicable to effect such reinstatement works.

27.3 The Station Facility Owner shall not be responsible for Repair and/or Maintenance of any part of the Station or Equipment which has been subject to destruction or damage pending its repair, reinstatement or making good.

27.4 If the monies recovered under any insurance policy maintained by the Station Facility Owner pursuant to Condition 26.1 are not sufficient to meet the cost to the Station Facility Owner of fulfilling its obligations under Condition 27.2, the Station Facility Owner shall bear the shortfall.

28. **Provision of Documents**

28.1 The Station Facility Owner, so far as it effects any insurance in respect of the Station, shall within 30 days of receipt of a request from any User provide such person with:

- (A) a copy of each insurance policy under, or in respect of which, the User has an interest and which relates to the Station or any risk of, or in any way associated with, the operation of the Station;
- (B) reasonable details of any amount payable by any User in respect of any such insurance policy; and
- (C) reasonable details of any claim which shall be made under any such insurance policy if the making of that claim affects or could reasonably be expected to affect any User.

29. **Maintenance of Insurance**

29.1 In respect of each insurance policy to which Condition 28 applies, the Station Facility Owner shall procure that:

- (A) if and to the extent that any User has an insurable interest capable of being covered by such policy and to the extent that any User reasonably so requests,

any User is named as a co-insured under such policy on such terms as shall be reasonable;

- (B) the policy is maintained and all claims are duly filed, and all proper steps to collect proceeds are duly taken in respect of such policy; and
- (C) if such insurance policy is not required under a station licence held by the Station Facility Owner or the Station Facility Owner does not hold a station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to any User by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given.

30. **Increase of premium or invalidation of policy**

30.1 A User shall not, and shall procure that its Associates (other than passengers) do not, bring onto or do or omit to do at the Station anything which it is aware, or it ought reasonably to be aware, would:

- (A) invalidate any insurance of the Station or any Adjacent Property; or
- (B) increase the premium payable for that insurance; or
- (C) render wholly or partly irrecoverable the monies which otherwise would have been payable under that insurance,

subject to the User receiving notice of any material provision of the insurance of the Adjacent Property which does not apply to insurance of the Station and the Station Facility Owner shall procure that any tenant or any person deriving title under or authorised by the Station Facility Owner to enter the Station shall comply with this Condition 30.1.

30.2 The User responsible for any act or omission contemplated by Condition 30.1 shall pay to the Station Facility Owner on demand the amount of:

- (A) any increase in premium referred to in Condition 30.1(B); and
- (B) any irrecoverable insurance monies referred to in Condition 30.1(C),

which in any such case results from the act or omission of that User or its Associates (other than passengers).

31. **Rights of Subrogation**

31.1 The Station Facility Owner shall use all reasonable endeavours to procure that any insurance policy to which Condition 28 applies shall include a waiver of the relevant insurer's right of subrogation against each User.

PART 6: ACCESS CHARGING

32. Notice of Charges

This Condition 32 shall not apply in relation to any charges payable on or after 1 April 2009.

- 32.1 Not later than 90 days prior to the commencement of each Accounting Year other than the First Year, each Passenger Operator shall notify the Station Facility Owner of those Common Station Amenities and those Common Station Services for which it wishes to pay fixed charges.
- 32.2 The Station Facility Owner shall, promptly after the Commencement Date in respect of the First Year and not later than 60 days prior to the commencement of each subsequent Accounting Year, notify each Passenger Operator of:
- (A) its best estimate of the Total Variable Charge for that Accounting Year; and
 - (B) the amount of such fixed charges as the Station Facility Owner is willing to accept for that Accounting Year for:
 - (1) those Common Station Amenities and Common Station Services referred to in any notice pursuant to Condition 32.1; and
 - (2) any other Common Station Amenities or Common Station Services.
- 32.3 The notice referred to in Condition 32.2 shall include a detailed breakdown of both the estimated Total Variable Charge and of the Quoted Fixed Charges, together with comparative figures (if available) for the preceding Accounting Year (except in the case of a notice in relation to the First Year), in each case in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed, the method of their calculation and the costs of the amenities and services in question. Without prejudice to the generality of the foregoing, such breakdown shall:
- (a) in relation to the Total Variable Charge, include a detailed breakdown of the estimated Qualifying Expenditure;
 - (b) in relation to the Quoted Fixed Charges, identify which of the Common Station Amenities and the Common Station Services are being quoted for on a fixed basis, or taken into account, as part of the Quoted Fixed Charges and the amount of the Quoted Fixed Charges which represents the Risk Premium; and
 - (c) include details of the specifications and other assumptions applied in the calculation of the Total Variable Charge and any Quoted Fixed Charges.
- 32.4 The Station Facility Owner shall:
- (A) if any Passenger Operator notifies the Station Facility Owner within 15 days of receipt of the notice referred to in Condition 32.2 that it wishes to pay fixed charges for any Common Station Amenities or Common Station Services not referred to in that notice for the relevant Accounting Year:
 - (1) notify such Passenger Operator within 15 days of the amount of such fixed charges as the Station Facility Owner is willing to accept for the relevant Accounting Year in respect of such Common Station Amenities or Common Station Services; and
 - (2) in any notice issued by it pursuant to this Condition 32.4(A):-

- (a) include a breakdown of such further Quoted Fixed Charges in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed;
 - (b) indicate the method of the calculation of such further Quoted Fixed Charges and the costs of the amenities and services in question;
 - (c) identify the amount of such further Quoted Fixed Charges which represents the Risk Premium; and
 - (d) include details of the specifications and other assumptions applied in calculating such further Quoted Fixed Charges
- (B) provide each Passenger Operator with such further information and/or clarification relating to the amounts notified to the Passenger Operator pursuant to Condition 32.2 or Condition 32.4(A) as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.
- 32.5 The Station Facility Owner and a Passenger Operator may agree that a Fixed Charge shall apply for more than one Accounting Year and where that is so agreed:
- (A) Conditions 32.1, 32.2 and 32.4 shall not apply to the Common Station Amenities or Common Station Services to which that Fixed Charge relates where the Accounting Year for which charges are to be notified pursuant to those Conditions is one during which it has been agreed that that Fixed Charge shall apply; and
 - (B) the Station Facility Owner shall where Condition 32.5(A) applies include with any notice referred to in Condition 32.3 confirmation of:-
 - (1) the amount of that Fixed Charge for the Accounting Year for which charges are so notified; and
 - (2) the amount of the Risk Premium in respect of that Fixed Charge.

33. **Determination and Payment of Charges**

This Condition 33 shall not apply in relation to any charges payable on or after 1 April 2009, except that:

- (a) Condition 33.6 shall continue to apply to such charges with the deletion of the words “(which charge...Accounting Year)”;
 - (b) regard shall be had to the provisions of Condition 33.4(B) as stated in Condition 43B.6(A)(2); and
 - (c) where Condition 33.7 would require payment after 1 April 2009 in relation to charges for a period before that date, then that requirement shall be unaffected.
- 33.1 Each Passenger Operator shall notify the Station Facility Owner no less than 15 days prior to the commencement of each Accounting Year
- (A) whether it elects to pay fixed charges for any Common Station Amenities or Common Station Services in respect of which Quoted Fixed Charges have been notified to it and, if so, for which of them; and
 - (B) in each case where it makes such election, whether

- (1) it will pay the amount of the relevant Quoted Fixed Charge; or
- (2) it wishes to contest the amount of the Quoted Fixed Charge.

Provided that to the extent that a Passenger Operator fails within the relevant period to make any such election, the Passenger Operator shall be deemed to have elected to pay the Total Variable Charge.

33.2 If a Passenger Operator has notified the Station Facility Owner pursuant to:

- (A) Condition 33.1(B)(1) that it will pay the amount of the relevant Quoted Fixed Charge for the relevant Accounting Year then:
 - (1) the amount of the Fixed Charge for the relevant amenities or services shall be that amount; and
 - (2) the Risk Premium in respect of that Fixed Charge shall be that identified in the notice of the relevant Quoted Fixed Charge pursuant to Condition 33.2 or 32.4(A); or
- (B) Condition 33.1(B)(2) that it wishes to contest the amount of any Quoted Fixed Charge, the amount of:
 - (1) the Fixed Charge for the relevant amenities or services; and
 - (2) (save where the amount of that Fixed Charge is determined pursuant to Condition 33.3(C)) the Risk Premium in respect of that Fixed Charge,shall be determined in accordance with Condition 33.3.

33.3 Where Condition 33.2(B) applies:

- (A) the Station Facility Owner and the Passenger Operator shall negotiate with each other with a view to reaching agreement as soon as reasonably practicable and no later than the commencement of the relevant Accounting Year on the amount of the Fixed Charge, and of the Risk Premium in respect of that Fixed Charge, for the relevant amenities or services;
- (B) if the Station Facility Owner and the Passenger Operator reach agreement with each other on the amount of the relevant Fixed Charge and Risk Premium, then the amounts so agreed shall for the relevant Accounting Year be the Fixed Charge for the relevant Common Station Amenities or Common Station Services and the Risk Premium in respect thereof;
- (C) if the Station Facility Owner and the Passenger Operator fail to reach agreement with each other on the amount of the Fixed Charge by the commencement of the relevant Accounting Year, the Passenger Operator may serve a Notice of Dispute as to that amount at any time up to 15 days after the commencement of that Accounting Year for determination as required by Condition 33.4 and the amount of the Fixed Charges so determined shall be the Fixed Charge for the relevant Common Station Amenities or Common Station Services for that Accounting Year; and
- (D) to the extent that the Passenger Operator fails within the relevant time period in Condition 33.3(C) to serve a Notice of Dispute, the Passenger Operator shall be deemed to have agreed to pay the Total Variable Charge or, as the case may be,

the Residual Variable Charge for the relevant amenities or services for the relevant Accounting Year.

33.4 The parties to any dispute shall agree by way of a Procedure Agreement within the meaning of the Access Dispute Resolution Rules that any determination pursuant to Condition 33.3(C) shall:

- (A) establish the amount of the Fixed Charges for the relevant Common Station Amenities or Common Station Services at the amount which shall be considered by the Access Dispute Resolution Rules Forum to which the dispute is allocated to be fair and reasonable and include appropriate payments:
 - (1) in respect of the overheads of the Station Facility Owner and by way of management fee for providing or procuring the provision of the relevant amenities or services; and
 - (2) to reflect the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges;
- (B) be made having regard to
 - (1) the matters as respect which duties are imposed on the ORR under section 4 of the Act and any guidance which may be issued by the ORR from time to time;
 - (2) the terms and conditions of the Station Access Agreement of the Passenger Operator, and in particular:
 - (a) the basis upon which the Residual Variable Charge is calculated and determined;
 - (b) any charges paid by the Passenger Operator for the relevant amenities or services during the preceding Accounting Year; and
 - (c) any specification for the relevant amenities or services or other standard to which they are required to be supplied or provided to the Passenger Operator;
 - (3) the costs which:
 - (a) the Station Facility Owner has incurred or will incur in providing or procuring the provisions of the relevant amenities or services;
 - (b) the Passenger Operator or the Station Facility Owner may incur in providing or procuring the provision of similar or reasonably comparable amenities or services to any person at any station other than the Station in respect of which it is facility owner; and
 - (c) (to the extent such information is reasonably available) it is reasonably likely would be incurred by the Passenger Operator in obtaining the provision of similar or reasonably comparable services or amenities from providers thereof otherwise than at a railway facility; and
 - (4) any contract in existence at the commencement of the relevant Accounting Year pursuant to which the Station Facility Owner procures the provision of

the relevant amenities or services and the benefits and disbenefits for the Station Facility Owner if any such contract had to be terminated or amended as a result of the provision of those amenities or services to the Passenger Operator at a fixed charge; and

(C) be final and binding on the Station Facility Owner and the Users; and

the costs and expenses of the expert in making such determination shall be borne equally by the Station Facility Owner and the Passenger Operator, unless the expert shall otherwise determine.

33.5 If Fixed Charges apply in respect of any Common Station Amenities or Common Station Services for any Accounting Year the Passenger Operator shall

(A) not be liable to pay the relevant proportion of the Total Variable Charge for the Common Station Amenities and the Common Station Services to which those Fixed Charges apply; and

(B) pay for all other Common Station Amenities and Common Station Services by way of the Residual Variable Charge.

33.6 Except as otherwise provided in the Station Access Agreement or in these Station Access Conditions, each User shall pay:

(A) the Access Charge (which charge shall, insofar as it relates to the Residual Variable Charge, be in accordance with such bona fide and reasonable estimates thereof as the Station Facility Owner may, from time to time, notify to the Passenger Operator in respect of each Accounting Year) by four-weekly instalments in arrears, which shall so far as practicable be in an equal amount for each instalment; and

(B) any Performance Bonus which the Station Facility Owner is entitled to receive from it pursuant to Condition 67.

Such payment shall be made not later than the number of days specified in paragraph 5 of Annex 8 after the end of the four-week period in question or after the date of receipt of an invoice for such payment whichever is the later.

33.7 If a Passenger Operator shall refer a dispute as to the amount of any Fixed Charges for any amenities or services to an expert pursuant to Condition 33.3(C):

(A) Conditions 33.5 and 33.6 shall, in respect of the period from the commencement of the Accounting Year in respect of which those Fixed Charges are to be paid down to the end of the four week period following next after that expert has made the determination required by Condition 33.4, apply as if the Fixed Charges for the relevant amenities or services are the Quoted Fixed Charges for those amenities or services; and

(B) forthwith following determination of that dispute:

(1) the Station Facility Owner shall repay to the Passenger Operator an amount equal to the amount (if any) by which the amount so paid in respect of the relevant amenities or services exceeds the Fixed Charges for them for that period as so determined; or

(2) the Passenger Operator shall pay to the Station Facility Owner an amount equal to the amount (if any) by which the amount so paid in respect of the

relevant amenities or services is less than the Fixed Charges for them for that period as so determined;

together with interest on such amount at the Default Interest Rate, calculated pursuant to Condition 37.

34. **Certificate of Residual Variable Charge and Fixed Costs**

This Condition 34 shall not apply in relation to any charges payable on or after 1 April 2009.

34.1 The Station Facility Owner shall, as soon as practicable, and in any event within sixty days, after the end of each Accounting Year and each Accounting Half-Year:

- (A) calculate in respect of each Passenger Operator the Residual Variable Charge payable by that Passenger Operator for that Accounting Year or Accounting Half-Year; and
- (B) provide to each Passenger Operator a certificate of the Residual Variable Charge so calculated.

34.2 The Station Facility Owner shall, as soon as practicable, and in any event within 60 days, after the end of each Accounting Year:

- (A) calculate in respect of each Passenger Operator the Fixed Costs incurred in respect of each Fixed Charge Amenity or Service in that Accounting Year;
- (B) provide to each Passenger Operator a certificate of the Fixed Costs so calculated and the Net Fixed Charges for each such Fixed Charge Amenity or Service.

34.3 The Certificate shall contain information in an amount of detail which is at least equal to that required by Condition 32.3 in relation to the charges and costs to which it relates.

35. **Adjustments for excess and short payments**

This Condition 35 shall not apply in relation to any charges payable on or after 1 April 2009, except that where Condition 35 would require payment after 1 April 2009 in relation to charges for a period before that date, then that requirement shall be unaffected.

35.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 33.6 in respect of the Residual Variable Charge shall have been greater than the amount of the Residual Variable Charge for that Accounting Year or Accounting Half-Year which is certified pursuant to Condition 34.1, the Station Facility Owner shall repay to the Passenger Operator an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in Condition 35.1(A) above at the Default Interest Rate, calculated pursuant to Condition 37.

35.2 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 33.6 in respect of the Residual Variable Charge shall have been less than the amount of the Residual Variable Charge for that Accounting Year or Accounting Half-Year which is certified pursuant to Condition 34.1, the Passenger Operator shall pay to the Station Facility Owner an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in paragraph 35.2(A) above at the Default Interest Rate, calculated pursuant to Condition 37.

36. **Adjustment by reference to Fixed Costs**

This Condition 36 shall not apply in relation to any charges payable on or after 1 April 2009, except that where Condition 36 would require payment after 1 April 2009 in relation to charges for a period before that date, then that requirement shall be unaffected.

- 36.1 If, in relation to any Accounting Year, the amount of any Net Fixed Charge which is certified pursuant to Condition 34.2 shall have been greater than the amount of the relevant Fixed Cost for the relevant Fixed Charge Amenity or Service for that Accounting Year which is certified pursuant to Condition 34.2, the Station Facility Owner shall repay to the Passenger Operator an amount equal to twenty five percent of the amount of such excess.
- 36.2 If, in relation to any Accounting Year the amount of any Net Fixed Charges which is certified pursuant to Condition 34.2 shall have been less than the amount of the relevant Fixed Cost for the relevant Fixed Charge Amenity or Service for that Accounting Year which is certified pursuant to Condition 34.2, the Passenger Operator shall pay to the Station Facility Owner an amount equal to twenty five per cent of the amount of such deficit.

37. **Calculation of Interest**

- 37.1 Interest payable pursuant to Conditions 33 and 35 shall be simple interest and shall be calculated as if the amount on which the interest is payable were a debt incurred in equal four-weekly instalments during the Accounting Year or Accounting Half-Year in question. The interest shall be payable on each instalment from the date upon which it shall be treated as having been incurred until the actual date of payment.

38. **Inspection of books, records and accounts**

- 38.1 Each User or bona fide prospective User shall be entitled to inspect (or procure that its agents or representatives inspect) the books, records and accounts kept by the Station Facility Owner in respect of the Station (including any financial and operational records or data), insofar as they relate to the Common Station Amenities or the Station Services, at any reasonable time upon reasonable notice to the Station Facility Owner.

39. **Adjustment following inspection**

This Condition 39 shall not apply in relation to any charges payable on or after 1 April 2009, except that where Condition 39 would require payment after 1 April 2009 in relation to charges for a period before that date, then that requirement shall be unaffected.

- 39.1 If, upon or following any inspection in accordance with Condition 38 by a Passenger Operator, the amount of the Residual Variable Charge in respect of any Accounting Year or Accounting Half-Year commencing not earlier than 18 months prior to the date on which the inspection is completed is established to have been less than the amount shown in the relevant Certificate, the Station Facility Owner shall, within 5 Business Days of being notified of such discrepancy, repay to the relevant Passenger Operator or Passenger Operators a sum equal to such shortfall, together with interest at the Default Interest Rate from the date which is half way through the Accounting Year or the

Accounting Half-Year in question until the date of actual repayment of that sum by the Station Facility Owner.

- 39.2 If, upon or following any such inspection, the amount of the Residual Variable Charge in respect of any Accounting Year or Accounting Half-Year commencing not earlier than eighteen months prior to the date on which the inspection is completed is established to have been greater than the amount shown in the relevant Certificate:
- (A) the relevant Passenger Operator shall, within 5 Business Days of being notified of such discrepancy, pay to the Station Facility Owner a sum equal to such excess but without interest; and
 - (B) the Station Facility Owner shall pay the relevant Passenger Operator an amount equal to the Passenger Operator's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.
- 39.3 If the shortfall referred to in Condition 39.1 represents:
- (A) more than 5% of the Residual Variable Charge, the Station Facility Owner shall pay the relevant Passenger Operator or Passenger Operators an amount equal to its reasonable costs and expenses incurred in carrying out or procuring the relevant inspection;
 - (B) less than 5% of the Residual Variable Charge, each relevant Passenger Operator or Passenger Operators shall pay the Station Facility Owner an amount equal to the Station Facility Owner's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

40. **Accounts**

This Condition 40 shall not apply in relation to any charges payable on or after 1 April 2009.

