

DATED [_____] 2007

Between

Northern Rail Limited as Depot Facility Owner

- and -

Grand Central Railway Company Limited as Beneficiary

Newcastle upon Tyne Heaton Depot

DEPOT ACCESS AGREEMENT
(Access to a passenger service
operator's depot)

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THIS AGREEMENT is made on []

BETWEEN:-

- (1) The party specified in paragraph 1 of Schedule 1 (the "Depot Facility Owner"); and
- (2) The party specified in paragraph 2 of Schedule 1 (the "Beneficiary").

BACKGROUND

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

IT IS AGREED as follows:

1. **INTERPRETATION**

1.1 **Definitions**

Unless the context otherwise requires:

"Aggregate Beneficiary Minutes Delay" means, in respect of any Accounting Period, the aggregate number of Beneficiary Minutes Delay in that Accounting Period, subject to the proviso in Clause 8.1.4(a)(i);

"Aggregate DFO Minutes Delay" means, in respect of any Accounting Period, the aggregate number of DFO Minutes Delay in that Accounting Period, subject to the proviso in Clause 8.1.9(a)(i);

"Allowable Beneficiary Minutes Delay" means the number of Beneficiary Minutes Delay per Accounting Period specified in Part A of Schedule 13;

"Allowable DFO Minutes Delay" means, the number of DFO Minutes Delay per Accounting Period specified in Part A of Schedule 14;

"Applicable Systems Interfaces" means the Systems Interfaces described in Schedule 4;

"Beneficiary Depot Services" means all those services described in Schedules 5 to 12 inclusive together with any temporary holding, shunting or marshalling required from time to time in the provision of such services;

"Beneficiary Event of Default" has the meaning attributed to it in Clause 6.2.1;

"Beneficiary Minutes Delay" means either:

- (a) the difference, expressed as a number of minutes and rounded up to the nearest whole minute, between the Diagram Departure Time and the Train Ready Time of any train other than one operated by or on behalf of the Beneficiary; or
- (b) where a train other than one operated by or on behalf of the Beneficiary is cancelled or for any other reason no Train Ready Time occurs in respect of it, the number of minutes comprised in the Beneficiary Minutes Delay Cap;

to the extent only (in either case) that the incidence of delay represented by such number of minutes is caused by a breach by the Beneficiary of its obligations under this Agreement (not being a breach caused by an event of Force Majeure affecting the Beneficiary);

"Beneficiary Minutes Delay Cap" means, in respect of any Beneficiary Minutes Delay, the cap specified in Part B of Schedule 13;

"Beneficiary Minutes Delay Threshold" means, in respect of any Beneficiary Minutes Delay, the relevant de minimis threshold specified in Part C of Schedule 13;

"Collision Damage" means damage to Fleet Vehicles caused by collision with another object or by derailment;

"Commencement Date" means the date upon which this Agreement becomes fully effective in accordance with Clause 2.3.2;

"Depot" means the light maintenance depot specified in paragraph 4 of Schedule 1;

"Depot Access Conditions" means in respect of the Depot:

- (a) the National Depot Access Conditions (December Standard) dated 30/11/95; and

- (b) the Newcastle upon Tyne Heaton Depot Access Annexes dated 10/09/96 (ORR Reference: DSA/15/02/96) which annexes for the purposes of this Agreement shall be the annexes referred to in the depot access conditions referred to in paragraph (a)

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

"Depot Facility Owner Event of Default" has the meaning attributed to it in Clause 6.2.3;

"DFO Minutes Delay" means either:

- (a) the difference, expressed as a number of minutes and rounded up to the nearest whole minute, between the Diagram Departure Time and the Train Ready Time of any train operated by or on behalf of the Beneficiary; or
- (b) where a train operated by or on behalf of the Beneficiary is cancelled or for any other reason no Train Ready Time occurs in respect of it, the number of minutes comprised in the DFO Minutes Delay Cap;

other than to the extent (in either case) that the incidence of delay represented by such number of minutes is caused by either:

- (i) a breach by the Beneficiary or any of its Affiliates of any contractual obligation owed to the Depot Facility Owner; or
- (ii) an event of Force Majeure affecting the Depot Facility Owner;

"DFO Minutes Delay Cap" means, in respect of any DFO Minutes Delay, the relevant cap specified in Part B of Schedule 14;

"DFO Minutes Delay Threshold" means, in respect of any DFO Minutes Delay, the de minimis threshold specified in Part C of Schedule 14;

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

"Excess Beneficiary Minutes Delay" means, in respect of any Accounting Period, the number of Beneficiary Minutes Delay by which the Aggregate Beneficiary Minutes Delay for that Accounting Period exceeds the Allowable Beneficiary Minutes Delay for that Accounting Period;

"Excess DFO Minutes Delay" means, in respect of any Accounting Period, the number of DFO Minutes Delay by which the Aggregate DFO Minutes Delay for that Accounting Period exceeds the Allowable DFO Minutes Delay for that Accounting Period;

"Fleet Vehicle" means those railway vehicles operated by or on behalf of the Beneficiary and of a type specified in Schedule 3;

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

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000" or such higher figure as the parties may agree from time to time in writing; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce Security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that Security;
- (e) any step is taken by any person with a view to its winding-up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to

cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

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

unless:

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

"Long-stop Date" means the date specified in paragraph 3 of Schedule 1;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 40 Melton Street, London, NW1 2EE (formerly named "Railtrack PLC", and referred to as "Railtrack" in the Depot Access Conditions).

"Operating Notice" means any notice to be given by one party to this Agreement to the other in respect of any matters contained or referred to in Clauses 8.1.1, 8.1.2 and 8.1.3 and Schedules 5 to 12 inclusive and in respect of any matters contained or referred to in Conditions N3.3, N3.5, N3.9, N3.10 and N3.13;

"Safety Certificate" and **"deemed Safety Certificate"** have the meanings given to "safety certificate" and "deemed safety certificate" in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

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

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

"**Suspension Notice**" means a notice served by one party on the other pursuant to Clause 6.3;

"**Termination Notice**" means a notice served by one party on the other pursuant to Clause 6.4.1 or 6.4.2, as the case may be; and

"**Track Access Agreement**" means the agreement for use of track, referred to in paragraph 6 of Schedule 1.

1.2 **References**

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

1.3 **Sub-contractors**

Where a party has sub-contracted its rights or obligations under this Agreement to any third party in accordance with Clause 9.4, references to that party in this Agreement shall, with the exception of Clause 7 and without prejudice to Clause 9.4, include references to any sub-contractor so appointed.

