
NATIONAL STATION ACCESS CONDITIONS 2013 (ENGLAND AND WALES)

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PART A ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS

Condition A1 General

1.1 General Interpretation

In these Station Access Conditions, the Annexes and any Relevant Agreement unless the context otherwise requires,

1.1.1 These Station Access Conditions References to these Station Access Conditions mean these Station Access Conditions and references to Annexes means to annexes to these Station Access Conditions each as modified from time to time.

1.1.2 Parts, Conditions and paragraphs References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Station Access Conditions.

1.1.3 References to statutory provisions References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as from time to time amended or modified or any enactment for the time being replacing or amending it.

1.1.4 Interpretation Act Words and expressions defined in the Interpretation Act 1978 shall have the same meanings. The words “include” and “including” shall be construed without limitation.

1.1.5 Definitions in the Act Terms and expressions defined in sections 1, 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meanings.

1.1.6 Construction of agreements Reference to an agreement or any other document includes that agreement or other document as from time to time modified, supplemented, varied, amended or novated (any such being a “change”) provided that where the agreement is a Relevant Agreement such change shall be included only if one of the following conditions shall have been satisfied:-

- (a) if the change is to any part of a Relevant Agreement other than these Station Access Conditions or the Annexes the change will not result or be likely to result in a Relevant Restriction; or
- (b) the change is one in respect of which the ORR shall have given its consent in writing; or
- (c) the change is one which falls wholly within the terms of a general consent given by the ORR in writing.

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

1.1.7 Notices etc. Wherever provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Relevant Agreement and the words “notify”, “consent” or “approve” (and cognate expressions) shall be construed accordingly.

1.1.8 References to person Any reference to a person shall be construed as including, where appropriate, a reference to a firm, company, corporation, government, state or agency of a state, any association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any of the foregoing.

1.1.9 Conflict In the event of any conflict (whether as to interpretation or otherwise) between the provisions of these Station Access Conditions and the provisions of a Relevant Agreement, the following order of precedence shall apply:

- (a) these Station Access Conditions; and
- (b) the provisions of that Relevant Agreement.

1.1.10 Time Limits Where in any Relevant Agreement any obligation of a person is required to be performed within a specified time limit, that obligation shall continue after that time limit if that person fails to comply with that obligation within the time limit.

1.1.11 Headings The headings and references to headings shall be disregarded.

1.1.12 Companies Act definitions The words “subsidiary”, “holding company” and “company” shall have the same meanings as in the Companies Act 2006.

1.1.13 Use of present tense Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.

1.1.14 Sub-contractors Where a party has sub-contracted its obligations under any Relevant Agreement references to that party in any Relevant Agreement shall include references to any sub-contractor so appointed.

1.1.15 Permission to use References to the grant to a User of permission to use the Station shall be construed to mean:

- (a) the grant of permission for the User and its Associates to use the Common Station Amenities and to obtain the benefit of the Station Services or Light Maintenance Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway, whether or not the Station Facility Owner is to provide those services itself or to secure their provision by another; and
- (b) to the extent reasonably necessary to give full effect to the permission in Condition A1.1.15(a), and subject to Condition A1.1.16, permission for the User and its Associates to:
 - (i) enter upon the Common Station Amenities, with or without vehicles;
 - (ii) bring things onto the Common Station Amenities and keep them there;
 - (iii) use and maintain any things kept, or buildings or other works constructed, on the Common Station Amenities (whether by the User or another);
 - (iv) carry out such works as shall have been approved in accordance with these Station Access Conditions;

- (v) exercise the rights over the Adjacent Property set out in Conditions J4, J5, J6 and J9 (other than J9.1); and
- (vi) carry out Light Maintenance Services,

provided that the permissions in Conditions A.1.1.15(a) and A1.1.15(b) shall be in common with, but not in priority to, any other User in respect of the Common Station Amenities or Common Station Services and shall be subject, in each case and in all respects, to:

- (c) these Station Access Conditions;
- (d) any Relevant Restriction arising under any Existing Agreement; and
- (e) whilst exercising any permissions conferred by Condition 1.1.15(b) any other restriction on such permissions which may from time to time be reasonably imposed by the Station Facility Owner in accordance with the Station Access Agreement.

1.1.16 Permission to use under Condition A1.1.15(b) In relation to the permissions specified in Condition A1.1.15(b):

- (a) the User shall and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Station Facility Owner (which consent shall not be unreasonably withheld or delayed);
- (b) the User shall promptly remove any vehicle or other thing so brought onto the Common Station Amenities when reasonably directed to do so by the Station Facility Owner; and
- (c) whilst exercising any permissions conferred by Condition A1.1.15(b) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Station Facility Owner shall specify.

1.1.17 Good Faith: Network Rail and all Relevant Operators shall, in exercising their respective rights and complying with their respective obligations under these Station Access Conditions, the Annexes and any Relevant Agreement (including when conducting any discussions or negotiations arising out of the application of these Station Access Conditions, the Annexes and any Relevant Agreement or exercising any discretion under them) at all times act in good faith.

1.1.18 "an after tax basis": References to an after tax basis shall be construed to mean payments of the monies which are the subject of the indemnity after:

- (a) first, if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumption set out below) by the beneficiary by virtue of the relief;
- (b) secondly, if the indemnity is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under Condition A1.1.18(a) such that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity

payment equals the amount of the payment after any reduction under Condition A1.1.18(a);

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

(c) for the purposes of Condition A1.1.18(a), the amount of tax saved shall be the difference between :

(i) the amount of tax which would have been payable by the beneficiary in respect of the accounting period of the beneficiary in which the relief arises, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and

(ii) the amount of tax which would have been payable by the beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such relief;

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

(d) for the purposes of Condition A1.1.18(b), the amount of the deduction in respect of any tax suffered shall be the difference between :

(i) the amount of tax which would have been payable by the beneficiary in respect of the accounting period of the beneficiary in which the indemnity payment is taxable, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and

(ii) the amount of tax which would have been payable by the beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such indemnity payment as increased under Condition A1.1.18(b) (the "grossed up amount");

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

(e) for the purposes of applying the above clauses on each occasion that an indemnity payment falls to be made, the beneficiary's "Taxable Profits" in the relevant accounting period shall be deemed to be the beneficiary's profits in such accounting period (as defined in Section 6 of the Income and Corporation Taxes Act 1988 ("ICTA")), as reduced by all reliefs other than the relief referred to in Condition A.1.1.18(a), arising in respect of such occasion and trading losses carried back under sub-section 393A(1)(b) of ICTA, but including, for the avoidance of doubt, charges on income, group relief and trading losses carried forward (to the extent not attributable to the relief referred to in Condition A1.1.18(a) arising in respect of such occasion).

In any case where an indemnity payment falls to be made on an "after tax basis", the adjustments referred to above shall be calculated by the auditors of the beneficiary (acting as experts and not as arbitrators) whose calculations shall be binding on the parties in the absence of manifest error and whose costs shall be borne in equal shares by the

beneficiary and the indemnifying party and, if such adjustments cannot be conclusively determined at the time when the indemnity payment is required to be made, the auditors shall provide an estimate of the adjustments which are likely to be required and the indemnity payment shall be made on the basis of such estimate and, as and when such adjustments can be conclusively determined, such payment will be made either by or to the beneficiary as may be required to give effect to the above paragraphs.

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

1.2 Definitions

In these Station Access Conditions, the Annexes and any Relevant Agreement, unless the context otherwise requires:

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

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

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

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

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

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

“Act” means the Railways Act 1993;

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

“Adjacent Works” means the works listed in paragraph 2 of Annex 4;

“Affiliate” in relation to a company means:

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

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

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

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

“British Rail Telecommunications Transfer Scheme” means the transfer scheme made under section 85 of the Act by the British Railways Board in favour of BR Telecommunications Limited with an effective date of 1 April 1994 and references to that scheme (where the context requires) include any transfer scheme which affects or is made in addition to that scheme made from time to time under section 85 of the Act by the Board with an effective date after 1st April 1994;

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

“Certificate” means the certificate issued by or on behalf of Station Facility Owner pursuant to Condition F3.1.2;

“Change” means any of the following:

(a) Works or activities at the Station which (whether during or after their completion) would be likely:

(i) materially to affect:

(1) the operation of trains to or from the Station; or

(2) the ability of a Relevant Operator’s Associates to pass to or from trains operated by or on behalf of that operator which stop at the Station; or

(3) the operation of the Station; or

(ii) to change materially the condition (or working order), standard or quantum of the Common Station Amenities or the Common Station Services at the Station, other than in accordance with the provisions of Parts D or M; or

(iii) to make any amenity or service which is not a Common Station Amenity or Common Station Service, a Common Station Amenity or a Common Station Service (as the case may be) at the Station or vice versa; or

(iv) to alter the periods during which the whole or any part of the Station is open to the public or to any User or its Associates, other than in accordance with the provisions of Part D; or

(v) to result in the relocation of any Core Facility as referred to in paragraph 26 of Annex 9 or any Station Facility as referred to in paragraph 10 of Annex 1;

(b) (except where such may arise pursuant to an Existing Agreement) the entering into of any agreement or other arrangement or the variation of an existing agreement or arrangement the purpose or effect of which involves or is likely to involve any of the matters described in paragraph (a) of this definition (excluding any agreement or arrangement entered into pursuant to the agreements referred to in paragraph 2 of Annex 9) provided that this paragraph (b) shall not prevent the entry by the Station Facility Owner into an access contract;

(c) any change to these Station Access Conditions or the Annexes (other than a Conditions Change carried out in accordance with Part B) including but not limited to any change to the Plan; and/or

(d) the grant of wayleaves, dedications or easements affecting the Station

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

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

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

(a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or

(b) Value Added Tax;

“Collateral Agreement” means any agreement between Network Rail and a User and in the form set out in Annex 8;

“Commencement Date” has the meaning attributed to it in the Station Access Agreement;

“Common Charges” means, in relation to each Passenger Operator, the aggregate of the following:

(a) the Residual Variable Charge;

(b) the Fixed Charges in respect of which that Passenger Operator shall have made an election pursuant to Condition F2; and

(c) the Passenger Operator’s Proportion of the Long Term Charge determined pursuant to Condition F10.5;

“Common Station Amenities” means:

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

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

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

“Common Station Services” means:

(a) in respect of a Passenger Operator the services supplied at the Station specified in paragraphs 3 and 4 of Annex 1; and

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

in each case to the extent they are available as at the Commencement Date unless otherwise specified in Annex 1 and in accordance with the specifications (if any) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 11, as modified by such changes as shall be implemented from time to time in accordance with Part C;

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

(a) Her Majesty’s Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power;

(b) the ORR, except to the extent that it shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as it shall so specify;

(c) subject to paragraph (b) above, any court, tribunal or arbitral body exercising its powers in any reference made to it pursuant to or arising out of any access contract or any act or omission or fact, matter or thing associated with any such contract or the relationship created or evidenced by it;

“Conditions Change Proposal” means any proposal (other than a notice issued by the ORR under Condition B6) to change these Station Access Conditions or the Annexes and any material modification to that proposal as referred to in Condition B1.4, whether the proposal involves a Template Change or a change to the Station Access Conditions or the Annexes which relate only to the Station or to a specific set of Stations (save where such a change is consequent upon a physical change at such Station, which shall instead be included within the relevant Part C Change Proposal);

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

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

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

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

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

“Conditions Efficacy Date” means the date upon which the first Relevant Agreement comes or came into effect in respect of the Station;

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

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

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

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

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

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

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

“Daily Charge” means any of the SFO’s Daily Long Term Charge, the User’s Daily General Charge and, in respect of Passenger Operators, the Daily Long Term Charge, as the context requires;

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

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

where:

POP = the Passenger Operator's Proportion in relation to the Passenger Operator in question;

LTC = the Long Term Charge; and

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the Passenger Operator in question are due to depart from the Station as determined in accordance with Condition F10;

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

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

"Default Responsibility" means the causation of any default as determined in accordance with Condition L8;

"Demarcation Agreements" means any demarcation agreement, whether entered into prior to or after the Conditions Efficacy Date, relating to the Station or any part of it provided for in the agreements specified in paragraph 1 of Annex 9;

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

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

"Dispute Resolution Procedure" means the procedure set out in Condition H5;

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

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

"Emergency" means:

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

(b) in relation to the operation of the railway passenger services or services for the carriage of goods by railway any situation or circumstance which the User reasonably considers constitutes an emergency affecting such services,

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

"Environmental Condition" means:

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

which (in either case) in Network Rail's reasonable opinion could result in Network Rail incurring any material liability or being subject to the Direction of any Competent Authority or could otherwise materially affect Network Rail's interest in the Station as an actual or potential railway asset for railway related uses which shall include (but not be limited to) any uses of the Station which are or may be permitted by Condition O5;

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

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

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

"Environmental Liability Commencement Date" means the earliest of:

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

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

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

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

"Excluded Equipment" means:

- (a) the items of Equipment (if any) referred to in Appendix 6 to Annex 1;
- (b) electronic communications apparatus within the extended definition in section 151 of the Telecommunications Act 2003 other than Excepted Equipment

and Retail Telecom Systems as defined in Equipment Inventory paragraph (10);
and

(c) any item of equipment not included in paragraphs (a) or (b) of this definition or otherwise specified in the Equipment Inventory:

(i) which is (from time to time) used exclusively (whether by Network Rail or at its direction) for the purposes of Network Rail's railway undertaking or function; and/or

(ii) which from time to time forms part of the infrastructure (as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I.No. 599 2006)) for which Network Rail and not the Station Facility Owner is responsible as part of the infrastructure safety case as referred to in the above regulations;

"Excluded Existing Agreements" means:

(a) those agreements and instruments listed or described in paragraph 1 of Annex 5;

(b) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits affecting the Station (whether or not so listed in paragraph 1 of Annex 5) entered into or granted by Network Rail or its predecessors in title at any time before the Conditions Efficacy Date, to:

(i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and

(ii) any other person;

(c) agreements or instruments relating to land owned by third parties at the Conditions Efficacy Date, provided that the rights and liabilities arising under such agreements or instruments were transferred to Network Rail under the Railtrack Transfer Scheme;

(d) the Demarcation Agreements;

(e) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;

(f) easements completed or to be completed pursuant to the agreement referred to in paragraph 2 of Annex 9 relating to BR Telecommunications Limited; and

(g) all agreements and instruments completed or to be completed pursuant to any of the agreements referred to in paragraph 2 of Annex 9 relating to the Adjacent Property;

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

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

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

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

whether or not the Financial Impact Test is satisfied;

“Existing Agreements” means the Included Existing Agreements, the Excluded Existing Agreements, the Global Agreements, any Superior Estate Grant and all other agreements entered into after the Conditions Efficacy Date the entering into of which is approved in accordance with Part C or to which Part C does not apply by reason of the operation of Condition G8 but shall not include the Relevant Agreement entered into between Network Rail and the Station Facility Owner;

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

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

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

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

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

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

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

“Fixed Charges” means the fixed charges (if any) proposed to Passenger Operators by the Station Facility Owner pursuant to Condition F1.1;

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

“Full Replacement Cost” means the cost of replacing the Station to the standard set out in Condition E2.2.2 and shall include any Value Added Tax and other taxes payable, reasonable provision for costs escalation between the commencement or renewal date of insurance cover and the date of replacement, professional and statutory fees, demolition, site clearance and shoring up;

“Global Agreements” means any agreement or instrument of any nature for the time being affecting the Station and at least one other station (whether or not also affecting other land) listed in paragraph 3 of Annex 5;

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

“Included Existing Agreements” means:

- (a) those agreements or instruments listed or described in paragraph 2 of Annex 5;
- (b) such other agreements or instruments completed or to be completed pursuant to the agreements referred to in paragraph 2 of Annex 9 other than:
 - (i) the Demarcation Agreements;
 - (ii) easements referred to in paragraph (f) of the definition of “Excluded Existing Agreements”; and
 - (iii) any agreement or instrument relating to the Adjacent Property;
- (c) all rights of third parties arising acquired or granted at any time before the Conditions Efficacy Date (other than those in paragraph (c) of the definition of “Excluded Existing Agreements”) over or in respect of the occupation of (or the entitlement to occupy) any part of the Station; and
- (d) all rights of third parties arising under Statute or by operation of law;

“Insured Risks” means:

- (a) (to the extent that these are normally insurable in respect of the Station on normal commercial terms with a member of the Association of British Insurers) fire, lightning, explosion, aircraft but not hostile aircraft, subterranean fire,

earthquake, riot and civil commotion, malicious damage, impact (including impact by rolling stock of any type), flood, storm, tempest, subsidence and terrorism; and

(b) such other insurable risks as Network Rail and the Relevant Operators may agree in accordance with the terms of these Station Access Conditions;

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

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

(a) any enactment to the extent that it applies to that person;

(b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding;

(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraph (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

“Licensee” means any person in occupation of part of the Station or operating a concession in part of the Station, in each case pursuant to a Global Agreement;