- 40.1 Without prejudice to any obligation of the Station Facility Owner under its station licence, the Station Facility Owner shall:
- (A) keep accounts in respect of the Station which relate solely to the operation of the Station;
 - (B) maintain such Station accounts in such a way as to enable all material revenue and expenditure to be clearly distinguished and analysed by category or, if appropriate, item in respect of:
 - (1) the Common Station Services and the Common Station Amenities; and
 - (2) the Exclusive Station Services,and to identify any contribution by any person towards the cost or expense of the foregoing.
- 40.2 Without prejudice to any obligation of the Station Facility Owner under its station licence, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition 40.1 shall at all times:

- (A) be kept up to date and to a standard which is at least sufficient to enable each Passenger Operator properly to assess the costs of the amenities and services in respect of which the Residual Variable Charge and any Fixed Charge is made; and
 - (B) include financial accounts and information in respect of each Accounting Year and Accounting Half-Year on a station by station basis, broken down as specified in Condition 40.1 above.
- 40.3 The Station Facility Owner shall within 14 days of the end of each Accounting Period provide to each Passenger Operator a comparison between the estimate of the Total Variable Charge notified pursuant to Condition 32.2 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.
- 40.4 Any comparison provided pursuant to Condition 40.3 shall, the Requisite Majority otherwise consent:
- (A) explain and identify any exceptional items and any variance of more than plus or minus 3 per cent between:
 - (1) the estimates of the Total Variable Charge referred to in Condition 40.3; and
 - (2) any revenue or expenditure taken into account in those estimates in respect of any category or item of Common Station Services or Common Station Amenities by reference to which the Station accounts are maintained pursuant to Condition 40.1(B);

and where the relevant Accounting Period includes either the 16th, 28th, 40th or the last week of an Accounting Year:

- (B) identify any such category or item of expenditure (and any contribution of any person towards any such expenditure) which was estimated pursuant to Condition 32.2 and which has been actually incurred; and
- (C) compare any such expenditure and contributions with that estimate.

41. **Calculation of number of Vehicles operated**

41.1 The Station Facility Owner shall:

- (A) as soon as reasonably practicable after a Station Access Agreement with a Passenger Operator comes fully into effect and otherwise at regular intervals of not more than 12 months; and
- (B) after each material change of the kind referred to in Condition 41.3,

use all reasonable endeavours to ascertain the number of Vehicles operated by or on behalf of the Station Facility Operator and each Passenger Operator which depart from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, provided that the Station Facility Owner shall not, in ascertaining such number of Vehicles, be obliged to recalculate a number calculated within the previous 12 months in respect of the Station Facility Owner or any Passenger Operator, unless:

- (C) the Station Facility Owner has grounds for a reasonable belief that a recalculation in accordance with this Condition 41.1 would give rise to a materially different number in any case; or

- (D) any Passenger Operator shall request that such number be so recalculated.
- 41.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 41.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.
- 41.3 For the purposes of Condition 41.1(B), a material change shall be deemed to have occurred if any event or circumstance (including entry by the Station Facility Owner into a new access agreement permitting a passenger service operator to use the Station, or amendment or termination of any existing access agreement permitting such use) shall have occurred which materially affects or is likely materially to affect the number of Vehicles operated by or on behalf of any Passenger Operator which stops at the Station.
- 41.4 Upon entry into a Station Access Agreement before 1 April 2009 with a passenger service operator and pending the first calculation thereafter by the Station Facility Owner pursuant to Condition 41.1, the Station Facility Owner shall, for the purposes of calculating the Total Variable Charge applicable in respect of such passenger service operator, use such estimate of the number of Vehicles in question as may have been provided to the Station Facility Owner by the relevant passenger service operator for the purposes of this Condition 41. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.
- 41.5 For the purposes only of paragraph (A)(c) or (B)(b), as the case may be, of the definition of "Common Charges", the Passenger Operator's Proportion shall be equal, as at the Commencement Date, to the percentage specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 41 only when:
- (A) there is a change in the number or identity of Passenger Operators; or
- (B) it shall be likely that such a recalculation would alter the Passenger Operator's Proportion of any Passenger Operator by an amount which is greater than the percentage specified in paragraph 6 of Annex 8 of its Passenger Operator's Proportion immediately prior to the recalculation in question.
- 41.6 If a Station Access Agreement is terminated by mutual agreement, the Station Facility Owner shall indemnify each Passenger Operator and keep each of them indemnified against the Excess Proportion.
- 41.7 In Condition 41.6, the "Excess Proportion", in relation to each Passenger Operator, shall be calculated as follows:

$$EP = (LTC_{\text{actual}} - LTC_{\text{notional}}) + (FC_{\text{actual}} - FC_{\text{notional}})$$

where:

EP is the Excess Proportion of the affected operator;

LTC_{actual} is the amount of the Passenger Operator's Proportion of the Long Term Charge which is payable by the affected operator for the relevant period following the relevant termination;

LTC_{notional} is the amount of the Passenger Operator's Proportion of the Long Term Charge which, on the assumed basis, would have been payable by the affected operator for the relevant period if the relevant termination had not taken place;

FC_{actual}	is the amount of the Passenger Operator's Proportion of the Fixed Charges which is payable by the affected operator for the relevant period following the relevant termination;
FC_{notional}	is the amount of the Passenger Operator's Proportion of the Fixed Charges which, on the assumed basis, would have been payable by the affected operator for the relevant period if the termination had not taken place;
"affected operator"	means the Passenger Operator in question;
"applicable period"	means the period beginning on the date of the relevant termination and ending on the earlier of: <ul style="list-style-type: none"> (a) the last day of the Accounting Year in which the relevant termination occurred; and (b) the next following date in respect of which the Station Facility Owner shall carry out a calculation pursuant to Condition 41.1;
"assumed basis"	means the assumption that: <ul style="list-style-type: none"> (a) the relevant termination did not occur; and (b) the Passenger Operator's Departures of the outgoing operator in the relevant period or the applicable period (as the case may be) were the same as they were immediately prior to the relevant termination;
"outgoing operator"	means the Passenger Operator whose Station Access Agreement has been the subject of a relevant termination;
"relevant period"	means the period beginning on the date of the relevant termination and ending on the date upon which the Station Access Agreement in question was expressed to expire by reason of the passage of time; and
"relevant termination"	means the termination by mutual agreement of the Station Access Agreement of a User other than the affected operator.

42. **The Long Term Charge**

42.1 Effective date

This Condition 42 shall have effect from the Long Term Charge Commencement Date.

42.2 Principal formula

42.2.1 *Calculation*

During each relevant year t (and so in proportion for any period comprising less than a full relevant year), the Long Term Charge shall be such amount as is calculated in accordance with the following formula:

$$LTC_t = S_t + L_t$$

where:

LTC_t means the Long Term Charge in relevant year t;

S_t means $S_{t-1} \left[1 + \frac{RPI_{t-1}}{100} \right]$

RPI_{t-1} means the percentage change (whether of a positive or negative value) in the Retail Prices Index published or determined with respect to November in relevant year t-1 and the index published or determined with respect to November in relevant year t-2;

L_t means an amount (whether of a positive or negative value) allowed in respect of the financial consequences to the Station Facility Owner in relevant year t following a relevant change of law, calculated in accordance with Condition 42.3;

but so that (without prejudice to the calculation of any Long Term Charge relating to a previous year) in relation to the relevant year commencing from a year in which the value specified in paragraph 2 of Annex 8 is altered, S_t shall have the value specified in paragraph 2 of Annex 8 and in relation to the next following relevant year S_{t-1} shall have the same value.

42.2.1A *Mid-year calculation*

Where an alteration to the amount of the Long Term Charge is made other than at the beginning of the Accounting Year, the increase or decrease to be recovered from or reimbursed to the Users of the station under the Access Charge resulting from the alteration to the amount of the Long Term Charge shall only be recovered or reimbursed from the beginning of the Accounting Period after the Accounting Period in which the alteration of the Long Term Charge is made and the amount to be recovered or reimbursed shall be an amount calculated as follows:

$$X=A \cdot [Pd/13]$$

where:

X means the amount to be recovered or reimbursed;

A means the amount of the alteration to the amount of the Long Term Charge; and

Pd means the Accounting Periods remaining in the Accounting Year after but not including the Accounting Period in which the alteration to the amount of Long Term Charge is made.

42.2.2 *Obligation to provide specification of calculation*

The Station Facility Owner shall provide to each User such specification of the calculation of the amount specified in paragraph 2 of Annex 8 in a form and amount of detail, and within such time, as shall be specified by the ORR in a notice given by the ORR to the Station Facility Owner for the purposes of this Condition 42.2.2.

42.3 Relevant changes of law

42.3.1 *General*

The following sub-paragraphs of this Condition 42.3 shall apply for the purpose of determining the value (if any) of the term L_t in Condition 42.2.

42.3.2 *Relevant amounts*

42.3.2.1 *Inclusion in formula*

If a relevant change of law occurs after the Long Term Charge Commencement Date, L_t in any relevant year shall be the relevant amount.

42.3.2.2 *Meaning of relevant amount*

The relevant amount is such reasonable amount:

- (a) which the Station Facility Owner, as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, may incur in (or save by reason of) complying, during relevant year t , with requirements resulting directly and necessarily from the relevant change of law in question; and
- (b) which it is fair and reasonable be borne by the Users having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act, and, subject to that, to the other matters referred to in Condition 96.

42.3.3 *Notification of change of law involving material amounts*

42.3.3.1 As soon as reasonably practicable after becoming aware of any relevant change of law which will or may reasonably be expected to involve the expenditure or saving by the Station Facility Owner of a material amount, the Station Facility Owner shall:

- (a) notify each User and the ORR of the relevant change of law in question and of its assessment of the relevant amount;
- (b) provide to each User such information as it shall reasonably require, in a form and amount of detail which is sufficient to enable it to make a proper assessment of the effect of the relevant change of law and of the assessment referred to in subparagraph (a) above; and
- (c) provide to the ORR all information required in that respect by the ORR.

42.3.3.2 Without prejudice to Condition 42.3.5 and subject to Condition 42.3.6, where an obligation to notify the ORR arises under this Condition 42.3.3:

- (a) no agreement or determination of the kind referred to in Condition 42.3.4 shall have effect until 28 days after the ORR shall have been notified of the agreement or determination in question; and
- (b) if the ORR shall have exercised its right to call in the determination pursuant to Condition 42.3.5, no such agreement or determination shall have effect.

42.3.4 *Value of relevant amount*

The amount referred to in Condition 42.3.2 for inclusion in the term L_t shall (save in the circumstances referred to in the remaining paragraphs of this Condition 42) be such amount as may be agreed between the Station Facility Owner and the Users or as may be

determined in accordance with any procedure for the settlement of disputes provided for in these Station Access Conditions.

42.3.5 *ORR's right to call in determination of relevant amount*

42.3.5.1 Notwithstanding Conditions 42.3.3 and 42.3.4, if the ORR shall have given notice to the parties that:

- (a) in its discretion it considers that it is appropriate, by reason of the significance of any change of law (and whether or not such change of law may give rise to changes of a material amount), that it should call in the determination of the value (if any) of the term L_t insofar as the value of that term is or may be affected by the change of law in question, and to determine it itself; and
- (b) it has determined that it will so determine it itself,

the determination in question shall be made by the ORR.

42.3.5.2 If the ORR shall have given a notice pursuant to Condition 42.5.1, the parties shall provide to it any information it may require relating to the change of law and its financial consequences.

42.3.5.3 Upon service by the ORR of a notice of the kind referred to in Condition 42.3.5.1, the parties shall discontinue any proceedings of the kind referred to in Condition 42.3.4 which might otherwise result in a determination of the value of the term L_t . The ORR's determination may make provision as to the proportions in which the parties shall bear the costs of the proceedings in question.

42.3.6 *Limitations on the determination of the relevant amount by the ORR*

42.3.6.1 Subject to Condition 42.3.3.2, no determination by the ORR of the kind referred to in Condition 42.3.5 shall, with respect to relevant year t in which it is made (or any previous year), operate so as to substitute the value determined by the ORR for any value agreed by the parties or determined pursuant to Condition 42.3.4:

- (a) before the date upon which the parties shall have been notified of the decision of the ORR to call in the determination; and
- (b) in the case of a change of law involving a material amount, after expiry of the notice period provided for in Condition 42.3.3.

42.3.6.2 The ORR's determination shall have effect in substitution for any value determined by the parties with effect for relevant year $t+1$ and following.

42.4 Review of Long Term Charge

42.4.1 *Review Notice*

42.4.1.1 The ORR may at any time and from time to time initiate an access charges review in respect of the parties' arrangements under the Station Access Agreement and these Station Access Conditions in relation to:

- (a) the amount of the Long Term Charge;
- (b) the manner in which, and the dates by which, the Long Term Charge shall be payable; and

(c) its allocation amongst Users.

42.4.1.2 The implementation of an access charges review shall be initiated by the ORR giving a review notice. The conclusions of any access charges review initiated pursuant to Condition 42.4.1.1 shall only have effect on and from 1 April 2014 or such later date as may be specified.

42.4.2 Definitions

In this Condition 42.4:

“access charges review” bears that meaning ascribed to it in Schedule 4A to the Railways Act 1993; and

“review notice” means a notice for the purpose of paragraph 4 of Schedule 4A to the Railways Act 1993.

42.5 Definitions

In this Condition 42, unless the context otherwise requires:

"material amount" means an amount which the Station Facility Owner may incur in, or save by reason of, complying with a relevant change of law which is likely to result in an increase (or decrease) in the annual Long Term Charge under a Station Access Agreement of an amount equivalent to or exceeding:

- (a) 0.5 *per cent* of the Long Term Charge in the relevant year *t* in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying; or
- (b) 0.5 *per cent* of the product of (i) the annual Long Term Charge in the relevant year *t* in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying and (ii) the number of remaining whole relevant years up to and including the relevant year ending on 31 March 2014;

"relevant amount" bears the meaning given to it in Condition 42.3.2.2;

"relevant change of law" means a Change of Law or the Direction of a Competent Authority;

"relevant year" means a Financial Year commencing on 1 April and ending on the following 31 March; "relevant year *t*" means the relevant year for the purposes of which any calculation falls to be made; "relevant year *t*-1" means the relevant year preceding relevant year *t*; and similar expressions shall be construed accordingly;

"Retail Prices Index" means the general index of retail prices published by the National Statistics each month in respect of all items or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the ORR may, after consultation with the Secretary of State, the Station Facility Owner and each User, determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as the ORR may, after consultation with the Secretary of State, the Station Facility Owner and each User, determine to be appropriate in the circumstances;

43. **Review of Access Charge generally**

43.1. The Station Facility Owner and all Users shall:

- (A) within 30 days of the giving of a notice by any one of them to the others for the purposes of this Condition 43.1 formally review (with each other, and in consultation with the Secretary of State):
 - (1) the amounts payable by any person to another under a Station Access Agreement and these Station Access Conditions;
 - (2) the manner in which, and the dates by which, such amounts shall be payable; and
 - (3) their allocation; and
- (B) negotiate with each other (and in so doing have regard to any comments which shall have been made by the Secretary of State in the course of such review) with a view to reaching agreement, subject to approval of the ORR, on any amendments to these Station Access Conditions and the relevant Station Access Agreement which the Station Facility Owner or any User may consider necessary or desirable in respect of any such matters.

43.2 If the Station Facility Owner and the Users reach agreement with each other on any such amendments, the Station Facility Owner shall promptly submit to the ORR for its approval:

- (A) the proposed amendments; and
- (B) copies of any objections to them which shall have been made by the Secretary of State in writing.

43.3. If the Station Facility Owner and the Users fail to reach agreement with each other on such amendments within 90 days of the giving of the notice referred to in Condition 43.1(A), the matters in dispute may be resolved in accordance with the Access Dispute Resolution Rules. In the event that the dispute is referred under the Access Dispute Resolution Rules, the parties to the dispute shall agree in a Procedure Agreement within the meaning of the Access Dispute Resolution Rules that such determination shall:

- (A) be made having regard to the matters as respects which duties are imposed on the ORR under section 4 of the Act; and

- (B) establish the proposed amendments to these Station Access Conditions and the relevant Station Access Agreement, which shall be submitted by the arbitrator to the ORR for approval under section 22 of the Act on behalf of the Station Facility Owner and each User.
- 43.4 If any proposed amendments to these Station Access Conditions or any Station Access Agreement which have been submitted to the ORR pursuant to Condition 43.2 or Condition 43.3 are approved by the ORR, such proposed amendments shall be made and become effective in accordance with the terms of its approval. If not so approved, such amendments shall not be made or have effect.
- 43.5 The provisions of this Condition 43 shall not apply to any matter to which Annex 12 relates which Annex shall apply as to the determination of the matters therein referred to.
- 43.6 The provisions of this Condition 43 shall not apply to any review of the Fixed Charges, and instead Condition 43B.9 shall apply.

PART 6B: ACCESS CHARGING, FIXING CHARGES FOR CONTROL PERIOD

43B.1 Fixing Charges for Control Period generally

This Part 6B provides for the agreement or determination of Fixed Charges in respect of the Station for the entirety of a Control Period.

In this Part 6B, unless the context otherwise requires:

“Control Period” means a period in respect of which the Office of Rail Regulation undertakes an access charges review of Network Rail’s access charges generally, and includes the period 1 April 2009 to 31 March 2014;

“Control Period Start Date” means the date upon which a Control Period begins, and includes 1 April 2009;

“Fixed QX Charges Notice” means a notice given by the Station Facility Owner which:

- (a) is given to each Passenger Operator before the Control Period Start Date in respect of the Control Period to which it relates;
- (b) states the amount of such fixed charges as the Station Facility Owner is willing to accept (subject to the provisions of this Part B) in respect of the Station Fixed QX Charge for the Control Period to which it relates;
- (c) includes a break-down of the Station Fixed QX Charge in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed;
- (d) indicates the method of calculation of the Station Fixed QX Charge and the cost of the amenities and services in question (including, where appropriate, the method of apportionment of costs which are incurred for both those amenities and services and other matters);
- (e) may include provision for indexation of the relevant amounts;
- (f) includes details of the specifications and other assumptions applied in calculating such Station Fixed QX Charge (including, where appropriate, any efficiency profile);
- (g) sets out the Individual Fixed QX Charge and shows the breakdown of the Station Fixed QX Charge between the Passenger Operators in accordance with their respective Passenger Operator’s Proportion;
- (h) provides a period for response, being not less than 6 weeks from the date of the notice; and
- (i) includes similar information in relation to all Managed Stations;

“Force Majeure” has the meaning ascribed to it in Condition 73.1 of the Independent Station Access Conditions

“Individual Fixed QX Charge” means, in respect of each Passenger Operator, the Passenger Operator’s Proportion of the Station Fixed QX Charge for each Accounting Year of the relevant Control Period, provided that if the Passenger Operator’s

Proportion changes during an Accounting Year, "Individual Fixed QX Charge" means an amount equal to the aggregate of the Passenger Operator's Proportion of the Station Fixed QX Charge for each of the relevant periods in the Accounting Year in question, calculated as follows:

$$ICFn = A/365 \times POPn \times IFCn$$

where:

ICFn is the Individual Fixed QX Charge for the relevant period in question

A is the number of days in the relevant period in question

POPn is the Passenger Operator's Proportion during the relevant period in question

IFCn is the Station Fixed QX Charge for the Accounting Year in question

"relevant periods" means:

- (a) the period beginning on the first day of the Accounting Year to the first change date;
- (b) each period from each change date in the Accounting Year to the next following change date in the Accounting Year; and
- (c) the period between the last change date in the Accounting Year to and including the last day of the Accounting Year; and

"change date" means the date upon which the Passenger Operator's Proportion changes in the Accounting Year pursuant to Part 6;

"Managed Station" means any station of which the Station Facility Owner is the licensed operator (and to which this Part 6B applies);

"Notice Response Period" means a reasonable period for response specified in the Fixed QX Charges Notice; and

"Station Fixed QX Charge" shall mean the Fixed Charges payable for the Station in respect of the Common Station Amenities and the Common Station Services for each Accounting Year of the relevant Control Period.