1.4 **Depot Access Conditions**

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

2. **CONDITIONS PRECEDENT**

2.1 **Conditions Precedent**

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

- 2.1.1 the Beneficiary has executed a Collateral Agreement in relation to the Depot and delivered it to the Depot Facility Owner for exchange with Network Rail;
- 2.1.2 the Depot Facility Owner is authorised to be the operator of the Depot by a light maintenance depot 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 Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);
- 2.1.4 the Beneficiary holds a Safety Certificate or deemed Safety Certificate in relation to its operation of trains;
- 2.1.5 an Insolvency Event not having occurred in relation to either of the parties; and
- 2.1.6 the Connection Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective).

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 Long-stop Date:

- 2.2.1 in the case of the Depot Facility Owner, the conditions precedent contained in Clause 2.1.2 and 2.1.6; and
- 2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.1, 2.1.3 and 2.1.4.

2.3 **Entry into effect**

- 2.3.1 Clauses 1, 2, 4, 6, 9, 11 and 12 and Conditions A1, Q1 and Q3 shall come into effect and be binding on the parties immediately upon signature of this Agreement.
- 2.3.2 All other Clauses and Conditions shall come into effect and be binding on the parties on the date on which the last of the conditions precedent contained in Clause 2.1 has been satisfied.

2.4 **Non-satisfaction**

2.4.1 If any of the conditions precedent in Clause 2.1 shall not have been satisfied in full on or before the Long-stop Date, this Agreement (except Clause 2.4.2) shall lapse and neither party shall have any liability to the other under or in respect of it, save in respect of a pre-existing breach of any of Clauses 2, 4, 6, 9, 11 and 12 and Conditions A1, Q1 and Q3.

2.4.2 The obligations of confidence provided for in the Depot Access Conditions shall continue in force for the period specified in Condition Q1.1 after this Agreement has otherwise ceased to have effect pursuant to Clause 2.4.1.

3. PERMISSION TO USE THE DEPOT

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

3.2 The Depot Facility Owner undertakes to provide to the Beneficiary and its Associates the Beneficiary Depot Services in accordance with this Agreement and shall comply with its other obligations contained in this Agreement.

3.3 In consideration of the permission granted to the Beneficiary and its Associates by the Depot Facility Owner in Clause 3.1 and the performance by the Depot Facility Owner of its other obligations under this Agreement, the Beneficiary shall pay the Access Charge in accordance with Clause 7 and Part F of the Depot Access Conditions and shall comply with its other obligations contained in this Agreement.

4. DEPOT ACCESS CONDITIONS

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

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

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

5. CHARGES FOR PERMISSION TO USE THE DEPOT

5.1 Subject to clause 5.2, the Access Charge incorporating the specific charges set out in Schedules 5 to 12 shall be calculated in accordance with Part F of the Depot Access Conditions.

- 5.2 For twelve months from the Commencement Date or such longer period as may be agreed or determined by the Parties in accordance with clause 5.4:
- (a) Condition F2.1 of the Depot Access Conditions will not apply; and
 - (b) the Beneficiary shall pay the Access Charge for each Accounting Period within 5 Business Days of the receipt of the invoice for the same delivered in accordance with Condition F1.2 of the Depot Access Conditions.
- 5.3 While clause 5.2 is in effect, the Depot Facility Owner shall account to the Beneficiary for Interest (to accrue daily) on the amount of paid Access Charges from the date of payment until 28 days after the receipt of the invoice.
- 5.4 The Depot Facility Owner and the Beneficiary shall not later than ten months from the Commencement Date meet and determine whether clause 5.2 shall cease to have effect.
- 5.5 Where the Depot Facility Owner and the Beneficiary are unable to come to an agreement under clause 5.4, the Parties shall refer the matter to the Office of Rail Regulation for determination.
- 5.6 For the purpose of clause 5.3, “Interest” means the base lending rate at Barclays Bank PLC as varied from time to time.

6.. **CONTRACT REVIEWS**

6.1 **Reviews by the parties**

6.1.1 The parties shall:

- (a) at intervals of not more than three months during the period specified in Clause 6.1.2, formally review with each other, and in consultation with the Secretary of State, the operation of this Agreement; and
- (b) at the conclusion of any such review, negotiate in good faith and on a reasonable basis with a view to reaching agreement (subject to Condition B9) on any amendments to this Agreement which either party may, in the light of experience gained as to the operation of this Agreement, reasonably consider necessary or desirable.

6.1.2 The period referred to in Clause 6.1.1(a) shall be the period of 12 months from the Commencement Date, provided that, if either party commences to provide passenger railway services pursuant to a franchise agreement during such period (or if both of them do so), such

period will be extended until the date 12 months after the date of commencement of such passenger railway services.

- 6.1.3 Either party may, by not less than 150 days' notice to the other and the Office of Rail Regulation, effective not later than 60 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 the railway passenger services (or part of them) operated by either party, terminate this Agreement if it fails to reach agreement with the other party on any amendments it wishes to make to this Agreement.

6.2 Consequential modifications following changes to Depot Access Conditions

- 6.2.1 This Agreement shall have effect with the modifications specified in a notice given by the Office of Rail Regulation for the purposes of this Clause 6.2, provided that the Office of Rail Regulation shall be satisfied as to the need for the modifications as provided in Clause 6.2.2, the procedural requirements of Clause 6.2.3 shall have been satisfied, and the modifications shall have effect in accordance with Clause 6.2.4.

- 6.2.2 A notice given by the Office of Rail Regulation under Clause 6.2.1 shall have effect only if the following conditions shall have been satisfied:

- (a) not earlier than 30 days before the notice shall have been given, the Office of Rail Regulation shall have given a notice to the parties pursuant to Condition B6.1 of the Depot Access Conditions; and
- (b) the Office of Rail Regulation shall be satisfied on reasonable grounds that the modifications specified in the notice shall:
 - (i) be necessary or expedient for the purpose of giving full effect to the purposes of the modifications specified in the said notice under Condition B6 of the Depot Access Conditions; and
 - (ii) not be of a nature or effect which is likely materially to prejudice the interests of either party under this Agreement.

- 6.2.3 The procedural requirements which require to have been followed for the purposes of Clause 6.2.1 are those specified in Condition B6.4 of the Depot Access Conditions *mutatis mutandis*.

- 6.2.4 A notice given under Clause 5.2.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect:

- (a) earlier than 60 days after the date upon which it shall have been given; or

- (b) later than the date which is 180 days after the Commencement Date.