“Light Maintenance Services” means the services described in paragraph 28 of Annex 9;

“Long Term Charge” means the amount set out in paragraph 3 of Annex 9 subject to variation in accordance with Condition F11.2;

“Long Term Charge Commencement Date” means the date set out in paragraph 27 of Annex 9;

“Maintenance” means the carrying out of the following in each case in accordance with the specifications (if any) set out in Annex 12 or determined pursuant to Annex 11:

(a) in relation to every part of the Station:

(i) any treatment, operation or work of a routine and foreseeable nature whether necessary at regular or irregular intervals which is required (whether by any current statutory or other code of practice or otherwise) from time to time to facilitate the efficient and safe operation and/or use in compliance with the requirements of any Statute of the relevant part for any purpose permitted by the Relevant Agreement;

(ii) the replacement of such parts of the Station as require, or are designed for, regular replacement; and

(iii) any inspection or certification required by a Statute or for the purpose of any treatment, operation or works described in this paragraph (a); and

- (b) in relation to the Equipment, all treatment, operations and works which are recommended in a current manufacturer's operating or maintenance manual (as updated from time to time) at the intervals and in the manner so recommended;

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

"Material Change Consultees" means:

- (a) in respect of a Material Change Proposal made by Network Rail, the Station Facility Owner or a User,

(i) each of Network Rail, the Station Facility Owner, and/or any User, who is not the Material Change Proposer, and who satisfies the Financial Impact Test;

(ii) the Secretary of State and Scottish Ministers if they may be affected by the implementation of the Material Change Proposal;

(iii) the ORR;

(iv) the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by the implementation of the Material Change Proposal; and

(v) any Station Investor who

(1) has issued its own Material Change Proposal in relation to the Station before the Proposer makes the Material Change Proposal; or

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

and who satisfies the Financial Impact Test; or

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

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

(i) upon notifying the Station Facility Owner that it no longer wishes to be a Material Change Consultee in relation to the Station;

(ii) after its own intended Material Change Proposal in relation to the Station has been abandoned or lapsed; or

(iii) five years after the Station asset(s) identified in its own Material Change Proposal became operational;

"Material Change Consultee's Costs" means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the Material Change Consultee in evaluating and responding to the Material Change Proposal (whether or not the Material Change Proposal is implemented) and any loss of profit or loss of revenue

(but not consequential costs, losses or expenses save for loss of profit or loss of revenue), and any net increase in Qualifying Expenditure incurred by the Material Change Consultee to the extent that the same are directly attributable to the implementation of the Material Change Proposal but taking into account and netting off against such costs, losses and expenses:

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

“Material Change Proposal” means either:

- (a) a Change which if implemented would satisfy the Financial Impact Test in respect of one or more Material Change Consultee(s) but excluding:
 - (i) any change to Excluded Equipment by Network Rail; and
 - (ii) the grant by Network Rail of a wayleave, dedication or easement affecting the Stationregardless of whether the Financial Impact Test is satisfied; or
- (b) a Change proposed by a Station Investor;

“Materiality Notice” means a notice served under Condition C2.2 or C2.3, or under Condition C3.2 or C3.3;

“Minimum Sum” has the meaning attributed to it in Condition E2.3;

“Network” means the network of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

“Network Code” means The Network Code as modified from time to time;

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

“Network Rail Certificate” means the certificate issued by or on behalf of Network Rail pursuant to Condition F9.5.2;

“Network Rail Emergency” means any situation or circumstance which Network Rail reasonably considers requires immediate or urgent action in order:

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

“Network Rail Environmental Indemnity” means the indemnity given by Network Rail pursuant to Condition M5.2;

“Network Rail’s Surveyor” means the person from time to time appointed by Network Rail in respect of the Station which person shall be a member of the Royal Institution of Chartered Surveyors of England and Wales and may be a person employed by or otherwise connected with Network Rail or any Affiliate of Network Rail;

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

“Non-Discretionary Change Proposal” means a proposal made in accordance with Condition C6;

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

“Non-Qualifying Material Change Consultee” means each of the Station Facility Owner, any User and/or any Station Investor who is the subject of a Material Change Proposal made by Network Rail, the Station Facility Owner or a User, but who does not satisfy the Financial Impact Test. Such Consultee is entitled to make representations in respect of the Material Change Proposal and object to the Material Change Proposal solely on the ground set out in Condition C4.5.2, but shall not be entitled to recover any Material Change Consultee Costs incurred by that Consultee in relation to such Material Change Proposal. Such Consultee shall not have any other rights granted to a Material Change Consultee under Part C, unless expressly stated;

“Non-Materiality Notice” means a notice served under Condition C2.2 outlining the proposed work or activity and the reason why the responsible party considers it to be an Exempt Activity;

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

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

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

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

“Notifiable Change Notice” means a notice served under Condition C3.2 outlining the proposed Change and the reason why the Proposer considers it to be a Notifiable Change;

“Notifiable Change Proposal” means a Change which if implemented

- (a) by any Proposer would not satisfy the Financial Impact Test; or

(b) by Network Rail would result in any change to Excluded Equipment regardless of whether the Financial Impact Test is satisfied;

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

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

“Passenger Information Systems” means any equipment, noticeboards, visual display units or other media used at the Station to communicate train service information or customer service information to persons at the Station;

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

“Passenger Operator’s Departures” means, as at any particular time by reference to which the Passenger Operator’s Proportion may be calculated, the number of Vehicles operated by or on behalf of the Passenger Operator which have departed from the Station during a period of the same duration and comprising the same days of the week (including public holidays, if applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition F10;

“Passenger Operator’s Proportion” means, save as provided in Condition F10.5, as at any time, the proportion which the number of Passenger Operator’s Departures bears to the number of Total Departures, as calculated pursuant to Condition F10 for the purposes of the Station Access Agreement;

“Plan” means the plan in Appendix 2 to Annex 1;

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

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

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

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

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

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

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

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

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

“Railway Superstructure” means such part of any bridge which belongs to Network Rail, viaduct, railway arch, raft or overlying structure which is either shown by red hatching on the Plan or identified pursuant to Appendix 7 of Annex 1;

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

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

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

“Relevant Operator” means each of the Station Facility Owner and any User;

“Relevant Restriction” means:

- (a) in relation to the Station Facility Owner, any material restriction, limitation or other impairment of the Station Facility Owner’s right to quiet use and enjoyment of the Station under a Relevant Agreement; and
- (b) in relation to any User, any material restriction, limitation or other impairment of the User’s permission to use the Station;

“Relevant Undertaking” means:

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

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

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

“Repair” means in relation to every part of the Station the carrying out, in accordance with the specifications (if any) set out in Annex 12 or determined pursuant to Annex 11, of:

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

but does not include the carrying out of:

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

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

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

“Requisite Majority” means, as at any particular time, passenger service operators whose Vehicle departures from the Station, expressed as a percentage of Total Departures, as at the relevant date, together are at least equal to the percentage specified in paragraph 4 of Annex 9 (or such other percentage as the ORR may specify by notice to the Station Facility Owner and to each Passenger Operator as the new percentage which is to apply for these purposes following the entry into, variation, amendment or termination of an access contract permitting a passenger service operator to use the Station, a Change in

Control of the Station Facility Owner or any Passenger Operator or any event which results in a material change to the proportion of the Total Departures made by trains operated by or on behalf of the Station Facility Owner or any Passenger Operator);

“Residual Variable Charge” means such part or whole of the Total Variable Charge in respect of which a Passenger Operator shall have elected or be deemed to have elected to pay pursuant to Condition F2.1;

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

“RPI” means the Retail Prices Index as defined in Condition F11 of these Station Access Conditions;

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

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

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

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

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

“SFO's Daily Long Term Charge” means for the day in respect of which the calculation falls to be made, an amount calculated in accordance with the following formula:-

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

where:

LTC = the Long Term Charge;

SFOP = the SFO's Proportion; and

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the Station Facility Owner are due to depart from the Station as determined in accordance with Condition F10

provided that in respect of any day on which the Station Facility Owner has no Vehicle departures the amount shall be nil;

“SFO's Daily Share” means for the day in respect of which the calculation falls to be made, an amount calculated in accordance with the following formula:-

$$\frac{\text{QEx} \times \text{SFOP}}{\text{D}}$$

where:

QEx = the amount of the Qualifying Expenditure for the Accounting Year in question;

SFOP = the SFO's Proportion; and

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the Station Facility Owner are due to depart from the Station as determined in accordance with Condition F10

provided that in respect of any day on which the Station Facility Owner has no Vehicle departures the amount shall be nil;

"SFO's Departures" means, as at any particular time by reference to which the SFO's Proportion may be calculated, the number of Vehicles operated by or on behalf of the Station Facility Owner which have departed from the Station during a period of the same duration and comprising the same days of the week (including public holidays, if applicable) as the Sample Period, as most recently calculated pursuant to Condition F10;

"SFO's Proportion" means, as at any time, the proportion which the number of SFO's Departures bears to the number of Total Departures;

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

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

(a) the buildings, structures, fixtures, fittings, the Station Facility Owner's Conduits, and other works for the time being at the Station, any alteration or additions to the Station and anything which is part of the Station pursuant to paragraphs 1 and 2 of Appendix 7 to Annex 1;

(b) any canopies of the Station which project beyond the blue edging on the Plan; and

(c) the Equipment;

but excluding:

(d) the Excluded Equipment;

(e) the Excepted Equipment; and

(f) the mines and minerals in and under the Station and (where mines and minerals are not owned by Network Rail) any right of support from such mines and minerals other than any such transmissible rights which are enjoyed by Network Rail;

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

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

"Station Facility Owner's Conduits" means those Conduits at or outside the Station used exclusively for the purposes of the Station (to the extent that they are not or do not become adopted or public conduits);

“Station Facility Owner’s Surveyor” means the person from time to time appointed by the Station Facility Owner to act as its surveyor who may be a person employed by or otherwise connected with the Station Facility Owner;

“Station Investor” means any person, other than Network Rail or any Relevant Operator, who makes a Proposal, a grant, loan or other payment for the enhancement or alteration of the Station in connection with related schemes of development, regeneration or corporate adoption which would involve a capital expenditure which is at least the equivalent to the Station Investor’s Qualification;

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

“Station Register” means a register maintained in accordance with Part I;

“Station Services” means the Common Station Services or Exclusive Station Services;

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

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

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

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

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

“Template Change” means any change to the template generic form of the National Station Access Conditions 2013 (England and Wales) or the template generic form of the Annexes to the National Station Access Conditions 2013 (but not a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations);

“Third Party Works” means Discretionary Third Party Works and Non-Discretionary Third Party Works;

“Total Departures” means, as at any particular time by reference to which the Passenger Operator’s Proportion or the SFO’s Proportion may be calculated, the number of Vehicles operated by or on behalf of all passenger service operators which have departed from the Station during a period which is of the same duration and comprising the same days of the

week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition F10 and a reference to a person “representing” Total Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

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

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

where:

V_{cn} is the Total Variable Charge for the relevant period in question

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

POP_n is the Passenger Operator’s Proportion during the relevant period in question

QEn is the Qualifying Expenditure for the Accounting Year in question

“relevant periods” means:

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

“change date” means the date upon which the Passenger Operator’s Proportion changes in the Accounting Year pursuant to Part F;

“Track Litter” means matter of whatever nature on:-

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

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

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

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

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

where:

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

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

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the User in question are due to depart from the Station as determined in accordance with Condition F10 in the case of a Passenger Operator or, in any other case, in accordance with the Station Access Agreement

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

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

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

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

1.3 Several Liability

Each Relevant Operator and Network Rail shall be severally responsible for its own acts, omissions, costs and liabilities and for the acts, omissions, costs and liabilities of its employees, agents and subcontractors and shall not be responsible for the acts, omissions, costs and liabilities of any other person.

1.4 Relevant special conditions

These Station Access Conditions incorporate the provisions (if any) set out in paragraph 22 of Annex 9.

PART B **MODIFICATIONS TO THE STATION ACCESS CONDITIONS**

Condition B1 Notification of a Conditions Change Proposal

1.1 Any Relevant Operator of any station in England and Wales or Network Rail shall be entitled to make a Conditions Change Proposal. The Conditions Change Proposer shall submit any such proposal to each of the Conditions Change Consultees and the Secretary of State (and the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by such proposal) and shall:

1.1.1 be in writing;

1.1.2 contain reasonable particulars of the change proposed;

1.1.3 contain the proposed text of those Conditions affected by the change as if the change were approved pursuant to this Part B;

1.1.4 be supported by an explanation in reasonable detail of the purpose of the proposed change; and

1.1.5 specify the date on which the Conditions Change Consultation Period ends.

1.2 The Conditions Change Consultees and the Secretary of State may make representations on the Conditions Change Proposal to the Conditions Change Proposer during the Conditions Change Consultation Period.

1.3 The Conditions Change Proposer shall within 5 Business Days following the end of the Conditions Change Consultation Period notify the Conditions Change Consultees and the Secretary of State of the date on which the Conditions Change Decision Period ends and at the same time supply to each of them:

1.3.1 copies of all representations received pursuant to Condition B1.2; and

1.3.2 if the Conditions Change Proposer consents, any modification to that proposal,

provided that no such documents shall be supplied, if the Conditions Change Proposer materially modifies it.

1.4 If at any time a Conditions Change Proposal is materially modified, the Conditions Change Proposer shall treat the modified proposal as a new Conditions Change Proposal.

1.5 The Conditions Change Proposer shall promptly comply with all reasonable written requests for reasonable further clarification of the proposal.

Condition B2 Approval or rejection of a Conditions Change Proposal

2.1 Without prejudice to Condition B6, a Conditions Change Proposal shall have been approved only if:

2.1.1 in the case of such a proposal which relates to a Template Change, at the end of the Conditions Change Decision Period not less than 80% of all Relevant Operators of every station in England and Wales shall have consented in writing to the Conditions Change Proposal; or

2.1.2 in the case of such a proposal which relates to a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations, the

Requisite Majority shall have consented in writing to the Conditions Change Proposal (provided that the failure of a Relevant Operator to provide a written response shall be deemed to be a consent to that proposal);

And in each case

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

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

Condition B3 The ORR's Approval or rejection of a Conditions Change Proposal

3.1 Decision to Approve

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

- (a) explaining the reasons for the proposed change;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B1.2 which shall have been neither accepted nor withdrawn); and
- (c) stating the reasons for any objections to the proposed change by any Relevant Operator or Network Rail.

3.1.2 Relevant Operators and Network Rail shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Conditions Change Proposal by the ORR.

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

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

3.2 Decision to reject

The Conditions Change Proposer shall, following the rejection of a Conditions Change Proposal by the ORR, notify all other Relevant Operators and Network Rail of that decision within 14 days of the decision.

Condition B4 Notification of Conditions Change Proposal

4.1 The Conditions Change Proposer shall notify any change made in accordance with this Part B other than Condition B6 to all Relevant Operators and Network Rail as well as to the ORR and the Secretary of State. Save as otherwise provided in Condition B6, the change in question shall have effect on the expiry of 21 days from the date of that notification.

4.2 The Conditions Change Proposer shall, following approval of a Conditions Change Proposal by the ORR and in any event prior to that Conditions Change Proposal having effect, supply to all Relevant Operators, Network Rail, the ORR and the Secretary of State a revised version of these Station Access Conditions incorporating the change.

Condition B5 Appeal procedure

5.1 If Network Rail shall have exercised its veto, any Relevant Operator shall be entitled to give a notice of appeal against it.

5.2 A notice of appeal shall:

5.2.1 be given to the ORR, Network Rail, the Conditions Change Proposer and each other Relevant Operator not later than 35 days after the exercise of the Network Rail veto;

5.2.2 contain the reasons why the Relevant Operator in question considers that the Network Rail veto should not have effect; and

5.2.3 request the ORR to determine the matter.

5.3 No notice of appeal may be given unless:

5.3.1 the Relevant Operator shall be satisfied that Network Rail is entitled to exercise the Network Rail veto; or

5.3.2 the entitlement of Network Rail to exercise its veto shall have been established pursuant to the Access Dispute Resolution Rules,

and evidence satisfactory to the ORR shall have been provided to it to that effect.

5.4 Without prejudice to Condition B5.5, Network Rail and the Relevant Operators shall use their respective reasonable endeavours to procure that the ORR is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.

5.5 In relation to any such appeal, the ORR shall, in determining it, have the power:

5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;

5.5.2 to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;

5.5.3 to determine whether the Network Rail veto shall have effect; and

5.5.4 to make such orders as it shall think fit in relation to the proportions of the costs of the appeal which shall be borne by any of the parties.

5.6 Where any party shall have given a notice of appeal, the ORR shall:

5.6.1 be entitled to decline to determine the appeal if, having consulted the parties concerned, it shall determine that the appeal should not proceed, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the industry;
- (b) the reference to it is frivolous or vexatious; or
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; and

5.6.2 not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the appeal.

