**Reference number:**

**[**Station Access Agreement (SAA) reference number

will be supplied by the Office of Rail and Road**]**

DATED: **20[** **]**

Between

**[ ]**

as Station Facility Owner

- and -

**[ ]**

as Beneficiary

# MASTER INDEPENDENT STATION ACCESS AGREEMENT

(Access by freight operators)

at

**[ ] STATION/S**

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

**BETWEEN:-**

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

(2) The party whose name and address and other particulars are specified in paragraph 2 of Schedule 2 (the "Beneficiary").

**BACKGROUND**

(A) The Station Facility Owner is the facility owner of the Station.

(B) The Beneficiary is an operator providing services for the carriage of goods by railway who wishes to obtain permission to use the Station.

(C) The Station Facility Owner has agreed to grant the Beneficiary and its Associates such permission on the terms and conditions of this Agreement.

(D) This Agreement is entered into pursuant to [directions given by the Office of Rail and Road in the exercise of its powers under the Act.] [a general approval issued by the Office of Rail and Road under section [18] [22] of the Act.] [SELECT AS APPROPRIATE]

**IT IS AGREED** as follows:

**1** **INTERPRETATION**

1.1 Definitions

In this Agreement, where the context admits:

"Access Charge" means, the sum referred to in Clause 6.1;

“Access Dispute Resolution Rules” means the set of rules regulating the resolution of disputes, entitled “Access Dispute Resolution Rules”, annexed to the Network Code;

"Additional Charge" means, in respect of a Station, the charge specified in column (4) of Appendix 1 to the relevant Station Supplement payable for each day upon which permission to use is exercised in excess of the Core Use (as amended from time to time in accordance with the provisions of this Agreement);

"Agreement" means, this Master Station Access Agreement and the relevant Station Supplement;

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

"Commencement Date" means, the date set out in paragraph 3 of the relevant Station Supplement;

"Core Use" means, in respect of a Station whichever of Occasional Use, Regular Use or Daily Use is specified in paragraph 4 of the relevant Station Supplement;

"Daily Use" means, in relation to a Station, the exercise of the permission to use that Station on not less than four days in any week;

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

"Exclusive Charges" means, the aggregate of the charges for the Exclusive Station Services specified in column (3) of Appendix 1 to the relevant Station Supplement (as amended from time to time in accordance with the provisions of this Agreement);

"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" means, the services identified in Appendix 2 to the relevant Station Supplement;

"Expiry Date" means, the date specified in paragraph 5 of the relevant Station Supplement;

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

(a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

(b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:

(i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000" or such higher figure as the parties may agree from time to time in writing; and

(ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;

(c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

(d) any step is taken to enforce Security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that Security;

(e) any step is taken by any person with a view to its winding-up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

(f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless:

(i) in any case, a railway administration order (or application therefore) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to that party pursuant to sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

(ii) in the case of paragraphs (a), (d) or (e), or (f) in relation to matters analogous or equivalent to the matters referred to in paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“Network Rail” means Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at Waterloo General Office, London, SE1 8SW (formerly named “Railtrack PLC”, and referred to as “Railtrack” in the Station Access Conditions).

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

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

"Occasional Use" means, in relation to a Station, the exercise, which is not Regular Use, of the permission to use that Station on not more than 10 days in any Accounting Year;

"Regular Use" means, in relation to a Station, the exercise of the permission to use that Station on not more than 3 days in any week;

"Retail Prices Index" means, the average of the latest available RPI forecasts as contained in the summary table of H.M. Treasury Forecasts for the UK Economy - A comparison of independent forecasts.