7. **TERM AND TERMINATION**

7.1 **Term**

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

6.1.1 lapse pursuant to Clause 2.4;

6.1.2 termination pursuant to Clause 6 or this Clause 7; and

6.1.3 the Depot Facility Owner ceasing to be the facility owner of the Depot.

7.2 **Events of default**

7.2.1 **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 or recognised under section 8 of the Act or by a licence or SNRP granted under to Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;

(e) **Loss of Safety Certificate**

The Beneficiary ceases to hold a Safety Certificate or deemed Safety Certificate whether because it has been revoked or otherwise;

(f) **Track Access Termination**

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

(g) **Non operation**

The Beneficiary does not require the Depot Facility Owner to carry out at least an average of ninety-five per cent. (95%) by value of the Minimum Level of Services in six consecutive Accounting Periods; and

(h) NOT USED

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

7.2.3 **Depot Facility Owner Events of Default**

The following shall be Depot Facility Owner Events of Default:

(a) **Insolvency**

An Insolvency Event occurs in relation to the Depot Facility Owner;

(b) **Breach of the Agreement**

The Depot Facility Owner commits a material breach of its obligations under this Agreement;

(c) **Force Majeure**

The Depot 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 Depot Facility Owner ceases to be authorised to be the operator of the Depot 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) **Connection Agreement**

Termination of the Connection Agreement unless the Depot Facility Owner shall become a party to an agreement for connection of the Depot to the Network on or before the date which is not later than 30 days after the termination of the Connection Agreement.

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

7.3 **Suspension**

7.3.1 **Right to suspend**

(a) The Depot 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 Depot Facility Owner Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

7.3.2 **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 Depot and the provision of the Beneficiary Depot Services while the Suspension Notice is in force;

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

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

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

7.3.3 **Effects of a Suspension Notice served by the Depot Facility Owner**

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

- (a) it shall have the effect of suspending the permission to use the Depot and the provision of the Beneficiary Depot Services to the extent specified in such Suspension Notice;
- (b) the Beneficiary shall comply with any reasonable restriction thereby imposed on it;
- (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 Depot Facility Owner to the Beneficiary pursuant to Clause 7.3.5(d); and
- (d) service of a Suspension Notice shall not affect the Beneficiary's continuing obligation to pay the Access Charge.

7.3.4 Effect of a Suspension Notice served by the Beneficiary

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

- (a) it shall have the effect of suspending the permission to use the Depot and the provision of the Beneficiary Depot Services to the extent specified in such Suspension Notice;
- (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 Beneficiary to the Depot Facility Owner pursuant to Clause 7.3.5(d); and
- (c) without prejudice to the Beneficiary's rights under Clause 8, the Beneficiary shall not be obliged to pay the Access Charge in respect of such Beneficiary Depot Services.

7.3.5 Suspension to be proportionate to breach

- (a) A Suspension Notice served pursuant to Clause 7.3.1 in respect of any Beneficiary Event of Default which relates only to particular Beneficiary Depot Services shall, so far as reasonably practicable, apply only to those Beneficiary Depot Services (or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (b) A Suspension Notice served pursuant to Clause 7.3.1 in respect of any Depot Facility Owner Event of Default which relates only to particular Beneficiary Depot Services shall, so far as reasonably practicable, apply only to those Beneficiary Depot Services (or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.

- (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 7.3.5(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.

7.4 Termination

7.4.1 The Depot Facility Owner's right to terminate

The Depot 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 provided that the relevant Beneficiary Event of Default is continuing;
- (b) the Beneficiary fails to comply with its obligations under Clause 7.3.5(c) provided that the relevant Beneficiary Event of Default is continuing;
- (c) except during the period of a Suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing; or
- (d) the period of 12 months has elapsed from the date upon which a franchise agreement entered into by either the Depot Facility Owner or the Beneficiary becomes effective.

7.4.2 The Beneficiary's right to terminate

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

- (a) the Depot Facility Owner fails to comply with its obligations under Clause 7.3.5(c) provided that the relevant Depot Facility Owner Event of Default is continuing; or
- (b) except during the period of a Suspension Notice relating to it, a Depot Facility Owner Event of Default has occurred and is continuing; or

- (c) the period of 12 months has elapsed from the date upon which a franchise agreement entered into by either the Depot Facility Owner or the Beneficiary becomes effective.

7.4.3 **Contents of Termination Notice**

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default or other matter entitling termination under Clause 7.4.1 or 7.4.2 as the case may be;
- (b) the date and time at which termination is to take effect, which in the case of a notice under Clause 7.4.1(d) or Clause 7.4.2(c) shall not be earlier than 6 months after such notice is given and in the case of any other notice shall not be earlier than the expiry of any relevant grace period under Clause 7.4.3(c)(ii); and
- (c) where the relevant Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (and where the Event of Default is a failure of the Beneficiary to pay the Access Charge, seven days shall be a reasonable grace period unless otherwise agreed).

7.4.4 **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 any relevant Event of Default has been remedied;
- (c) this Agreement shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice 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 Regulation;
- (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving such notice to the Secretary of State at the address set out in paragraph 5 of Schedule 1, or such other address as shall be notified by it to the parties from time to time; and
- (e) termination of this Agreement by either party shall be without prejudice to any right of action that may have arisen prior to, or may arise in consequence of, such termination, provided always that no termination by the Beneficiary under Clause 7.4.2(c) or by the Depot Facility Owner under Clause 7.4.1(d) shall of itself give rise or be deemed to give rise to any right of action by the Depot Facility Owner or the Beneficiary respectively.

7.5 Exclusion of common law termination rights

The suspension and termination rights set out in this Clause 7 and Clause 6 shall be the parties' only rights to suspend or terminate this Agreement, whether pursuant to its terms, at law or otherwise.

7.6 Office of Rail Regulation's termination

7.6.1 This Agreement shall terminate upon:

- (a) the date specified in a notice (the "Office of Rail Regulation's Termination Notice") given to the parties by the Office of Rail Regulation for the purposes of this Clause 7.6;
or
- (b) the happening of such event as shall be specified in such a notice.