43B.2 Notice of Fixed Charges

The Station Facility Owner shall give a Fixed QX Charges Notice in respect of each Control Period and:

- (A) the Station Facility Owner shall provide each Passenger Operator with such further information and/or clarification relating to the amounts notified as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request; and
- (B) Each Passenger Operator shall notify the Station Facility Owner as soon as practicable and in any event before the end of the Notice Response Period

whether it agrees the Station Fixed QX Charge and to pay the Individual Fixed QX Charge based on it in the amounts stated for the relevant Control Period.

- (C) If a Passenger Operator does not agree the Station Fixed QX Charge and to pay the Individual Fixed QX Charge based on it in the amounts stated, then:
- (1) its notification under Condition 43A.2(B) shall include details of the aspects of the Individual Fixed QX Charge / Station Fixed QX Charge and their calculation to which it objects, and the reasons for objection;
 - (2) the Passenger Operator shall provide the Station Facility Owner with such further information and/or clarification as to its objection as the Station Facility Owner may reasonably request, promptly upon receipt of any such request; and
 - (3) the Station Facility Owner and the Passenger Operator shall seek to reach agreement as to the amount of the Station Fixed QX Charge and, based on this, the amount of the Individual Fixed QX Charge to be paid by the Passenger Operator to the Station Facility Owner, subject to Conditions 43B.3 to 43B.5.

43B.3 Agreement of Fixed Charges

In the event that

- (A) in relation to the Station, all Passenger Operators shall have agreed the Station Fixed QX Charge and to pay the Individual Fixed QX Charge based on it, and
- (B) in relation to all other Managed Stations, the relevant passenger service operators have similarly agreed,

then the Station Facility Owner shall notify each Passenger Operator that the Fixed Charges are agreed in respect of the Station, and they shall be payable accordingly for the relevant Control Period, subject to Condition 43B.8.

43B.4 Wider agreement

In the event that all Passenger Operators shall have agreed the Station Fixed QX Charge and to pay the Individual Fixed QX Charge based on it (but not all of the relevant passenger service operators in relation to the other Managed Stations have agreed similarly), then:

- (A) the Station Facility Owner may at its discretion notify each Passenger Operator that the Fixed Charges are agreed in respect of the Station, and they shall be payable accordingly for the relevant Control Period, subject to Condition 43B.9; and
- (B) if the Station Facility Owner does not notify as provided under Condition 43B.4(A), then it shall refer within 21 days from the end of the Notice Response Period, the issue of the amount of the Fixed Charges that are to be payable for determination under Condition 43B.6.

43B.5 Failure to agree

In the event that not all Passenger Operators shall have agreed the Station Fixed Charge and to pay the Individual Fixed QX Charge based on it in respect of the Station by the end of the Notice Response Period, then the Station Facility Owner shall refer within 21 days from the end of the Notice Response Period for determination under 43B.6 the issue of what Fixed Charges are to be payable by the Passenger Operators in respect of the Station for the relevant Control Period.

43B.6 Referral to determination

Any referral under Condition 43B.4 or 43B.5 shall be in accordance with the Access Dispute Resolution Rules and the parties in dispute shall agree, by way of a Procedure Agreement within the meaning of the Access Dispute Resolution Rules, that:

- (A) the determination shall:
 - (1) establish the Station Fixed QX Charge payable for the Station in respect of the Common Station Amenities and the Common Station Services for each Accounting Year of the relevant Control Period at the amount which shall be considered by the Access Dispute Resolution Rules forum to which the dispute is allocated to be fair and reasonable and include appropriate payments:
 - (a) in respect of the overheads of the Station Facility Owner and for providing or procuring the provision of the relevant amenities or services; and
 - (b) to reflect the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges;
 - (2) be made having regard to the factors which are set out in Condition 33.4(B);
- (B) the determination shall be undertaken together with all (if any) referrals arising in relation to the Fixed QX Charges Notice in respect of other Managed Stations and so that the expert shall determine those referrals accordingly.
- (C) the determination shall be final and binding on the Station Facility Owner and the Users, and the Fixed Charges so determined shall be payable accordingly.

43B.7 Specifications

Where the Fixed Charges have been agreed or determined on the basis of any specification, then the Station Facility Owner's obligations in respect of the relevant Common Station Services and Common Station Amenities shall be by reference to that specification and:

- (A) that specification shall be treated as superseding any then existing specification contained or referred to in the Annexes which relates to the relevant Common Station Services or Common Station Amenities; and
- (B) there shall be promoted a Proposal for Change for the purposes of updating the text of the Annexes accordingly, to which no User shall unreasonably object, but so that the effect of Condition 43B.7(A) shall not be prejudiced pending any such Proposal becoming effective.

43B.8 Transition

If a Fixed QX Charges Notice has been served, but the amount of Fixed Charges has not been ascertained by the Control Period Start Date, whether by virtue of Condition 43B.3, 43B.4(A) or 43B.5, then:

- (A) the Fixed Charges stated in the Fixed QX Charges Notice shall apply as from the Control Period Start Date to the end of the four week period beginning the day after the date of ascertainment of the Fixed Charges, ascertained by way of any of conditions 43B.3, 43B.4(A) or 43B.6;
- (B) forthwith following ascertainment:
 - (1) the Station Facility Owner shall repay to the Passenger Operator an amount equal to the amount (if any) by which the amount so paid exceeds that which would have been payable on the basis of the ascertained Fixed Charges being payable from the beginning of the Control Period;
 - (2) the Passenger Operator shall pay to the Station Facility Owner an amount equal to the amount (if any) by which the amount so paid is less than that which would have been payable on the basis of the ascertained Fixed Charges being payable from the beginning of the Control Period

together with interest on such an amount at the Default Rate, calculated pursuant to Condition 37.

43B.9 Adjustment of Fixed Charges

- (A) The Station Facility Owner or any Passenger Operator may at any time during a Control Period in relation to which Fixed Charges are payable under this Part 6B seek a review of the amount of the Fixed Charges on the basis that:
 - (1) exceptional circumstances have arisen, which could not reasonably have been foreseen at the time when those Fixed Charges were established;
 - (2) these circumstances may include a Change of Law, the direction of a Competent Authority or the effect of an event of Force Majeure;
 - (3) such circumstances have, or may reasonably be expected to have, a fundamental effect on the relationship between the Fixed Charges and the underlying costs or benefits such that it would be inequitable for the Fixed Charges to continue at their current level.
- (B) Such a review shall be initiated by service of a notice, in case of notice by the Station Facility Owner served upon the Passenger Operators, and in the case of notice by a Passenger Operator, served upon the Station Facility Owner and other Passenger Operators. The notice shall:
 - (1) identify the circumstances that would justify such a review; and
 - (2) set out the review proposals.

- (C) The Station Facility Owner and Passenger Operators shall seek to reach agreement as regards the review and any consequential adjustment to the Fixed Charges.
- (D) In the event of failure to agree, the party seeking the review may refer the issue of what, if any, adjustment should be made and when, for determination in similar manner as under Condition 43B.6(A).
- (E) In the event of agreement or determination of any adjustment to the Fixed Charges in accordance with either Condition 43B.9(C) or (D) above, the adjustment shall take effect from such date as is agreed or determined (“the Date of Adjustment”) and any overpayments or underpayments already made by the Train Operator to the Station Facility Owner in respect of the period commencing from the Date of Adjustment, will be reimbursed or paid as soon as possible.
- (F) An adjustment to the Fixed Charges during a Control Period shall also be made to reflect the position where a Proposal for Change to a Common Station Amenity or a Common Station Service is approved pursuant to Parts 2 and/or 3 and such Proposal for Change includes an adjustment to the costs of providing such Common Station Amenity or Common Station Service. Such an adjustment should be addressed as part of the relevant Proposal for Change.

PART 7: EXISTING AGREEMENTS AND THIRD PARTY RIGHTS

44. General

- 44.1 No User shall do or permit to be done anything which might reasonably be expected to cause a breach of any Existing Agreement in so far as it is aware of any such obligations or such obligations are disclosed in the Station Register and such obligations relate to the Station.
- 44.2 The Station Facility Owner shall (on an after tax basis) indemnify each User, and keep it indemnified, against all costs and expenses reasonably and properly incurred by it in and as a consequence of its complying with its obligations under Condition 44.1 in relation to any Existing Agreement.

45. Station Facility Owner's representations, warranties and undertakings

- 45.1 The Station Facility Owner represents, warrants and undertakes to each User that as at the date first mentioned in Condition 55.2 all Existing Agreements the terms of which result or are likely to result in a Relevant Restriction will have been disclosed in the Station Register in accordance with the provisions of Part 9.
- 45.2 The Station Facility Owner shall comply with the obligations binding on the Station Facility Owner and contained in the Existing Agreements insofar as non-compliance by the Station Facility Owner would or could have a material adverse effect on any User or its business.
- 45.3 The Station Facility Owner represents, warrants and undertakes to each User that it has not entered into and will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to:
- (A) any Existing Agreement; or
 - (B) these Station Access Conditions.

46. Exercise of discretion/Grant of consent

- 46.1 Where any Existing Agreement contains rights and/or obligations:
- (A) whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by the Station Facility Owner; and
 - (B) the rights in respect of which may be exercised so as to protect the permission to use of any User,

the Station Facility Owner, shall when exercising such discretion or granting such consent, approval or waiver, subject to the terms of that Existing Agreement, consult with and have due regard to any representations which may be made by any User and shall at all times ensure, so far as reasonably practicable, that any disruption to the operation and/or use of the Station is minimised in all respects.

- 46.2 Where any works are proposed to be carried out under the terms of any Existing Agreement:
- (A) where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts 3 and 4 as if the exercise of the discretion in question were a Proposal for Change; and

- (B) where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition 21.1.
- 46.3 At the request of any User, the Station Facility Owner shall take all reasonable steps to exercise such rights, which shall include (without limitation) enforcing the collection of any contribution or compensation payable by a third party in respect of any works carried out in relation to the Station under any Existing Agreement.
47. **Wayleave grants**
- 47.1 The Station Facility Owner may grant wayleaves or easements at the Station to any public or local authority or public utility company or other persons, including (without limitation) rights of way, which do not impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services.
- 47.2 The Station Facility Owner may retain the benefit of grants pursuant to Condition 47.1 including rents or other payments arising under them except for any compensation for damage suffered by each User which shall be paid to the User in question promptly upon receipt.
- 47.3 No grant shall be made pursuant to Condition 47.1 until each User has been consulted and the Station Facility Owner shall have had due regard to that User's interests in the Station including the operational integrity of the Station and that User's existing and future plans for its use and enjoyment of the Station.
- 47.4 Any grant of rights of way made pursuant to Condition 47.1 shall require the grantee to comply with the Station Facility Owner's reasonable requirements in relation to safety or security and to give due consideration to its and any User's representations regarding the effect of the exercise of the rights in question on its and the User's operations. Any grant of a right of entry to carry out works made pursuant to Condition 47.1 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Station no less beneficial than the provisions of Conditions 20.3(B) and 83.
- 47.5 Where the Station Facility Owner wishes to grant wayleaves or easements at the Station which impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services the provisions of Part 3 shall apply.
48. **Superior Estate Owner consent**
- 48.1 Where, under these Station Access Conditions, the consent of the Station Facility Owner is required, and such consent may be given by the Station Facility Owner only with the permission of a Superior Estate Owner arising under a Superior Estate Grant in existence before 01 April 1994, it is a condition precedent to the grant of that consent that such permission is first obtained, provided that the Station Facility Owner shall use all reasonable endeavours to obtain such permission.
49. **Supplemental Agreements**
- 49.1 In this Condition 49:
- (A) "Relevant Arrangement" means:
- (1) an estate, interest or charge in or over land; or
 - (2) an agreement and any other arrangement, whether or not of a similar nature;

in any such case contemplated by a Supplemental Agreement;

- (B) "Supplemental Agreement" means any one or more of
- (1) an Agreement dated 01 April 1994 and made between the British Railways Board (1) and Railtrack PLC (2) and entitled "Agreement for Leases, Site Demarcations, Connection Agreements and BRT Easements" which forms part of the Railtrack Transfer Scheme;
 - (2) an Agreement dated 01 April 1994 and made between Railtrack (1) and the British Railways Board (2) and entitled "Property Miscellaneous Provisions Agreement" which forms part of the Railtrack Transfer Scheme;
 - (3) an Agreement dated 01 April 1994 and made between Railtrack (1) and BR Telecommunications Limited (2) and entitled "Framework Agreement relating to Grant of Easement and Property Leases" which forms part of the Railtrack Transfer Scheme and the British Rail Telecommunications Transfer Scheme;
 - (4) an Agreement dated 01 April 1994 and made between the British Railways Board (1) and BR Telecommunications Limited (2) and entitled "Agreement for Leases, Property Licences and Grant of Easements" which forms part of the British Rail Telecommunications Transfer Scheme;
 - (5) an Agreement dated 02 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement to provide access to and accommodation at the Board's Properties for the storage and sorting of mail and for use of employees of The Post Office";
 - (6) an Agreement dated 02 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement for Carriage of Letter Mail";
 - (7) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Interim Agreement - Agreement for the Carriage of Letter Mail";
 - (8) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Property Agreement - Agreement for The Post Office's use of the Board's Properties"; and
 - (9) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Ten Year Agreement - Agreement for the Carriage of Letter Mail".

49.2 If the Station Facility Owner intends to take any relevant action it shall give notice to each User:

- (A) stating that intention;
- (B) giving sufficient details of the relevant action and the Relevant Restriction in question to enable the recipient to make an accurate assessment of the likely effect of the Relevant Restriction on its permission to use the Station; and
- (C) referring to this Condition 49.

49.3 Subject to Conditions 49.4 and 49.5, a relevant action for the purpose of this Condition 49 is an action taken whether or not pursuant to or in accordance with an obligation in a Supplemental Agreement:

- (A) to implement or amend a Supplemental Agreement; or
- (B) to grant, enter into or amend a Relevant Arrangement; or
- (C) to exercise any discretion under or in respect of a Supplemental Agreement or a Relevant Arrangement;

and which creates or is reasonably likely to create a Relevant Restriction.

49.4 Where on the Conditions Efficacy Date a person used or occupied a Station for the purposes of its undertaking in a way that was and has continued to be continuous and apparent and, as against the Station Facility Owner or its predecessors in title, lawful, the granting to that person (or to a person who has succeeded to the relevant part of that person's undertaking) of a legal right to do so is not a relevant action for the purpose of this Condition 49 and Part 3 does not apply to it.

49.5 The granting to Rail Express Systems Limited (or to a person who has succeeded to the relevant part of its undertaking) of a lease of a unit of accommodation at the Station occupied (or to be occupied) by Royal Mail Group Limited (or any of its subsidiaries) pursuant to the agreements referred to in Condition 49.1(5) to (9) inclusive is not a relevant action for the purpose of this Condition 49 and Part 3 does not apply to it.

49.6 The Station Facility Owner may take the relevant action specified in the notice given under Condition 49.2 unless it is not fair and reasonable that the Relevant Restriction in question should be created having regard to:

- (A) the reason for the Relevant Restrictions;
- (B) its likely duration and extent;
- (C) the interests of the Station Facility Owner (including any contractual obligations entered into prior to the Conditions Efficacy Date to take the relevant action) and all Users;
- (D) the interests of passengers using the Station;
- (E) the nature and extent of the rights to use or occupy the Station which were being lawfully exercised on the Conditions Efficacy Date;
- (F) the interests of the Board in disposing of those parts of its undertaking in respect of which it was lawfully exercising rights to use or occupy the Station on the Conditions Efficacy Date;
- (G) the reasonable expectations of the Users when they entered into their Station Access Agreements; and
- (H) the other matters as respects which duties are imposed on the ORR by Section 4 of the Act

and the objecting party has commenced proceedings under Condition 49.7 within the 30 day period mentioned therein.

- 49.7 Any dispute as to whether, having due regard to the factors specified in Condition 49.6, it is fair and reasonable that the Relevant Restriction should be created shall be determined in accordance with the Access Dispute Resolution Rules.
- 49.8 If and to the extent that the Station Facility Owner complies with its obligations in this Condition 49 in respect of a relevant action, Part 3 does not apply to that relevant action.

PART 8: LITIGATION AND DISPUTES

50. **Notification by Station Facility Owner**

50.1 The Station Facility Owner shall promptly notify each User of:

- (A) any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which is likely to exceed the amount specified in paragraph 7 of Annex 8;
- (B) any claim, litigation, lien, demand or judgment relating to the Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are likely to exceed the amount specified in paragraph 8 of Annex 8; and
- (C) any other dispute relating to:
 - (1) the Station; or
 - (2) any rights granted to that User under its Station Access Agreement;

which it (acting reasonably) believes may have a materially adverse effect on the User's business at the Station.

51. **Notification by User**

51.1 Each User shall promptly notify the Station Facility Owner of any claim, litigation, lien, demand or judgment brought by it or against it which is likely to affect the provision of the Station Services or the Common Station Amenities.

51.2 Notwithstanding Conditions 50 and 52, a User shall have the right to participate in any prosecution, defence or settlement conducted in accordance with such Conditions at its sole cost and expense, provided that such participation shall neither prejudice its conduct by the Station Facility Owner nor reduce the User's share of the cost of such action.

52. **Authority of Station Facility Owner**

52.1 The Station Facility Owner:

- (A) shall have the authority; and
- (B) shall, so far as is reasonably practicable and prudent in respect of any third party act of a kind referred to in Condition 68.5, use its reasonable endeavours,

to commence, prosecute, defend, pursue or settle any claim, litigation, lien, demand or judgment relating to the Common Station Amenities or the Station Services (other than between the Station Facility Owner and a User) on behalf of both itself and, if appropriate, any Users, provided that the Station Facility Owner shall have no such authority or obligation without the prior consent of Passenger Operators representing the Requisite Majority where:

- (C) the dispute is likely materially to affect the Station Facility Owner's ability to operate the Station; or
- (D) the Station Facility Owner proposes to account for the costs or amount of such a dispute as part of the Qualifying Expenditure or other consideration payable under the Station Access Agreement and the amount of the dispute and/or the total

amount of the damages together with costs are likely to exceed the amount specified in paragraph 9 of Annex 8.