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

“Safety Certificate” and “deemed Safety Certificate” have the meanings given to “safety certificate” and “deemed safety certificate” by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

“Secretary of State” means, the Secretary of State for Transport and/or where

this agreement relates to matters within their responsibility, the Scottish Ministers;

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

“SNRP” has the meaning ascribed to it by The Railway (Licensing of Railway Undertakings) Regulations 2005;

"Station" means, the station which is the subject of and identified in paragraph 2 of the relevant Station Supplement;

"Station Access Conditions" means, in relation to a Station, the Station Access Conditions referred to in paragraph 6 of the relevant Station Supplement, as modified from time to time with the approval of the Office of Rail and Road;

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

"Station Supplement" means, in relation to a Station, a supplement to this Master Station Access Agreement in a form substantially similar to that set out in Schedule 1 entered into between the parties;

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

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

"Track Access Agreement" means, an agreement for permission to use track in order to operate trains to and from the Station for the provision of Non-Passenger Services; and

"User's Common Charges" means, in relation to a Station, the charges specified in column (1) of Appendix 1 to the relevant Station Supplement (as amended from time to time in accordance with the provisions of this Agreement).

1.2 References

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

1.3 Sub-contractors

Where a party has sub-contracted its rights or obligations under this Agreement to a sub-contractor in accordance with Clause 7.7, references to that party in this Agreement shall, with the exception of Clause 6 and without prejudice to Clause 7.7, include references to any sub-contractor so appointed.

1.4 Station Access Conditions

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

1.5 Separate Agreement

Each Station Supplement shall be construed, together with this Master Station Access Agreement, as a separate and independent agreement.

1.6 Appendices

The provisions of Appendices 2 and 3 shall apply to the terms and conditions upon which the Station Facility Owner shall provide the Exclusive Station Services to the Beneficiary.

**2 CONDITIONS PRECEDENT**

2.1 Conditions Precedent

Subject to Clauses 2.2, 2.3 and 2.4, the provisions of this Agreement shall not have effect in relation to a Station until the following conditions precedent (so far as they are applicable to each party) shall have been satisfied in full in relation to such Station:

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

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

2.1.3 the Station Facility Owner holds a Safety Authorisation or deemed Safety Authorisation in relation to its operation of the Station;

2.1.4 any necessary Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);

2.1.5 the Beneficiary holds a Safety Certificate or deemed Safety Certificate in relation to its operation of trains;

2.1.6 no Insolvency Event has occurred in relation to either of the parties; and

2.1.7 the parties have entered into the relevant Station Supplement.

2.2 Obligation to satisfy Conditions Precedent

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

2.2.1 in the case of the Station Facility Owner, the conditions precedent contained in Clauses 2.1.2, 2.1.3 and 2.1.7; and

2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.1, 2.1.4, 2.15 and 2.1.7.

2.3 Entry into effect

2.3.1 Clauses 1 (other than Clause 1.6), 2, 4, 5, 7, 8 and 9 and Station Access Conditions 1, 100 and 102 shall come into effect in relation to the Station and be binding on the parties immediately upon signature of this Agreement.

2.3.2 All other clauses and Station Access Conditions shall come into effect and be binding on the parties on the Commencement Date.

2.4 Non-satisfaction

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

2.4.2 The obligations of confidence provided for in the Station Access Conditions shall continue in force for a period of 6 years after this Agreement has otherwise ceased to have effect in relation to the relevant Station.

**3 PERMISSION TO USE THE STATION**

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

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

**4 STATION ACCESS CONDITIONS**

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

4.2 Except where the Office of Rail and Road shall have directed otherwise in the exercise of its powers under the Act, the Station Facility Owner shall ensure that all operators of trains having permission to use the Station agree to comply with the Station Access Conditions.

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

**5 TERM AND TERMINATION**

5.1 Term

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

1. lapse under Clause 2.4;
2. the Expiry Date, as specified in paragraph 3 of Schedule 1;
3. the Station Facility Owner ceasing to be the facility owner in relation to the Station;
4. such date as the Station Facility Owner and Beneficiary may agree;
5. termination under Condition 41 of the Station Access Conditions; or

(f) notwithstanding Clause 5.4.3(c), the expiry of a period of notice, such period to be not less than 180 days, given by either party to the other.