5.7 The determination of the ORR shall be final and binding on Network Rail, the Conditions Change Proposer and every Relevant Operator.

5.8 In this Condition B5:

“the exercise of the Network Rail veto” means the reasonable giving by Network Rail of a notice of objection as provided for in Condition B2.1.3, and cognate terms and expressions shall be construed accordingly; and

“notice of appeal” means a notice given pursuant to Condition B5.2.

Condition B6 Changes to the Station Access Conditions initiated by the ORR

6.1 These Station Access Conditions shall have effect with the modifications (being the equivalent of either a Conditions Change or a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations) specified in any notice given by the ORR for the purposes of this Condition B6, provided that the ORR shall be satisfied as to the need for the modification as provided in Condition B6.2, the procedural requirements of Condition B6.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition B6.4.

6.2 A notice given by the ORR under Condition B6.1 shall have effect:

6.2.1 in the case of a notice given on or before the date six months after the Relevant Date, if it is satisfied on reasonable grounds that it is necessary or expedient that the modifications specified in the notice in question be made; and

6.2.2 in the case of a notice given after the date six months after the Relevant Date, if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:

- (a) 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
- (b) 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.

6.2.3 For the purposes of Condition B6.2.2(b):

(a) “relevant person” means a Relevant Operator, Network Rail, an Access Option Holder and any other person who, in the opinion of the ORR, shall be likely to become a User; and

(b) “Access Option Holder” means any person who has an access option in respect of the Station (as defined in section 17(6) of the Act).

6.3 The procedural requirements which shall require to have been followed for the purposes of Condition B6.1 are:

6.3.1 in its consideration of the matters referred to in Condition B6.2, the ORR shall have consulted all Relevant Operators, Network Rail, the Secretary of State (and the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by the modification), together with any other persons whom the ORR shall consider ought properly to be consulted, in relation to the modification which it proposes to make;

6.3.2 in the consultations referred to in Condition B6.3.1, the ORR shall have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;

6.3.3 the ORR shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the modification to be made;

6.3.4 the ORR shall have notified each person consulted pursuant to Condition B6.3.1 as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and

6.3.5 in effecting the notifications required by Condition B6.3.4, the ORR shall have treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to the ORR or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

6.4 A notice under Condition B6.1 shall come into effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances come into effect:

6.4.1 in the case of a notice given on or before the date six months after the Relevant Date;

(a) earlier than 30 days after the date upon which it shall have been given; or

(b) later than the date seven months after the Relevant Date; and

6.4.2 in the case of a notice given after the date six months after the Relevant Date, earlier than 180 days after the date upon which it shall have been given.

6.5 A notice under Condition B6.1 shall not have effect in relation to any proposed modification of Conditions B6.1 to B6.4 (inclusive) or this Condition B6.5.

PART C CHANGES TO THE STATION OR TO THE STATION ACCESS CONDITIONS

Condition C1 Change

- 1.1 No Relevant Operator or Network Rail shall take any action falling within the definition of Change save in accordance with this Part C.
- 1.2 Any Relevant Operator or Network Rail shall be entitled to make a Proposal and any Station Investor shall be entitled to make a Material Change Proposal.
- 1.3 Any party who is a Consultee under this Part C shall act reasonably in its dealings with the Proposer of any Change.
- 1.4 Any party who is the Proposer of any Change under this Part C shall act reasonably in its dealings with all Consultees to that Change.
- 1.5 Under this Part C, each Station Investor or named Relevant Operator at a Station shall have the right (whether by virtue of any enactment that is part of the applicable law of the Station Access Agreement or otherwise) to enforce directly such rights as have been granted (or expressed to be granted) to it as a third party or relevant Consultee under the Station Access Agreement.

Condition C2 Exempt Activities

- 2.1 Each of Network Rail, the Station Facility Owner and/or any User shall be entitled to undertake an Exempt Activity for which that party is responsible without complying with the requirements for Change in this Part C.
- 2.2 If the responsible party is unsure of whether the relevant work or activity is an Exempt Activity it shall before undertaking such work or activity serve on each of the other Notifiable Change Consultees a Non-Materiality Notice and if any of the Notifiable Change Consultees believes the relevant work or activity is not an Exempt Activity it shall serve a Materiality Notice on the responsible party within 5 Business Days of receipt of the Non-Materiality Notice.
- 2.3 If any of the Notifiable Change Consultees believes that any work or activity undertaken without a Non-Materiality Notice having been served is not an Exempt Activity it shall serve on each of the others a Materiality Notice within 20 Business Days of the work or activity being undertaken.
- 2.4 If a Materiality Notice is served under Condition C2.2 or C2.3 the responsible party may elect either to
 - 2.4.1 treat the relevant work or activity as a Notifiable Change and proceed accordingly;
or
 - 2.4.2 treat the relevant work or activity as a Material Change and proceed accordingly;
or
 - 2.4.3 commence the Dispute Resolution Procedure.
- 2.5 If no Materiality Notice is served under Condition C2.2 or C2.3 within the relevant time limit then the relevant work or activity shall be an Exempt Activity.

Condition C3 Notifiable Change

- 3.1 The Proposer of a Notifiable Change Proposal shall submit that Proposal, together with any associated documentation, to each of the Notifiable Change Consultees. The Proposal must set out details of the proposed change, any proposed changes to the Station Access Conditions and Annexes and the reason why it is intended to deal with it as a Notifiable Change. The Proposal must also specify the date on which the Representation Period ends.
- 3.2 If the responsible party is unsure of whether the proposed Change is a Notifiable Change it shall before submitting the Proposal serve on each of the Notifiable Change Consultees a Notifiable Change Notice and if any of the Notifiable Change Consultees believes the proposed Change is not a Notifiable Change it shall serve a Materiality Notice on the responsible party within 5 Business Days of receipt of the Notifiable Change Notice.
- 3.3 If, when a Notifiable Change Proposal is submitted, any of the Notifiable Change Consultees believes that any work or activity to which that Proposal relates is not a Notifiable Change it shall serve on each of the others a Materiality Notice at any time within the Representation Period.
- 3.4 If a Materiality Notice is served under Condition C3.2 or C3.3 the responsible party may elect either to
 - 3.4.1 treat the relevant work or activity as a Material Change and proceed accordingly; or
 - 3.4.2 commence the Dispute Resolution Procedure,and if it fails to do either within 10 Business Days following the later of the end of the Representation Period and the further period referred to in Condition C3.8 (if any) then it shall be open to the relevant Notifiable Change Consultee to commence the Dispute Resolution Procedure.
- 3.5 If no Materiality Notice is served under Condition C3.2 or C3.3 within the relevant time limit then the relevant work or activity shall be a Notifiable Change.
- 3.6 If a Notifiable Change Proposal is made, and no Materiality Notice is served under Condition C3.3, the Notifiable Change Consultees may make representations on the Notifiable Change Proposal to the Proposer during the Representation Period.
- 3.7 The Proposer must consider any representations made and in doing so have due regard to the relevant Consultee's interests in the Station and its use and enjoyment of the Station.
- 3.8 The Proposer must advise the Notifiable Change Consultees within a further 10 Business Days following the end of the Representation Period of any revisions to the Notifiable Change Proposal as a result of any representations made and provide the Notifiable Change Consultees with written reasons for rejection where they are not incorporated into the final Notifiable Change as implemented.
- 3.9 If no representations are received during the Representation Period then the Notifiable Change Consultees are deemed to have accepted the Notifiable Change at the end of the Representation Period.

- 3.10 All the Notifiable Change Consultees may agree by notice to the Proposer at any time that the Representation Period shall be a shorter period than that specified in the Notifiable Change Proposal.
- 3.11 In accordance with the requirements set out in Conditions C8 and C10, the Proposer will forward all documentation (including any representations made during the Representation Period and the Proposer's response) to the ORR to enable Registration of the Notifiable Change and of any consequential amendment of the Station Access Conditions.
- 3.12 Registration of a Notifiable Change shall be in accordance with the requirements set out in Condition C10, but such Registration does not remove the requirement to obtain other associated approvals either under any Relevant Agreement or under any standard industry procedures such as detailed technical approvals, method statements, lease amendments, etc. which, wherever possible, should be progressed as part of the Notifiable Change consultation process.

Condition C4 Material Change

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

- 4.1.9 if the Proposer is a Station Investor, it shall execute a deed in the form of Annex 15 (Template Station Investor Participation Deed) and send a copy of that deed to each Material Change Consultee;
- 4.1.10 pursuant to Condition C4.8, who (other than the Material Change Proposer) it is proposed should pay the costs of implementation and any increase in running costs; and, if it is proposed that a party should pay a proportion of such costs, what proportion it is proposed that such party should pay; and
- 4.1.11 information on any wayleaves or easements requests (where necessary).
- 4.2 The Proposer of a Material Change Proposal shall submit, together with any associated documentation, the same Proposal as required under Condition C4.1 to each Non-Qualifying Material Change Consultee, except it shall not include any documentation as required under Conditions C4.1.6 and C4.1.8.
- 4.3 Although the information contained in the Material Change Proposal may be of an outline or generic nature it must nevertheless contain such detail as is reasonably necessary and appropriate to enable the Material Change Consultees and Non-Qualifying Material Change Consultees to determine whether such Proposal if implemented would put that Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be).
- 4.4 During the Consultation Period, the Material Change Consultees may do one of the following:
- 4.4.1 give a response Accepting the Material Change Proposal unconditionally and agreeing to enter into the Co-operation Agreement; or
- 4.4.2 give a response objecting to the Material Change Proposal; or
- 4.4.3 give no response; and
- 4.4.4 in addition, if the Material Change Consultee is Network Rail, Network Rail may give a response Accepting the Material Change Proposal conditionally pursuant to Condition C5;
- 4.5 During the Consultation Period, the Non-Qualifying Material Change Consultees may do one of the following:
- 4.5.1 make representations in respect of the Material Change Proposal;
- 4.5.2 give a response objecting to the Material Change Proposal on the ground that the Material Change Proposal if implemented would put the Non-Qualifying Material Change Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be); or
- 4.5.3 give no response.
- 4.6 If no response is made by a Material Change Consultee during the Consultation Period then the relevant Material Change Consultee is deemed to have Accepted the Material Change and to have agreed to enter into the Co-operation Agreement at the end of the Consultation Period.

- 4.7 All the Material Change Consultees and the Non-Qualifying Material Change Consultees may agree by notice to the Proposer at any time that the Consultation Period shall be a shorter period than that specified in the Material Change Proposal.
- 4.8 The cost of implementing an Accepted Material Change Proposal, and any increase in the running costs of the Station resulting directly from such implementation, may be apportioned between the Proposer and the Material Change Consultees in accordance with the terms set out in the Proposal.
- 4.9 If a Material Change Consultee wishes to object to a Material Change Proposal it may only do so on one of the grounds set out in this Condition by giving notice to the Proposer during the Consultation Period and stating the grounds for its objection with supporting evidence of those grounds in such detail as is reasonably necessary and appropriate to enable the Proposer to evaluate it properly having regard to the grounds of the objection. The only grounds on which a Material Change Consultee may object to a Material Change Proposal are that:
- 4.9.1 the information to consider the Material Change Proposal is incomplete or inaccurate having regard to:
- (a) the nature of the Material Change Proposal; and
 - (b) the information required to accompany a Material Change Proposal (as set out in Condition C4.1 which to avoid doubt need only comprise outline or generic details of the Proposal having regard to the information available at the time the Proposal is made); and/or
- 4.9.2 the Material Change Proposal if implemented would put the Material Change Consultee in breach of a Legal Requirement or of its Franchise Agreement, Station Operator's Licence or Network Licence (as the case may be); and/or
- 4.9.3 the Material Change Proposal is not consistent with the ORR's Investment Framework Policy and Guidelines as published from time to time; and/or
- 4.9.4 a Material Change Consultee considers that the completed Material Change Proposal would be contrary to the safe and efficient operation of the Station; and/or
- 4.9.5 implementation of the Material Change Proposal will result, or will be more likely than not to result, in a material adverse effect, whether permanent or temporary on
- (a) the operation of the Station or the Network; or
 - (b) the use of the Station by any Material Change Consultee's passengers; or
 - (c) the Material Change Consultee's ability to perform any obligations or exercise any discretions which it has in relation to railway services; and/or
- 4.9.6 in a manner specified by the Material Change Consultee, the implementation of the Material Change Proposal will, or will be more likely than not to, materially disrupt, interfere with, or otherwise be incompatible with the implementation of other specified works on or at the Station; and/or
- 4.9.7 the amount or other terms of the Relevant Undertaking offered by the Proposer are in some other respect insufficient or inappropriate for reasons specified by the Material Change Consultee; and/or

- 4.9.8 the Material Change Consultee who is required to pay a proportion of the costs of a Material Change Proposal believes that the additional revenue which that Material Change Consultee expects to gain as a result of implementation of the Proposal will be, or is more likely than not to be less than it is proposed will cost the Material Change Consultee to pay for, or contribute to, such implementation; and/or
- 4.9.9 in addition, if the Proposer of the Material Change is a Station Investor:
- (a) the Material Change Proposal does not provide a significant improvement to Common Station Service or Common Station Amenities; and/or
 - (b) if the Material Change Proposal is an offer to fund or contribute to the cost of carrying out works or to pay a sum of money for investment in the railway industry, the Material Change Proposal does not provide a cash contribution which is at least equivalent to the Station Investor's Qualification (which Network Rail or the Relevant Operator agree to invest in the railway industry by acceptance of the Material Change Proposal) to Network Rail or a Relevant Operator; and/or
 - (c) the Material Change Proposal is not accompanied by an undertaking in the terms referred to in Condition C4.1.8.
- 4.10 If a Material Change Consultee purports to object to a Material Change Proposal on any other ground, including but not limited to an objection solely on the grounds of entitlement to compensation, such objection shall be void and (unless it has also objected on one of the grounds set out in this Condition) the Material Change Consultee shall be deemed to have Accepted the Material Change at the end of the Consultation Period.
- 4.11 When objecting on any grounds as set out in Conditions C4.9.5, C4.9.6, C4.9.7, C4.9.8 or C4.9.9, the Material Change Consultee shall demonstrate, with supporting evidence, in its objection that the compensation payable under the Co-operation Agreement is in some respect insufficient or inappropriate. If the Proposer disagrees with the Material Change Consultee on such compensation, the Proposer may refer the matter to the Dispute Resolution Procedure.
- 4.12 At the end of the Consultation Period, if any objections have been received, the Proposer must give them due consideration and respond to the relevant Material Change Consultee(s) within the Response Period. If the Proposer considers that an objection made on one of the grounds set out in Conditions C4.5.2 or C4.9 (as the case may be) is not valid it may within the Response Period refer the question of the validity of the objection for resolution under the Dispute Resolution Procedure.
- 4.13 If any objection (whether accepted or determined pursuant to the Dispute Resolution Procedure as having been validly made) requires any amendment to the Material Change Proposal the Proposer shall issue an amended Material Change Proposal incorporating such amendment or amendments and identifying the changes to the original Proposal, and the provisions of Conditions C4.1 to C4.12 inclusive shall apply as if set out again in full and the Consultation Period in respect of the amended Material Change Proposal (the "Second Consultation Period") shall be 20 Business Days (or longer if the Proposer so elects).
- 4.14 If during the Second Consultation Period a Material Change Consultee or Non-Qualifying Material Change Consultee objects to the amended Material Change Proposal then the Proposer may refer the question of the validity of the objection for resolution under the Dispute Resolution Procedure as soon as practicable after receiving that objection.

- 4.15 Any procedure for the agreement or determination of compensation pursuant to the provisions of a Co-operation Agreement shall not prevent or delay the Registration or implementation of the Material Change.
- 4.16 If the Material Change Consultee does not raise a valid objection, or it is determined that it did not raise a valid objection, to the Material Change Proposal under Condition C4.9 at the end of the Consultation Period or (if applicable) the end of the Second Consultation Period, the Material Change Consultee shall have Accepted and shall sign the Co-operation Agreement as proposed in the Material Change Proposal, and if it fails to do so it shall be deemed to have Accepted the Co-operation Agreement as proposed in the Material Change Proposal.
- 4.17 Registration of a Material Change does not remove the requirement to obtain other associated approvals either under any Relevant Agreement or under any standard industry procedures such as detailed technical approvals, method statements, lease amendments, etc. which, wherever possible, should be progressed as part of the Material Change consultation process.
- 4.18 The Proposer shall pay to each Material Change Consultee all costs reasonably incurred by that Consultee in evaluating and responding to the Material Change Proposal during the Consultation Period after which time such costs shall be dealt with in accordance with the Co-operation Agreement (if any). Where such costs are not dealt with under the Co-operation Agreement, these shall be agreed between the parties or in the event of dispute shall be determined on the application of either party under the Dispute Resolution Procedure and shall be paid within 20 Business Days of the agreement or determination of such amounts.
- 4.19 If at any time after the end of the Consultation Period or (if applicable) any Second Consultation Period a Material Change Proposal is materially modified for any reason (including without limitation because it is only partially implemented or is withdrawn following commencement of implementation) then the Proposer shall treat the modification as a Change or (as the case may be) an Exempt Activity to which the provisions of this Part C shall apply.