53. **Resolution of disputes and claims**

53.1 Save as otherwise provided in these Station Access Conditions, any dispute or claim arising out of or in connection with these Station Access Conditions or a Station Access Agreement shall be resolved in accordance with the following escalation process:

- (A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this Condition, the appropriate managers of the parties shall discuss the dispute with a view to resolution;
- (B) if the parties are unable to resolve the dispute in accordance with Condition 53.1(A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
- (C) if the parties are unable to resolve the dispute in accordance with Condition 53.1(B), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate directors for resolution;
- (D) if the dispute is not resolved pursuant to Conditions 53.1(A) to 53.1(C) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

53.2 Nothing in Condition 53.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this procedure directly (whether or not the dispute has been escalated in accordance with Condition 53.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

PART 9: STATION REGISTER

54. Maintenance of the Register

54.1 The Station Facility Owner shall, in such form as it may reasonably determine, maintain at the premises referred to in paragraph 9 of Annex 1 a register for the purposes of this part 9 and shall, upon ceasing to be the facility owner of the Station, deliver to the person succeeding it as facility owner:

- (A) such register; and
- (B) a copy of each set of financial accounts and supporting information referred to in Condition 40.1.

55. Content of the Register

55.1 Subject to Conditions 56 and any notice given under Condition 57, the Station Facility Owner shall cause to be entered in the Station Register:

- (A) so far and as soon as reasonably practicable, but in any event not later than the date first mentioned in Condition 55.2, in relation to Existing Agreements of which it is aware, the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) a copy or a true and fair description of the material terms of every Existing Agreement;
 - (2) a copy or a true and fair description of the material terms of every amendment (however described) of any such Existing Agreement; and
 - (3) a copy or a true and fair description of the material terms of every consent, approval, waiver or other discretion which shall have been given, made or exercised under or in respect of any such Existing Agreement;
- (B) in relation to Existing Works, all material information in relation to the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) all Existing Works;
 - (2) every amendment (however described) to any such Existing Works; and
 - (3) every consent, approval, waiver or other discretion which shall have been given, made or exercised in respect of any such Existing Works;
- (C) in relation to any Proposal described in Part 3, the provisions of:
 - (1) such proposal;
 - (2) any representations and/or objections made in respect of such proposal;
 - (3) any consent to such proposal; and
 - (4) the result of any decisions made by the ORR in respect of such proposal;
- (D) the Statement of Condition;

- (E) every Direction of any Competent Authority (other than a Statute) which relates to the Station or to the operation of the Station and which either:
 - (1) is likely to result in or affect a Relevant Restriction; or
 - (2) is likely materially to increase the amount of the Qualifying Expenditure, provided that such Direction is not applicable to stations generally;
- (F) in relation to any Vehicle count referred to in Condition 41, details of:
 - (1) the date of each such count;
 - (2) the person or persons responsible for such count;
 - (3) a summary of the results of such count; and
 - (4) any challenges and objections made by any Passenger Operator in relation to the results of any such count;
- (G) a copy of the Station Facility Owner's station licence and the safety validation documentation in relation to the Station and any modification of it, any notices given under or in respect thereof (including any notice of revocation or termination, howsoever expressed, and any provisional or final order given under Section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of a User under or in respect of its Station Access Agreement; and

55.2 The date referred to in Condition 46.1 and Condition 55.1(A) shall be the date which falls 30 days prior to the date on which the Secretary of State issues an invitation to tender pursuant to section 26 of the Act in respect of any railway passenger services operated by any User, provided that the first mentioned date shall not be earlier than 01 November 1999.

56. **Exclusions from the Register**

56.1 In entering any document or information on the Station Register, the Station Facility Owner shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of any person, where publication of that matter would or might, in the reasonable opinion of the Station Facility Owner, seriously and prejudicially affect the interests of that person.

57. **Public Interest**

57.1 The Station Facility Owner shall not enter any provision in the Station Register, and shall remove any document or information so entered, if the ORR shall, following an application made to it by any person, have given notice to the Station Facility Owner that, in its opinion, it would be against the public interest or the commercial interests of any person if the document or information in question were entered into, or (as the case may be) not removed from, the Station Register.

58. **Inspection and Copies**

58.1 The contents of the Station Register shall be available at the place where it is required to be maintained for inspection by any User, the ORR, the Secretary of State and any person whom the ORR shall nominate as a prospective User during normal business hours, without payment of any fee.

- 58.2 Any User and any person nominated by the ORR for the purposes of Condition 58.1 may, on the payment of such reasonable fee as the Station Facility Owner may from time to time specify with the approval of the ORR, require the Station Facility Owner to supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.
- 58.3 If requested to do so by the ORR or the Secretary of State, the Station Facility Owner, without payment of any fee, shall supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.

PART 10: RIGHTS GRANTED OVER ADJACENT PROPERTY

59. Rights of Way

- 59.1 Subject to Condition 63.1, each User shall have the right of way over the Adjacent Property to and from the Station for all purposes in connection with the User's permission to use the Station. Any such right shall be over such of the roadways, vehicular access areas or footpaths or other pedestrian areas or facilities (other than Barrow Crossings) which, at the relevant time, provide access to the Station.
- 59.2 Without prejudice to Condition 59.1, where the Plan shows land marked with black stipple each User shall have the right to pass to and from the Station over that land for all purposes in connection with the User's permission to use the Station.
- 59.3 If the rights in Conditions 59.1 or 59.2 are exercised, the User shall procure that (to the extent that the right includes by implication a right to load and/or unload) loading and/or unloading is carried out in a reasonable manner.

60. Barrow Crossings

- 60.1 Subject to Conditions 60.2 and 63.1, each User shall have the right to use any Barrow Crossing. If such right is exercised, the User shall procure that the operation of trains on the Network is not delayed or disrupted.
- 60.2 A User shall not permit the public (other than persons who are accompanied by another person holding a personal track safety certificate) to use a Barrow Crossing.

61. Emergency Rights

- 61.1 Each User shall have the right of exit from and entry to the Station in an Emergency over emergency routes designated by the Station Facility Owner or any Competent Authority (including any shown by '↑E' on the Plan) or over such other route as is required by the Emergency and available for the purpose.

62. Entry upon the Adjacent Property

- 62.1 Subject to Condition 63.1, each User shall have the right at any reasonable time upon reasonable notice to the Station Facility Owner, or in an Emergency at any time, to enter upon the Adjacent Property with or without vehicles, plant and machinery for the purpose of doing anything that may be required to preserve or to protect life or property.

63. Exercise and enjoyment of Rights

- 63.1 The exercise of rights pursuant to Conditions 59, 60, 61 and 62 shall be:
- (A) subject to due consideration in the circumstances being given to the Station Facility Owner's representations in respect of the effect on its operations; and
 - (B) in common with the Station Facility Owner and any other person to whom rights are granted over the Adjacent Property or who is authorised to use that property.
- 63.2 The Station Facility Owner shall use all reasonable endeavours to ensure that no person shall, save pursuant to an Existing Agreement or the operation of these Station Access Conditions, obstruct a right of way over, the Adjacent Property so as materially to prejudice any User's permission to use the Station.

64. **Works costs**

- 64.1 Each User shall pay to the Station Facility Owner any reasonable costs and expenses properly incurred by the Station Facility Owner and which arise directly out of the exercise by that User of any rights granted to it under this Part 10.

PART 11: STATION FACILITY OWNER'S PROPERTY RIGHTS

65. **Property Interests**

65.1 Save for the permission to use the Station and any other rights expressly granted under a Station Access Agreement, nothing in a Station Access Agreement shall confer upon or grant to a User any right or interest in or over the Station or any Adjacent Property.

66. **Exercise of Rights Granted**

66.1 The Station Facility Owner shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Station Access Agreement

(A) overload Conduits on, or obstruct a right of way over the Station, so as materially to prejudice any User's permission to use the Station; or

(B) place any sales barrow or exhibition stand on the Station so as to obstruct:

(1) access or egress to or from the highway or trains operated by any User or its Associates or any ticket office at the Station; or

(2) the visibility of any Passenger Information Systems.

66.2 Where an Existing Agreement contains a legally binding obligation on the part of the Station Facility Owner to regrant existing rights or privileges over the Station, the Station Facility Owner may regrant such rights or privileges to the person for the time being entitled to enforce such obligation.

PART 12: PERFORMANCE MONITORING REGIME AND REMEDIES

67. Performance Monitoring Regime

- 67.1 The Station Facility Owner and each Passenger Operator shall procure that with effect from 01 April 1996, Performance Audits are carried out in accordance with this Condition 67 and that in respect of the Accounting Year commencing on 01 April 1996 the following are determined in accordance with Condition 67.6:
- (A) the Audit Representatives;
 - (B) the Initial Performance Audit Form; and
 - (C) the Initial Baseline Mark for each Audit Question.
- 67.2 A Performance Audit shall be carried out on each Audit Date and the Station Facility Owner and the Audit Representatives shall on each Audit Date, subject to Condition 67.6(E), jointly complete a Performance Audit Form in respect of that Performance Audit by
- (A) allocating the appropriate Audit Mark to each Audit Question;
 - (B) stating the relevant Audit Score; and
 - (C) signing the Performance Audit Form.
- 67.3 Where an Audit Score represents an Increase, the Station Facility Owner shall be entitled to receive from each Passenger Operator a Performance Bonus, which shall be paid in accordance with Condition 33.6.
- 67.4 Where an Audit Score represents a Decrease, each Passenger Operator shall be entitled to receive from the Station Facility Owner a Performance Rebate, which shall be made in accordance with Condition 68.1.
- 67.5 The Station Facility Owner shall within 7 days of the completion of a Performance Audit Form pursuant to Condition 67.2:
- (A) notify each Passenger Operator of:
 - (1) the relevant Audit Score stated in that Performance Audit Form; and
 - (2) any entitlement to a Performance Bonus or Performance Rebate arising pursuant to Condition 67.3 or Condition 67.4; and
 - (B) provide to each Passenger Operator a copy of that Performance Audit Form.
- 67.6 The identity of the Audit Representatives, the terms of the Performance Audit Form and, where necessary, the Baseline Mark and Baseline Position shall be determined in accordance with the following provisions:
- (A) The person or persons who are to act on behalf of the Passenger Operators for the purposes of this Condition 67 shall be that person or those persons (but not more than two) each being an employee of a Passenger Operator whose names are jointly notified to the Station Facility Owner by the Passenger Operators from time to time.

- (D) If in accordance with the terms of these Station Access Conditions:
- (1) any amenity or service becomes or ceases to be a Common Station Amenity or Common Station Service; or
 - (2) there is a change to the terms upon which any Audit Station Amenity or Audit Station Service is provided to Passenger Operators; or
 - (3) any Audit Station Amenity or Audit Station Service to which an Audit Question relates which was previously adversely affected by any works permitted pursuant to Part 3 or Part 4 ceases to be adversely affected in such way,

the Station Facility Owner and the Audit Representatives shall at the request of any of them negotiate with each other with a view to agreeing within 30 days of such request any modifications to

- (a) the Performance Audit Form;
- (b) the Baseline Marks; or
- (c) the Baseline Position,

as may be necessary to reflect those matters and if that agreement is not reached within such 30 days, the matters in dispute shall be referred by the Station Facility Owner to be resolved in accordance with the Access Dispute Resolution Rules.

- (E) If to complete a Performance Audit Form in respect of a Performance Audit reference would need to be made to or reliance placed upon any matter which is required to be determined in accordance with this Condition 67.6 and that the matter has not been so determined then the relevant Performance Audit Form shall not be required to be completed unless and until that matter is so determined.

67.7 In this Condition 67, unless the context otherwise requires:-

Audit Date means the dates in each Accounting Year falling 5 days after the end of the second, fourth, sixth, eighth, tenth and thirteenth Accounting Periods or such other dates at the Station Facility Owner and the Audit Representatives may agree;

Audit Mark means in respect of any Audit Question:

- (a) if (save where paragraph (c) below applies) the Station Facility Owner and the Audit Representatives jointly agree that the Audit Question is:
 - (i) satisfied, the Points Available; or
 - (ii) not satisfied, nil

save that where an Audit Representative is an employee, officer or contractor of a Passenger Operator which supplies on behalf of the Station Facility Owner any Audit Station Service that Audit Representative shall be disregarded for the purpose of determining whether it is so agreed that any Audit

Question in respect of that Audit Station Service is or, as the case may be, is not satisfied; or

- (b) if the Station Facility Owner and the Audit Representatives do not jointly agree as is referred to in paragraph (a) above the same Audit Mark as was allocated in the previous Performance Audit or where the Performance Audit is the first in any Accounting Year the relevant Baseline Mark;
- (c) if at the Audit Date any Audit Station Amenity or Audit Station Service to which an Audit Question relates is adversely affected by any works permitted pursuant to Part 3 or 4, no Audit Mark shall be allocated for such Audit question and the Total Points Available for that Performance Audit shall be reduced by the Points Available for that Audit Question;

Audit Question	means a question on the Performance Audit Form in respect of which an Audit Mark is required to be allocated on a Performance Audit Form pursuant to a Performance Audit;
Audit Representatives	means the person or persons from time to time determined pursuant to Condition 67.6(A) as being those who are to act on behalf of the Passenger Operators for the purposes of this Condition 67;
Audit Score	means the total of the Audit Marks allocated on a Performance Audit Form pursuant to a Performance Audit expressed as a percentage of the Total Points Available;
Audit Station Amenity	means any Common Station Amenity to which an Audit Question relates;
Audit Station Service	means any Common Station Service to which an Audit Question relates;
Baseline Mark	means in relation to an Audit Question: <ul style="list-style-type: none">(a) which arises in respect of any Performance Audit carried out in the Accounting Year commencing 01 April 1996, the Initial Baseline Mark for the relevant Audit Question; or(b) which arises in respect of any Performance Audit carried out in any subsequent Accounting Year, the average of those Audit Marks allocated to the relevant Audit Question pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Mark for that Accounting Year; or(c) where Condition 67.6(D) has applied the number of points determined in relation to the relevant Audit Question pursuant to that Condition;

Baseline Position	<p>means in relation to a Performance Audit:</p> <ul style="list-style-type: none"> (a) carried out in the Accounting Year commencing 01 April 1996, the Initial Baseline Position; (b) carried out in any subsequent Accounting Year, the average of the Audit Scores allocated pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Position for that Accounting Year; or (c) where Condition 67.6(D) has applied the number of points determined pursuant to that Condition <p>expressed, in each case as a percentage of the Total Points Available;</p>
Decrease	<p>means that the relevant Audit Score is less than the Baseline Position;</p>
Increase	<p>means that the relevant Audit Score exceeds:</p> <ul style="list-style-type: none"> (a) in the case of the First Performance Audit in any Accounting Year, the Baseline Position, or (b) in the case of any subsequent Performance Audit in any Accounting Year, the Audit Score for the immediately preceding Performance Audit, <p>and references to an Increase being of a certain percentage shall be construed as referring to the number of percentage points which such excess represents;</p>
Initial Baseline Mark	<p>means that number of points which is determined pursuant to Condition 67.6(C) in relation to the relevant Audit Question;</p>
Initial Baseline Position	<p>means the total of the Initial Baseline Marks expressed as a percentage of the Total Points Available;</p>
Initial Performance Audit Form	<p>means the form set out in Annex 13 subject to such modifications as may be determined, pursuant to Condition 67.6(B);</p>
Performance Audit	<p>means:-</p> <ul style="list-style-type: none"> (a) a review of the Audit Station Amenities and the Audit Station Services for the purpose of agreeing whether each Audit Question is, or is not, satisfied on the relevant Audit Date; and (b) subject to Condition 67.6, an allocation of the appropriate Audit Mark to each Audit Question and calculation of the relevant Audit Score, <p>in each case jointly by the Station Facility Owner and the Audit Representatives;</p>

Performance Audit Form means the Initial Performance Audit Form subject to such modifications as may from time to time be determined pursuant to Condition 67.6(D);

Performance Bonus means an amount calculated in accordance with the following formula:

$$\frac{D (RVC+FC)}{365} \times \frac{Z}{100}$$

where:

RVC = the Residual Variable Charge payable by the Passenger Operator for the relevant Accounting Year as most recently estimated by the Station Facility Owner pursuant to Condition 33.6(A);

FC = the Fixed Charges payable by the Passenger Operator for the relevant Accounting Year;

D = the number of days that have passed since the last Performance Audit or the beginning of the Accounting Year where the relevant Performance Audit is the first in that Accounting Year; and

Z = (a) where the relevant Audit Score is less than or equal to 35% of the Total Points Available and the Increase is of at least 20 percentage points, 0.25;

(b) where the relevant Audit Score is greater than 35% but less than or equal to 70% of the Total Points Available and the Increase is of at least 5 percentage points, 0.5; or

(c) where the relevant Audit Score is greater than 70% of the Total Points Available and the Increase is of at least 2 percentage points, 1

provided that in relation to any period from 1 April 2009 the definition of "RVC" shall be treated as deleted, and "RVC +" shall be treated as deleted from the formulae;

Performance Rebate means an amount calculated in accordance with the following formula:

$$\frac{D (RVC+FC)}{365} \times \frac{Z}{100}$$

RVC = the Residual Variable Charge payable by the Passenger Operator for the relevant Accounting Year as most recently estimated by the Station Facility Owner pursuant to Condition 33.6(A);

- FC = the Fixed Charges payable by the Passenger Operator for the relevant Accounting Year;
- D = the number of days that have passed since the last Performance Audit or the beginning of the Accounting Year where the relevant Performance Audit is the first in that Accounting Year; and
- Z = 1, save where for the previous two or more Performance Audits the Audit Score has also represented a Decrease when Z shall be 5

provided that in relation to any period from 1 April 2009 the definition of "RVC" shall be treated as deleted, and "RVC +" shall be treated as deleted from the formulae;

- Points Available means the number of points which is shown on the Performance Audit Form against a Audit Question as to be allocated if it is satisfied; and
- Total Points Available means the total of the Points Available on all Audit Questions.

67.8 Nothing done, nor any right or obligation arising, pursuant to or in connection with this Condition 67 shall constitute, or be deemed, an acceptance or evidence of a breach by the Station Facility Owner of its obligations under any Station Access Agreement or by a Passenger Operator under its obligations under any sub-contract with the Station Facility Owner for the provision of any Common Station Service.

68. **Abatement and self help remedies**

68.1 The Daily Charge of a User shall be abated by the amounts specified in, or determined in accordance with the provisions of:

- (A) Annex 6 or Annex 7 (as applicable) if, otherwise than in circumstances expressly provided for under these Station Access Conditions, any of the Common Station Amenities or Common Station Services identified in Annex 6 are not provided to a User which has a right to use such amenities or services for the relevant period specified in Annex 6, or the Station is not open for the periods specified in Annex 7; and
- (B) Condition 67 where the User is entitled to receive a Performance Rebate from the Station Facility Owner pursuant to Condition 67.