5.2 Events of default

5.2.1 Beneficiary Events of Default

The following shall be Beneficiary Events of Default:

(a) Insolvency: An Insolvency Event occurs in relation to the Beneficiary;

(b) Breach of the Agreement: The Beneficiary commits a material breach of its obligations under this Agreement;

(c) Force Majeure: The Beneficiary fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure;

(d) Loss of Licence: The Beneficiary ceases to be authorised to be the operator of trains by a licence granted under section 8 of the Act or by a licence or SNRP granted or recognised under the Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;

(e) Loss of Safety Certificate: The Beneficiary ceases to hold a Safety Certificate or deemed Safety Certificate whether because it has been revoked or otherwise;

(f) Track Access Agreement Termination: Termination of the Track Access Agreement unless the Beneficiary shall become a party to an access agreement in relation to track which is contiguous to the Station on or before the date which is not later than 30 days after the termination of the Track Access Agreement (any such agreement being thereafter treated as the Track Access Agreement).

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

5.2.3 Station Facility Owner Events of Default

The following shall be Station Facility Owner Events of Default:

(a) Insolvency: An Insolvency Event occurs in relation to the Station Facility Owner;

(b) Breach of the Agreement: The Station Facility Owner commits a material breach of its obligations under this Agreement;

(c) Force Majeure: The Station Facility Owner fails, for a continuous period of 90 days, to perform its obligations under this Agreement to any material extent as a result of an event of Force Majeure;

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

(e) Loss of Safety Authorisation: The Station Facility Owner ceases to hold a Safety Authorisation or deemed Safety Authorisation whether because it has been revoked or otherwise.

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

5.3 Suspension

5.3.1 Right to suspend

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

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

5.3.2 Contents of a Suspension Notice

A Suspension Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) the date and time at which suspension is to take effect;

(c) in the case of a Suspension Notice served on the Beneficiary, reasonable restrictions imposed on the grant to the Beneficiary and its Associates of permission to use the Station while the Suspension Notice is in force;

(d) in the case of a Suspension Notice served on the Station Facility Owner, details of any suspension on the grant to the Beneficiary of the permission to use the Station while the Suspension Notice is in force;

(e) the steps reasonably required to remedy the relevant Event of Default;

(f) a reasonable grace period for the defaulting party to remedy it (and where the relevant Event of Default is a failure to pay any part of the Access Charge, seven days shall be a reasonable grace period); and

(g) the Station to which it relates.

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

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

(a) the Beneficiary shall comply with any reasonable restriction thereby imposed on it;

(b) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Station Facility Owner to the Beneficiary under Clause 5.3.5(d); and

(c) service of a Suspension Notice shall not affect the Beneficiary's continuing obligation to pay the Access Charge.

5.3.4 Effect of a Suspension Notice served by the Beneficiary

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

(a) it shall have the effect of suspending the permission to use the Station to the extent specified in such Suspension Notice;

(b) the amount of the Access Charge payable shall be abated to the extent that it corresponds to the suspended part of the Beneficiary's permission to use the Station; and

(c) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Beneficiary to the Station Facility Owner under Clause 5.3.5(d).

5.3.5 Suspension to be proportionate to breach

(a) A Suspension Notice served pursuant to Clause 6.3.1 in respect of any Beneficiary Event of Default which relates only to particular Station Services or particular Common Station Amenities at the Station shall, so far as reasonably practicable, apply only to:

(i) those Station Services; and

(ii) those Common Station Amenities,

(or (as the case may be) parts or part of them) at such Station and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(b) A Suspension Notice served under Clause 5.3.1 in respect of any Station Facility Owner Event of Default which relates only to particular Station Services or particular Common Station Amenities at the Station shall, so far as reasonably practicable, apply only to:

(i) those Station Services; and

(ii) those Common Station Amenities,

(or (as the case may be) parts or part of them) at such Station and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(c) The party served with a Suspension Notice shall, with all reasonable diligence, take such steps as shall be reasonable and necessary to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

(d) Where a party served with a Suspension Notice has complied with its obligations under Clause 5.3.5(c) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which shall have served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question, by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

5.4 Termination

5.4.1 The Station Facility Owner's right to terminate

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

(a) the Beneficiary fails to comply with any material restriction in a Suspension Notice;

(b) the Beneficiary fails to comply with its obligations under Clause 5.3.5(c); or

(c) except during the period of a Suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing.