Condition C5 Conditional Acceptance of a Material Change Proposal by Network Rail

- 5.1 Where Network Rail is a Material Change Consultee it shall be entitled to require as a condition of its acceptance of a Material Change Proposal that the implementation of the Proposal (or any part or parts of it) is subject to:
- 5.1.1 the Proposer having entered into an Asset Protection Agreement; and
- 5.1.2 (where the Proposal is made by a Station Investor) the Proposer having entered into a Property Agreement,
- but it shall not be entitled to require any other condition of its consent in its role as landlord under any lease of the Station.
- 5.2 Network Rail and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Asset Protection Agreement required under Condition C5.1.1 but Network Rail shall be entitled to require adherence to the current ORR Asset Protection Policies and Guidelines in relation to settling the form of the Asset Protection Agreement.
- 5.3 Network Rail and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Property Agreement required under Condition C5.1.2.

- 5.4 In the event of failure to agree on any of the terms and conditions of any Asset Protection Agreement or Property Agreement required under Condition C5.1.1 or C5.1.2 either party may refer the matter to the Dispute Resolution Procedure.

Condition C6 Non-Discretionary Change

- 6.1 A party who is required to undertake an action which constitutes a Non-Discretionary Change shall submit a Proposal, together with any associated documentation, to each of the Notifiable Change Consultees as if that Proposal had been a Notifiable Change Proposal. The Proposal must set out the proposed change and the reason why it is a Non-Discretionary Change.
- 6.2 The Proposer of a Non-Discretionary Change shall be entitled to implement the relevant Non-Discretionary Change at any time whether or not the Representation Period has ended and regardless of whether it has received any representations if failure to do so would or would be reasonably likely to result in any breach of any relevant Legal Requirement, Direction or Safety Obligation, or would result in a breach of any provision of the Station Access Conditions. Under this Condition C6.2, the Proposer shall be entitled to implement the Non-Discretionary Change without regard to Conditions C7 (other than C7.1.1), C8, C9 or C10.
- 6.3 Other than as set out in Condition C6.2 the Non-Discretionary Change shall be treated as though it had been a Notifiable Change.
- 6.4 The provisions of Condition P3 shall have effect in relation to any costs of complying with or in consequence of any Non-Discretionary Change referred to in Condition C6.1.

Condition C7 Approval by the ORR

- 7.1 No Proposal to change these Station Access Conditions or Annexes whose implementation would:
- 7.1.1 require consequential amendments to a Station Access Agreement; or
- 7.1.2 materially diminish for a period in excess of 28 consecutive days the number of passengers or trains that are able to use the Station,
- shall take effect or be implemented unless and until the ORR shall have notified its approval of any such Proposal and any such consequential amendments (unless they fall wholly within a general approval given by the ORR pursuant to sections 22(2) or 22(3) of the Act).
- 7.2 ORR may choose to give an approval in principle only of a Proposal where it thinks it appropriate.

Condition C8 Submission of a Proposal to the ORR

- 8.1 On acceptance of a Notifiable Change, Material Change or Non-Discretionary Change in accordance with the procedures referred to in this Part the Proposer shall (subject to Condition C8.2) submit any Proposal requiring approval under Condition C7.1 to the ORR for its approval, together with a written memorandum explaining the reasons for the proposed change and setting out details of the conduct and outcome of the representation or consultation process (as the case may be) provided that no such approval shall be sought if and to the extent that (or, if applicable, for so long as):

- 8.1.1 the change in question shall fall wholly within a relevant general approval given by the ORR pursuant to sections 22(2) or 22(3) of the Act;
 - 8.1.2 the Proposal requires the implementation and completion of any procedure pursuant to Part F or Part G of the Network Code, and the result of that procedure is pending; or
 - 8.1.3. any other consents or approvals are required by any Statute to or from any third party to enable the implementation of the Proposal, and have not yet been obtained.
- 8.2 The Proposer shall submit details of a Proposal accepted in accordance with this Part but withheld in accordance with Condition C8.1 to the ORR for approval on satisfaction of the relevant conditions in Conditions C8.1.2 and C8.1.3.
 - 8.3 The Proposal requiring approval shall be submitted within 20 Business Days (which period may be extended with the consent of the Proposer and all relevant Consultees) following acceptance of a Proposal submitted under Condition C8.1 or satisfaction of a Proposal submitted under Condition C8.2, otherwise it shall lapse and no longer be effective.

Condition C9 Notification of the ORR's decision

- 9.1 The Proposer shall, as soon as reasonably practicable after it receives notice of the ORR's decision on an application for approval of an amendment pursuant to Condition C8, notify each Consultee of such decision.

Condition C10 Registration, Requisite Consents and Implementation

- 10.1 Any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted (including a conditional acceptance under Condition C5) under the procedures referred to in this Part (including without limitation approval by the ORR under Condition C8) shall be registered with the ORR by Registration by:
 - 10.1.1 the Proposer; or
 - 10.1.2 any Relevant Operator or Network Rail if the relevant Proposer fails to do so following acceptance of such Proposal under the procedures referred to in this Part,

but in the event that no party takes the necessary steps to achieve Registration within two months (which period may be extended with the consent of the Proposer and the relevant Consultee(s)) following acceptance of the relevant Proposal, then such Proposal shall lapse and no longer be effective.
- 10.2 Any documentation required as a consequence of any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted under the procedures referred to in this Part shall be settled between the relevant parties each acting reasonably in relation to the settlement of the terms and conditions of any such document and in the event of failure to agree on any of the terms and conditions of any such document either party may refer the matter to the Dispute Resolution Procedure. This Condition C10.2 shall not impede or delay the registration requirement referred to in Condition C10.1.
- 10.3 The Proposer shall use its reasonable endeavours to obtain all Requisite Consents as soon as practicable having regard to the nature of that consent and the matter to which it relates and in any event prior to implementation of the Notifiable Change, Material Change or Non-Discretionary Change (as the case may be) or (if the relevant Requisite Consent relates to a phase of the Notifiable Change, Material Change or Non-Discretionary Change or can only be obtained after the commencement of the Notifiable Change,

Material Change or Non-Discretionary Change) the relevant part of the Notifiable Change, Material Change or Non-Discretionary Change and the requirement to obtain Requisite Consents (if any) shall not impede or delay the procedures referred to in this Part nor be used as a ground for objection to any Proposal.

- 10.4 Following Registration and before implementing the Notifiable Change, Material Change or the Non-Discretionary Change (as the case may be), the Proposer will issue an Implementation Notice to all the relevant Consultees and the ORR.
- 10.5 If no Implementation Notice is issued within three years of Registration (which period may be extended by the Proposer with the consent of all relevant Consultees) the relevant Notifiable Change, Material Change or the Non-Discretionary Change shall lapse and no longer be effective.
- 10.6 If an Implementation Notice is issued the Proposer must implement the relevant Proposal and then proceed diligently with it and if the Proposer does not commence implementation of the Relevant Proposal within 20 Business Days (which period may be extended by the Proposer with the consent of all relevant Consultees) following the issue of the Implementation Notice the relevant Notifiable Change, Material Change or the Non-Discretionary Change shall lapse and no longer be effective.
- 10.7 If before the Notifiable Change, Material Change or (where applicable) the Non-Discretionary Change is implemented the Proposer wishes to withdraw it it may do so by notice to the relevant Consultees and to the ORR.

Condition C11 Notice to determine

- 11.1 If a Material Change Proposal made by Network Rail is accepted in accordance with this Part and, where relevant, approved by the ORR pursuant to Condition C8, Network Rail shall be entitled to serve notice to determine any Relevant Agreement between it and the Station Facility Owner at such time and in respect of such part or parts of the Station as shall be specified in the Material Change Proposal (if any). If no date is specified in the Material Change Proposal, the Relevant Agreement in question shall determine on the day which falls 150 days after the date of service of Network Rail's notice.
- 11.2 The date of expiration of any notice served by Network Rail pursuant to Condition C12.1 shall, if any conditions in the Material Change Proposal remain to be satisfied by Network Rail at the expiration date, be postponed to the date 15 Business Days after satisfaction of the last such condition unless the failure to satisfy is due to the default of the Station Facility Owner or its servants, agents or contractors.

Condition C12 Notices

- 12.1 Any notice to be served or information to be shared under this Part shall be in writing and served by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or in accordance with the notice provisions of the Relevant Agreement until such time (if any) as the Online Application Process is available after which time the Online Application Process shall be used instead.

PART D **WORKS, REPAIRS AND MAINTENANCE**

Condition D1 Existing Works, Third Party Works and Emergencies

1.1 Subject to Condition D3 and notwithstanding the provisions of its station licence, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary to:

1.1.1 permit the carrying out of Existing Works or Non-Discretionary Third Party Works, provided that in the case of Existing Works the Station Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in Annex 4; or

1.1.2 safeguard the safety or security of persons or property in an Emergency at or affecting the Station.

1.2 Notwithstanding the provisions of its station licence, the Station Facility Owner shall, when reasonably requested to do so by Network Rail, restrict, suspend or alter any permission to use the Station:

1.2.1 for the purposes set out in Conditions D1.1.1 and D1.1.2, provided that in the case of Existing Works Network Rail shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in Annex 4; or

1.2.2 in a Network Rail Emergency.

Condition D2 Repairs and Maintenance and other works

2.1 Subject to Conditions D2.3 and D3.1, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary to:

2.1.1 permit Repair, Maintenance, Discretionary Third Party Works or Exempt Activities to be made or carried out at or in relation to the Station without complying with the requirements for Change in Part C (save, in relation to Exempt Activities, the requirements of Condition C2);

2.1.2 permit any works conducted in accordance with the provisions of Part K to be made or carried out subject to compliance with the provisions of Part C insofar as such works are not an Exempt Activity and fall within the definition of Change;

2.1.3 permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part M subject to compliance with the provisions of Part C insofar as such action is not an Exempt Activity and falls within the definition of Change (save where otherwise provided for in Part M)];

2.1.4 permit any works conducted in accordance with an obligation under Part E, to be made or carried out, subject to compliance with the provisions of Part C where such works are undertaken to remedy Substantial Damage;

2.1.5 permit any works which fall within the definition of Non-Discretionary Change, subject to compliance with the provisions of Condition C6; and

2.1.6 permit any works carried out in accordance with the provisions of Condition L2.3 without complying with the requirements for Change in Part C.

2.2 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in accordance with Condition D2.1 when reasonably requested to do so by:

2.2.1 Network Rail in order to enable Network Rail to comply with its obligations under Condition D4, Part E, Part K and Part M; or

2.2.2 any User either in order to enable such User to comply with its obligations under Part M or to exercise its rights under Condition L2.3.

2.3 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station in accordance with Condition D2.1 (otherwise than in a trivial respect) and Network Rail or a User shall, if it requests the Station Facility Owner to impose such a restriction, suspension or alteration (otherwise than in a trivial respect) pursuant to Condition D2.2:

2.3.1 provide at least 10 Business Days notice in writing to each User or Network Rail (and the Station Facility Owner where a User so requests) of:

- (a) the date and time proposed for the restriction, suspension or alteration; and
- (b) a reasonable programme of works for the carrying out of the works in question; and

2.3.2 use all reasonable endeavours timeously to consult with Network Rail and each Relevant Operator in relation to such restriction, suspension or alteration and, as far as reasonably practicable, shall minimise the extent and period of any such restriction, suspension or alteration, having regard to the likely effect of the relevant works on the business of each User and Network Rail (or as the case may be the Station Facility Owner) who may be affected.

2.4 The Station Facility Owner and Network Rail shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Conditions D1 and D2.

2.5 Where any works are proposed to be carried out under the terms of any Existing Works:

2.5.1 where Network Rail and/or the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts C and D as if the exercise of the discretion in question were a Proposal for Change; and

2.5.2 where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition D3.

Condition D3 Alternative arrangements

3.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Condition D1 or D2, it shall, to the extent reasonably practicable, make timeous and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Station provided for in the Relevant Agreement, for:

3.1.1 suitable alternative arrangements in respect of access to and egress from the highway;

3.1.2 each Relevant Operator's Associates to pass to and from trains operated by or on behalf of that Relevant Operator which stop at the Station and for any Passenger Operator's passengers to buy tickets for railway passenger services; and

3.1.3 the provision of up-to-date train running information and toilet amenities,

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

3.2 Network Rail (or, where appropriate, any User) shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition D3.1 as a result of a Network Rail request pursuant to Conditions D1.2 and D2.2.1 or a request of any User pursuant to Condition D2.2.2.

Condition D4 Network Rail's obligations

4.1 Network Rail shall ensure that:

4.1.1 Maintenance and/or Repair (as the case may be) is carried out to those items of Equipment and those Elements of the Station listed as Network Rail's responsibility in the Equipment Inventory and the Elements Inventory;

4.1.2 Repair is carried out to each Element of the Station not listed as the responsibility of Network Rail or the Station Facility Owner in the Elements Inventory; and

4.1.3 renewal shall be undertaken to the items and Elements referred to in Conditions D4.1.1 and D4.1.2 where it is reasonably necessary and the most economic method of repair.

4.2 If Network Rail fails to carry out any work in accordance with this Condition D4, the Station Facility Owner may give Network Rail written notice of its intention to carry out such work unless, within a reasonable period after such notice (having regard to the nature and extent of the work involved), Network Rail carries out the work in question.

4.3 If, after expiry of any such reasonable period, Network Rail has failed to carry out such work to the reasonable satisfaction of the Station Facility Owner, the Station Facility Owner may carry out the work and Network Rail shall pay to the Station Facility Owner on demand the costs and expenses properly incurred in carrying out such work.

4.4 Network Rail shall not be in breach of its obligations under Condition D4.1 if:

4.4.1 the Station or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Condition D4.1, Network Rail has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged; or

4.4.2 the Station Facility Owner has not restricted, suspended or altered the permission to use the Station in accordance with Network Rail's reasonable request and, in consequence, Network Rail has been prevented from performing its obligations in Condition D4.1.

Condition D5 The Station Facility Owner's obligations

5.1 The Station Facility Owner shall ensure that:

5.1.1 Maintenance and/or Repair (as the case may be) is carried out to those items of Equipment, and Maintenance is carried out to those Elements of the Station, listed as the Station Facility Owner's responsibility in the Equipment Inventory and the Elements Inventory;

5.1.2 Repair is carried out to the Elements of the Station listed as the Station Facility Owner's responsibility in the Elements Inventory, provided that the Station Facility Owner shall be under no obligation to Repair any such Elements of the Station damaged by the Insured Risks unless and to the extent that payment of any insurance monies is refused in whole or in part by reason of, or arising out of, any act, omission, neglect or default by or on the part of the Station Facility Owner or its employee, agent, licensee or invitee, but excluding any User;

5.1.3 Maintenance is carried out to each part of the Station not listed as the responsibility of Network Rail or the Station Facility Owner in the Elements Inventory;

5.1.4 renewal shall be undertaken to the items and Elements referred to in Conditions D5.1.1 and D5.1.2 where it is reasonably necessary and the most economic method of repair; and

5.1.5 any Element of the Station or item of Equipment specified in Annex 10 the Repair of which is the responsibility of the Station Facility Owner pursuant to this Condition D5.1 shall, insofar and to the extent that it is as at the Conditions Efficacy Date in a state of actual disrepair (or, as the case may be, not in working order), be brought into a proper state of repair (or, as the case may be, working order) as soon as reasonably practicable and otherwise in accordance with the terms of Annex 10.

5.2 The Station Facility Owner's obligations in Condition D5.1 shall extend to adequately painting and decorating (which shall include the application of preservative treatments where appropriate) the interior and exterior of any buildings forming part of the Station to the reasonable satisfaction of Network Rail's Surveyor.

5.3 The Station Facility Owner shall not be in breach of its obligations under Conditions D5.1 and D5.2 if the Station or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Conditions D5.1 and D5.2, the Station Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.

Condition D6 Equipment

The Station Facility Owner shall use all reasonable endeavours to procure that the Equipment (other than the Excluded Equipment) is used and operated competently and properly.

Condition D7 General upkeep

The Station Facility Owner shall, so far as practicable:

7.1 keep the Station (and any adjoining road frontage where litter emanates from the Station) free from refuse, and in a clean and tidy condition; and

7.2 clean all windows and glass comprised in the Station.

Condition D8 Conduits free from obstruction

The Station Facility Owner shall keep all Conduits protected from frost (where necessary and where practicable at reasonable cost) and free from obstruction.

Condition D9 Outstanding disrepair

9.1 If the Station Facility Owner fails to carry out any work in accordance with Conditions D5 to D8, Network Rail may give the Station Facility Owner written notice of its intention to carry out such work unless, within a reasonable period after such notice (having regard to the nature and extent of the work involved), the Station Facility Owner carries out the work in question.