68.2 Any amount abated pursuant to Condition 68.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be deducted by the party in question from the Daily Charge for the relevant Accounting Period. If and to the extent that the Daily Charge for such period has already been paid, the amount to be abated shall be paid by the party required to grant such abatement to the party entitled to benefit from it, within ten Business Days of the first mentioned party being notified of the relevant cause of abatement.

68.3 If the Station Facility Owner fails to carry out any work in accordance with Condition 22 and such failure would have a material adverse affect on the lawful business of a User carried on at the Station then that User, having consulted with each other User, may give the Station Facility Owner written notice of its intention to carry out such work unless,

- within a reasonable period after receipt of such notice, the Station Facility Owner remedies such breach.
- 68.4 If, after expiry of such reasonable period as is referred to in Condition 68.3, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition 68.3 or where more than one the User referred to in Condition 68.5 may carry out the work in accordance with the relevant provisions of these Station Access Conditions and the Station Facility Owner shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.
- 68.5 Where more than one User has given notice under Condition 68.3 then unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Qualifying Expenditure shall be the User referred to in Condition 68.4, provided always that where the User is carrying out any works in accordance with Condition 68.4, the Station Facility Owner shall not take any steps to remedy the relevant breach.
- 68.6 If the Station Facility Owner fails to secure the provision of any of the Common Station Services in accordance with its obligations under these Station Access Conditions any User shall, subject to Condition 68.7, be entitled to procure that such services are carried out in accordance with the relevant provisions of these Station Access Conditions during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the User's Daily General Charge payable by it to the Station Facility Owner for the relevant Accounting Period. If and to the extent that the User's Daily General Charge has already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within ten Business Days of the Station Facility Owner being notified of the amount of the relevant cost.
- 68.7 A User shall be entitled to the remedies referred to in Condition 68.6 only if:
- (A) each other User has agreed that the User may exercise those remedies or the User bears the greatest proportion of Qualifying Expenditure;
 - (B) the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and
 - (C) the breach remains unremedied by the Station Facility Owner at the end of that period.
- 68.8 If none of the Station Facility Owner, any User, or any of the employees, subcontractors or agents of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition 68.1 whether as a consequence of Force Majeure (as defined in Condition 73.1) or otherwise, there shall be no abatement of the Daily Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition 101.2), nor seek payment of an amount in respect of it.
- 68.9 Where for the purposes of Condition 68.1 any amount is to be specified in or determined in accordance with the provisions of Annex 6 by reference to any period of time during which any service or amenity is unavailable or not provided in accordance with the Station Access Conditions then any such period of time shall only commence upon the Station Facility Owner being notified, or becoming aware, of such unavailability or failure and such notification need not be in writing.

69. **User's liabilities**

69.1 Subject to the Station Access Conditions, if a User is, as a result of any breach by it of its obligations under the Station Access Agreement, responsible (in whole or in part) for:

- (A) the Station Facility Owner failing to secure the opening of the Station in accordance with Condition 81.1(A);
- (B) the Station Facility Owner failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 6; or
- (C) a Performance Rebate being receivable from the Station Facility Owner pursuant to Condition 67;

the User shall pay the Station Facility Owner an amount equal to Z% of the lesser of the amount by which any charges are required to be abated as a result of such breach by the User pursuant to:

- (D) Condition 68.1; or
- (E) the provisions (if any) contained in any relevant Station Access Agreement by which Condition 68.1 is varied or disapplied as a result of such breach by the User,

where Z% equals the User's Default Responsibility in relation to the failure or Performance Rebate in question.

70. **Indemnities**

70.1 Subject to Condition 71, the Station Facility Owner shall (on an after tax basis) indemnify each User, and keep each of them respectively indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by each of them as a result of any breach by the Station Facility Owner of any of its obligations under a Station Access Agreement to which the User in question is party with the Station Facility Owner.

70.2 Subject to Condition 71, each User shall (on an after tax basis) indemnify the Station Facility Owner and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the User of any of its obligations under that User's Station Access Agreement.

71. **Limitation on claims**

71.1 Save as otherwise expressly provided in any Station Access Agreement (including these Station Access Conditions), no party to a Station Access Agreement shall be liable in respect of any breach of a Station Access Agreement:

- (A) unless notice of it is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant or could, with reasonable diligence, have become so known;

- (B) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed:
 - (1) in the case of a claim against the Station Facility Owner, the amount specified in paragraph 10 of Annex 8;
 - (2) in the case of a claim against a passenger service operator, the amount specified in paragraph 11 of Annex 8; and
 - (3) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 12 of Annex 8;
- (C) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:
 - (1) in the case of a claim against the Station Facility Owner the amount specified in paragraph 13 of Annex 8;
 - (2) in the case of a claim against a passenger service operator, the amount specified in paragraph 14 of Annex 8; and
 - (3) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 15 of Annex 8,

in any Accounting Year, in which case the liability of the respondent to the claimant shall be limited to the amount of the excess over those amounts respectively,

provided that Conditions 71.1(B) and 71.1(C) shall not apply in respect of any obligation to pay any liquidated sum.

- 71.2 Save as otherwise expressly provided in any Station Access Agreement (including these Station Access Conditions), no party to a Station Access Agreement may recover or seek to recover from any other party to that agreement any amount in respect of any loss of revenue (including fare revenue, subsidy, access charges to third parties and incentive payments) in connection with the subject matter of such Station Access Agreement, which is or is alleged to be caused to it by the other party.
- 71.3 Save as otherwise expressly provided in any Station Access Agreement (including these Station Access Conditions), the remedies provided for in these Station Access Conditions and the Access Dispute Resolution Rules, to the extent applicable, shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.
- 71.4 Save as expressly provided in any Station Access Agreement or in these Station Access Conditions no person shall be entitled to recover damages, abate its Access Charge, or otherwise obtain reimbursement or restitution in respect of any claim under a Station Access Agreement or these Station Access Conditions if and to the extent that the loss in respect of which it is seeking to recover such damages, abatement, reimbursement or restitution has been recovered under any other agreement or by operation of law.

72. **Default Responsibility**

- 72.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused:-

- (A) any of the Common Station Amenities or Common Station Services identified in Annex 6 not to be provided for the relevant period specified in Annex 6, or the Station not to open for the periods specified in Annex 7; and
- (B) a Performance Rebate to be receivable from the Station Facility Owner pursuant to Condition 67

and where more than one person or event is the cause, so far as practicable, the extent to which each person or event is the cause.

72.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition 72.1, have due regard to all information available to it which is relevant in the circumstances.

72.3 As soon as reasonably practicable following the occurrence of a matter listed in Condition 72.1, the Station Facility Owner shall notify each User of the degree of causation, if any, of that occurrence attributed by the Station Facility Owner to itself or to the User which shall unless disputed by the User, within 5 Business Days of receipt of that notice be deemed to have been agreed by the User.

73. **Force Majeure**

73.1 "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstance or any combination of events or circumstances beyond the reasonable control of any party to a Station Access Agreement which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means. Without prejudice to that generality, "Force Majeure" under this Condition 73.1 shall include subject to Condition 73.1(B) the following events and circumstances:

- (A) war damage, enemy action, terrorism, the act of any government or government instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by Her Majesty's Government (or any department, minister, official or nominee of it) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God, strike or any industrial action by employees of any person other than the party claiming the benefit of this Condition 73 or of its Affiliates, or the provision by the Station Facility Owner of such assistance as may be reasonable to co-operate in alleviating the effects of an incident adversely affecting the safety or security of persons or property;

and shall exclude the following events and circumstances:

- (B) any act of the ORR, any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of this Condition 73 or of its Affiliates, or any accumulation (other than one of exceptional severity or of an exceptional nature) of ice, rain, water, snow or leaves on or affecting railway assets or any breach of a contractual obligation owed to the party claiming the benefit of this Condition 73.

73.2 No party to a Station Access Agreement shall be responsible for any failure to fulfil its obligations under such agreement if, and to the extent that, such failure shall be caused by, or directly or indirectly by reason of, Force Majeure, which makes it impossible or impracticable for that party to comply with such obligations.

- 73.3 A party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under the Station Access Agreement.
- 73.4 As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the occurrence of the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under the Station Access Agreement.
- 73.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under the Station Access Agreement.
74. **Application of this Part and Mitigation**
- 74.1 The provisions of this Part 12 shall apply in respect of any Station Access Agreement save to the extent varied or disapplied in such Station Access Agreement.
- 74.2 Nothing in any Station Access Agreement shall in any way restrict or limit the general principles at law relating to the mitigation of loss or damage resulting from breach of contract.

PART 13: ENVIRONMENTAL PROTECTION

75. **General environmental obligations**

- 75.1. Each User shall promptly notify the Station Facility Owner (and in such case where such notification is given orally shall promptly confirm such notification in writing) of any Environmental Damage or any circumstance of which that User is aware and which it is reasonably foreseeable is likely to give rise to, or which has given rise to, an Environmental Condition. Each User shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.
- 75.2 No User shall take action which it knows, or ought reasonably to know, could materially:
- (A) increase the risk of the Station Facility Owner being liable under the SFO Environmental Indemnity or increase the extent of such liability;
 - (B) prejudice the defence of any claim brought against the Station Facility Owner by a Competent Authority or any other person; or
 - (C) increase the cost of remedying any Environmental Condition,
- provided that a User may in any event take such action either if required to do so by any Competent Authority or in order to comply with Environmental Law.
- 75.3 No User shall be liable for any Environmental Damage to the extent that it existed as at the Environmental Liability Commencement Date.
- 75.4 The rights and obligations of each User in respect of the Station under this Part 13 shall apply equally to any part of the Adjacent Property which is subject to an Environmental Condition resulting from the activities of the User at the Station.

76. **Remedial action required as a result of a User's activities**

- 76.1 Where:
- (A) the Station Facility Owner becomes aware that, as a result of any activities of a User, or its Associates, an Environmental Condition exists or has occurred at the Station or the Adjacent Property and the Station Facility Owner reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
 - (B) the Station Facility Owner is given a Direction by a Competent Authority that any action is required to prevent, mitigate or remedy an Environmental Condition resulting from activities of a User or its Associates at the Station or the Adjacent Property,
- the Station Facility Owner shall inform that User of the need to take such action.
- 76.2 Any User responsible for the Environmental Condition shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition and shall provide the Station Facility Owner with the opportunity to supervise such action (the reasonable costs of such supervision to be borne by the User). The User shall complete such action within a reasonable time and to the reasonable satisfaction of the Station Facility Owner.
- 76.3 Any action taken by a User pursuant to Condition 76.2 shall be at its own cost.

- 76.4 Where a User fails to take or complete any action required by Condition 76.2 within a reasonable time and to the reasonable satisfaction of the Station Facility Owner, the Station Facility Owner shall be entitled to take or complete such action.
- 76.5 Within 21 days of receiving notification of any act or potential claim, judgment, order, notice, direction or injunction which could give rise to the Station Facility Owner being liable under the SFO Environmental Indemnity, the User shall provide the Station Facility Owner with written details thereof. Such details shall include copies of all relevant data, reports, advice, opinions, statements, correspondence and any other relevant document.
- 76.6 Where the Station Facility Owner receives notification from a User pursuant to Condition 76.5, the Station Facility Owner shall have a right to:
- (A) defend, contest, comply with or settle any claim, judgment, order, notice, direction or injunction; and/or
 - (B) take any action or carry out any works to prevent, mitigate or remedy the condition of the Station pursuant to Condition 77 which could give rise to an obligation of the Station Facility Owner to indemnify the User under the SFO's Environmental Indemnity.

77. The Station Facility Owner's remedial action

- 77.1 If in the Station Facility Owner's reasonable opinion, urgent action is necessary in order to prevent, mitigate or remedy an Environmental Condition or to comply with a Direction of a Competent Authority the Station Facility Owner may take (without the need to comply with Part 3) reasonable steps to prevent, mitigate or remedy that Environmental Condition or to comply with that Direction.
- 77.2 Subject to Condition 77.1, the Station Facility Owner may, if action is in its reasonable opinion necessary in order to prevent, mitigate or remedy an Environmental Condition at the Station for which a User is not responsible, take such action upon at least six months notice to the Users.
- 77.3 Where any action is taken pursuant to Conditions 77.1 or 77.2 to prevent, remedy or mitigate an Environmental Condition which is not the result of the activities of any User or its Associates or of the condition of the Station prior to the Environmental Liability Commencement Date, the cost of such action shall be borne between the Station Facility Owner and the Users on a fair and equitable basis.

78. Environmental indemnities

- 78.1 Each User shall indemnify the Station Facility Owner and keep it indemnified from and against all reasonable and proper expenses, costs and liabilities reasonably and properly incurred by the Station Facility Owner as a result of any Environmental Condition at the Station or the Adjacent Property which exists as a result of activities by that User or its employees, agents, contractors, subtenants or licensees since the Environmental Liability Commencement Date, or the proper undertaking by the Station Facility Owner in accordance with this Part 13 of any steps to prevent, mitigate or remedy such an Environmental Condition.
- 78.2 The Station Facility Owner shall indemnify each User from and against all Environmental Liability incurred by each User to the extent that such liability is due to the condition of the Station prior to the Environmental Liability Commencement Date, provided that the Station Facility Owner shall not be liable under this Condition 78.2 for any Environmental Liability

which results from the User's failure to comply with the obligations contained in this Part 13.

78.3 If any payment is made by:

(A) the Station Facility Owner to a User under Conditions 77.3 or 78.2; or

(B) a User to the Station Facility Owner under Condition 78.1,

and the payee subsequently recovers or procures the recovery from a third party of any amount by way of damages or compensation in respect of any liabilities of the kind referred to in that Condition, the payee shall repay to the payer an amount equal to the lesser of:

(C) the amount recovered from the third party; and

(D) the amount paid by the payer pursuant to that Condition.

79. **Conduct of claims**

79.1 A User shall on a timely basis keep the Station Facility Owner informed of the conduct and progress of all claims of the kind referred to in Condition 76.5. The User shall provide promptly to the Station Facility Owner copies of all relevant data, reports, records, pleadings, statements, correspondence, advice and opinions concerning any claim, judgment, order, notice, direction or injunction or the circumstances, events, conditions or activities which could give rise to any liability of the Station Facility Owner to indemnify the User under the SFO's Environmental Indemnity.

79.2 The User shall not settle any claim of the kind referred to in Condition 76.5 without the Station Facility Owner's written consent (such consent not to be unreasonably withheld or delayed).

79.3 Where any Environmental Damage arising at the Station since the Environmental Liability Commencement Date results in any Competent Authority or other person taking proceedings under Environmental Law against the Station Facility Owner, each User shall have the right to be joined as a party (at its own cost) to any proceedings where permissible as a matter of law.

80. **Confidentiality**

80.1 Where a person who is to provide information or documents under this Part 13 to another person is under a duty of confidentiality in relation to that information or documents, he shall use all reasonable endeavours to obtain permission to disclose such information or documents and unless and until any such permission is obtained he shall not be required to provide such information or documents under this Part 13.

PART 14: OTHER POSITIVE OBLIGATIONS

81. Station Facility Owner's obligations

- 81.1 The Station Facility Owner shall (or shall procure that another person on its behalf shall):
- (A) ensure that the Station is open for use by all Users and their Associates at such times and to such extent as are specified in paragraph 5 of Annex 1, subject to any restrictions or limitations which may apply or be imposed pursuant to these Station Access Conditions;
 - (B) use all reasonable endeavours to ensure that the Common Station Services are provided to a standard and in a quantum which is at least as good as their standard and quantum as at the Conditions Efficacy Date or, if any permitted changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;
 - (C) save as otherwise provided for or permitted by these Station Access Conditions:
 - (1) not change materially the Common Station Services (whether in whole or in part) from the condition (or working order), standard or quantum referred to in Condition 81.1(B) without such change having been approved in accordance with the Station Access Conditions;
 - (2) not change materially the Common Station Amenities (whether in whole or in part) without such change having been approved in accordance with the Station Access Conditions;
 - (D) notwithstanding its obligations under its station licence, comply with any reasonable request of any User which is necessary to enable that User to:
 - (1) deal with an Emergency;
 - (2) comply with its Safety Obligations;
 - (3) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; and
 - (4) maintain security in relation to persons and property at the Station;
 - (E) [NOT USED]
 - (F) not less than 60 days prior to the expiry of any Exclusive Period, notify each User that the relevant exclusive use of the Exclusive Station Service at the Station is no longer reserved for the exclusive use of the User previously entitled;
 - (G) save as otherwise specifically provided in these Station Access Conditions, provide or procure the provision of the Common Station Services and the Common Station Amenities;
 - (H) without prejudice to Condition 101.3, promptly pay to the relevant authority or person all rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Station and a fair proportion of all such sums which are not separately assessed or payable, but excluding:
 - (1) tax assessable on the Station Facility Owner in respect of payments under any Station Access Agreement;

- (2) tax assessable on the Station Facility Owner in respect of consideration paid to the Station Facility Owner in connection with any dealing with its interest in the Station; or
 - (3) interest or penalties payable by the Station Facility Owner in consequence of its delay or default;
- (I) promptly pay to the relevant person for all Services consumed on the Station or a fair proportion of the cost to the Station Facility Owner in respect of the supply of such services to the Station, the Adjacent Property and any other premises;
 - (J) observe and perform all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Station or its use;
 - (K) take all reasonable steps to prevent, and not to allow, any encroachment on the Station or the acquisition of any right or easement against the Station (save for the rights granted in accordance with these Station Access Conditions);
 - (L) maintain at the Station a notice under section 55 British Transport Commission Act 1949;
 - (M) provide and keep in working order at the Station such fire extinguishers and/or other fire safety equipment and maintain such fire precaution arrangements as shall ensure satisfactory safety from the risks of fire or explosion;
 - (N) be responsible for obtaining and/or maintaining any necessary fire certificate for the Station;
 - (O) keep the Railway Substructure and the Railway Superstructure in a safe condition to the extent that it is not the responsibility of any third party;
 - (P) collect and dispose of Track Litter to the extent required to ensure compliance with the Environmental Protection Act 1990 (or which would be so required if the track or land on which such Track Litter is present were relevant land of a principal litter authority as defined by the said Act); and
 - (Q) if a lease of any Core Facility as is referred to in paragraph 21 of Annex 8 is to be terminated or expires in accordance with the terms of such lease (but not if such a lease is terminated and relet, on terms substantially the same as those that applied to the previous letting, in consequence of a franchise agreement being entered into pursuant to section 26 of the Act), offer to let such Core Facility subject to the provisions of Part 3 and on terms substantially the same as those that applied to the previous letting save as to the term of that letting:
 - (1) where such Core Facility is not a ticket office, to the Passenger Operators (other than the Passenger Operator to whom the previous letting had been granted) any such offer being made first to whichever of those Passenger Operators shall bear the greatest proportion of Qualifying Expenditure and, if not accepted within 7 days by that Passenger Operator, being so made to each of the other of those Passenger Operators in turn in descending order of the proportion of Qualifying Expenditure borne by them, provided that if any such offer is not accepted by any of those Passenger Operators the Station Facility Owner shall offer to so let such Core Facility to such person (if any) as the Secretary of State shall nominate within 14 days of being requested to do so by the Station Facility Owner; and

- (2) where such Core Facility is a ticket office, to such person as the ORR shall, within six months of being requested to do so by the Station Facility Owner, notify the Station Facility Owner as being the lead retailer from time to time having the obligation to operate one or more ticket offices at the Station.
- (R) as soon as reasonably practicable and in any event before 01 April 1997, take all reasonable steps to obtain appropriate contributions, by way of service charge, in respect of the use of any Common Station Amenity or Common Station Service, from any person having rights of occupation of any part of the Station under a lease or licence, where the relevant leased or licensed premises enjoy the benefit of or are recipients of such Common Station Amenity or Common Station Service, such steps to include to the extent reasonable:
- (1) where the relevant lease or licence contains provisions for payment of such a service charge, the prompt and efficient calculation, invoicing and collection (including the taking of all appropriate debt recovery procedures and steps) of the same;
 - (2) where the relevant lease or licence contains provisions for the negotiation of such a service charge, the due, prompt and proper exercise of all rights available to the Station Facility Owner under such provisions;
 - (3) where the relevant lease or licence does not contain any provision for such a service charge, upon the renewal of such lease or licence, the inclusion (subject to any statutory rights exercised by the relevant tenant or licensee) in such renewed lease or licence, of provision for such a service charge; and
 - (4) subject to the provisions of Condition 81.1(R)(3) on the granting of any new lease or licence, the inclusion in such new lease or licence of provision for such a service charge.