5.4.2 The Beneficiary's right to terminate

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

(a) the Station Facility Owner fails to comply with its obligations under Clause 5.3.5(c); or

(b) except during the period of a Suspension Notice relating to it, a Station Facility Owner Event of Default has occurred and is continuing.

5.4.3 Contents of Termination Notice

A Termination Notice shall specify:

(a) the Station to which it relates;

(b) the nature of the relevant Event of Default;

(c) the date and time at which termination is to take effect, which shall not be earlier than the later of 30 days after such notice is given and the expiry of any grace period under Clause 5.4.3(d)(ii);

(d) where the relevant Event of Default is capable of remedy:

(i) the steps reasonably required to remedy the Event of Default; and

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

5.4.4 Effects of a Termination Notice

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

(a) the service of the Termination Notice shall not affect the parties' continuing rights and obligations under this Agreement up to the date of termination as specified in the Termination Notice or such later date as the party which has served the Termination Notice may notify to the other following the service of the Termination Notice but prior to the date upon which it shall have been specified to have effect;

(b) the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that the relevant Event of Default has been remedied;

(c) this Agreement shall terminate in relation to the Station on the later of:

(i) the date and time specified in the Termination Notice or such later date and time as the party which has served the Termination Notice may notify to the other prior to the date and time upon which it shall have been specified to have effect; and

(ii) 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail and Road; and

(d) promptly after it has been served, a copy of the Termination Notice shall be sent by the Station Facility Owner to the Secretary of State at the address set out in paragraph 3 of Schedule 2, or such other address as shall be notified by him to the Station Facility Owner from time to time.

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

5.5 Exclusion of common law termination rights

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

5.6 Non-operation of trains

5.6.1 The Beneficiary shall notify the Station Facility Owner whenever it reasonably expects a material interruption to, or material change in, the Non-Regular Passenger Services. Any such notice shall, to the extent reasonably practicable, state the details of any such interruption or change.

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

**6 CHARGES FOR PERMISSION TO USE THE STATION**

6.1 The Access Charge for the Station shall, in respect of an Accounting Year, be the aggregate of the following:-

6.1.1 the User's Common Charges;

6.1.2 the Exclusive Charges; and

6.1.3 any Additional Charge.

6.2 The Beneficiary shall, not later than 90 days prior to the commencement of an Accounting Year (except in relation to the First Year) notify the Station Facility Owner of the Core Use and the Exclusive Station Services the Beneficiary requires in relation to the Station for that Accounting Year.

6.3 The Station Facility Owner shall, not later than 30 days after receipt of such notification, notify the Beneficiary of the User's Common Charges, Exclusive Charges and Additional Charge which the Station Facility Owner is willing to accept for that Accounting Year.

6.4 The notice referred to in Clause 6.3 shall include a breakdown of the proposed User's Common Charges, Exclusive Charges and Additional Charge in sufficient detail to enable the Beneficiary to make a proper assessment of the charges proposed, the method of their calculation and the costs of the amenities and services in question.

6.5 The Station Facility Owner shall provide the Beneficiary with such further information and / or clarification relating to the amounts notified to the Beneficiary under Clause 6.4 as the Beneficiary may from time to time reasonably request, promptly upon receipt of any such request.

6.6 The parties shall negotiate in good faith with a view to reaching agreement on any necessary amendments to columns (1), (3) and (4) of Appendix 1 to the relevant Station Supplement and, if agreement has not been reached within 30 days after notice has been received under Clause 6.3, either party may refer serve a Notice of Dispute in accordance with the Access Dispute Resolution Rules.

6.7 The Station Facility Owner and the Beneficiary shall notify the Office of Rail and Road as soon as any amendments to the Access Charge have been agreed by them or determined pursuant to Clause 6.6.

6.8 The notice to the Office of Rail and Road referred to in Clause 6.7 shall contain sufficient details of the amendments to the Access Charge to enable the Office of Rail and Road to make a proper assessment of the new proposed charges, the method of their calculation and the costs of the amenities and services in question.

6.9 The parties shall provide the Office of Rail and Road with such further information and / or clarification relating to the new proposed charges as the Office of Rail and Road may reasonably request, promptly upon receipt of any such request.