7.6.2 An Office of Rail Regulation's Termination Notice shall have effect if the following conditions shall have been satisfied:

- (a) the Office of Rail Regulation shall have given to the parties a review notice complying with Clause 7.6.3 by a date which is not earlier than 1 April 1998; and
- (b) either:

- (i) the parties shall have failed to submit to the Office of Rail Regulation for its approval within 90 days of the giving of the review notice or such longer period as the Office of Rail Regulation may specify proposed amendments to this Agreement which they shall have agreed in respect of all of the matters referred to in the review notice; or
 - (ii) the parties having submitted proposed amendments to it, the Office of Rail Regulation shall have failed or refused to approve them within 150 days of the giving of the review notice or such longer period as the Office of Rail Regulation may specify; and
- (c) the Office of Rail Regulation shall have specified in the Office of Rail Regulation's Termination Notice the date or the happening of an event upon which it shall have effect, which date or event shall not be earlier than 150 days after the giving of the said notice.

7.6.3 A review notice shall be a notice given by the Office of Rail Regulation stating its conclusions in relation to its review of the parties' arrangements under this Agreement in respect of any matter.

7.7 Termination by either party

Either party may terminate this Agreement by not less than 180 days' notice to the other and the Office of Rail Regulation to be effective not earlier than the first date upon which significant changes may be made to a timetable of railway passenger services published or procured to be published to the public by Network Rail, such date being one specified by the European Passenger Timetable Conference.

8. CHARGES FOR PERMISSION TO USE THE DEPOT

The Access Charge incorporating the specific charges set out in the relevant Appendices to Schedules 5 to 12 shall be calculated and paid in accordance with Part F.

9. REMEDIES

9.1 Delays and specified performance defaults

9.1.1 The Depot Facility Owner, within 5 Business Days following each relevant Diagram Departure Time, shall notify to the Beneficiary:

- (a) the Train Ready Time or other fact as recorded by the Depot Facility Owner pursuant to Condition L1.1, in respect of each train operated by or on behalf of the Beneficiary, in any case where either:

- (i) the Train Ready Time is later than the relevant Diagram Departure Time for that train; or
- (ii) that train is cancelled or for any other reason no Train Ready Time occurs in respect of it;

together with (in any such case), where relevant,

(b) both:

- (i) the relevant number of DFO Minutes Delay; and
- (ii) particulars sufficient to enable the Beneficiary to make a proper assessment of how and the extent to which the Depot Facility Owner considers that any delay referred to in Clause 9.1.1(a)(i) or (a)(ii) but not included in the computation of DFO Minutes Delay was caused by either
 - (1) a breach by the Beneficiary or any of its Affiliates of any contractual obligation owed to the Depot Facility Owner; or
 - (2) an event of Force Majeure affecting the Depot Facility Owner.

9.1.2 The Depot Facility Owner, within 5 Business Days following each relevant Diagram Departure Time, shall notify to the Beneficiary, together with the information notified pursuant to Clause 9.1.1:

- (a) the Train Ready Time or other fact as recorded by the Depot Facility Owner pursuant to Condition L1.1, in respect of each train other than one operated by or on behalf of the Beneficiary, in any case where both:
 - (i) either:
 - (1) the Train Ready Time is later than the relevant Diagram Departure Time for that train; or
 - (2) that train is cancelled or for any other reason no Train Ready Time occurs in respect of it; and

- (ii) (in either case) the Depot Facility Owner considers that such delay was wholly or partly caused by a breach by the Beneficiary of its obligations under this Agreement (not being a breach caused by an event of Force Majeure affecting the Beneficiary):

together with (in any such case).

- (b) both:

- (i) the relevant number of Beneficiary Minutes Delay; and
- (ii) particulars sufficient to enable the Beneficiary to make a proper assessment of how and the extent to which the Depot Facility Owner considers that any delay referred to in Clause 9.1.2(a)(i)(1) or (2) was caused by a matter referred to in Clause 9.1.2(a)(ii).

9.1.3 The Beneficiary shall be deemed to have agreed any DFO Minutes Delay, any Beneficiary Minutes Delay and any associated particulars of causation or contribution so notified to it, unless and to the extent that, within 5 Business Days of the time of service of the relevant notice, the Beneficiary shall have notified to the Depot Facility Owner that it disputes any of its contents. Any such notice by the Beneficiary shall specify what is disputed, and state reasons.

9.1.4 Within 5 Business Days of the end of each Accounting Period, the Depot Facility Owner shall:

- (a) notify the Beneficiary of the:

- (i) Aggregate Beneficiary Minutes Delay for that Accounting Period, provided that there shall not be included in the calculation of Aggregate Beneficiary Minutes Delay any Beneficiary Minutes Delay which are less than the relevant Beneficiary Minutes Delay Threshold or in excess of the Beneficiary Minutes Delay Cap; and
- (ii) Excess Beneficiary Minutes Delay for that Accounting Period; and

- (b) submit an invoice to the Beneficiary covering:

- (i) all such Excess Beneficiary Minutes Delay, charged at the rates specified in Part D of Schedule 13 (or at such higher rates as for the time being shall have taken effect pursuant to Clause 9.1.5); and

- (ii) such other performance related payments as shall be due from the Beneficiary in accordance with Clause 9.2.

9.1.5 The Allowable Beneficiary Minutes Delay shall be decreased or the rates of payment specified in Part D of Schedule 13 shall be increased from time to time in such manner, on such conditions, and for such purposes as shall have been specified by the Office of Rail Regulation by notice in writing to the Depot Facility Owner and the Beneficiary within 28 days after the giving of any directions by the Office of Rail Regulation under section 17 or 18 of the Act requiring the Depot Facility Owner to enter into another Depot Access Agreement.

9.1.6 All invoices submitted under Clause 9.1.4(b) shall:

- (a) be in sufficient detail to enable the Beneficiary to make a proper assessment of the amounts being levied;
- (b) be accompanied by reasonable supporting information (save to the extent already supplied by the Depot Facility Owner to the Beneficiary); and
- (c) be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the Beneficiary's address for service set out in this Agreement.

9.1.7 Subject to Clause 9.1.8, the Beneficiary shall pay each such invoice within 28 days of receipt of the confirmation copy of the invoice delivered to the Beneficiary in accordance with Clause 9.1.6(c).

9.1.8 If the Beneficiary shall dispute its liability to pay any part of any such invoice, it shall not pay that part which shall be in dispute (pending final resolution of any dispute resolution proceedings which may have been commenced in relation to the matters in dispute) but shall pay the balance. If and to the extent that it is finally determined that the part so unpaid was properly payable by the Beneficiary, so much of the part as should have been paid shall bear interest in accordance with Condition Q2.1 as though the Beneficiary had defaulted in the payment of it when originally due.