9.2 If, after expiry of any such reasonable period, the Station Facility Owner has failed to carry out such work to the reasonable satisfaction of Network Rail, Network Rail may enter the Station and carry out the work and the Station Facility Owner shall pay to Network Rail on demand the costs and expenses properly incurred in carrying out such work.

9.3 If the Station Facility Owner becomes aware of any defect or item of disrepair for which Network Rail may be or become liable under the Defective Premises Act 1972, the Station Facility Owner shall promptly give written notice to Network Rail of such defect or item of disrepair.

Condition D10 Exclusion of liability

No liability shall attach to Network Rail by reason of any consent given or made by or on behalf of Network Rail in respect of any alterations, additions or other works (including works of Repair or reinstatement) carried out by or on behalf of the Station Facility Owner, nor shall any such consent prejudice or derogate from the obligation of the Station Facility Owner to observe and perform the Station Facility Owner's obligations under these Station Access Conditions.

Condition D11 Operating manuals

Network Rail and the Station Facility Owner shall make any operating or maintenance manual or other material which would facilitate Maintenance and/or Repair available on loan to the other.

PART E **INSURANCE**

Condition E1 Responsibility of Relevant Operators for effecting insurance

1.1 The Station Facility Owner shall insure and keep insured the Station against property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent station operator would effect and maintain insurance (other than the Insured Risks), provided that the terms of such insurance shall not unreasonably restrict any User's use of the Station.

1.2 The Station Facility Owner shall indemnify Network Rail, and keep it indemnified, from and against any costs not exceeding the Minimum Sum incurred in repairing, reinstating and making good the Station in respect of damage or destruction to or of the Station as a result of an Insured Risk provided that if any occurrence of an Insured Risk shall affect both the Station and any one or more stations or light maintenance depots leased by the Station Facility Owner from Network Rail (being referred to in this Part E collectively as "the Affected Facilities" and separately as "an Affected Facility") then the Station Facility Owner shall not be required to indemnify Network Rail for a sum exceeding the Minimum Sum in respect of the Affected Facilities as a whole.

1.3 Each User shall, if it is not a public service operator, effect and maintain appropriate insurance with a member of the Association of British Insurers or with Lloyds of London underwriters against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.

1.4 Each User shall, in respect of any insurance policy to which Condition E1.3 applies, provide the Station Facility Owner or Network Rail with suitable evidence, promptly upon receipt of a request from that person for such evidence, that such insurance policy is in full force and effect, that all premiums have been paid up to date and that no circumstances exist which might lead to that policy being avoided.

Condition E2 Responsibility of Network Rail for effecting insurance

2.1 Network Rail shall:

2.1.1 insure and keep insured the Station (but not tenants' or trade fixtures and fittings) with a member of the Association of British Insurers or with Lloyds of London underwriters upon reasonable commercial terms against the Insured Risks; and

2.1.2 subject to Condition E2.2, effect such insurance for the Full Replacement Cost (less such excess as shall constitute the Minimum Sum) and such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one Affected Facility such excess shall apply only once in respect of that occurrence to the Affected Facilities as a whole.

2.2 Network Rail shall, in respect of any insurance effected pursuant to Condition E2.1, use all reasonable endeavours to procure that:

2.2.1 the cost of such insurance is the best effective price reasonably obtainable; and

2.2.2 such insurance is effected so that in the event of Substantial Damage to the Station, it shall be replaced with a modern equivalent building of a size and specification to meet modern requirements (unless exact replacement of the Station is required by any public body pursuant to listed building or other legislation or by a Superior Estate Owner).

2.3 The Minimum Sum shall in the period of three years commencing on each third anniversary of 4 February 1996 be a sum equal to the percentage specified in paragraph 5 of

Annex 9 of the turnover of the Station Facility Owner as forecast by the Station Facility Owner for the Financial Year during which the calendar year immediately following such anniversary mostly falls less any grant aid or grant income which the Station Facility Owner anticipates it will receive from any source, provided that the figure calculated for the Minimum Sum shall be rounded down to the amount nearest to the figure specified in paragraph 6 of Annex 9 and shall not in any event be less than the figure specified in paragraph 6 of Annex 9 or greater than the amount specified in paragraph 7 of Annex 9.

Condition E3 Destruction or damage to the Station

3.1 If the Station is destroyed or damaged then:

3.1.1 all amounts payable by the Station Facility Owner to Network Rail pursuant to the indemnity in E1.2;

3.1.2 all monies payable under insurance policies effected by Network Rail in respect of destruction or damage to the Station; and

3.1.3 all monies payable under insurance policies effected by the Station Facility Owner pursuant to Condition E1,

shall be applied (taking the amounts referred to in E3.1.1 first where applicable) by Network Rail and the Station Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Station, subject to:

3.1.4 Condition E3.2; and

3.1.5 Network Rail obtaining all necessary permissions and approvals which Network Rail shall use all reasonable endeavours to obtain as soon as reasonably practicable

Provided that if any occurrence of an Insured Risk shall affect the Station and one or more Affected Facilities then any monies paid pursuant to Condition E1.2 shall be required to be applied to the Station only in the same proportion as the amount of insured damage suffered at the Station from the occurrence of the Insured Risk bears to the total amount of insured damage so suffered at all Affected Facilities

3.2 As soon as practicable following the destruction of or damage referred to in Condition E3.1, Network Rail shall consult with the Relevant Operators and shall use all reasonable endeavours to agree:

3.2.1 the necessary reinstatement works, which in the case of Substantial Damage (and save where required by reason of the listed building or similar status of the Station or by a Superior Estate Owner) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed provided that if the cost of such modern equivalent is more than the cost of rebuilding or reinstating the damaged or destroyed building(s) or Equipment the Relevant Operators shall by Requisite Majority have the option of requiring a modern equivalent building or reinstatement of the building which was damaged or destroyed; and

3.2.2 the programme for the carrying out of such reinstatement works,

and, subject to this, Network Rail shall proceed as soon as reasonably practicable to effect such reinstatement works.

3.3 Neither Network Rail nor the Station Facility Owner shall be responsible for Repair and/or Maintenance of any part of the Station or Equipment which has been subject to destruction or damage pending its repair, reinstatement or making good.

3.4 If the monies recovered under any insurance policy maintained by Network Rail are not sufficient to meet the cost to Network Rail of fulfilling its obligations under Condition E3.2, that person shall bear the shortfall.

Condition E4 Provision of documents

4.1 Network Rail or the Station Facility Owner, so far as it effects any insurance in respect of the Station, shall within 30 days of receipt of a request from Network Rail or any Relevant Operator provide such person with:

4.1.1 a copy of each insurance policy under, or in respect of which, Network Rail or the Relevant Operator has an interest and which relates to the Station or any risk of, or in any way associated with, the operation of the Station;

4.1.2 reasonable details of any amount payable by Network Rail or any Relevant Operator in respect of any such insurance policy; and

4.1.3 reasonable details of any claim which shall be made under any such insurance policy if the making of that claim affects or could reasonably be expected to affect Network Rail or any Relevant Operator.

Condition E5 Maintenance of insurance

5.1 In respect of each insurance policy to which Condition E4 applies, the person effecting such insurance shall procure that:

5.1.1 if and to the extent that Network Rail or any Relevant Operator has an insurable interest capable of being covered by such policy and to the extent that Network Rail or any Relevant Operator reasonably so requests, Network Rail or any Relevant Operator is named as a co-insured under such policy on such terms as shall be reasonable;

5.1.2 the policy is maintained and all claims are duly filed, and all proper steps to collect proceeds are duly taken in respect of such policy; and

5.1.3 if such insurance policy is not required under a station licence held by that person or that person does not hold a station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to Network Rail or any Relevant Operator by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given.

Condition E6 Increase of premium or invalidation of policy

6.1 Network Rail or any Relevant Operator shall not, and shall procure that its Associates (other than passengers) do not, bring onto or do or omit to do at the Station anything which it is aware, or it ought reasonably to be aware, would:

6.1.1 invalidate any insurance of the Station or any Adjacent Property; or

6.1.2 increase the premium payable for that insurance; or

6.1.3 render wholly or partly irrecoverable the monies which otherwise would have been payable under that insurance,

subject to the Relevant Operator receiving notice of any material provision of the insurance of the Adjacent Property which does not apply to insurance of the Station and Network Rail and any Relevant Operator shall procure that their Associates (other than passengers) and the Station Facility Owner shall procure that any undertenant or any person deriving title under or authorised by the Station Facility Owner to enter the Station shall comply with this Condition E6.1.

6.2 The person responsible for any act or omission contemplated by Condition E6.1 shall pay to the person effecting such insurance on demand the amount of:

6.2.1 any increase in premium referred to in Condition E6.1.2; and

6.2.2 any irrecoverable insurance monies referred to in Condition E6.1.3,

which in any such case results from the act or omission of that person, its Associates (other than passengers), or any undertenant or any person deriving title under or authorised to enter the Station by the Station Facility Owner

Condition E7 Rights of subrogation

Network Rail and the Station Facility Owner shall each use all reasonable endeavours to procure that any insurance policy to which Condition E4 applies shall include a waiver of the relevant insurer's right of subrogation against Network Rail and each Relevant Operator.

Condition E8 Abatement of Rent

To the extent that Network Rail recovers any loss of rent under a policy of insurance effected in accordance with this Part E, an equivalent proportion of the rent payable under the Relevant Agreement shall be abated by Network Rail save to the extent that Part L has operated to provide an abatement in respect of the same event.

Condition E9 Reimbursement of insurance premiums

9.1 The Station Facility Owner shall promptly pay Network Rail the amount of all insurance premiums paid by Network Rail from time to time in complying with its obligations under Condition E2.1.

9.2 There shall be deducted from any amount payable under Condition E9.1 any commission or discount payable to or to any person on behalf of Network Rail for effecting the relevant insurance policy.

PART F **ACCESS CHARGING**

Condition F1 Notice of charges

1.1 The Station Facility Owner shall, promptly after the Commencement Date in respect of the First Year and not later than 60 days prior to the commencement of each subsequent Accounting Year, notify each Passenger Operator of:

1.1.1 its best estimate of the Total Variable Charge for that Accounting Year; and

1.1.2 such Fixed Charges (if any) as the Station Facility Owner is willing to accept in lieu of all or any part of the Total Variable Charge for that Accounting Year.

1.2 The notice referred to in Condition F1.1 shall include a detailed breakdown of both the estimated Total Variable Charge and of the proposed Fixed Charges, together with comparative figures for the preceding Accounting Year (except in the case of a notice in relation to the First Year), in each case in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed, the method of their calculation and the costs of the amenities and services in question. Without prejudice to the generality of the foregoing, such breakdown shall:

1.2.1 in relation to the Total Variable Charge, include a detailed breakdown of the estimated Qualifying Expenditure; and

1.2.2 in relation to the Fixed Charges, identify which of the Common Station Amenities and the Common Station Services are being quoted for on a fixed basis, or taken into account, as part of the Fixed Charges; and

include details of the specifications and other assumptions applied in the calculation of the Total Variable Charge or any Fixed Charge.

1.3 The Station Facility Owner shall provide each Passenger Operator with such further information and/or clarification relating to the amounts notified to the Passenger Operator pursuant to Condition F1.2 as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.

Condition F2 Payment of charges

2.1 If the notice referred to in Condition F1.1 proposes any Fixed Charges, each Passenger Operator shall notify the Station Facility Owner within 45 days of receipt of such notice whether or not it elects to pay any or all of such Fixed Charges and, if so, which part or parts. To the extent that a Passenger Operator fails within such period to make any such election, the Passenger Operator shall be deemed to have elected to pay the Total Variable Charge.

2.2 If a Passenger Operator makes a timely election to pay any particular Fixed Charges, it shall not be liable to pay the relevant proportion of the Total Variable Charge for the Common Station Amenities and the Common Station Services to which such Fixed Charges apply (to the extent that they so apply). The Passenger Operator shall pay for all other Common Station Amenities and Common Station Services by way of the Residual Variable Charge.

2.3 Except as otherwise provided in the Station Access Agreement or in these Station Access Conditions, each User shall pay the Access Charge (which charge shall, insofar as it relates to the Residual Variable Charge, be in accordance with such bona fide and reasonable estimates thereof as the Station Facility Owner may, from time to time, notify to the Passenger Operator in respect of each Accounting Year) by four-weekly instalments in arrears, which shall so far as practicable be in an equal amount for each instalment. Such payment shall be made not later

than the number of days specified in paragraph 8 of Annex 9 after the end of the four-week period in question or after the date of receipt of an invoice for such payment whichever is the later.

Condition F3 Certificate of Residual Variable Charge

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

3.1.1 calculate in respect of each Passenger Operator the Residual Variable Charge payable by that Passenger Operator for that Accounting Year or Accounting Half-Year; and

3.1.2 provide to each Passenger Operator a certificate of the Residual Variable Charge so calculated.

3.2 The Certificate shall contain information in relation to each element of the Residual Variable Charge in an amount of detail which is at least equal to that required by Condition F1.2.

Condition F4 Adjustments for excess payments

4.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition F2.3 in respect of the Residual Variable Charge shall have been greater than the amount of the Residual Variable Charge for that Accounting Year or Accounting Half-Year which is certified pursuant to Condition F3.1, the Station Facility Owner shall repay to the Passenger Operator an amount equal to:

4.1.1 the difference between the amount so paid and the Residual Variable Charge so certified; and

4.1.2 interest on the amount referred to in paragraph F4.1.1 above at the Default Interest Rate, calculated pursuant to Condition F6.

Condition F5 Adjustments for short payments

If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition F2.3 in respect of the Residual Variable Charge shall have been less than the amount of the Residual Variable Charge for that Accounting Year or Accounting Half-Year which is certified pursuant to Condition F3.1, the Passenger Operator shall pay to the Station Facility Owner an amount equal to:

5.1 the difference between the amount so paid and the Residual Variable Charge so certified; and

5.2 interest on the amount referred to in paragraph F5.1 above at the Default Interest Rate, calculated pursuant to Condition F6.

Condition F6 Calculation of interest

Interest payable pursuant to Conditions F4 and F5 shall be simple interest and shall be calculated as if the amount on which the interest is payable were a debt incurred in equal four-weekly instalments during the Accounting Year or Accounting Half-Year in question. The interest shall be payable on each instalment from the date upon which it shall be treated as having been incurred until the actual date of payment.

Condition F7 Inspection of books, records and accounts

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

Condition F8 Adjustments following inspection

8.1 If, upon or following any inspection in accordance with Condition F7 by a Passenger Operator, the amount of the Residual Variable Charge in respect of any Accounting Year or Accounting Half-Year commencing not earlier than 18 months prior to the date on which the inspection is completed is established to have been less than the amount shown in the relevant Certificate, the Station Facility Owner shall, within 5 Business Days of being notified of such discrepancy, repay to the relevant Passenger Operator or Passenger Operators a sum equal to such shortfall, together with interest thereon at the Default Interest Rate from the date which is half way through the Accounting Year or the Accounting Half-Year in question until the date of actual repayment of that sum by the Station Facility Owner.

8.2 If, upon or following any such inspection, the amount of the Residual Variable Charge in respect of any Accounting Year or Accounting Half-Year commencing not earlier than 18 months prior to the date on which the inspection is completed is established to have been greater than the amount shown in the relevant Certificate:

8.2.1 the relevant Passenger Operator shall, within 5 Business Days of being notified of such discrepancy, pay to the Station Facility Owner a sum equal to such excess but without interest; and

8.2.2 the Station Facility Owner shall pay the relevant Passenger Operator an amount equal to the Passenger Operator's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

8.3 If the shortfall referred to in Condition F8.1 represents:

8.3.1 more than 5% of the Residual Variable Charge, the Station Facility Owner shall pay the relevant Passenger Operator or Passenger Operators an amount equal to its reasonable costs and expenses incurred in carrying out or procuring the relevant inspection;

8.3.2 less than 5% of the Residual Variable Charge, each relevant Passenger Operator or Passenger Operators shall pay the Station Facility Owner an amount equal to the Station Facility Owner's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

Condition F9 Accounts

9.1 Without prejudice to any obligation of the Station Facility Owner under its station licence, the Station Facility Owner shall:

9.1.1 keep accounts in respect of the Station which relate solely to the operation of the Station;

9.1.2 maintain such Station accounts in such a way as to enable all material revenue and expenditure to be clearly distinguished and analysed by category or, if appropriate, item in respect of:

(a) the Common Station Services and the Common Station Amenities; and

(b) the Exclusive Station Services,

and to identify any contribution by any person towards the cost or expense of the foregoing.