6.10 Subject to Clause 7.3 any amendment to Appendix 1 to the relevant Station Supplement shall be deemed to have been effective from the commencement of the Accounting Year referred to in Clause 6.2.

6.11 Where, pursuant to Clause 6.6, the amount payable by the Beneficiary from the commencement of an Accounting Year is different from that actually paid by it:

6.11.1 where such amount is more, the Beneficiary shall pay to the Station Facility Owner an amount equal to the shortfall; or

6.11.2 where such amount is less, than the Station Facility Owner shall pay to the Beneficiary an amount equal to the excess

such amounts to be payable within 28 days of the determination of such amount.

6.12 Interest shall be payable on any amounts payable pursuant to Clause 6.11 and such interest shall be calculated at a rate equivalent to the average of the base lending rates published by the Royal Bank of Scotland during any relevant period or at any alternative rate specified by a Relevant Access Dispute Resolution Rules Forum where a dispute has been the subject of dispute resolution under the Access Dispute Resolution Rules pursuant to that Part of the Station Access Conditions specified in paragraph 7.2 of the relevant Station Supplement.

6.13 All invoices other than VAT invoices which shall be supplied in accordance with Condition 101.3 shall be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the address for service of the recipient set out in Schedule 2 with a copy to the bank or other financial institution providing the payment facility referred to in Clause 6.14 and (save as provided in Condition 33.6 in respect of the Access Charge) shall be paid within 28 days of their receipt.

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

**7 WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

7.1 Whole agreement

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

7.2 Counterparts

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

7.3 Variation

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

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

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

7.4 Assignment

Subject to Clause 7.6, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assigns or assignees but neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party and the Office of Rail and Road.

7.5 No encumbrances

No Security on or over any of a party's rights or interests under this Agreement shall have effect unless it is created with the prior written consent of the other party (whose consent shall not be unreasonably withheld or delayed) and the Office of Rail and Road.

7.6 Novation

Each party agrees to take all such steps as may be necessary to give effect to the novation of the Station Facility Owner's rights and obligations under this Agreement by and in favour of the Secretary of State or his nominee, if and to the extent necessary to enable the Secretary of State to perform his duty to secure the provision of services for the carriage of passengers by railway pursuant to section 30 of the Act, provided that any such novation shall have been approved by the Office of Rail and Road under the Act and shall be on terms that:

7.6.1 the Secretary of State or his nominee shall have satisfied all relevant conditions precedent which are specified in Clause 2.1 (unless and to the extent that such conditions precedent shall have been waived);

7.6.2 the Station Facility Owner shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of dispute resolution under the Access Dispute Resolution Rules or litigation between the parties or any liability in respect of any act or omission under or in relation to this Agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

7.6.3 neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause 7.6.2.

7.7 Sub-contractors

7.7.1 Subject to Clause 7.7.3, the Station Facility Owner may subcontract the performance of any of its obligations under this Agreement.

7.7.2 Subject to Clause 7.7.3 the Beneficiary shall not, without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed), sub-contract the performance of any of its obligations under this Agreement.

7.7.3 Nothing in this Clause 7.7 shall operate so as to relieve the Station Facility Owner or the Beneficiary of its obligations under this Agreement and each party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

7.8 Termination on ceasing to be a facility owner

7.8.1 In this Clause 7.8:

(a) "a relevant disposal" means the disposal or the creation of any estate, interest, right or title in or to the Station which, whether or not with the passage of time or the giving of notice, may result in another person becoming the facility owner in respect of the Station but does not include the creation of Security over the Station; and

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

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

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

7.8.4 A relevant disposal made in breach of Clause 7.8.2 and Security created or permitted to subsist in breach of Clause 7.8.3 shall be void and of no effect and shall not be binding upon or confer rights exercisable against any User.

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

**8 NOTICES AND COMMUNICATIONS**

8.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or by recorded delivery or sent by pre-paid first class post, or by facsimile, or by electronic transmission, to the party on whom the notice is to be served at the relevant address for service set out in Schedule 2, or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.