9.1.9 Within 15 Business Days of the end of each Accounting Period, the Beneficiary shall:

- (a) notify the Depot Facility Owner of the:

- (i) Aggregate DFO Minutes Delay in respect of that Accounting Period, provided that there shall not be included in the calculation of Aggregate DFO Minutes Delay any DFO Minutes Delay which are less than the relevant DFO Minutes Delay Threshold or any DFO Minutes Delay to the extent that they are more than the relevant DFO Minutes Delay Cap; and
 - (ii) Excess DFO Minutes Delay in respect of that Accounting Period; and
- (b) submit an invoice to the Depot Facility Owner covering:
 - (i) all such Excess DFO Minutes Delay, charged at the rates specified in Part D of Schedule 14 (or at such higher rates as for the time being shall have taken effect pursuant to Clause 9.1.10); and
 - (ii) such other performance related payments as shall be due from the Depot Facility Owner in accordance with Clause 8.2.

9.1.10 The Allowable DFO Minutes Delay shall be decreased or the rates of payment specified in Part D of Schedule 14 shall be increased from time to time in such manner, on such conditions, and for such purposes as shall have been specified by the Office of Rail Regulation by notice to the Depot Facility Owner and the Beneficiary within 28 days after the giving of any directions by the Office of Rail Regulation under section 17 of the Act requiring the Depot Facility Owner to enter into another Depot Access Agreement.

9.1.11 All invoices submitted under Clause 9.1.9(b) shall:

- (a) be in sufficient detail to enable the Depot Facility Owner to make a proper assessment of the amounts being levied;
- (b) be accompanied by reasonable supporting information (save to the extent already supplied by the Beneficiary to the Depot Facility Owner); and
- (c) be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the Depot Facility Owner's address for service set out in this Agreement.

9.1.12 Subject to Clause 9.1.13, the Depot Facility Owner shall pay each such invoice within 28 days of receipt of the confirmation copy of the invoice delivered to the Depot Facility Owner in accordance with Clause 9.1.11(c).

9.1.13 If the Depot Facility Owner shall dispute its liability to pay any part of any such invoice, it shall not pay that part which shall be in dispute (pending final resolution of any dispute resolution proceedings which may have been commenced in relation to the matters in dispute) but shall pay the balance. If and to the extent that it is finally determined that the part so unpaid was properly payable by the Depot Facility Owner, so much of the part as should have been paid shall bear interest in accordance with Condition Q2.1 as though the Depot Facility Owner had defaulted in the payment of it when originally due.

9.2 **Performance incentives**

9.2.1 The Depot Facility Owner shall pay the Beneficiary such amounts, by reference to such performance criteria, as are specified in Schedule 16.

9.2.2 The Beneficiary shall pay the Depot Facility Owner such amounts, by reference to such performance criteria, as are specified in Schedule 15.

9.3 **Indemnities**

9.3.1 Subject to Clause 9.4, the Depot Facility Owner shall (on an after tax basis) indemnify the Beneficiary, and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable 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 Depot Facility Owner of any of its obligations under this Agreement.

9.3.2 Subject to Clause 9.4, the Beneficiary shall (on an after tax basis) indemnify the Depot Facility Owner and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable 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 Beneficiary of any of its obligations under this Agreement.

9.4 **Limitation on claims**

9.4.1 Neither party shall be liable, in respect of any breach of this Agreement, under the indemnities specified in Clause 9.3:

- (a) unless notice of such breach 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;

- (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:
 - (i) in the case of a claim against the Depot Facility Owner, the amount specified in paragraph 1 of Schedule 17; and
 - (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 2 of Schedule 17;
- (c) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:
 - (i) in the case of a claim against the Depot Facility Owner the amount specified in paragraph 3 of Schedule 17; and
 - (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 4 of Schedule 17;

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;

- (d) arising from a single occurrence or circumstance (or connected series of occurrences or circumstances) to the extent that the amount of the relevant claim exceeds:
 - (i) in the case of a claim against the Depot Facility Owner, the amount specified in paragraph 5 of Schedule 17; and
 - (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 6 of Schedule 17,

provided that Clause 8.4.1(d) shall not apply to any liability in respect of physical damage to property;

- (e) in respect of any incidence of delay to a train operated by or on behalf of the Beneficiary, the Depot Facility Owner or any other User under a Depot Access Agreement,

provided that Clause 9.4.1 shall not apply to any liability in respect of death or injury to persons caused by negligence.

- 9.4.2 The Beneficiary shall not be liable under the indemnity specified in Clause 9.3.2:
- (a) in respect of any incidence of delay to a train operated by or on behalf of a Relevant Operator; or
 - (b) for any liquidated damages which the Depot Facility Owner shall have been required to pay any other User under a Depot Access Agreement.
- 9.4.3 The Depot Facility Owner shall not be liable under the indemnity specified in Clause 9.3.1:
- (a) in respect of any incidence of delay to any train operated by or on behalf of the Beneficiary; or
 - (b) for any liquidated damages which the Beneficiary shall have been required to pay to the Depot Facility Owner.
- 9.4.4 Without prejudice to the provisions of Clauses 9.1 and 9.2, neither party to this Agreement shall be liable to the other, under the indemnities specified in Clause 9.3, for any loss of revenue suffered by the other (including fare revenue, subsidy, access charge revenue and incentive payments).
- 9.4.5 The remedies provided for in this Agreement and, to the extent applicable, the Access Dispute Resolution Rules shall be the sole remedies available to the parties in respect of any matters for which such remedies would, but for the limitations in Clauses 9.4.1, 9.4.2, 9.4.3 and 9.4.4, be available.
- 9.5 **Replacement or repair of parts**
- Without prejudice to Clauses 8.1 to 8.4, if the Beneficiary requests the Depot Facility Owner to replace or repair any parts in relation to which the Depot Facility Owner shall be in breach of any of its obligations under or arising pursuant to Conditions N1.2, N1.3 and N1.4, the Depot Facility Owner shall comply with such request within 5 Business Days of receipt of such request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.
- 10 **WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**
- 10.1 **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 10.1 shall not have the effect of excluding any term implied by law.

10.2 **Assignment**

Subject to Clause 10.3, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assignees but neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party and the Office of Rail Regulation.

10.3 **Novation**

Each party agrees to take all such steps as may be necessary to give effect to the novation of either party's rights and obligations under this Agreement by and in favour of the Secretary of State or 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 Regulation pursuant to the Act and shall be on terms that:

10.3.1 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);

10.3.2 the party whose rights and obligations are being novated shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to this Agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or 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

10.3.3 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 10.3.2.