9.2 Without prejudice to any obligation of the Station Facility Owner under its station licence, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition F9.1 shall at all times:

9.2.1 be kept up to date and to a standard which is at least sufficient to enable each Passenger Operator properly to assess the costs of the amenities and services in respect of which the Residual Variable Charge is made; and

9.2.2 include financial accounts and information in respect of each Accounting Year and Accounting Half-Year on a station by station basis, broken down as specified in Condition F9.1 above.

9.3 The Station Facility Owner shall, within 14 days of the end of each Accounting Period, provide to each Passenger Operator a comparison between the estimate of the Total Variable Charge notified pursuant to Condition F1.1 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.

9.4 Any comparison provided pursuant to Condition F9.3 shall, unless the Requisite Majority otherwise consent:

9.4.1 explain and identify any exceptional items and any variance of more than plus or minus 3 per cent. between:

(a) the estimates of the Total Variable Charge referred to in Condition F9.3; and

(b) any revenue or expenditure taken into account in those estimates in respect of any category or item of Common Station Services or Common Station Amenities by reference to which the Station accounts are maintained pursuant to Condition F9.1.2;

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

9.4.2 identify any such category or item of expenditure (and any contribution of any person towards any such expenditure) which was estimated pursuant to Condition F1.1 and which has been actually incurred; and

9.4.3 compare any such expenditure and contributions with that estimate.

9.5 Network Rail shall:

9.5.1 keep financial records in respect of the Station which relate solely to costs that Network Rail is entitled to recoup from the Station Facility Owner under these Station Access Conditions; and

9.5.2 promptly upon request by the Station Facility Owner, provide the Station Facility Owner with a certificate of such costs and their calculation.

9.6 The financial records to be kept and maintained by Network Rail in accordance with Condition F9.5 shall at all times be kept up to date and to a standard which is at least sufficient to enable the Station Facility Owner properly to analyse and assess all material elements of the costs to be recouped by category or, if appropriate, item.

9.7 Each Relevant Operator and each bona fide prospective User shall be entitled to inspect (or procure that its agents or representatives inspect) the financial records referred to in Condition F9.5 at any reasonable time upon reasonable notice to Network Rail.

9.8 If, upon or following any inspection in accordance with Condition F9.7, the amount of the costs actually recouped by Network Rail in respect of any Accounting Year or Accounting Half-Year commencing not earlier than 18 months prior to the date on which the inspection is completed is established to have been greater than the amount shown in the relevant Network Rail Certificate, Network Rail shall, within 5 Business Days of being notified of such discrepancy, repay to the Station Facility Owner a sum equal to such excess, together with interest at the Default Interest Rate from the date which is half way through the Accounting Year or the Accounting Half-Year in question until the date of actual repayment of that sum by Network Rail.

9.9 If the excess referred to in Condition F9.8 represents:

9.9.1 more than 5% of the costs actually recouped by Network Rail, Network Rail shall pay the Relevant Operator an amount equal to its reasonable costs and expenses incurred in carrying out or procuring the relevant inspection;

9.9.2 less than 5% of the costs actually recouped by Network Rail, the Relevant Operator shall pay Network Rail an amount equal to its reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

9.10 If, upon or following any inspection referred to in Condition F9.7, the amount of the costs actually recouped by Network Rail in respect of any Accounting Year or Accounting Half-Year commencing not earlier than 18 months prior to the date on which the inspection is completed is established to have been less than the amount shown in the relevant Network Rail Certificate:

9.10.1 the Station Facility Owner shall, within seven days of being notified of such discrepancy, pay to Network Rail a sum equal to such shortfall but without interest; and

9.10.2 Network Rail shall pay the Relevant Operator an amount equal to that operator's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

9.11 References in this Condition F9 to any cost which Network Rail may recoup or be entitled to recoup shall not include any part of the Long Term Charge.

Condition F10 Calculation of number of Vehicles operated

10.1 The Station Facility Owner shall:

10.1.1 as soon as reasonably practicable after a Station Access Agreement with a Passenger Operator comes fully into effect and otherwise at regular intervals of not more than 12 months; and

10.1.2 after each material change of the kind referred to in Condition F10.3,

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

10.1.3 the Station Facility Owner has grounds for a reasonable belief that a recalculation in accordance with this Condition F10.1 would give rise to a materially different number in any case; or

10.1.4 any Passenger Operator shall request that such number be so recalculated.

10.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition F10.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

10.3 For the purposes of Condition F10.1.2, a material change shall be deemed to have occurred if any event or circumstance (including entry by the Station Facility Owner into a new access agreement permitting a passenger service operator to use the Station, or amendment or termination of any existing access agreement permitting such use) shall have occurred which materially affects or is likely materially to affect the number of Vehicles operated by or on behalf of the Station Facility Owner or any Passenger Operator which stop at the Station.

10.4 Upon entry into a Station Access Agreement with a passenger service operator and pending the first calculation thereafter by the Station Facility Owner pursuant to Condition F10.1, the Station Facility Owner shall, for the purposes of calculating the Total Variable Charge applicable in respect of such passenger service operator, use such estimate of the number of Vehicles in question as may have been provided to the Station Facility Owner by the relevant passenger service operator for the purposes of this Condition F10. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

10.5 For the purposes only of paragraph (c) of the definition of “Common Charges”, the Passenger Operator’s Proportion shall be equal, as at the Commencement Date, to the percentage specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition F10 only when:

10.5.1 there is a change in the number or identity of Passenger Operators; or

10.5.2 it shall be likely that such a recalculation would alter the Passenger Operator’s Proportion of any Relevant Operator by an amount which is greater than the percentage specified in paragraph 9 of Annex 9 of its Passenger Operator’s Proportion immediately prior to the recalculation in question.

10.6 If a Station Access Agreement is terminated by mutual agreement, the Station Facility Owner shall indemnify each Passenger Operator and keep each of them indemnified against the Excess Proportion.

In this Condition F10.6, the “Excess Proportion”, in relation to each Passenger Operator, shall be calculated as follows:

$$EP = \left(\frac{\text{LTC actual}}{\text{LTC notional}} - \frac{\text{LTC actual}}{\text{LTC notional}} \right) + \left(\frac{\text{RVC actual}}{\text{RVC notional}} - \frac{\text{RVC actual}}{\text{RVC notional}} \right)$$

where:

EP is the Excess Proportion of the affected operator;

LTC actual is the amount of the Passenger Operator’s Proportion of the Long Term Charge which is payable by the affected operator for the relevant period following the relevant termination;

LTC notional	is the amount of the Passenger Operator’s Proportion of the Long Term Charge which, on the assumed basis, would have been payable by the affected operator for the relevant period if the relevant termination had not taken place;
RVC actual	is the amount of the Residual Variable Charge which is payable by the affected operator for the applicable period following the relevant termination;
RVC notional	is the amount of the Residual Variable Charge which, on the assumed basis, would have been payable by the affected operator for the applicable period if the relevant termination had not taken place;
“affected operator”	means the Passenger Operator in question;
“applicable period”	means the period beginning on the date of the relevant termination and ending on the earlier of: <ul style="list-style-type: none"> (a) the last day of the Accounting Year in which the relevant termination occurred; and (b) the next following date in respect of which the Station Facility Owner shall carry out a calculation pursuant to Condition F10.1;
“assumed basis”	means the assumption that: <ul style="list-style-type: none"> (a) the relevant termination did not occur; and (b) the Passenger Operator’s Departures of the outgoing operator in the relevant period or the applicable period (as the case may be) were the same as they were immediately prior to the relevant termination;
“outgoing operator”	means the Passenger Operator whose Station Access Agreement has been the subject of a relevant termination;
“relevant period”	means the period beginning on the date of the relevant termination and ending on the date upon which the Station Access Agreement in question was expressed to expire by reason of the passage of time; and
“relevant termination”	means the termination by mutual agreement of the Station Access Agreement of a Relevant Operator other than the affected operator.

Condition F11 The Long Term Charge

11.1 Effective Date

This Condition F11 shall have effect from the Long Term Charge Commencement Date

11.2 Principal formula

11.2.1 *Calculation*

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

$$LTC_t = S_t + L_t$$

where

LTC_t means the Long Term Charge in relevant year t;

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

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

L_t means an amount (whether of a positive or negative value) allowed in respect of the financial consequences to Network Rail in relevant year t following a relevant change of law, calculated in accordance with Condition F11.3;

but so that (without prejudice to the calculation of any Long Term Charge relating to a previous year) in relation to the relevant year commencing from a year in which the value specified in paragraph 3 of Annex 9 is altered, S_t shall have the value specified in paragraph 3 of Annex 9 and in relation to the next following relevant year S_{t-1} shall have the same value.

11.2.1A *Mid-year calculation*

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

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

where:

X means the amount to be recovered or reimbursed;

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

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

11.2.2 *Obligation to provide specification of calculation*

Network Rail shall provide to each Relevant Operator such specification of the calculation of the amount specified in paragraph 3 of Annex 9 in a form and amount of detail, and within such time, as shall be specified by the ORR in a notice given by the ORR to Network Rail for the purposes of this Condition F11.2.2.

11.3 Relevant changes of law

11.3.1 *General*

The following sub-paragraphs of this Condition F11.3 shall apply for the purpose of determining the value (if any) of the term L_t in Condition F11.2.

11.3.2 *Relevant amounts*

11.3.2.1 *Inclusion in formula*

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

11.3.2.2 *Meaning of relevant amount*

The relevant amount is such reasonable amount:

(a) which Network Rail, as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, may incur in (or save by reason of) complying, during relevant year t , with requirements resulting directly and necessarily from the relevant change of law in question; and

(b) which it is fair and reasonable be borne by the Relevant Operators having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act, and, subject to that, to the other matters referred to in Condition P3.

11.3.3 *Notification of change of law involving material amounts*

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

(a) notify each Relevant Operator and the ORR of the relevant change of law in question and of its assessment of the relevant amount;

(b) provide to each Relevant Operator such information as it shall reasonably require, in a form and amount of detail which is sufficient to enable it to make a proper assessment of the effect of the relevant change of law and of the assessment referred to in sub-paragraph (a) above; and

(c) provide to the ORR all information required in that respect by the ORR.

11.3.3.2 Without prejudice to Condition F11.3.5 and subject to Condition F11.3.6, where an obligation to notify the ORR arises under this Condition F11.3.3:

(a) no agreement or determination of the kind referred to in Condition F11.3.4 shall have effect until 28 days after the ORR shall have been notified of the agreement or determination in question; and

(b) if the ORR shall have exercised its right to call in the determination pursuant to Condition F11.3.5, no such agreement or determination shall have effect.

11.3.4 *Value of relevant amount*

The amount referred to in Condition F11.3.2 for inclusion in the term L_t shall (save in the circumstances referred to in the remaining paragraphs of this Condition F11) be such amount as may be agreed between Network Rail and the Relevant Operators or as may be determined in accordance with any procedure for the settlement of disputes provided for in these Station Access Conditions.

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

11.3.5.1 Notwithstanding Conditions F11.3.3 and F11.3.4, if the ORR shall have given notice to the parties that:

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

the determination in question shall be made by the ORR.

11.3.5.2 If the ORR shall have given notice pursuant to Condition F11.4.1, the parties shall provide to it any information it may require relating to the change of law and its financial consequences.

11.3.5.3 Upon service by the ORR of a notice of the kind referred to in Condition F11.3.5.1, the parties shall discontinue any proceedings of the kind referred to in Condition F11.3.4 which might otherwise result in a determination of the value of the term L_t . The ORR's determination may make provision as to the proportions in which the parties shall bear the costs of the proceedings in question.

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

11.3.6.1 Subject to Condition F11.3.3.2, no determination by the ORR of the kind referred to in Condition F11.3.5 shall, with respect to relevant year t in which it is made (or any previous year), operate so as to substitute the value determined by the ORR for any value agreed by the parties or determined pursuant to Condition F11.3.4:

- (a) before the date upon which the parties shall have been notified of the decision of the ORR to call in the determination; and
- (b) in the case of change of law involving a material amount, after expiry of the notice period provided for in Condition F11.3.3.2(a).

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

11.4 Review of Long Term Charge

11.4.1 Review Notice

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

- (a) the amount of the Long Term Charge;
- (b) the manner in which, and the dates by which, the Long Term Charge shall be payable; and
- (c) its allocation amongst Relevant Operators.

11.4.1.2 The implementation of an access charges review shall be initiated by the ORR giving a review notice. The conclusions of any access charges review initiated pursuant to Condition F11.4.1.1 shall only have effect on and from 1 April 2014 or such later date as may be specified.

11.4.2 Definitions

In this Condition F11.4:

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

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

11.5 Definitions

In this Condition F11, unless the context otherwise requires:

“material amount” means an amount which Network Rail may incur in, or save by reason of, complying with a relevant change of law which is likely to result in an increase (or decrease) in the annual Long Term Charge under a Relevant Agreement of an amount equivalent to or exceeding:

(a) 0.5 *per cent* of the Long Term Charge in the relevant year *t* in which Network Rail first becomes liable to make any payment or perform any other obligation in so complying; or

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

“relevant amount” bears the meaning given to it in Condition F11.3.2.2;

“relevant change of law”	means a Change of Law or the Direction of a Competent Authority;
“relevant year”	means a Financial Year commencing on 1 April and ending on the following 31 March; “relevant year t” means the relevant year for the purposes of which any calculation falls to be made; “relevant year t-1” means the relevant year preceding relevant year t; and similar expressions shall be construed accordingly; and
“Retail Prices Index”	means the general index of retail prices published by the National Statistics each month in respect of all items or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the ORR may, after consultation with the Secretary of State, Network Rail and each Relevant Operator, determine to be appropriate in the circumstances; or (b) if there is a material change in the basis of the index, such other index as the ORR may, after consultation with the Secretary of State, Network Rail and each Relevant Operator, determine to be appropriate in the circumstances.

Condition F12 Review of Access Charge generally

12.1 The Station Facility Owner and all Users shall:

12.1.1 within 30 days of the giving of a notice by any one of them to the others for the purposes of this Condition F12.1 formally review (with each other, and in consultation with the Secretary of State):

- (a) the amounts payable by any person to another under a Station Access Agreement and these Station Access Conditions;
- (b) the manner in which, and the dates by which, such amounts shall be payable; and
- (c) their allocation; and

12.1.2 negotiate with each other (and in so doing have regard to any comments which shall have been made by the Secretary of State in the course of such review) with a view to reaching agreement, subject to approval of the ORR, on any amendments to these Station Access Conditions and the relevant Station Access Agreement which the Station Facility Owner or any User may consider necessary or desirable in respect of any such matters.

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

12.2.1 the proposed amendments; and

12.2.2 copies of any objections to them which shall have been made by the Secretary of State in writing.

12.3 If the Station Facility Owner and the Users fail to reach agreement with each other on such amendments within 90 days of the giving of the notice referred to in Condition F12.1.1, the matters in dispute may be resolved in accordance with the Access Dispute Resolution Rules. In the event that the dispute is referred under the Access Dispute Resolution Rules, the parties to the dispute shall agree in a Procedure Agreement within the meaning of the Access Dispute Resolution Rules that such determination shall:

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

12.3.2 establish the proposed amendments to these Station Access Conditions and the relevant Station Access Agreement, which shall be submitted by the arbitrator to the ORR for approval under section 22 of the Act on behalf of the Station Facility Owner and each User.

12.4 If any proposed amendments to these Station Access Conditions or any Station Access Agreement which have been submitted to the ORR pursuant to Condition F12.2 or Condition F12.3 are approved by the ORR, such proposed amendments shall be made and become effective in accordance with the terms of its approval. If not so approved, such amendments shall not be made or have effect.

PART G **EXISTING AGREEMENTS AND THIRD PARTY RIGHTS**

Condition G1 General

1.1 The Station Facility Owner shall use all reasonable endeavours to observe and give effect to all obligations (other than, in the case of Excluded Existing Agreements, for the payment of money) of Network Rail under any Existing Agreement.

1.2 No Relevant Operator shall do or permit to be done anything which might reasonably be expected to cause a breach of any Existing Agreement in so far as it is aware of any such obligations or such obligations are disclosed in the Station Register and such obligations relate to the Station.

1.3 Network Rail shall, so far and as soon as reasonably practicable, notify the Station Facility Owner of each of the following insofar as they are likely to result in or effect a Relevant Restriction:

1.3.1 every Excluded Existing Agreement;

1.3.2 every amendment (however described) of any such Excluded Existing Agreement; and

1.3.3 every consent, approval, waiver or other discretion which shall have been given, made or exercised under or in respect of any such Excluded Existing Agreement.

Condition G2 Costs of compliance

2.1 Network Rail shall (on an after tax basis) indemnify each Relevant Operator, and keep it indemnified, against all costs and expenses reasonably and properly incurred by it in and as a consequence of its complying with its obligations under Conditions G1.1 and G1.2 in relation to any Excluded Existing Agreement.

2.2 The Station Facility Owner shall (on an after tax basis) indemnify each User, and keep it indemnified, against all costs and expenses reasonably and properly incurred by it in and as a consequence of its complying with its obligations under Condition G1.2 in relation to any Included Existing Agreement.