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

8.2.1 if sent by hand or recorded delivery, when so delivered or if sent by prepaid first class post, 2 days after posting; and

8.2.2 if sent by facsimile or by electronic transmission, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

**9 GOVERNING LAW AND SUBMISSION TO JURISDICTION**

9.1 Governing law

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

9.2 Jurisdiction

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

**10 MODIFICATION BY THE OFFICE OF RAIL AND ROAD**

10.1 Modification of agreement

This Agreement shall have effect with the modifications specified in any notice given by the Office of Rail and Road for the purposes of this Clause 10, provided that:

10.1.1 the circumstances set out in Clause 10.2 have occurred;

10.1.2 the Office of Rail and Road shall be satisfied as to the need for the modification as provided in Clause 10.3;

10.1.3 the procedural requirements of Condition 10.4 shall have been satisfied; and

10.1.4 the modification shall not have effect earlier than 180 days after the date upon which it shall have been given.

10.2 Conditions for modification

The circumstances referred to in Clause 10.1 are that the Office of Rail and Road shall have received:

10.2.1 an application for directions in accordance with schedule 4 to the Act in relation to a Station by an applicant who requests permission to use that Station:

(i) for or in connection with the provision of scheduled passenger services; or

(ii) for on in connection with the carriage of goods by railway and in respect of which the Core Use is intended to be other than Occasional (howsoever such terms are expressed in the application);

10.2.2 an application under section 18(5) of the Act by the Station Facility Owner in relation to a Station for approval of an access contract in respect of which the beneficiary is a person who has requested permission to use that Station for either of the purposes specified in sub-Clause 10.2.1; or

10.2.3 notification from the parties to this Agreement that the Beneficiary wishes the Core Use to be other than occasional.

10.3 Need for modification

A notice given by the Office of Rail and Road under Clause 10.1 shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions have been satisfied:

10.3.1 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

10.3.2 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.

10.4 Procedural requirements

The procedural requirements which shall require to have been followed for the purposes of Clause 10.1 is that either:

10.4.1 the parties shall have failed to submit to the Office of Rail and Road for its approval proposed amendments to this Agreement having regard to the circumstances set out in Clause 10.2 or a statement that in such circumstances and after consulting all relevant persons no such amendments are necessary, within 45 days of an event specified in Clause 10.2 occurring; or

10.4.2 the parties having submitted proposed amendments or a statement to it, the Office of Rail and Road shall have failed to approve them within 75 days of such an event occurring.

10.5 Limitations on numbers of review notices

The Office of Rail and Road shall not be entitled to exercise its power under Clause 10.1 on more than one occasion in respect of any Station.

10.6 Date extensions

The Office of Rail and Road shall be entitled, by notice to the parties, to substitute for any date or period specified in this Clause 10 a date which is not more than 90 days later, or a period which is not more than 90 days longer, than that so specified.

10.7 Review notices - supplemental

Notices under Clause 10.6 may be given at any time and from time to time, provided that the Office of Rail and Road shall first have consulted the parties and have taken into account any representations or objections which either of them shall have made to it within such period as it shall have specified for the purpose.

**11 RIGHTS OF THIRD PARTIES**

11.1 Application to Third Parties

Except as provided in this Clause 11 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to enforce any term of this contract.

11.2 Application to the Office of Rail and Road and the Secretary of State

The Office of Rail and Road and the Secretary of State shall have the right (whether by virtue of any enactment that it part of the applicable law of this Agreement or otherwise to directly enforce such rights as have been granted to them under this contract.

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

SIGNED on behalf of .........................................................

the Station Facility Owner (Company name)

.........................................................

(Signature)

.........................................................

(Signatory full name)

………..............................................

(Date)

SIGNED on behalf of .........................................................

the Beneficiary (Company name)

.........................................................

(Signature)

.........................................................

(Signatory full name)

………..............................................

(Date)

**SCHEDULE 1**

**STATION SUPPLEMENT**

**THIS STATION SUPPLEMENT** is made on [ ] day of [ ] 20[ ]

**BETWEEN:-**

(1) [ ] whose registered office is set out in paragraph 1 of Schedule 2 to the Master Station Access Agreement (the "Station Facility Owner"); and

(2) [ ] whose registered office is set out in paragraph 2 of Schedule 2 to the Master Station Access Agreement (the "Beneficiary").