82. **Users' obligations**

82.1 Each User shall (or shall procure that another person on its behalf shall):

- (A) comply with any reasonable request of the Station Facility Owner which is necessary to enable the Station Facility Owner (as the case may be) to:
 - (1) deal with an Emergency or a Network Emergency;
 - (2) comply with its Safety Obligations;
 - (3) maintain security in relation to persons and property at the Station; and
 - (4) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;
- (B) take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition 82 insofar as they are applicable to them;
- (C) provide to the Station Facility Owner, for display at the Station, such information relating to changes in any railway passenger services provided by any User (including changes of a temporary nature) which shall be necessary or expedient in order to inform passengers of such changes in a timely manner;

- (D) timeously provide to the Station Facility Owner any notices which:
- (1) are required to be displayed at the Station;
 - (2) contain or specify obligations binding on the User; and
 - (3) are required to be provided by the User,
- by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- (E) procure that the Station Facility Owner is provided with a copy of the User's passenger licence (if any) and the safety case referred to in such licence (to the extent that it shall not already have been provided to the Station Facility Owner) and any modification of it and any notices given under or in respect of it (including any notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of the Station Facility Owner under or in respect of the Station Access Agreement;
- (F) without prejudice to the provisions of Condition 1.1(P), timeously notify the Station Facility Owner if the User or any of its Associates wishes to:
- (1) carry out any material maintenance of, or work to, any thing kept on the Common Station Amenities;
 - (2) bring things onto the Common Station Amenities which may affect the proper operation of the Common Station Amenities; or
 - (3) enter upon the Common Station Amenities with vehicles;
- (G) use all reasonable endeavours to liaise and co-operate with other Users and the Station Facility Owner in relation to the exercise of their permission to use Common Station Amenities and Common Station Services in order to secure the efficient and economic use of the Station for the benefit of Users and their Associates;
- (H) perform and observe (or reimburse the Station Facility Owner for the whole or a due proportion, as the case may require, of the costs incurred by the Station Facility Owner in doing so) all present and future regulations and requirements of any utility supplying Services to the Station;
- (I) perform and observe the covenants, obligations and conditions for the time being contained in every Superior Estate Grant in existence before 01 April 1994 so far as they affect the Station and bind the Station Facility Owner except:
- (1) the covenants for payment of rent and any other money payable by the Station Facility Owner to the Superior Estate Owner under any Superior Estate Grant; and
 - (2) any obligations assumed by the Station Facility Owner under these Station Access Conditions; and
- (J) comply with any reasonable requests of the Station Facility Owner to minimise so far as practicable:

- (1) emissions from any diesel trains operated by or on behalf of the User from the Station;
- (2) the costs of cleaning the Common Station Amenities and any track adjacent to platforms within the Station.

83. **Standard of works**

83.1 The Station Facility Owner and each User shall procure that:

- (A) works referred to in Part 4 and any other works to any part of the Station permitted by these Station Access Conditions which are carried out by it or on its behalf are conducted in a proper and workmanlike manner in accordance with Safety Obligations and methods and practices customarily used in good and prudent building practice (including, where applicable, Railway Group Standards);
- (B) such works are conducted with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced building contractors engaged in a similar activity under similar circumstances and conditions; and
- (C) any physical damage to the Station or the Adjacent Property arising as a result of such works is made good as soon as reasonably practicable.

PART 15: OTHER NEGATIVE OBLIGATIONS

84. **Planning**

- 84.1 No User shall make any application for planning permission or for a determination that planning permission is not required in respect of the Station or in respect of any change of use of the Station without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed).
- 84.2 No User shall make any alteration or addition to or change of use of the Station (notwithstanding any other consent which may be granted by the Station Facility Owner) before all necessary planning permissions have been obtained.

85. **Encroachments**

- 85.1 No User shall stop up or obstruct any window or other opening at the Station except so far as such action shall be necessary to preserve the safety or security of persons or property at the Station and, if so necessary, the User in question shall notify the Station Facility Owner of the action taken if the window or opening opens onto land other than Adjacent Property.
- 85.2 No User shall give to any third party any acknowledgement that such User or any other person enjoys the access of light or air to any of the windows or openings in the Station by the consent of that third party, nor pay any money to or enter into any agreement with that third party for the purpose of inducing or binding it not to obstruct the access or light or air to any such windows or openings.

86. **Signs**

- 86.1 No User shall display at the Station any sign, light or other illumination or obstruction which will cause, or is likely in the Station Facility Owner's reasonable opinion to cause, confusion or interference with the proper operation of the Network.

87. **Excavations/Excluded Equipment**

- 87.1 No User shall carry out any continuous unsupported excavation at the Station, or do anything at the Station which will or is likely to endanger the safety or stability of any railway or of any Adjacent Property.
- 87.2 No User shall interfere with or endanger the Excluded Equipment.

88. **Use**

- 88.1. No User shall use the Station otherwise than for any of the purposes contemplated by Condition 1.1(O).
- 88.2 No User shall do or, to the extent reasonably within its control, permit to be done on the Station anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to any other User or to the Station Facility Owner or its tenants or the occupiers of any neighbouring property or the public, provided that:
- (A) without prejudice to Condition 75.2, the proper use of the Station for any of the purposes referred to in Condition 88.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition 88.2; and

- (B) nothing in Condition 88.2(A) shall operate to sanction anything which shall constitute a nuisance actionable by any third party.
- 88.3 Neither the Station Facility Owner nor any User shall bring or, to the extent reasonably within its control, permit to be brought onto the Station anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.
- 88.4 Without prejudice to Condition 75.2 nothing in Conditions 88.2, 88.3 or 88.5 shall prevent the lawful bringing onto the Station of anything which may reasonably be required for or in connection with use of the Station for the purposes permitted by Condition 88.1 or the proper performance by the Station Facility Owner of its obligations under a Station Access Agreement or an Existing Agreement.
- 88.5 Neither the Station Facility Owner nor any User shall permit smoking or naked lights within the Station where the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 and the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 apply and no dispensation exists.
89. **Overloading**
- 89.1 Neither the Station Facility Owner nor any User shall overload structural parts of the Station, any Railway Superstructure or Railway Substructure or the works or structures by which it is supported, or do anything which will cause the designed capacity of any part of the Station or the Conduits at or used for the Station to be exceeded, to the extent that such capacity is reasonably capable of being ascertained in advance, or its adequacy reasonably capable of being called in question.
90. **Improper use of Station**
- 90.1 Except as otherwise permitted by the Station Access Agreement, no User shall take or omit to take (nor, to the extent reasonably within its reasonable control, permit to be taken or omitted) any action which would involve improper use of the Common Station Amenities, increase the risk of loss or damage to those amenities or otherwise adversely affect Common Station Services.
91. **Works to Station**
- 91.1 No User shall:
- (A) cut into or injure the brickwork, foundations or any other part of the Railway Substructure or Railway Superstructure or install (without in either case the previous written approval of the Station Facility Owner) against or within the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace; or
- (B) carry out any paint spraying (other than water paint spraying) beneath the Railway Substructure or Railway Superstructure without any requisite licence from the local or other appropriate authority and without compliance with any requirements of such authority (including construction of any necessary booth unless formally exempted by the authority).
92. **Not causing breach**
- 92.1 Neither the Station Facility Owner nor a User shall do or omit to do, or permit any Associate (other than passengers) or agent of such person to do or omit to do, anything

which may result in a breach of any obligation in these Station Access Conditions by any of the Users or the Station Facility Owners to any other of them.

92.2 No User shall do anything in breach of, the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence before 01 April 1994 so far as they affect the Station and bind the Station Facility Owner.

93. **Damage caused through Railway Substructure and Railway Superstructure**

93.1 No User shall make any claim whatsoever on the Station Facility Owner or its employees or agents (other than such as arises from a breach of any obligation of, or the negligence of, the Station Facility Owner or its employees or agents) in respect of any damage, loss or inconvenience which may be suffered by the User in consequence of any percolation of water or other liquids or soil, dust or dirt (however caused) through or from the Railway Substructure or Railway Superstructure.

PART 16: ATTRIBUTION OF COSTS

94. Application of this Part

94.1 The provisions of this Part 16 shall not affect the proportions in which Qualifying Expenditure or the Long Term Charge is borne by Passenger Operators.

95. Compliance with obligations under Conditions

95.1 If the Station Facility Owner or any User shall reasonably incur any costs in complying with their respective obligations under Conditions 46.3, 81.1(I), 81.1(J) and 81.1(O), the liability for the payment of those costs as between the Station Facility Owner and each User shall be determined on a fair and equitable basis, having regard to the following criteria:

- (A) if the costs arise from a Proposal for Change that has been accepted in accordance with Part 3 (other than a Proposal for Change made pursuant to Condition 18.1) the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- (B) if the costs arise from the grant, after the Conditions Efficacy Date, of any lease or underlease for residential purposes, then the costs shall be wholly those of the Station Facility Owner; and
- (C) if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Station or Equipment (other than Excluded Equipment), then such costs shall be Qualifying Expenditure to the same extent that the costs of Maintenance and/or Repair thereof would be Qualifying Expenditure.

96. Compliance with changes imposed by law

96.1 Subject to Condition 96.2, if any User shall reasonably incur any costs in complying with, or in consequence of, any Change of Law or any Direction of any Competent Authority (other than any body appointed in accordance with Condition 53), or in complying with Non-Discretionary Changes under Condition 13, the liability for the payment of those costs as between any of the Station Facility Owner and the Users shall be determined on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act and subject to those matters:

- (A) the expectations which:
 - (1) the User in question could reasonably have had when it entered into the Station Access Agreement; and
 - (2) the Station Facility Owner reasonably has in respect of its interests in relation to the Station;
- (B) the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by the Station Facility Owner and each User upon such change being carried out;
- (C) the benefits or disadvantages which have accrued and are likely to accrue to the Station Facility Owner and each User in consequence of the change;
- (D) the scale of disruption to the Station Facility Owner's and each User's business which is likely to occur in consequence of the change; and

(E) any User's franchise term (as defined in section 23(3) of the Act) (if applicable),

provided that there shall not for these purposes be taken into account the existence or terms of any contract entered into by the Station Facility Owner after 01 April 1994 except to the extent that the tribunal shall be satisfied that they ought properly to be taken into account.

96.2 In relation to the Station Facility Owner, Condition 96.1 shall apply to the costs incurred by the Station Facility Owner in the stated circumstances in its capacity as the operator of the Station and not as the owner or tenant of the Station responsible for its structural integrity and maintenance. Condition 42 applies in the case of relevant changes of law (as defined in that Condition) affecting the Station Facility Owner in the latter capacity.

97. **Basis of accounting and payment**

97.1 Without prejudice to the obligations of any person under a licence granted to it under section 8 of the Act, any costs incurred by the Station Facility Owner or any User which are required under these Station Access Conditions to be reimbursed by, or accounted to, any other of them shall be accounted for in accordance with generally accepted accounting principles applicable in the United Kingdom.

97.2 The Station Facility Owner and each User shall promptly make such payments as are necessary to discharge their respective liabilities for the payment of the costs to which Conditions 95 and 96 relate.

98. **Apportionment of costs**

98.1 Any costs incurred both in relation to:

(A) Qualifying Expenditure; and

(B) any other matter or thing,

shall be attributed as between them on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act and taking into account generally accepted accounting principles applicable in the United Kingdom.

99. **Minimisation of costs**

99.1 The Station Facility Owner shall pay the best effective price reasonably obtainable in respect of any costs and expenses which it is entitled under these Station Access Conditions to recoup or obtain reimbursement from any User.

PART 17: GENERAL

100. Confidentiality

- 100.1 Except as permitted by Condition 100.2 or Condition 100.3, all data and information acquired or received by any party under or pursuant to a Station Access Agreement shall be held confidential during the continuance of such agreement and for the period specified in paragraph 17 of Annex 8 thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.
- 100.2 Any party to the Station Access Agreement shall be entitled in good faith to divulge any data or information to which Condition 100.1 applies without the approval of the other party to the following third parties and, where relevant, in the following circumstances:
- (A) to the Secretary of State;
 - (B) to the ORR;
 - (C) to the Health and Safety Executive;
 - (D) to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;
 - (E) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under the Station Access Agreement or to enforce its rights under such Agreement, upon obtaining an undertaking of strict confidentiality from such person (other than such an officer or employee of the party in question);
 - (F) to any person who has entered into bona fide discussions with the Station Facility Owner in relation to the entry by that person into a Station Access Agreement, in respect of information:
 - (1) contained on the Station Register; or
 - (2) in any set of financial accounts (and supporting information) in respect of the Common Station Amenities and Common Station Services,upon obtaining an undertaking of strict confidentiality from such person;
 - (G) to any lender, security trustee, bank or other financial institution from whom such party or any person referred to in Conditions 100.2(D) to 100.2(F) is seeking or obtaining finance, upon obtaining an undertaking of strict confidentiality from such entity or advisers;
 - (H) to any professional advisers or consultants of such party or any of the foregoing persons and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
 - (I) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
 - (J) to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;

- (K) pursuant to the order of any court or tribunal of competent jurisdiction;
- (L) to London Underground Limited to the extent that:
 - (1) such information is in respect of the interaction between the operations of the Station Facility Owner and the Users and the operation of railway passenger services by London Underground Limited; and
 - (2) it is necessary to divulge such information for the safety and efficiency of any such operations or services; or
- (M) to a passenger transport executive or its successor to the extent that the party disclosing the same is legally obliged to do so.

100.3 The Station Facility Owner may disclose information to which Condition 100.1 applies if and to the extent that Part 9 of Schedule 7 of any access agreement conferring permission to use track for the purpose of operation of trains for the carriage of passengers by railway so provides.

101. **Payments, default interest and VAT**

101.1 Default interest: If any party to a Station Access Agreement defaults in the payment, when due, of any sum payable under such agreement (howsoever determined), the liability of such party shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (both before and after judgment) at the Default Interest Rate. All such interest shall be calculated on the actual number of days elapsed and a 365-day year.

101.2 Payments gross: All sums due under a Station Access Agreement shall be paid:

- (A) without deduction or withholding in respect of duties, taxes, taxation or charges otherwise of a taxation nature, unless the deduction or withholding is required by law, in which event the payer shall:
 - (1) ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - (2) account to the relevant taxation or other authorities within the period for payment permitted by the applicable law for the full amount of the deduction or withholding; and
 - (3) furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and
- (B) free and clear of any other deduction, withholding, set-off or counterclaim save only as may be required by law or in accordance with the Station Access Agreement.

101.3 VAT:

- (A) Where any taxable supply for VAT purposes is made under or in connection with the Station Access Agreement by a party to that agreement to any other party, the payer shall, in addition to any payment required for that supply, pay upon

presentation of a valid tax invoice such VAT as is chargeable in respect of that supply.

- (B) Where under the Station Access Agreement a party to that agreement has agreed to reimburse or indemnify any other party in respect of any payment made or cost incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the indemnified party is treated as a member of a group for VAT purposes, under sections 25 and 26 of the Value Added Tax Act 1994.
- (C) Where any rebate or repayment of any amount is payable by one party to a Station Access Agreement to any other party, and the first party is entitled as a matter of law or of H.M. Revenue & Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

102. **Invalidity and waiver**

- 102.1 Invalidity: If any provision in the Station Access Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of the Station Access Agreement but the legality, validity and enforceability of the remainder of such agreement shall not be affected.
- 102.2 Waiver: No waiver by any party of any default by any other in the performance of any of the provisions of the Station Access Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under the Station Access Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy under the Station Access Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 102.3 Time limits: Where in the Station Access Agreement any obligation of a party is required to be performed within a specified time limit, that obligation shall be deemed to continue after that time limit if the party fails to comply with the obligation within the time limit.

103. **Passenger Transport Executives**

103.1 If:

- (A) a passenger transport executive or any successor enters into an agreement pursuant to section 20 of the Transport Act 1968 or a franchise agreement with, or in relation to the railway passenger services of, a Passenger Operator; and
- (B) a notice is at any time given or issued by any party to a Station Access Agreement to which that Passenger Operator is a party in the exercise of any right to terminate that Station Access Agreement,

then the party giving or issuing that notice shall promptly after it has done so send a copy of it to the relevant passenger transport executive or its successor.

Co-operation Agreement

between

[] LIMITED
as the Proposer

and

[] LIMITED
as the MCC

relating to

[] Station

Note: this document should only be used in connection with Material Change Proposals made between Railway Industry parties.

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THIS AGREEMENT is dated

and made

BETWEEN:

- (1) [] **LIMITED** (company registration number []
[] whose registered office is at []
(the "Proposer"); and
- (2) [] **LIMITED** (company registration number []
[] whose registered office is at []
(the "MCC").

WHEREAS:

- (1) [There is in respect of the Station a Station Access Agreement which incorporates the ISACs made between the Proposer and the MCC (*to be used where one party is the Station Facility Owner and the other party is a User*)] [The Proposer and the MCC are parties to agreements which incorporate the ISACs (*to be used between parties where either of them is a Material Chance Consultee to the MCP i.e. there is no agreement between them, but both separately are parties to an agreement which incorporates the ISACs, so that they are both bound by the ISACs.*)].
- (2) The Proposer has issued the MCP to the MCC and this Agreement concerns the implementation of the MCP.
- (3) The purpose of this Agreement is:
- (i) **co-operation** – to establish appropriate principles concerning the basis upon which the MCC and the Proposer will co-operate with each other throughout the implementation of the MCP in order to minimise any material adverse effect of the MCP upon the MCC's Business; and
 - (ii) **financial undertaking** – to provide a financial undertaking to pay to the MCC the MCC Costs and such part of any increased net costs in respect of the Station for which the MCC is responsible pursuant to the Station Access Agreement as shall be directly attributable to the implementation of the MCP and to set out appropriate procedures to be followed in relation to any claim by the MCC pursuant to the financial undertaking.

IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and phrases shall have the following meanings unless the contrary intention appears:

"Control Period" means the period between the reviews of Network Rail's funding requirements by the ORR;

"Fixed Sum" has the meaning given that expression in clause 4.1 of this Agreement;

"implementation of the MCP" means the implementation and carrying out of works or other activities within the station change process as outlined by the MCP;

“ISACs” means the Independent Station Access Conditions and Annexes applicable to the Station;

“MCC” means the Material Change Consultee being the second party to this Agreement;

“MCC’s Business” means the business of [running services for the carriage of passengers by railway] [operating the Station and the Network];

“MCC Costs” means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the MCC in evaluating and responding to the MCP (whether or not the MCP is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue) and any net increase in Qualifying Expenditure incurred by the MCC to the extent that the same are directly attributable to the implementation of the MCP but taking into account and netting off against such costs, losses and expenses:

- (a) the benefit (if any) to be obtained or likely to be obtained by the MCC as a consequence of the implementation of the MCP; and
- (b) the ability or likely future ability of the MCC to recoup any costs, losses and expenses from third parties including passengers and customers;

“MCP” means a Material Change Proposal for the Station issued on [];

“Proposer” means the proposer of a Material Change Proposal being the first party to this Agreement;

“Required Interference” has the meaning given that expression in clause 3.1 of this Agreement;

“Required Interference Proposal” has the meaning given that expression in clause 5.1 of this Agreement;

“Savings Suggestion” has the meaning given that expression in clause 11.2 of this Agreement;

“Station” means [] Station;

“Station Access Agreement” means an access agreement dated [] made between the Proposer and the MCC incorporating the ISACs;

“Unplanned Interference” has the meaning given that expression in clause 7.1 of this Agreement.

1.2 In this Agreement the following rules of interpretation shall apply:

- (A) References in the singular shall include the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (B) References to a particular clause or sub-clause shall be references to that clause or sub-clause in this Agreement (except to the extent that the context requires otherwise);

- (C) Reference to this Agreement is a reference to this agreement as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to it or in accordance with any terms of it;
- (D) Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it;
- (E) Headings are included for convenience only and are to be ignored for the purposes of interpretation; and
- (F) Unless a contrary intention appears, words and expressions defined in the ISACs shall have the same meanings when used in this Agreement.

2. **CO-OPERATION**

- 2.1 The parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights as set out in this Agreement.

3. **FINANCIAL UNDERTAKING**

- 3.1 When undertaking the implementation of the MCP, the Proposer shall use its reasonable endeavours not to prevent, hinder, obstruct, delay or interfere with the MCC's Business except insofar as it cannot reasonably be avoided or, acting reasonably, it is nevertheless necessary to do so in order to implement the MCP (the "**Required Interference**").
- 3.2 MCC Costs arising by reason of a material adverse impact upon the MCC's Business from the Required Interference or any MCC Costs arising by reason of the impact upon the MCC's Business from the MCP following completion, shall be compensated to the MCC in accordance with clauses 4, 6, 7 or 8, as applicable.
- 3.3 The Proposer of the MCP shall pay emerging costs in accordance with clauses 6, 7 and 8, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum in accordance with clause 4.
- 3.4 To the extent that the net costs of operating the Station are increased as a result of the implementation and completion of the MCP, the Proposer shall compensate the MCC for any increased Qualifying Expenditure (as defined in the ISACs) that the MCC is to be charged under the Station Access Agreement either by reducing the relevant Qualifying Expenditure payable pursuant to the Station Access Agreement or alternatively the Proposer may make a separate payment or payments to the MCC of a sum equivalent to the increase in Qualifying Expenditure, whichever is appropriate.
- 3.5 For the avoidance of doubt, the costs and payments for procuring the works and services in order to carry out the works or activities referred to in the MCP will be paid in accordance with the MCP.

4. **PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM**

- 4.1 If the MCC desires to recover compensation by way of a Fixed Sum, it shall within a reasonable period after the date of this Agreement serve notice on the Proposer identifying the fixed amount of compensation it will accept (the "**Fixed Sum**") in full and final settlement of all MCC Costs.

- 4.2 Within 40 Business Days following the receipt of any such notice the Proposer shall serve notice on the MCC indicating whether it accepts or rejects such offer and if it fails to serve any such notice it shall be deemed to have rejected such offer.
- 4.3 If the Proposer in its discretion accepts the MCC's offer (both the form of payment and the amount) in relation to a Fixed Sum, the Proposer shall, subject to clause 4.4, pay the Fixed Sum to the MCC within [20 Business Days] from the date of any agreement under clause 4.2 and from the date of such agreement the provisions of clauses 6, 7 and 8 shall cease to apply.
- 4.4 At the request of the Proposer and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the Proposer's and the MCC's respective Businesses, the Proposer shall be entitled to pay the Fixed Sum by instalments of such sums and at such intervals as the Proposer and the MCC may agree (on the assumption that, wherever possible, the MCC should be entitled to receive instalments as and when costs are incurred by it) but in default of agreement over the circumstances in which it would be reasonable to pay by instalments, or over the amount or frequency of such instalments, the same may be referred by either party to dispute resolution under clause 14.

5. **NOTICE OF A REQUIRED INTERFERENCE**

- 5.1 Where the Proposer is able to reasonably anticipate that the implementation of the MCP or a phase of the MCP will result in Required Interference then the Proposer shall so far as reasonably possible provide 40 Business Days' written notice to the MCC of the relevant Required Interference together with:
- (A) a description of the relevant Required Interference and those parts of the MCC's Business that the Proposer considers are likely to be materially affected by it; and
 - (B) such supporting information as is available to the Proposer at that time and which will be reasonably required by the MCC for the purpose of complying with its obligations under clause 6.3 (save that such supporting information does not need to be provided where compensation for MCC Costs is being paid by way of a Fixed Sum under clause 4).

The Proposer shall be permitted to serve further notice(s) together with appropriate supporting information in relation to the relevant Required Interference if and whenever the Proposer reasonably believes there is a change that will impact upon the level of relevant Required Interference and the adverse effect caused to the MCC's Business arising from implementation of the relevant phase of the MCP (the original notice and any such further notice shall each be a "**Required Interference Proposal**").

6. **ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE**

- 6.1 This clause 6 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 6.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 5.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 6.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state

clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 14.

6.3 The MCC's response to the Proposer under clause 6.2 shall:

- (A) confirm whether or not MCC Costs will be directly attributable to the relevant Required Interference Proposal and if so provide the Proposer with reasonable information in support thereof;
- (B) state the estimated amount of any MCC Costs directly attributable to the relevant Required Interference Proposal and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) in relation to the relevant Required Interference Proposal;
- (D) make any proposals for reaching agreement in relation to the terms on which any MCC Costs are to be compensated; and
- (E) make any proposals for satisfying the mitigation obligation under clause 11 and estimate the costs of performing such obligation.

6.4 The Proposer shall be entitled

- (A) to undertake the relevant Required Interference after service of any Required Interference Proposal under clause 5.1 regardless of whether or not the MCC has provided the response under clause 6.3; and/or
- (B) to submit a Savings Suggestion as outlined at clause 11; and/or
- (C) either to agree the MCC response in relation to the level and manner of MCC Costs payable in the response issued pursuant to clause 6.3 or refer the MCC response and its contents to dispute resolution in accordance with clause 14.

6.5 For the avoidance of doubt, the Proposer shall be entitled to undertake the implementation of the MCP and phases of the same without having identified any Required Interference or having served notices in accordance with clause 5.1 but shall make payment of MCC Costs in accordance with clause 8.

7. **UNPLANNED MATERIAL INTERFERENCE WITH THE MCC'S BUSINESS**

7.1 This clause 7 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum, and it applies where as a consequence of the implementation of the MCP there is:

- (A) unanticipated or unplanned interference that results in a prevention, hindrance, obstruction, delay or interference with the MCC's Business at the Station; and/or
- (B) some Required Interference that has not (for any reason) been the subject of a Required Interference Proposal given by the Proposer in accordance with clause 5.1 above

(each of which circumstances are referred to below as an "**Unplanned Interference**").

- 7.2 After an Unplanned Interference event, the MCC shall within 30 Business Days or such longer period as the MCC may propose as being reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) provide to the Proposer a notice that shall:
- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 14;
 - (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
 - (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
 - (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 11 and estimate the costs of performing such obligations.
- 7.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 7.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 14.

8. **PAYMENT OF MCC COSTS**

- 8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 8.2 The Proposer shall pay any MCC Costs within 20 Business Days of agreement or determination (whether under clause 6.4 or 7.3 in relation to MCC Costs arising from the Required Interference or the Unplanned Interference, or under clause 14 in relation to other MCC Costs) of the level and manner of payment of the MCC Costs (or the relevant instalment of them).
- 8.3 At the request of the MCC and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the MCC's Business, the Proposer shall make payments on account of the MCC Costs payable under clause 8.2 on a without prejudice basis of such sums and at such intervals as the Proposer and the MCC may agree but in default of agreement over the circumstances in which it would be reasonable to make payments on account, or over the amount or frequency of such payments, the same may be referred by either party to dispute resolution under clause 14.

9. **REPAYMENT OF OVERPAID MCC COSTS**

- 9.1 As soon as practicable after the total amount of MCC Costs (the "**Final MCC Costs**") is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the "**Total MCC Costs Paid**") and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the "**Overpaid MCC Costs**").
- 9.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 14.

- 9.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within [20] Business Days of agreement or determination of the amount of such costs under clauses 9.1 and 9.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 9.1 (the “**Interest Commencement Date**”), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.
- 9.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 9 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

10. **FAILURE TO IMPLEMENT MCP**

- 10.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the “**Partial MCC Costs Amount**”) (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).
- 10.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer’s notice, or either party may refer the same to dispute resolution under clause 14.
- 10.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 10.2 of the level of the Partial MCC Costs Amount.
- 10.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer’s notice given under clause 10.1 exceeds the Partial MCC Costs Amount then the provisions of clause 9 shall apply mutatis mutandis to any such overpaid amount.

11. **MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION**

- 11.1 The MCC is required to take all reasonable steps which are within its power and which are not prohibited by or in breach of any existing Legal Requirement to reduce the extent of the MCC Costs resulting from the implementation of the MCP by the Proposer and without prejudice thereto (without being obliged to incur additional expenditure or loss of revenue unless these are compensated for by the Proposer) take all reasonable steps to mitigate and minimise any adverse impact on the MCC’s Business of the implementation of the MCP and to conduct its business in such manner as responds efficiently to the occurrence of any Required Interference and/or Unplanned Interference.
- 11.2 The Proposer may submit suggestions (each of which is a “**Savings Suggestion**”) to the MCC identifying potential opportunities for making savings in MCC Costs arising from the implementation of the MCP and if the MCC at its discretion accepts the Savings Suggestion then the MCC shall implement the same.
- 11.3 If the MCC accepts and implements the Savings Suggestion then the Proposer shall pay the reasonable and direct losses and expenses of implementation of the Savings Suggestion including loss of profit (but not consequential costs, losses or expenses save for loss of profit) recoverable under this Agreement but the MCC must provide the

Proposer with such supporting evidence as it reasonably requires showing the extent of the same.

12. **LIMITATIONS ON THE FINANCIAL UNDERTAKING**

12.1 The MCC shall not be entitled to claim or be paid under the terms of this Agreement to the extent that the MCC will be or is entitled to payment of a sum or compensation in respect of the works or activities in the MCP or other associated work under the terms of:

- (A) any Track Access Agreement with [Network Rail] [the MCC]; and/or
- (B) any Network Change under Conditions G and H of the Network Code; and/or
- (C) the Station Access Agreement relating to the Station; and/or
- (D) any lease from [Network Rail] [the MCC] of premises at the Station; and /or
- (E) any other agreement with the Proposer or a third party,

in respect of the same MCC Costs provided always that if only part of an amount payable under this Agreement has been recovered or can be recovered by the MCC under such other agreement, then the remainder of the MCC Costs payable under this Agreement will remain payable to the MCC by the Proposer pursuant to this Agreement.

12.2 The Proposer shall have no liability under this Agreement in respect of:

- (A) MCC Costs arising after a period of five years from the date the Station asset(s) identified in the MCP become operational;
- (B) MCC Costs not notified in writing to the Proposer with appropriate supporting information in accordance with the requirements of this Agreement;
- (C) matters that result from Repair, Maintenance and/or renewals activity and works that fall within Part 4 or Part 13 of the ISACs where such activity and works would have been undertaken in any event in accordance with the ISACs regardless of whether such works and activities were contemplated by the MCP;
- (D) works and activities that are outside of the Station Change process contained in the ISACs and/or outside of the MCP; or]
- (E) [works and activities that the MCC is required to undertake by virtue of the provisions of its franchise agreement [concession agreement] (if any)].

12.3 Notwithstanding the provisions of clause 12.2(A), in circumstances where the implementation of the MCP straddles more than one [franchise term] [Control Period] [concession agreement] and the MCC costs have not been taken into account by the [Secretary of State] [ORR] in the calculations relating to any subsequent [franchise term] [concession agreement] [Control Period] after the one in which the MCP is made, then the Proposer shall continue to pay the MCC Costs arising during the remainder of the time period set out in clause 12.2(A) to the extent such costs have not been taken into account.

13. **ALTERNATIVE ACCOMMODATION**

13.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 13.2 (the “**Additional Accommodation**”)

used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:

- (A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC's Business having regard to the functionality of its previous accommodation; and
 - (B) arrangements for and timing of the relocation to the alternative accommodation
- have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and
- (C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.

13.2 If the MCC identifies any Station Facility:

- (A) which is affected by the Proposer's MCP;
- (B) that is reasonably necessary for use in connection with its rail business; and
- (C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

then it shall inform the Proposer that alternative accommodation needs to be provided. The Proposer shall be entitled either to agree with the MCC that such accommodation needs to be provided or refer the matter to dispute resolution under clause 14.

13.3 For the avoidance of doubt, in considering whether any alternative accommodation is reasonably adequate there shall be no assumption that it shall be a like for like replacement.

13.4 In the event of any dispute under this clause 13 either party may refer the matter for dispute resolution under the terms of clause 14.

14. **DISPUTES**

14.1 Disputes arising out of or in connection with this Agreement shall be resolved in accordance with the following escalation process:

- (A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;
- (B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
- (C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

14.2 Nothing in clause 14.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this Agreement directly (whether or not the dispute has been escalated in accordance with clause 14.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

15. **ASSIGNMENT**

15.1 This Agreement is personal to the parties and neither the Proposer nor the MCC shall assign all or any part of the benefit of or its rights or benefits under this Agreement.

16. **GENERAL**

16.1 This Agreement shall not create or be taken to evidence any partnership, joint venture or agency between the parties. Neither party is hereby authorised to act as agent of the other, without the other party's prior written consent.

16.2 No indulgence granted by either party shall constitute or be construed as a waiver of the other party's strict rights under this Agreement.

16.3 If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

16.4 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement.

16.5 Each party admits that it has not entered into this Agreement in reliance upon any representation or promise of the other party.

16.6 No variation of any of the terms of this Agreement shall be effective unless it is in writing and signed on behalf of each of the parties.

17. **NOTICES**

17.1 Any notice or other document to be given or served under this Agreement shall be in writing and sent by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or delivered to or sent by first class post or facsimile to the other party to be served at its registered office.

17.2 Any such notice or document shall be deemed to have been served:

- (A) If sent by e-mail, at the time it leaves the electronic gateway of the sender;
- (B) if delivered, at the time of delivery;
- (C) if sent by facsimile, upon receipt of the appropriate confirmation report; or
- (D) if posted by pre-paid first class post, on the second Business Day following that on which the envelope containing the same was posted.

Provided that, for the purposes of Clauses 17.2(A), 17.2(B) and 17.2(C) where the notice is delivered or transmitted outside the hours of 9 a.m. to 5 p.m. on a Business Day, or at any time on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next Business Day.

18. **VAT**

18.1 If and to the extent that the fulfilment by either party of an obligation on its part contained or referred to in this Agreement shall constitute or shall at any time be found to constitute a supply of goods or a supply of services for the purposes of the Value Added Tax Act 1994 and/or that VAT is chargeable in respect of any supply made pursuant to this Agreement then the party in receipt of such supply shall pay to the supplier thereof the amount of such VAT payable in connection therewith upon receipt of a valid VAT invoice or invoices giving the requisite details of the taxable supplies.

18.2 Where either party agrees to pay the other an amount of money pursuant to this Agreement such amount shall be regarded as being exclusive of VAT and such agreement shall be construed as requiring the additional payment by the payer to the payee of any VAT properly chargeable in respect of the relevant supply made or to be made by the payee to the payer upon receipt of a valid VAT invoice.

19. **COUNTERPARTS**

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

20. **THIRD PARTIES**

20.1 This Agreement gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Co-operation Agreement

between

[] LIMITED

as the Proposer

and

[] LIMITED

as the MCC

relating to

[] Station

Note: this document should only be used in connection with Material Change Proposals made by Station Investors at Managed Stations.

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THIS AGREEMENT is dated

and made

BETWEEN:

(1) [] **LIMITED** (company registration number [] whose registered office is at [] (the "Proposer"); and

(2) [] **LIMITED** (company registration number [] whose registered office is at [] (the "MCC").

WHEREAS:

- (1) The Proposer has issued the MCP to the MCC and this Agreement concerns the implementation of the MCP.
- (2) Network Rail and each of the Relevant Operators wish the Proposer to be bound by the provisions of Part 3 of the Station Access Conditions in respect of the MCP and the Proposer has agreed to be bound by those provisions.
- (3) The purpose of this Agreement is:
 - (i) **co-operation** – to establish appropriate principles concerning the basis upon which the MCC and the Proposer will co-operate with each other throughout the implementation of the MCP in order to minimise any material adverse effect of the MCP upon the MCC's Business; and
 - (ii) **financial undertaking** – to provide a financial undertaking to pay to the MCC the MCC Costs and such part of any increased net costs in respect of the Station for which the MCC is responsible pursuant to the Station Access Agreement as shall be directly attributable to the implementation of the MCP and to set out appropriate procedures to be followed in relation to any claim by the MCC pursuant to the financial undertaking.

IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and phrases shall have the following meanings unless the contrary intention appears:

"APA" means an Asset Protection Agreement (as that expression is defined in the ISACs) entered into between (1) Network Rail and (2) the Proposer before, on or after the date of this Agreement in relation to the carrying out of the works or other activities [as] [including those] outlined by the MCP;

"Control Period" means the period between the reviews of Network Rail's funding requirements by the ORR;

"Fixed Sum" has the meaning given that expression in clause 6.1 of this Agreement;

“implementation of the MCP” means the implementation and carrying out of works or other activities within the station change process as outlined by the MCP;

“ISACs” means the Network Rail Independent Station Access Conditions and Annexes applicable to the Station;

“MCC” means the Material Change Consultee being the second party to this Agreement;

“MCC’s Business” means the business of [running services for the carriage of passengers by railway] [operating the Station and the Network];

“MCC Costs” means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the MCC in evaluating and responding to the MCP (whether or not the MCP is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue) and any net increase in Qualifying Expenditure incurred by the MCC to the extent that the same are directly attributable to the implementation of the MCP but taking into account and netting off against such costs, losses and expenses:

(A) the benefit (if any) to be obtained or likely to be obtained by the MCC as a consequence of the implementation of the MCP; and

(B) the ability or likely future ability of the MCC to recoup any costs, losses and expenses from third parties including passengers and customers;

“MCP” means a Material Change Proposal for the Station issued on [];

“Property Agreement” means an agreement dated [] made between [Network Rail] [the MCC] and the Proposer [giving the Proposer access and other rights over or in respect of the Station in connection with the implementation of the MCP;]

“Proposer” means the proposer of a Material Change Proposal being the first party to this Agreement;

“Required Interference” has the meaning given that expression in clause 5.1 of this Agreement;

“Required Interference Proposal” has the meaning given that expression in clause 7.1 of this Agreement;

“Savings Suggestion” has the meaning given that expression in clause 13.2 of this Agreement;

“Station” means [] Station;

“Station Access Agreement” means an access agreement dated [] made between [Network Rail and the MCC] [the MCC and []] incorporating the ISACs;

“Unplanned Interference” has the meaning given that expression in clause 9.1 of this Agreement.

1.2 In this Agreement the following rules of interpretation shall apply:

- (A) References in the singular shall include the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (B) References to a particular clause or sub-clause shall be references to that clause or sub-clause in this Agreement (except to the extent that the context requires otherwise);
- (C) Reference to this Agreement is a reference to this agreement as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to it or in accordance with any terms of it;
- (D) Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it;
- (E) Headings are included for convenience only and are to be ignored for the purposes of interpretation; and
- (F) Unless a contrary intention appears, words and expressions defined in the ISACs shall have the same meanings when used in this Agreement.

2. **PARTICIPATION**

- 2.1 In all matters relating to or arising from the MCP, the Proposer shall comply with and be liable under the provisions of Part 3 of the ISACs as if it was a Relevant Operator.

3. **LIMITATION**

- 3.1 The Proposer shall not acquire under this Agreement:
 - (A) any rights or liabilities in connection with any other MCP; or
 - (B) any rights or liabilities from or to Network Rail or from or to any Relevant Operator in connection with the MCP other than as set out in this Agreement or in Part 3 of the ISACs.
- 3.2 The rights and liabilities set out in this Agreement shall be without prejudice to the rights and liabilities set out in the [APA,] [Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station made between the Proposer and Network Rail to the extent that the rights and liabilities set out in the [APA,] [the Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station do not conflict with the rights and liabilities set out in this Agreement or in Part 3 of the ISACs.

4. **CO-OPERATION**

- 4.1 The parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights as set out in this Agreement.

5. **FINANCIAL UNDERTAKING**

- 5.1 When undertaking the implementation of the MCP, the Proposer shall use its reasonable endeavours not to prevent, hinder, obstruct, delay or interfere with the MCC's Business except insofar as it cannot reasonably be avoided or, acting reasonably, it is nevertheless necessary to do so in order to implement the MCP (the "**Required Interference**").
- 5.2 MCC Costs arising by reason of a material adverse impact upon the MCC's Business from the Required Interference, or any MCC Costs arising by reason of the impact upon the MCC's Business from the MCP following completion, shall be compensated to the MCC in accordance with clauses 6, 8, 9 or 10, as applicable.
- 5.3 The Proposer of the MCP shall pay emerging costs in accordance with clauses 8, 9 and 10, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum in accordance with clause 6.
- 5.4 To the extent that the net costs of operating the Station are increased as a result of the implementation and completion of the MCP, the Proposer shall compensate the MCC for any increased Qualifying Expenditure (as defined in the ISACs) that the MCC is to be charged under the Station Access Agreement either by reducing the relevant Qualifying Expenditure payable pursuant to the Station Access Agreement or alternatively the Proposer may make a separate payment or payments to the MCC of a sum equivalent to the increase in Qualifying Expenditure, whichever is appropriate.
- 5.5 For the avoidance of doubt, the costs and payments for procuring the works and services in order to carry out the works or activities referred to in the MCP will be paid in accordance with the MCP.

6. **PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM**

- 6.1 If the MCC desires to recover compensation by way of a Fixed Sum, it shall within a reasonable period after the date of this Agreement serve notice on the Proposer identifying the fixed amount of compensation it will accept (the "**Fixed Sum**") in full and final settlement of all MCC Costs.
- 6.2 Within 40 Business Days following the receipt of any such notice the Proposer shall serve notice on the MCC indicating whether it accepts or rejects such offer and if it fails to serve any such notice it shall be deemed to have rejected such offer.
- 6.3 If the Proposer in its discretion accepts the MCC's offer (both the form of payment and the amount) in relation to a Fixed Sum, the Proposer shall, subject to clause 6.4, pay the Fixed Sum to the MCC within [20 Business Days] from the date of any agreement under clause 6.2 and from the date of such agreement the provisions of clauses 8, 9 and 10 shall cease to apply.
- 6.4 At the request of the Proposer and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the Proposer's and the MCC's respective Businesses, the Proposer shall be entitled to pay the Fixed Sum by instalments of such sums and at such intervals as the Proposer and the MCC may agree (on the assumption that, wherever possible, the MCC should be entitled to receive instalments as and when costs are incurred by it) but in default of agreement over the circumstances in which it would be reasonable to pay by instalments, or over the amount or frequency of such instalments, the same may be referred by either party to dispute resolution under clause 16.

7. **NOTICE OF A REQUIRED INTERFERENCE**

- 7.1 Where the Proposer is able to reasonably anticipate that the implementation of the MCP or a phase of the MCP will result in Required Interference then the Proposer shall so far as reasonably possible provide 40 Business Days' written notice to the MCC of the relevant Required Interference together with:
- (A) a description of the relevant Required Interference and those parts of the MCC's Business that the Proposer considers are likely to be materially affected by it; and
 - (B) such supporting information as is available to the Proposer at that time and which will be reasonably required by the MCC for the purpose of complying with its obligations under clause 8.3 (save that such supporting information does not need to be provided where compensation for MCC Costs is being paid by way of a Fixed Sum under clause 6).

The Proposer shall be permitted to serve further notice(s) together with appropriate supporting information in relation to the relevant Required Interference if and whenever the Proposer reasonably believes there is a change that will impact upon the level of relevant Required Interference and the adverse effect caused to the MCC's Business arising from implementation of the relevant phase of the MCP (the original notice and any such further notice shall each be a "**Required Interference Proposal**").

8. **ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE**

- 8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 8.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 7.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 8.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 16.
- 8.3 The MCC's response to the Proposer under clause 8.2 shall:
- (A) confirm whether or not MCC Costs will be directly attributable to the relevant Required Interference Proposal and if so provide the Proposer with reasonable information in support thereof;
 - (B) state the estimated amount of any MCC Costs directly attributable to the relevant Required Interference Proposal and provide the Proposer with reasonable information in support thereof;
 - (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) in relation to the relevant Required Interference Proposal;
 - (D) make any proposals for reaching agreement in relation to the terms on which any MCC Costs are to be compensated; and
 - (E) make any proposals for satisfying the mitigation obligation under clause 13 and estimate the costs of performing such obligation.
- 8.4 The Proposer shall be entitled

- (A) to undertake the relevant Required Interference after service of any Required Interference Proposal under clause 7.1 regardless of whether or not the MCC has provided the response under clause 8.3; and/or
- (B) to submit a Savings Suggestion as outlined at clause 13; and/or
- (C) either to agree the MCC response in relation to the level and manner of MCC Costs payable in the response issued pursuant to clause 8.3 or refer the MCC response and its contents to dispute resolution in accordance with clause 16.

8.5 For the avoidance of doubt, the Proposer shall be entitled to undertake the implementation of the MCP and phases of the same without having identified any Required Interference or having served notices in accordance with clause 7.1 but shall make payment of MCC Costs in accordance with clause 10.

9. **UNPLANNED MATERIAL INTERFERENCE WITH THE MCC'S BUSINESS**

9.1 This clause 9 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum, and it applies where as a consequence of the implementation of the MCP there is:

- (A) unanticipated or unplanned interference that results in a prevention, hindrance, obstruction, delay or interference with the MCC's Business; and/or
- (B) some Required Interference that has not (for any reason) been the subject of a Required Interference Proposal given by the Proposer in accordance with clause 7.1 above

(each of which circumstances are referred to below as an “**Unplanned Interference**”).

9.2 After an Unplanned Interference event, the MCC shall within 30 Business Days or such longer period as the MCC may propose as being reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) provide to the Proposer a notice that shall:

- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 16;
- (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
- (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 13 and estimate the costs of performing such obligations.

9.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 9.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 16.

10. **PAYMENT OF MCC COSTS**

- 10.1 This clause 10 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 10.2 The Proposer shall pay any MCC Costs within 20 Business Days of agreement or determination (whether under clause 8.4 or 9.3 in relation to MCC Costs arising from the Required Interference or the Unplanned Interference, or under clause 16 in relation to other MCC Costs) of the level and manner of payment of the MCC Costs (or the relevant instalment of them).
- 10.3 At the request of the MCC and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the MCC's Business, the Proposer shall make payments on account of the MCC Costs payable under clause 10.2 on a without prejudice basis of such sums and at such intervals as the Proposer and the MCC may agree but in default of agreement over the circumstances in which it would be reasonable to make payments on account, or over the amount or frequency of such payments, the same may be referred by either party to dispute resolution under clause 16.

11. **REPAYMENT OF OVERPAID MCC COSTS**

- 11.1 As soon as practicable after the total amount of MCC Costs (the "Final MCC Costs") is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the "Total MCC Costs Paid") and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the "Overpaid MCC Costs").
- 11.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 16.
- 11.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within [20] Business Days of agreement or determination of the amount of such costs under clauses 11.1 and 11.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 11.1 (the "**Interest Commencement Date**"), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.
- 11.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 11 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

12. **FAILURE TO IMPLEMENT MCP**

- 12.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the "Partial MCC Costs Amount") (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).
- 12.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 16.

- 12.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 12.2 of the level of the Partial MCC Costs Amount.
- 12.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer's notice given under clause 12.1 exceeds the Partial MCC Costs Amount then the provisions of clause 11 shall apply mutatis mutandis to any such overpaid amount.

13. **MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION**

- 13.1 The MCC is required to take all reasonable steps which are within its power and which are not prohibited by or in breach of any existing Legal Requirement to reduce the extent of the MCC Costs resulting from the implementation of the MCP by the Proposer and without prejudice thereto (without being obliged to incur additional expenditure or loss of revenue unless these are compensated for by the Proposer) take all reasonable steps to mitigate and minimise any adverse impact on the MCC's Business of the implementation of the MCP and to conduct its business in such manner as responds efficiently to the occurrence of any Required Interference and/or Unplanned Interference.
- 13.2 The Proposer may submit suggestions (each of which is a "**Savings Suggestion**") to the MCC identifying potential opportunities for making savings in MCC Costs arising from the implementation of the MCP and if the MCC at its discretion accepts the Savings Suggestion then the MCC shall implement the same.
- 13.3 If the MCC accepts and implements the Savings Suggestion then the Proposer shall pay the reasonable and direct losses and expenses of implementation of the Savings Suggestion including loss of profit (but not consequential costs, losses or expenses save for loss of profit) recoverable under this Agreement but the MCC must provide the Proposer with such supporting evidence as it reasonably requires showing the extent of the same.

14. **LIMITATIONS ON THE FINANCIAL UNDERTAKING**

- 14.1 The MCC shall not be entitled to claim or be paid under the terms of this Agreement to the extent that the MCC will be or is entitled to payment of a sum or compensation in respect of the works or activities in the MCP or other associated work under the terms of:
- (A) any Track Access Agreement with [Network Rail] [the MCC]; and/or
 - (B) any Network Change under Conditions G and H of the Network Code; and/or
 - (C) the Station Access Agreement relating to the Station; and/or
 - (D) any lease from [Network Rail] [the MCC] of premises at the Station; and /or
 - (E) [the APA; and/or]
 - (F) [the Property Agreement; and/or]
 - (G) any other agreement with the Proposer or a third party,

in respect of the same MCC Costs provided always that if only part of an amount payable under this Agreement has been recovered or can be recovered by the MCC under such other agreement, then the remainder of the MCC Costs payable under this Agreement will remain payable to the MCC by the Proposer pursuant to this Agreement.

- 14.2 The Proposer shall have no liability under this Agreement in respect of:
- (A) MCC Costs arising after a period of five years from the date the Station asset(s) identified in the MCP become operational;
 - (B) MCC Costs not notified in writing to the Proposer with appropriate supporting information in accordance with the requirements of this Agreement;
 - (C) matters that result from Repair, Maintenance and/or renewals activity and works that fall within Part 4 or Part 13 of the ISACs where such activity and works would have been undertaken in any event in accordance with the ISACs regardless of whether such works and activities were contemplated by the MCP;
 - (D) works and activities that are outside of the Station Change process contained in the ISACs and/or outside of the MCP[; or]
 - (E) [works and activities that the MCC is required to undertake by virtue of the provisions of its franchise agreement [concession agreement] (if any)].
- 14.3 Notwithstanding the provisions of clause 14.2(A), in circumstances where the implementation of the MCP straddles more than one [franchise term] [Control Period] [concession agreement] and the MCC costs have not been taken into account by the [Secretary of State] [ORR] in the calculations relating to any subsequent [franchise term] [concession agreement] [Control Period] after the one in which the MCP is made, then the Proposer shall continue to pay the MCC Costs arising during the remainder of the time period set out in clause 14.2(A) to the extent such costs have not been taken into account.

15. **ALTERNATIVE ACCOMMODATION**

- 15.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 15.2 (the “**Additional Accommodation**”) used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:
- (A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC’s Business having regard to the functionality of its previous accommodation; and
 - (B) arrangements for and timing of the relocation to the alternative accommodation have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and
 - (C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.
- 15.2 If the MCC identifies any Station Facility:

- (A) which is affected by the Proposer's MCP;
- (B) that is reasonably necessary for use in connection with its rail business; and
- (C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

then it shall inform the Proposer that alternative accommodation needs to be provided. The Proposer shall be entitled either to agree with the MCC that such accommodation needs to be provided or refer the matter to dispute resolution under clause 16.

15.3 For the avoidance of doubt, in considering whether any alternative accommodation is reasonably adequate there shall be no assumption that it shall be a like for like replacement.

15.4 In the event of any dispute under this clause 15 either party may refer the matter for dispute resolution under the terms of clause 16.

16. **DISPUTES**

16.1 Disputes arising out of or in connection with this Agreement shall be resolved in accordance with the following escalation process:

- (A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;
- (B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
- (C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

16.2 Nothing in clause 16.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this Agreement directly (whether or not the dispute has been escalated in accordance with clause 16.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

17. **ASSIGNMENT**

17.1 This Agreement is personal to the parties and neither the Proposer nor the MCC shall assign all or any part of the benefit of or its rights or benefits under this Agreement.

18. **GENERAL**

18.1 This Agreement shall not create or be taken to evidence any partnership, joint venture or agency between the parties. Neither party is hereby authorised to act as agent of the other, without the other party's prior written consent.

18.2 No indulgence granted by either party shall constitute or be construed as a waiver of the other party's strict rights under this Agreement.

- 18.3 If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
- 18.4 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement.
- 18.5 Each party admits that it has not entered into this Agreement in reliance upon any representation or promise of the other party.
- 18.6 No variation of any of the terms of this Agreement shall be effective unless it is in writing and signed on behalf of each of the parties.

19. **NOTICES**

- 19.1 Any notice or other document to be given or served under this Agreement shall be in writing and sent by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or delivered to or sent by first class post or facsimile to the other party to be served at its registered office.
- 19.2 Any such notice or document shall be deemed to have been served:
- (A) If sent by e-mail, at the time it leaves the e-mail gateway of the sender;
 - (B) if delivered, at the time of delivery;
 - (C) if sent by facsimile, upon receipt of the appropriate confirmation report; or
 - (D) if posted by pre-paid first class post, on the second Business Day following that on which the envelope containing the same was posted.

Provided that, for the purposes of clauses 19.2(A), 19.2(B) and 19.2(C) where the notice is delivered or transmitted outside the hours of 9 a.m. to 5 p.m. on a Business Day, or at any time on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next Business Day.

20. **VAT**

- 20.1 If and to the extent that the fulfilment by either party of an obligation on its part contained or referred to in this Agreement shall constitute or shall at any time be found to constitute a supply of goods or a supply of services for the purposes of the Value Added Tax Act 1994 and/or that VAT is chargeable in respect of any supply made pursuant to this Agreement then the party in receipt of such supply shall pay to the supplier thereof the amount of such VAT payable in connection therewith upon receipt of a valid VAT invoice or invoices giving the requisite details of the taxable supplies.
- 20.2 Where either party agrees to pay the other an amount of money pursuant to this Agreement such amount shall be regarded as being exclusive of VAT and such agreement shall be construed as requiring the additional payment by the payer to the payee of any VAT properly chargeable in respect of the relevant supply made or to be made by the payee to the payer upon receipt of a valid VAT invoice.

21. **COUNTERPARTS**

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

22. **THIRD PARTIES**

22.1 This Agreement gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Annex 15

Template Station Investor Participation Deed

Part 1: Template Station Investor Participation Deed (England & Wales)

This DEED is dated _____ and is made by

- (1) **[STATION INVESTOR]** (the “**Station Investor**”) in favour of
- (2) each other person having rights or obligations in relation to the making of Material Changes under the Station Access Conditions (the “**Conditions**”) relating to **[insert details of Station]** (the “**Material Change Consultees**”).

WHEREAS:

- (A) The Station Investor has made a Material Change Proposal in respect of the Station dated _____, to which this Deed is attached (the “**Specified Proposal**”);
- (B) The Material Change Consultees wish the Station Investor to be bound by the provisions of Part 3 of the Conditions in respect of the Specified Proposal.

NOW THIS DEED WITNESSES:

1 DEFINITIONS

Unless the context requires otherwise, words and phrases defined in Part 1 of the Conditions shall have the same meanings in this Deed.

2 PARTICIPATION

In all matters relating to or arising from the Specified Proposal, the Station Investor shall comply with, and be liable under, the provisions of Part 3 of the Conditions as if it was a User as set out in Part 1 of the Conditions.

3 LIMITATION

The Station Investor shall not acquire under this Deed:

- (a) any liability in connection with any other Material Change Proposal; or
- (b) except as provided in Clause 4.2, any other liability to any Material Change Consultee in connection with the Specified Proposal.

4 GOVERNING LAW AND DISPUTE RESOLUTION

4.1 Governing law

This Deed shall be governed by and construed in accordance with the laws of England and Wales.

4.2 Dispute resolution

Any dispute which may arise out of, or in connection with, this Deed shall be referred for resolution under the Dispute Resolution Procedure, and for these purposes, the Station Investor shall have the same rights and obligations as any other relevant party under the Dispute Resolution Procedure.

5 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

5.1 Subject to Clause 5.2, no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

5.2 ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under Part 3 of the Conditions.

EXECUTED as a DEED by)

[STATION INVESTOR])

in the presence of:)