Condition G3 Representations, warranties and undertakings

3.1 Network Rail represents, warrants and undertakes to each Relevant Operator that:

3.1.1 as at the date first mentioned in Condition I2.2, all Existing Agreements (other than Included Existing Agreements) the terms of which result or are likely to result in a Relevant Restriction will have been disclosed in the Station Register in accordance with the provisions of Part I; and

3.1.2 any information provided by Network Rail to the Station Facility Owner for inclusion in the Station Register shall give a true and fair representation of the matters to which it relates.

3.2 Network Rail represents, warrants and undertakes to each Relevant Operator that it has not entered into and will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to:

3.2.1 any Existing Agreement; or

3.2.2 these Station Access Conditions.

3.3 Network Rail shall comply with the obligations binding on Network Rail and contained in the Existing Agreements insofar only as each Relevant Operator is not required to comply with such obligations under Condition G1.2 and non-compliance by Network Rail would or could have a material adverse effect on any Relevant Operator or its business.

3.4 The Station Facility Owner represents, warrants and undertakes to each User that:

3.4.1 it will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to:

- (a) any Existing Agreement; or
- (b) these Station Access Conditions; and

3.4.2 as at the date first mentioned in Condition I2.2, all Included Existing Agreements the terms of which result or are likely to result in a Relevant Restriction will have been disclosed in the Station Register in accordance with the provisions of Part I.

Condition G4 Global Agreements

4.1 In this Condition G4, “relevant Network Rail obligation” means an obligation under a Global Agreement to the extent that it relates to the Station which:

4.1.1 is expressed in the Global Agreement in question to be the responsibility of Network Rail; and

4.1.2 Network Rail shall reasonably have determined it shall be necessary or expedient that the Station Facility Owner shall discharge.

4.2 Not later than the number of days specified in paragraph 10 of Annex 9 after the date on which these Station Access Conditions first became fully effective, Network Rail shall give notice to the Station Facility Owner of the relevant Network Rail obligations.

4.3 In giving notice to the Station Facility Owner pursuant to Condition G4.2, Network Rail shall use all reasonable endeavours to procure that any necessary consent, approval, waiver or other allowance shall be obtained so as to permit the Station Facility Owner to be provided with a copy of the Global Agreement in question. If Network Rail shall not be permitted to provide the Station Facility Owner with any such copy:

4.3.1 Network Rail shall promptly give notice of that fact to the Station Facility Owner and shall use all reasonable endeavours to make the Station Facility Owner aware of the nature of the terms and conditions of the Global Agreement in question in some other lawful manner; and

4.3.2 the Station Facility Owner shall not be responsible for any failure to discharge its obligations under this Condition G4 to the extent that Network Rail shall have failed to make the Station Facility Owner aware of the said terms and conditions.

4.4 The Station Facility Owner shall discharge the relevant Network Rail obligations.

4.5 If, in Network Rail’s reasonable opinion, the Station Facility Owner shall have failed timeously to discharge its obligations under Condition G4.4, Network Rail shall be entitled to perform any such relevant Network Rail obligation. The Station Facility Owner shall reimburse to Network Rail its reasonable costs and expenses in so doing.

4.6 Where it is indicated in paragraph 3 of Annex 5 that this Condition G4.6 shall apply to a particular Global Agreement, the Station Facility Owner shall be entitled, in lieu of Network Rail, to exercise the rights of Network Rail under such Global Agreement (other than any right to terminate any such agreement) to the extent that it relates to the Station, including (without prejudice to that generality):

4.6.1 the right to give any consent, approval, agreement or waiver in relation to any fact, matter or thing under or concerning the Global Agreement in question;

4.6.2 any right in relation to the area of the Station to which the Global Agreement in question relates;

4.6.3 the right to agree any amendment of the Global Agreement in question,

except insofar as the exercise of any such right shall:

4.6.4 reasonably be expected to operate to the material prejudice of Network Rail;

4.6.5 materially prejudice the proper operation of the Network;

4.6.6 necessarily cause Network Rail to be in breach of its obligations under the Global Agreement in question;

4.6.7 cause the Global Agreement in question to be amended in relation to any period after the date of expiry by passage of time; or

4.6.8 relate to the assessment or payment of any licence fee.

4.7 Upon being requested to do so by the Station Facility Owner, Network Rail shall give notice to each party to the Global Agreements to which this Condition G4 applies informing it that the Station Facility Owner is entitled as provided in Condition G4.6, and shall take all such steps as shall be reasonably required to give effect to any exercise by the Station Facility Owner of any such right.

4.8 The Station Facility Owner shall:

4.8.1 consult with and keep Network Rail promptly and fully informed in all material respects in relation to the conduct and progress of negotiations relating to the matters referred to in Condition G4.6 (including providing Network Rail with copies of travelling draft agreements);

4.8.2 in the conduct and settlement of the negotiations and travelling draft agreements, take into account any representations made by Network Rail; and

4.8.3 forthwith after completing the amendment of a Global Agreement, deliver to Network Rail the stamped and executed agreement or instrument effecting the amendment.

4.9 Where it is indicated in paragraph 3 of Annex 5 that this Condition G4.9 shall apply to a particular Global Agreement, Network Rail shall not be entitled to exercise any right to terminate such Global Agreement in relation to the Station without the prior written consent of the Station Facility Owner.

Condition G5 Exercise of discretion/Grant of consent

5.1 Where any Existing Agreement contains rights and/or obligations:

5.1.1 whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by Network Rail and/or the Station Facility Owner; and

5.1.2 the rights in respect of which may be exercised so as to protect the permission to use of any User and the Station Facility Owner's interest or otherwise benefit the Station, its use, occupation or repair or the interest of any User in the Station

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

5.2 Where any works are proposed to be carried out under the terms of any Existing Agreement:

5.2.1 where Network Rail and/or the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts C and D as if the exercise of the discretion in question were a Proposal for Change; and

5.2.2 where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition D3.1.

5.3 At the request of Network Rail, any User and/or the Station Facility Owner (as the case may be), Network Rail and/or the Station Facility Owner shall take all reasonable steps to exercise such rights, which shall include (without limitation) enforcing the collection of any contribution or compensation payable by a third party in respect of any works carried out in relation to the Station under any Existing Agreement.

Condition G6 Wayleave grants

6.1 Network Rail may grant (as binding the Station Facility Owner) wayleaves or easements at the Station to any public or local authority or public utility company or other persons, including (without limitation) rights of way, which do not impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services.

6.2 Network Rail may retain the benefit of grants pursuant to Condition G6.1 including rents or other payments arising under them except for any compensation for damage suffered by each Relevant Operator which shall be paid to the Relevant Operator in question promptly upon receipt.

6.3 No grant shall be made pursuant to Condition G6.1 until each Relevant Operator has been consulted and Network Rail shall have had due regard to that operator's interests in the Station including the operational integrity of the Station and that operator's existing and future plans for its use and enjoyment of the Station.

6.4 Any grant of rights of way made pursuant to Condition G6.1 shall require the grantee to comply with the Station Facility Owner's reasonable requirements in relation to safety or security and to give due consideration to its and any User's representations regarding the effect of the exercise of the rights in question on its and the User's operations. Any grant of a right of entry to carry out works made pursuant to Condition G6.1 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Station no less beneficial to the Station Facility Owner than the provisions of Conditions D2.3.2 and N4.

6.5 Where Network Rail wishes to grant wayleaves or easements at the Station which impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services the provisions of Part C shall apply.

Condition G7 Superior Estate Owner consent

Where, under these Station Access Conditions, the consent of Network Rail is required, and such consent may be given by Network Rail only with the permission of a Superior Estate Owner arising under a Superior Estate Grant in existence before 1 April 1994, it is a condition precedent to the grant of that consent that such permission is first obtained, provided that Network Rail shall use all reasonable endeavours to obtain such permission.

Condition G8 Supplemental Agreements

8.1 In this Condition G8:

8.1.1 "Relevant Arrangement" means:

- (a) an estate, interest or charge in or over land; or
- (b) an agreement and any other arrangement, whether or not of a similar nature

in any such case contemplated by a Supplemental Agreement;

8.1.2 "Supplemental Agreement" means any one or more of:

- (a) an Agreement dated 1 April 1994 and made between the British Railways Board (1) and Railtrack PLC (2) and entitled "Agreement for Leases, Site Demarcations, Connection Agreements and BRT Easements" which forms part of the Railtrack Transfer Scheme;
- (b) an Agreement dated 1 April 1994 and made between Railtrack PLC (1) and the British Railways Board (2) and entitled "Supplemental Agreement for Leases (Real Property)" which forms part of the Railtrack Transfer Scheme;
- (c) an Agreement dated 1 April 1994 and made between Railtrack PLC (1) and the British Railways Board (2) and entitled "Property Miscellaneous Provisions Agreement" which forms part of the Railtrack Transfer Scheme;
- (d) an Agreement dated 1 April 1994 and made between Network Rail (1) and BR Telecommunications Limited (2) and entitled "Framework Agreement relating to Grant of Easement and Property Leases" which forms part of the Railtrack Transfer Scheme and the British Rail Telecommunications Transfer Scheme;
- (e) an Agreement dated 1 April 1994 and made between the British Railways Board (1) and BR Telecommunications Limited (2) and entitled "Agreement for Leases, Property Licences and Grant of Easements" which forms part of the British Rail Telecommunications Transfer Scheme;
- (f) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement to provide access to and accommodation at the Board's Properties for the storage and sorting of mail and for use of employees of The Post Office";

(g) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement for Carriage of Letter Mail";

(h) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Interim Agreement - Agreement for the Carriage of Letter Mail";

(i) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Property Agreement - Agreement for The Post Office's use of the Board's Properties";

(j) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Ten Year Agreement - Agreement for the Carriage of Letter Mail".

8.2 If Network Rail and/or the Station Facility Owner intends to take any relevant action it/they shall give notice to each User:

8.2.1 stating that intention;

8.2.2 giving sufficient details of the relevant action and the Relevant Restriction in question to enable the recipient to make an accurate assessment of the likely effect of the Relevant Restriction on its permission to use the Station; and

8.2.3 referring to this Condition G8.

8.3 Subject to Conditions G8.4 and G8.5, a relevant action for the purpose of this Condition G8 is an action taken whether or not pursuant to or in accordance with an obligation in a Supplemental Agreement:

8.3.1 to implement or amend a Supplemental Agreement; or

8.3.2 to grant, enter into or amend a Relevant Arrangement; or

8.3.3 to exercise any discretion under or in respect of a Supplemental Agreement or a Relevant Arrangement;

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

8.4 Where on the Conditions Efficacy Date a person used or occupied a Station for the purposes of its undertaking in a way that was and has continued to be continuous and apparent and, as against the Station Facility Owner or its predecessors in title, lawful, the granting to that person (or to a person who has succeeded to the relevant part of that person's undertaking) of a legal right to do so is not a relevant action for the purpose of this Condition G8 and Part C does not apply to it.

8.5 The granting to Rail Express Systems Limited (or to a person who has succeeded to the relevant part of its undertaking) of a lease of a unit of accommodation at the Station occupied (or to be occupied) by Royal Mail Group Limited (or any of its subsidiaries) pursuant to the agreements referred to in Condition G8.1.2(f) - (j) inclusive is not a relevant action for the purpose of this Condition G8 and Part C does not apply to it.

8.6 Network Rail and/or the Station Facility Owner may take the relevant action specified in the notice given under Condition G8.2 unless it is not fair and reasonable that the Relevant Restriction in question should be created having regard to:

- 8.6.1 the reason for the Relevant Restriction;
- 8.6.2 its likely duration and extent;
- 8.6.3 the interests of Network Rail (including any contractual obligations entered into prior to the Conditions Efficacy Date to take the relevant action), the Station Facility Owner and all Users;
- 8.6.4 the interests of passengers using the Station;
- 8.6.5 the nature and extent of the rights to use or occupy the Station which were being lawfully exercised on the Conditions Efficacy Date;
- 8.6.6 the interests of the Board in disposing of those parts of its undertaking in respect of which it was lawfully exercising rights to use or occupy the Station on the Conditions Efficacy Date;
- 8.6.7 the reasonable expectations of Relevant Operators when they entered into their Relevant Agreements; and
- 8.6.8 the other matters as respects which duties are imposed on the ORR by section 4 of the Act

and the objecting party has commenced proceedings under Condition G8.7 within the 30 day period mentioned therein.

8.7 Any dispute as to whether, having due regard to the factors specified in Condition G8.6, it is fair and reasonable that the Relevant Restriction should be created shall be determined in accordance with the Access Dispute Resolution Rules.

8.8 If and to the extent that Network Rail and/or the Station Facility Owner comply with their obligations in this Condition G8 in respect of a relevant action, Part C does not apply to that relevant action.

PART H LITIGATION AND DISPUTES

Condition H1 Notification by Network Rail

Network Rail shall promptly notify each Relevant Operator of any dispute relating to:

1.1 the Station; or

1.2 any rights granted to the Relevant Operator under any Relevant Agreement,

which Network Rail (acting reasonably) believes may have a materially adverse effect on the Relevant Operator's business at the Station.

Condition H2 Notification by Station Facility Owner

The Station Facility Owner shall promptly notify Network Rail and each User of:

2.1 any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which is likely to exceed the amount specified in paragraph 11 of Annex 9; and

2.2 any claim, litigation, lien, demand or judgment relating to the Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are likely to exceed the amount specified in paragraph 12 of Annex 9.

Condition H3 Notification by User

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

3.2 Notwithstanding Conditions H2 and H4, a User and Network Rail shall each have the right to participate in any prosecution, defence or settlement conducted in accordance with such Conditions at its sole cost and expense, provided that such participation shall neither prejudice its conduct by the Station Facility Owner nor reduce the User's or Network Rail's share of the cost of such action.

Condition H4 Authority of Station Facility Owner

The Station Facility Owner:

4.1 shall have the authority; and

4.2 shall, so far as is reasonably practicable and prudent in respect of any third party act of a kind referred to in Condition L2.5, use its reasonable endeavours,

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

4.3 the dispute is likely materially to affect the Station Facility Owner's ability to operate the Station; or

4.4 the Station Facility Owner proposes to account for the costs or amount of such a dispute as part of the Qualifying Expenditure or other consideration payable under the Relevant

Agreement and the amount of the dispute and/or the total amount of the damages together with costs are likely to exceed the amount specified in paragraph 13 of Annex 9.

Condition H5 Resolution of disputes and claims

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

5.1.1 within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this Condition, the appropriate managers of the parties shall discuss the dispute with a view to resolution;

5.1.2 if the parties are unable to resolve the dispute in accordance with Condition H5.1.1, the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;

5.1.3 if the parties are unable to resolve the dispute in accordance with Condition H5.1.2, the dispute shall be escalated within a further 5 Business Days to the parties' appropriate directors for resolution;

5.1.4 if the dispute is not resolved pursuant to Conditions H5.1.1 to H5.1.3 then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

5.2 Nothing in Condition H5.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this procedure directly (whether or not the dispute has been escalated in accordance with Condition H5.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

PART I **STATION REGISTER**

Condition I1 Maintenance of the Register

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

1.1.1 such register; and

1.1.2 a copy of each set of financial accounts and supporting information referred to in Condition F9.1.

1.2 Where information which is required to be entered in the Station Register is provided to the Station Facility Owner by or on behalf of Network Rail, the Station Facility Owner shall enter such information in the Station Register in such form as Network Rail shall reasonably require.

Condition I2 Content of the Register

2.1 Subject to Conditions I2.2, I3 and any notice given under Condition I4, the Station Facility Owner shall cause to be entered in the Station Register:

2.1.1 so far and as soon as reasonably practicable, but in any event not later than the date first mentioned in Condition I2.2, in relation to Existing Agreements of which it is aware the following insofar as they are likely to result in or effect a Relevant Restriction:

(a) a copy or a true and fair description of the material terms of every Existing Agreement;

(b) a copy or a true and fair description of the material terms of every amendment (however described) of any such Existing Agreement; and

(c) a copy or a true and fair description of the material terms of every consent, approval, waiver or other discretion which shall have been given, made or exercised under or in respect of any such Existing Agreement;

2.1.2 in relation to Existing Works, all material information in relation to the following insofar as they are likely to result in or effect a Relevant Restriction:

(a) all Existing Works;

(b) every amendment (however described) to any such Existing Works; and

(c) every consent, approval, waiver or other discretion which shall have been given, made or exercised in respect of any such Existing Works;

2.1.3 in relation to any Proposal described in Part C, the provisions of:

(a) such proposal;

(b) any representations and/or objections made in respect of such proposal;

(c) any consent to such proposal; and

(d) the result of any decisions made by the ORR in respect of such proposal;

2.1.4 the Statement of Condition;

2.1.5 every Direction of any Competent Authority (other than a Statute) which relates to the Station or to the operation of the Station and which either:

- (a) is likely to result in or affect a Relevant Restriction; or
- (b) is likely materially to increase the amount of the Qualifying Expenditure,

provided that such Direction is not applicable to stations generally;

2.1.6 in relation to any Vehicle count referred to in Condition F10, details of:

- (a) the date of each such count;
- (b) the person or persons responsible for such count;
- (c) a summary of the results of such count; and
- (d) any challenges and objections made by any Passenger Operator in relation to the results of any such count;

2.1.7 a copy of the relevant issue of the Network Rail (or Railtrack) Standard Letting Conditions (as amended or replaced from time to time);

2.1.8 a copy of these Station Access Conditions;

2.1.9 a copy of the Station Facility Owner's station licence and the safety validation documentation in relation to the Station and any modification of it, any notices given under or in respect thereof (including any notice of revocation or termination, howsoever expressed, and any provisional or final order given under section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of a User under or in respect of its Station Access Agreement; and

2.1.10 a copy of the qualification criteria and requirements and the procedure for their establishment referred to in Condition N1.6.2 (d).