10.4 **Sub-contracting**

Either party may subcontract the performance of any of its obligations under this Agreement without thereby relieving it of any such obligations to the other party.

10.5 **Ceasing to be a facility owner**

- 10.5.1 In this Clause 10.5 "a relevant disposal" means the disposal or the creation of any estate, interest, right or title in or to the Depot 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 Depot but does not include the creation of Security over the Depot.
- 10.5.2 The Depot Facility Owner shall not make a relevant disposal otherwise than to a person holding a light maintenance depot licence in respect of the Depot who prior to the making of the relevant disposal has taken a novation of this Agreement on terms approved by the Office of Rail Regulation.
- 10.5.3 The Depot Facility Owner shall not create or permit to subsist Security over the Depot otherwise than on terms approved by the Office of Rail Regulation.
- 10.5.4 A relevant disposal shall not release the Depot Facility Owner from any accrued but unperformed obligation, the consequences of any breach of this Agreement or any liability in respect of any act or omission under or in relation to this Agreement arising prior to the date of that relevant disposal.

11 **DEPOT WORK PLAN**

The Depot Facility Owner represents, warrants and undertakes that the copy of the Depot Work Plan entered in the Depot Register is true and accurate in all material respects and has not been superseded.

12 **NOTICES AND COMMUNICATIONS**

- 12.1 Any notice or other communication, with the exception of Operating Notices, under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the party on whom the notice is to be served at the relevant address for service set out in paragraph 1 of 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.
- 12.2 Any Operating Notice shall be in writing and given to the person set out in paragraph 2 of Schedule 2, or to such other person in the United Kingdom as that party may specify by notice to the other party to this Agreement in accordance with the relevant provision of this Agreement or the Depot Access Conditions and shall be deemed to have been received by the party to whom it is addressed if sent by facsimile, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a

transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

- 12.3 Any notice or other communication made in accordance with this Clause 112 shall be, or shall be deemed to have been, received by the party to whom it is addressed if sent by hand or recorded delivery when so delivered or in the case of pre-paid first class post, 2 days after posting.

13 **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

13.1 **Governing law**

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

13.2 **Jurisdiction**

Subject to the Depot 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.

14 **RIGHTS OF THIRD PARTIES**

14.1 **Application to Third Parties**

Except as provided in this Clause 14 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.

14.2 **Application to the Office of Rail Regulation and the Secretary of State**

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

IN WITNESS whereof this Agreement has been signed by or on behalf of the parties.

FOR THE DEPOT FACILITY OWNER:

NAME:

DATE:

POSITION:

SIGNATURE:

FOR THE BENEFICIARY:

NAME: IAN ROBERT YEOWART

DATE: [] 2007

POSITION: MANAGING DIRECTOR

SIGNATURE:

SCHEDULE 1
CONTRACT PARTICULARS

1. **Depot Facility Owner:**

Name: Northern Rail Ltd

Registered office: Northern House, 9 Rougier Street, York, YO1 6HZ

2. **Beneficiary:**

Name: Grand Central Railway Company Limited

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

3. **Long-stop Date:**

The date of this agreement.

4. **Depot:**

The light maintenance depot known as Newcastle upon Tyne Heaton, as more particularly described in the Depot Access Conditions.

5. **Address of Secretary of State:**

The Secretary of State

Rail Group

76 Marsham Street

London

SW1P 4DR

6. **Track Access Agreement:**

Access contract dated 18 January 2007 between Network Rail and Grand Central Railway Company Limited providing permission for the Beneficiary to use track in order to operate trains to and from the entrance(s) to the Depot.

**SCHEDULE 2
NOTICES**

1. **Formal Notices**

Address for service on the Depot Facility Owner:

Attention: Engineering Director

Address Northern Rail Limited, 3rd Floor, Northern House, 9 Rougier Street, York YO1 6HZ

Fax No. 01904 568360

Address for service on the Beneficiary:

Attention: Sean English

Operations Director

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

Fax No 01904 466066

2. **Operating Notices**

Details for Service on the Depot Facility Owner:

Relevant Employee The District Maintenance Manager

Northern Rail Limited,

Heaton Traincare Depot. off Benfield Road, Heaton, Newcastle NE6 2XT

Tel: 0191 221 4741

Email: Gary.Tremble@northernrail.org

Details for Service on the Beneficiary:

Relevant Employee: Sean English

Fax No: 01904 466066

**SCHEDULE 3
FLEET VEHICLES**

Type of Railway Vehicle	Running Maintenance Programme (as defined in Schedule 5)
CLASS 43 POWER CARS	SOVEREIGN TRAINS VMI – SEPARATE AGREEMENT
MARK 3 HST TYPE TRAILER	SOVEREIGN TRAINS VMI – SEPARATE AGREEMENT

SCHEDULE 4
APPLICABLE SYSTEMS INTERFACES

NOT USED

**SCHEDULE 5
FLEET MAINTENANCE**

NOT USED

APPENDIX 1 TO SCHEDULE 5
Fleet Maintenance and Level of Services

NOT USED

APPENDIX 2 TO SCHEDULE 5
Charges

NOT USED

APPENDIX 3 TO SCHEDULE 5

Train Presentation Specification

NOT USED

**SCHEDULE 6
FUELLING AND FUEL POINT EXAMS**

1. **Definitions**

In this Schedule:

"**Appendix**" means an appendix to this Schedule;

"**Depot Delivered Price**" means the unit charge per litre of Gasoil delivered to the Depot as paid by the Depot Facility Owner;

"**Fuel Point Exam**" NOT USED

"**Fuel Point Exam Specification**" NOT USED

"**Fuelling**" means the replenishing of the Beneficiary's Traction Units with Gasoil to the levels of capacity as are set out in Appendix 3;

"**Gasoil**" means gasoil for traction conforming with BS 2869 Part II: 1988 Class A2 or better or equivalent, marked and dyed in accordance with HM Customs & Excise Regulations and including any additives which may properly be required;

"**RSL VECOMAS**" means the data base on which the ownership, lease and hire of Traction Units is registered by Network Rail as authorised for operation on the Network;

"**Traction Unit**" means a diesel locomotive, diesel multiple unit or other railway vehicle of a type listed in paragraph 3 of Appendix 1; and

"**Train Presentation Specification**" NOT USED

2. **Fuelling**

2.1 The Depot Facility Owner shall provide the Beneficiary with Fuelling up to the Minimum Level of Services as specified in paragraph 1 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Fuelling up to the Maximum Level of Services as specified in paragraph 2 of Appendix 1 at the request of the Beneficiary.