**WHEREAS**

(A) The Station Facility Owner and the Beneficiary have entered into the Master Station Access Agreement;

(B) The Station Facility Owner and the Beneficiary wish to enter into this Station Supplement with respect to the Station specified in paragraph 2 of this Station Supplement.

**IT IS AGREED** as follows:

**1** **INTERPRETATION**

1.1 In this Station Supplement:

"Master Station Access Agreement" means the master station access agreement dated [ ] between the Station Facility Owner and the Beneficiary.

1.2 Words and expressions shall, unless otherwise defined herein, have the meanings given to them in the Master Station Access Agreement.

2. **Station**

This Station Supplement supplements and forms part of the Master Station Access Agreement and relates to the following station:

[ ] Station

3. **Commencement Date**

[ACTUAL DATE] or [The date of this agreement, subject to approval by the Office of Rail and Road under S18 of the Railways Act 1993]

4. **Core Use**

[ ]

5. **Expiry Date**

[ ]

6. **Station Access Conditions**

The Independent Station Access Conditions 2013 (England and Wales) and the annexes relating to the Station.

7. **Miscellaneous Provisions**

7.1 The Station Access Condition referred to in Clause 5.1.1(b) of the Master Station Access Agreement is Condition 42.

7.2 The part of the Station Access Conditions referred to in Clause 6.12 of the Master Station Access Agreement is Part 8.

8. **Governing Law**

This Station Supplement is governed by and shall be construed in accordance with the laws of [England/Scotland]

**IN WITNESS** whereof the parties have executed this Station Supplement as first dated above.

**APPENDIX 1**

**Access Charge**

|  |  |  |  |
| --- | --- | --- | --- |
| **(1)** | **(2)** | **(3)** | **(4)** |
| **User's Common Charges [per week]** | **Exclusive Station Services** | **Exclusive Charges [per week]** | **Additional Charge** |
|  |  |  |  |
|  | Watering  Despatch |  |  |

**APPENDIX 2**

**Exclusive Station Services**

1.1 Watering of the Beneficiary's trains when requested by the Beneficiary ("Watering") for so long as the service is available at the Station.

1.2 Punctual despatch of trains operated by or on behalf of the Beneficiary ("Despatch") at the Station during the following Exclusive Periods [ ].

1.3 [Other ].

**APPENDIX 3**

**Specifications for Exclusive Station Services**

1.1 [ ]

1.2 The Station Facility Owner shall in connection with the permission to use the Station granted by it under Clause 3 of the Master Station Access Agreement during the term of that Agreement in relation to the Station, or during any applicable Exclusive Period, use all reasonable endeavours to ensure that the Exclusive Station Services are maintained in accordance with the specification set out in this Appendix 3 and, if any changes have been made to them by agreement, their standard and quantum after such changes have been made.

SIGNED on behalf of .........................................................

the Station Facility Owner (Company name)

.........................................................

(Signature)

.........................................................

(Signatory full name)

………..............................................

(Date)

SIGNED on behalf of .........................................................

the Beneficiary (Company name)

.........................................................

(Signature)

.........................................................

(Signatory full name)

………..............................................

(Date)

**SCHEDULE 2**

**ADDRESSES FOR SERVICE**

1 Station Facility Owner:

Name: [ ]

Registered Office: [ ]

[ ]

[ ]

[ ]

Address for service [ ]

[ ]

[ ]

[ ]

Contact Details: [ ]

(Attention: [ ])

2 Beneficiary:

Name: [ ]

Registered Office: [ ]

[ ]

[ ]

[ ]

Address for service [ ]

[ ]

[ ]

[ ]

Contact Details: [ ]

(Attention: [ ])

3 Address of Secretary of State:

The Secretary of State

Department for Transport

33 Horseferry Road

London

SW1P 4DR

WHERE APPROPRIATE

The Scottish Ministers

Transport Scotland

Buchanan House

58 Port Dundas Road

Glasgow

G4 0HF