2.3 NOT USED

3. **Depot Facility Owner's Obligations**

The Depot Facility Owner shall:

- 3.1 inform the Beneficiary if any Traction Unit in respect of which Fuelling is to be carried out is, as a result of any matter which the Depot Facility Owner has discovered in the course of carrying out any Fuelling, in the Depot Facility Owner's reasonable opinion, in an unsafe condition.
- 3.2 on receipt of a request either for Fuelling in excess of the Minimum Level of Services, the Depot Facility Owner shall, as soon as reasonably practicable, notify the Beneficiary of the date and time for the completion of such Fuelling.. The Depot Facility Owner shall provide the Fuelling in question at a time which is reasonably convenient for the Beneficiary, except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.
- 3.3 maintain a daily record of the Fuelling provided to the Beneficiary as specified in paragraph 4 of Appendix 1.
- 3.4 inform the Beneficiary promptly upon request of the average Depot Delivered Price of Gasoil over the preceding three complete calendar months.
- 3.5 provide the Beneficiary with a detailed written record of the Fuelling carried out on the Beneficiary's Traction Units with any invoice for charges submitted to the Beneficiary;
- 3.6 ensure that fuelling installations, and metering and gauging equipment, are constructed, operated, maintained and calibrated in accordance with the International Standards for Legal Metrology;
- 3.7 promptly provide the Beneficiary with any sample of Gasoil which the Beneficiary may reasonably demand; and
- 3.8 NOT USED

4. **Beneficiary's Obligations**

The Beneficiary shall use all reasonable endeavours to procure that the correct details of its Traction Units and the name of its accounting manager and the accounting office are entered and maintained on RSL VECOMAS.

5. General Conditions

The Depot Facility Owner shall be under no obligation to carry out Fuelling in respect of any Traction Unit if:

- 5.1 the Beneficiary has failed to comply with its obligations under paragraph 4 in respect of such Traction Unit; or
- 5.2 in the reasonable opinion of the Depot Facility Owner the mechanical condition of the Traction Unit would render it unsafe to do so.

6. Charging

6.1 The Depot Facility Owner's charge per litre of Gasoil shall be the aggregate of the average Depot Delivered Price of Gasoil over the preceding three complete calendar months together with a handling charge as specified in Paragraph 3 of Appendix 2 for the storage and replenishment of Gasoil and the provision of lubricants and coolants.

6.2 The Beneficiary shall pay to the Depot Facility Owner:

6.2.1 NOT USED

6.2.2 NOT USED

APPENDIX 1 TO SCHEDULE 6

Fuelling

1. Minimum Level of Services

1.1 For 2007/08

Accounting Period	1	2	3	4	5	6	7	8	9	10	11	12	13
Gasoil (litres x 1000)	0	0	0	0	100	100	185	185	185	185	185	185	185

1.2 For 2008 onwards

Accounting Period	1	2	3	4	5	6	7	8	9	10	11	12	13
Gasoil (litres x 1000)	185	185	185	185	185	185	185	185	185	185	185	185	185

Diagram: Each diagram and as required.

The following Diagrams: Diagrams numbers are not yet provided.

2. Maximum Level of Services

Accounting Period	1	2	3	4	5	6	7	8	9	10	11	12	13
Gasoil (litres x 1000)	250	250	250	250	250	250	250	250	250	250	250	250	250

Diagram: Each diagram

The following Diagrams: Diagrams numbers are not yet provided.

3. Traction Units

3 x HST in 2+6 formation – 2 x class 43 power cars plus 6 x mark 3 trailers

4. Daily Record

To be maintained by the Depot Facility Owner forwarded electronically via email to the beneficiary at the beginning of each day shift.

APPENDIX 3 TO SCHEDULE 6
Train Presentation Specification

NOT USED

**SCHEDULE 7
EXTERIOR CLEANING**

NOT USED

APPENDIX 1 TO SCHEDULE 7
Exterior Cleaning

NOT USED

APPENDIX 2 TO SCHEDULE 7

Charges

NOT USED

APPENDIX 3 TO SCHEDULE 7

Washing Specification

NOT USED

APPENDIX 4 TO SCHEDULE 7
Train Presentation Specification

NOT USED

SCHEDULE 8
STABLING

1. **Definitions**

In this Schedule:

"**Appendix**" means an appendix to this Schedule;

"**Custody Period**" means the period of time for which Fleet Vehicles are Stabled in accordance with this Schedule;

"**Stabling**" means the parking or laying up of Fleet Vehicles in accordance with paragraphs 3 to 6 of Appendix 1 between the time of delivery to the Depot as stated in the relevant Diagram and the time of collection from the Depot as stated in the relevant Diagram (other than as required in connection with the provision of Beneficiary Depot Services in accordance with Schedules other than this Schedule), together with ancillary shunting and marshalling and "Stabled" and "Stable" shall be construed accordingly; and

"**Train Presentation Specification**" NOT USED

2. **Provision of Stabling**

2.1 The Depot Facility Owner shall provide the Beneficiary with Stabling up to the Minimum Level of Services as specified in paragraph 1 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Stabling up to the Maximum Level of Services as specified in paragraph 2 of Appendix 1 for such of the Fleet Vehicles as the Beneficiary may request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.

2.3 If the Beneficiary does not receive or anticipates that it will not require to receive the whole of the Stabling specified in paragraph 2 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Stabling from that Accounting Period be carried forward to the next Accounting Period whereupon, in that Accounting Period, the Depot Facility Owner shall provide the Beneficiary with additional Stabling of an amount equal to the unperformed Stabling carried forward except where, and to the extent that:

2.3.1 the unperformed Stabling carried forward exceeds 5% by value of the Stabling specified in paragraph 1 of Appendix 1 to be provided in the Accounting Period from which that Stabling is carried forward; or

2.3.2 the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.

3. Depot Facility Owner's Obligations

3.1 The Depot Facility Owner shall inform the Beneficiary as soon as reasonably practicable of any loss of, damage to, or material deterioration in the condition of, the Fleet Vehicles of which it becomes aware during the Custody Period.

3.2 The Depot Facility Owner shall allow the Beneficiary's representatives reasonable access to the Depot at all reasonable times and upon reasonable prior notice in order to permit such representatives to review the condition of and, if appropriate, carry out any work on the Fleet Vehicles which the Beneficiary considers to be necessary or expedient provided that the Beneficiary's representatives shall not be entitled to carry out light maintenance services to the Fleet Vehicles whilst at the Depot.

3.3 The Depot Facility Owner, having carried out Stabling, shall present trains for service in compliance with the Train Presentation Specification.

4. Beneficiary's Obligations

4.1 Except to the extent that the Fleet Vehicles in question shall be awaiting the provision of Beneficiary Depot Services (other than Stabling) or awaiting collection following the provision of Beneficiary Depot Services (other than Stabling) the Beneficiary shall ensure that all Fleet Vehicles are in a safe condition and appropriately maintained during the Custody Period.

4.2 The Beneficiary shall ensure that nothing is stored on any Fleet Vehicle unless the Depot Facility Owner has given its prior consent in writing – which will not be unreasonably withheld. .

4.3 The Depot Facility Owner shall be entitled to refuse to take delivery of a Fleet Vehicle which does not comply with paragraphs 4.1 or 4.2.

5. Movements of Fleet Vehicles within the Depot

5.1 The Depot Facility Owner may, during the Custody Period, move Fleet Vehicles which are the subject of Stabling within the Depot, provided always that the relevant Fleet Vehicles shall be stored in accordance with paragraphs 3 to 6 of Appendix 1.

6. Failure to Collect

6.1 If the Beneficiary fails to collect any Fleet Vehicle at the time appointed for such collection in the relevant Diagram, the Depot Facility Owner shall be entitled to charge for the Stabling of such

Fleet Vehicle in accordance with the charges referred to in paragraph 7 until such time as the Fleet Vehicle is collected by the Beneficiary.

6.2 If the Beneficiary fails to collect any Fleet Vehicle for a period of 5 Business Days after the time appointed for such collection in the relevant Diagram, the Depot Facility Owner, upon informing the Beneficiary, shall be entitled to move such Fleet Vehicle:

6.2.1 to another part of the Depot; or

6.2.2 to different premises of the Depot Facility Owner; or

6.2.3 to premises of another responsible person, in which case the Beneficiary shall reimburse the Depot Facility Owner for all associated costs involved in such a move,

and in all such cases the Depot Facility Owner shall not be obliged to effect Stabling in accordance with paragraphs 3 to 6 of Appendix 1 and all movements of such Fleet Vehicle shall be at the risk of the Beneficiary except in the case of a negligent act or omission of the Depot Facility Owner or its Associates.

6.3 If the Depot Facility Owner has moved any Fleet Vehicles to different premises in accordance with paragraph 6.2, the Depot Facility Owner shall return the relevant Fleet Vehicles to the Depot for collection by the Beneficiary within a reasonable period of receiving notice from the Beneficiary requesting such return.

6.4 The Beneficiary shall reimburse the Depot Facility Owner for all associated costs involved in complying with paragraph 6.3.

7. **Charges**

7.1 The Beneficiary shall pay to the Depot Facility Owner:

7.1.1 the charges set out in paragraph 1 of Appendix 2 in respect of Stabling up to the Minimum Level of Services; and

7.1.2 the charges set out in paragraph 2 of Appendix 2 in respect of Stabling comprised in the Variable Level of Services.

APPENDIX 1 TO SCHEDULE 8

Stabling Specification

1. Minimum Level of Services

Fleet Vehicle: Class 43 power cars x 2

Mark 3 HST type trailers x 6

Accounting Period	1	2	3	4	5	6	7	8	9	10	11	12	13
Number of Fleet Vehicles	224	224	224	224	224	224	224	224	224	224	224	224	224

Diagram: Each diagram and as required.

The following Diagrams: Diagrams numbers are not yet provided

2. Maximum Level of Services

Fleet Vehicle: Class 43 power cars x 6

Mark 3 HST type trailers x 21

Accounting Period	1	2	3	4	5	6	7	8	9	10	11	12	13
Number of Fleet Vehicles	756	756	756	756	756	756	756	756	756	756	756	756	756

3. Covered Accommodation

Fleet Vehicle: Class 43 power cars x 6

Mark 3 HST type trailers x 21

4. Road Access

Fleet Vehicle: As required per vehicle

5. Traction Current

No

6. Security arrangements required by the Beneficiary

Fleet Vehicle: All vehicles to be stored in a secure area with particular emphasis on prevention of vandalism.

APPENDIX 2 TO SCHEDULE 8

Charges

1. **Stabling up to Minimum Level of Services**

Charge per Fleet Vehicle: [Redacted information] per day

2. **Stabling comprised in the Variable Level of Services**

Charge per Fleet Vehicle: [Redacted information] per day

APPENDIX 3 TO SCHEDULE 8
Train Presentation Specification

**SCHEDULE 9
WHEEL RE-PROFILING**

NOT USED

APPENDIX 1 TO SCHEDULE 9
Charges

NOT USED

Authority

NOT USED

NOT USED

**SCHEDULE 10
INTERIOR CLEANING**

NOT USED

Regular Cleaning

NOT USED

APPENDIX 2 TO SCHEDULE 10

Charges

NOT USED

APPENDIX 3 TO SCHEDULE 10
Cleaning Specification

NOT USED

APPENDIX 4 TO SCHEDULE 10
Train Presentation Specification

NOT USED

SCHEDULE 11
OFF-DEPOT SERVICES

NOT USED

APPENDIX 1 TO SCHEDULE 11

Off-Depot Services

NOT USED

APPENDIX 2 TO SCHEDULE 11
Charges

NOT USED

APPENDIX 3 TO SCHEDULE 11
Train Presentation Specification

NOT USED

SCHEDULE 12
DEPOT ACCESS

Not Used

APPENDIX 2 TO SCHEDULE 12 SCHEDULE 13
BENEFICIARY MINUTES DELAY

NOT USED

SCHEDULE 14
DFO MINUTES DELAY

NOT USED

SCHEDULE 15
PERFORMANCE RELATED PAYMENTS
BY BENEFICIARY

NOT USED

SCHEDULE 16
PERFORMANCE RELATED PAYMENTS BY
DEPOT FACILITY OWNER

NOT USED

SCHEDULE 17
REMEDIES

- (1) The amount referred to in Clause 8.4.1(b)(i) is [Redacted information].
- (2) The amount referred to in Clause 8.4.1(b)(ii) is [Redacted information].
- (3) The amount referred to in Clause 8.4.1(c)(i) is [Redacted information].
- (4) The amount referred to in Clause 8.4.1(c)(ii) is [Redacted information].
- (5) The amount referred to in Clause 8.4.1(d)(i) is [Redacted information].
- (6) The amount referred to in Clause 8.4.1(d)(ii) is [Redacted information].

SCHEDULE 18
NOTIFIABLE CONDITION