2.2 The date referred to in Condition G3.1.1 and Condition I2.1.1 shall be the date which falls 30 days prior to the date on which the Secretary of State issues an invitation to tender pursuant to section 26 of the Act in respect of any railway passenger services operated by any Relevant Operator, provided that the first mentioned date shall not be earlier than 1 November 1999.

Condition I3 Exclusions from the Register

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

Condition I4 Public interest

The Station Facility Owner shall not enter any document or information in the Station Register, and shall remove any document or information so entered, if the ORR shall, following an application made to it by any person, have given notice to the Station Facility Owner that, in its opinion, it would be against the public interest or the commercial interests of any person if the

document or information in question were entered into, or (as the case may be) not removed from, the Station Register.

Condition 15 Inspection and copies

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

5.2 Any of Network Rail, any User and any person nominated by the ORR for the purposes of Condition 15.1 may, on the payment of such reasonable fee as the Station Facility Owner may from time to time specify with the approval of the ORR, require the Station Facility Owner to supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.

5.3 If requested to do so by the ORR or the Secretary of State, the Station Facility Owner, without payment of any fee, shall supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.

PART J **RIGHTS GRANTED OVER ADJACENT PROPERTY**

Condition J1 Services through Conduits

The Station Facility Owner shall have the right to the free passage and running of the Services to and from the Station in and through any existing Conduits under or over the Adjacent Property and any new Conduits laid pursuant to Condition J2.1 during any period that they are not adopted or public Conduits.

Condition J2 Installation of new Conduits

2.1 Subject to Condition J2.2, the Station Facility Owner shall have the right to lay new Conduits in, over or under the Adjacent Property with the consent of Network Rail (such consent not to be unreasonably withheld or delayed).

2.2 Network Rail may require such route, specifications, methods of construction and works programmes as are in each case reasonable as a condition of its consent in accordance with Condition J2.1.

2.3 For the purpose of Condition J2.2, whether any requirement of Network Rail is reasonable shall be determined by reference to the matters in respect of which duties are imposed on the ORR by section 4 of the Act.

Condition J3 Maintenance etc. of Conduits

3.1 Subject to Condition J3.3, the Station Facility Owner shall have the right to enter the Adjacent Property and with the consent of Network Rail (such consent not to be unreasonably withheld or delayed) to construct, connect into, repair, maintain, renew and inspect (but not so as to overload) Conduits (including new Conduits pursuant to Condition J2.1).

3.2 If the right pursuant to Condition J3.1 is exercised, the Station Facility Owner shall procure that:

3.2.1 the works are carried out in accordance with a programme of works approved by Network Rail (such approval not to be unreasonably withheld or delayed);

3.2.2 entry is over recognised existing routes where applicable, or over such other route as Network Rail reasonably requires;

3.2.3 the works are carried out at such times and in such manner as is reasonable in all the circumstances. Works shall be carried out with as little damage and disturbance to Network Rail as is reasonably practicable. Any physical damage caused by the carrying out of the works shall be made good; and

3.2.4 where the Conduits are outside the Station and the Adjacent Property, the works are carried out so as to comply with any obligation owed to, and any right vested in, a third party.

3.3 The consent of Network Rail shall not be required for any works pursuant to Condition J3.1 which are:

3.3.1 works which Network Rail has notified the Station Facility Owner do not require such consent; or

3.3.2 Adjacent Works.

3.4 The Station Facility Owner shall give Network Rail reasonable notice of any works of the kind referred to in Condition J3.3 and such information about those works as Network Rail may reasonably require.

Condition J4 Rights of way

4.1 Subject to Condition J10.1, the Station Facility Owner shall have the right of way over the Adjacent Property to and from the Station for all purposes in connection with the Station Facility Owner's use and enjoyment of the Station. Any such right shall be over such of the roadways, vehicular access areas or footpaths or other pedestrian areas or facilities (other than Barrow Crossings) which, at the relevant time, provide access to the Station.

4.2 Without prejudice to Condition J4.1, where the Plan shows land coloured brown the Station Facility Owner shall have the right to pass to and from the Station over that land for all purposes in connection with the Station Facility Owner's use and enjoyment of the Station. Any such right shall be with or without vehicles when the land coloured brown is unhatched on the Plan, and pedestrian only where that land is hatched brown on the Plan.

4.3 If the rights in Conditions J4.1 or J4.2 are exercised, the Station Facility Owner shall procure that (to the extent that the right includes by implication a right to load and/or unload) loading and/or unloading is carried out in a reasonable manner.

Condition J5 Barrow Crossings

Subject to Conditions J5.2 and J10.1, the Station Facility Owner shall have the right to use any Barrow Crossing. If such right is exercised, the Station Facility Owner shall procure that:

5.1.1 the operation of trains on the Network is not delayed or disrupted; and

5.1.2 signs are exhibited prohibiting access for the public (save where Condition J5.2 permits public use of a Barrow Crossing.)

J5.2 The Station Facility Owner shall not permit the public (other than persons who are accompanied by another person holding a personal track safety certificate) to use a Barrow Crossing.

Condition J6 Emergency rights

The Station Facility Owner shall have the right of exit from and entry to the Station in an Emergency over emergency routes designated by Network Rail or any Competent Authority (including any shown coloured purple on the Plan) or over such other route as is required by the Emergency and available for the purpose.

Condition J7 Support

The Station Facility Owner shall have the right of support for the Station from the Adjacent Property and any Railway Substructure.

Condition J8 Off-Site signage

The Station Facility Operator shall have the right to maintain on the Adjacent Property:

8.1 the existing directional signs and notices at the locations marked "SIGN" on the Plan; and

8.2 new directional signs and notices approved by Network Rail at locations approved by it (such approvals not to be unreasonably withheld or delayed),

in each case, referring to the Station Facility Owner, each User and the Station Facility Owner's undertenant (if any) with a description of its or their business provided that no such sign shall cause or be likely in Network Rail's reasonable opinion to cause confusion or interference with the proper operation of the Network.

Condition J9 Entry upon the Adjacent Property

Subject to Condition J10.1, the Station Facility Owner shall have the right at any reasonable time upon reasonable notice to Network Rail, or in an Emergency at any time, to enter upon the Adjacent Property with or without vehicles, plant and machinery:

9.1 for the purpose of exercising any right granted to, or of performing any obligation imposed on, the Station Facility Owner by Network Rail under a Relevant Agreement, or of inspecting the Station; and

9.2 in an Emergency, for the purpose of doing anything that may be required to preserve or to protect life or property.

Condition J10 Exercise and enjoyment of rights

10.1 The exercise of rights pursuant to Conditions J4, J5, J6 and J9 shall be:

10.1.1 subject to due consideration in the circumstances being given to Network Rail's representations in respect of the effect on its operations; and

10.1.2 in common with Network Rail and any other person to whom rights are granted over the Adjacent Property or who is authorised to use that property.

10.2 Network Rail shall use all reasonable endeavours to ensure that no person shall, save pursuant to an Existing Agreement or the operation of these Station Access Conditions, overload Conduits on, or obstruct a right of way over, the Adjacent Property so as materially to prejudice the Station Facility Owner's use and enjoyment of the Station or any User's permission to use the Station.

Condition J11 Works costs

Each Relevant Operator shall pay to Network Rail any reasonable costs and expenses properly incurred by Network Rail and which arise directly out of the exercise by that Relevant Operator of any rights granted to it under this Part J.

PART K **RIGHTS RESERVED BY NETWORK RAIL**

There are excepted and reserved to Network Rail and to any other person deriving title through or under it or authorised by any of them or otherwise entitled the rights described in this Part K subject to the various provisions contained in these Station Access Conditions:

Condition K1 Existing Agreements

All rights and privileges enjoyed over the Station pursuant to Existing Agreements (including the right to re-grant those rights and privileges whether or not to the original grantee).

Condition K2 Conduits

2.1 Subject to Condition K2.2, the right at any time to construct, connect into, repair, maintain, renew and inspect any Conduits on, in, over or under the Station for any purpose provided that such works shall take place only if the location of any new Conduits (including the making of new connections) and the details of any new Conduits (comprising specifications, methods of construction and any access or supervision requirements) have received the consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed).

2.2 Without prejudice to Conditions D1 and D2, the consent of the Station Facility Owner shall not be required for the location or details of any works pursuant to Condition K2.1 which the Station Facility Owner has notified Network Rail do not require such consent.

Condition K3 Entry upon the Station

Notwithstanding the provisions of the Station Facility Owner's station licence the right at any reasonable time upon reasonable notice to the Station Facility Owner or in a Network Rail Emergency at any time, to enter upon the Station with or without vehicles, plant and machinery:

3.1 in a Network Rail Emergency, for the purpose of doing anything that may be required to preserve or to protect life or property;

3.2 to exercise any right excepted, reserved or otherwise granted to, or performing any obligation imposed on, Network Rail in each case pursuant to these Station Access Conditions;

3.3 to inspect the Station and to take inventories of anything which belongs to Network Rail but not more often in the latter case than once in every year without reasonable cause;

3.4 to inspect or carry out any works at any Adjacent Property in connection with which there is reserved also the right to build on or into, or erect scaffolding against, any wall of the Station. This right may only be exercised where the works cannot conveniently be carried out without access to the Station;

3.5 for any purpose connected with valuing or disposing of any interest of Network Rail in the Station but not more often than once in every year without reasonable cause;

3.6 to carry out (whether on or from the Station) any works which in the reasonable opinion of Network Rail are necessary for the proper operation of its railway undertaking. This right may only be exercised where the works cannot conveniently be carried out without access to the Station;

3.7 to inspect, repair, install, lay and make connections to test, alter, or remove any Excluded Equipment (but not the Station Facility Owner's temporary buildings) at the Station; and

3.8 to carry out any tests, sampling or other investigations which Network Rail acting reasonably considers necessary to enable it to determine whether an Environmental Condition has been or could be caused by any activities of any person.

Condition K4 Works upon and use of Adjacent Property

The right from time to time to execute works (including demolition) at any Adjacent Property and to use or otherwise deal with any Adjacent Property for any purpose and in any manner, provided that such works shall not cause any material interference with:

4.1 the access of light or air to the Station (where such access of light or air is relevant to the authorised use of the Station);

4.2 any authorised use of the Station; or

4.3 any right granted by Part J.

Condition K5 Support

The right of support from the Station for the Adjacent Property.

Condition K6 Services through Conduits

The right to the free passage and running of the Services to and from the Adjacent Property and to or from the public highway in and through any Conduits which may at any time be on, in, under or over the Station.

Condition K7 Rights of way

7.1 The right of way to and from the Adjacent Property and to and from the public highway for all purposes in connection with the use and enjoyment of the Adjacent Property over the roadways, vehicular access areas or footpaths or other pedestrian areas or facilities as are at the Station at the Conditions Efficacy Date or over such alternative route or routes as the Station Facility Owner may reasonably prescribe and first notify to Network Rail.

7.2 Without prejudice to Condition K7.1, where the Plan shows land uncoloured hatched brown and/or land uncoloured crosshatched brown Network Rail shall have the right to pass to and from the Adjacent Property and to or from the public highway over that land for all purposes in connection with the use and enjoyment of the Adjacent Property. Any such right shall be exercisable with or without vehicles where the land is hatched brown on the Plan and pedestrian only where the land is crosshatched brown on the Plan.

7.3 The exercise of rights pursuant to Conditions K7.1 and K7.2 shall be:

7.3.1 subject to due consideration being given to the Station Facility Owner's representations in relation to the effect on its and the Users' operations;

7.3.2 to the extent that the right includes by implication a right to load and/or unload, loading and/or unloading is carried out in a reasonable manner; and

7.3.3 used in common with any Relevant Operator and any other person to whom rights are granted over the Station or who is authorised to use it.

Condition K8 Parking

The right to park private motor or light goods vehicles at those parking spaces shown with black cross hatch on the Plan or described in paragraph 23 of Annex 9 (if any) or at agreed equivalent spaces in sufficient proximity to those spaces shown on the Plan in connection with the operation of the railway undertaking in the locality of the Station.

Condition K9 Demarcation Agreements

The right to enter into (as binding on the Station Facility Owner) any Demarcation Agreement.

Condition K10 Exercise of rights granted

In exercising its rights in Part K Network Rail shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Relevant Agreement overload Conduits on, or obstruct a right of way over the Station, so as materially to prejudice the Station Facility Owner's use and enjoyment of the Station or any User's permission to use the Station.

Condition K11 Works costs

Network Rail shall pay to a Relevant Operator any reasonable costs and expenses properly incurred by that Relevant Operator and which arise directly out of the exercise by Network Rail of any rights reserved to it under this Part K.

Condition K12 Property interests

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

PART L **REMEDIES**

Condition L1 Application of this Part

The provisions of this Part L shall apply in respect of any Relevant Agreement save to the extent varied or disapplied in such Relevant Agreement.

Condition L2 Abatement and self help remedies

2.1 If, otherwise than in circumstances expressly provided for under these Station Access Conditions, any of the Common Station Amenities or Common Station Services identified in Annex 6 are not provided to a User which has a right to use such amenities or services for the relevant period specified in Annex 6, or the Station is not open for the periods specified in Annex 7:

2.1.1 the SFO's Daily Long Term Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 6 or Annex 7 (as applicable);

2.1.2 the User's Daily General Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 6 or Annex 7 (as applicable); and

2.1.3 the Daily Long Term Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 6 or Annex 7 (as applicable).

2.2 Any amount abated pursuant to Condition L2.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be deducted by the party in question from the Daily Charge for the relevant Accounting Period. If and to the extent that the Daily Charge for such period has already been paid, the amount to be abated shall be paid by the party required to grant such abatement to the party entitled to benefit from it, within 10 Business Days of the first mentioned party being notified of the relevant cause of abatement.

2.3 If Network Rail or the Station Facility Owner fails to carry out any work in accordance with their respective obligations in Conditions D4 to D8 and such failure would have a material adverse effect on the lawful business of a User carried on at the Station, then that User, having consulted with each other User, may give the Station Facility Owner or Network Rail (in respect of a breach of Condition D4) written notice of its intention to carry out such work unless, within a reasonable period after receipt of such notice by the relevant person:

2.3.1 in respect of a breach by Network Rail of Condition D4, Network Rail remedies such breach; or

2.3.2 in respect of a breach by the Station Facility Owner of Conditions D5 to D8, the Station Facility Owner remedies such breach.

2.4 If, after expiry of such reasonable period as is referred to in Condition L2.3, the Station Facility Owner or Network Rail has failed to carry out such work, the User giving the notice pursuant to Condition L2.3 or, where more than one, the User referred to in Condition L2.5, may carry out the work in accordance with the relevant provisions of these Station Access Conditions and the Station Facility Owner in respect of a breach of Conditions D5 to D8 and Network Rail in respect of a breach of Condition D4 shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.

2.5 Where more than one User has given notice under Condition L2.3 then, unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Qualifying Expenditure shall be the User referred to in Condition L2.4 provided always that where the User is

carrying out any works in accordance with Condition L2.4 then neither the Station Facility Owner nor Network Rail shall take any steps to remedy the relevant breach.

2.6 If the Station Facility Owner fails to secure the provision of any of the Common Station Services in accordance with its obligations under these Station Access Conditions any User shall, subject to Condition L2.7, be entitled to procure that such services are carried out in accordance with the relevant provisions of these Station Access Conditions during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the User's Daily General Charge payable by it to the Station Facility Owner for the relevant Accounting Period. If and to the extent that the User's Daily General Charge has already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within 10 Business Days of the Station Facility Owner being notified of the amount of the relevant cost.

2.7 A User shall be entitled to the remedies referred to in Condition L2.6 only if:

2.7.1 each other User (if any) has agreed that the User may exercise those remedies or the User bears the greatest proportion of Qualifying Expenditure;

2.7.2 the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and

2.7.3 the breach remains unremedied by the Station Facility Owner at the end of that period.

2.8 If none of Network Rail, the Station Facility Owner, any User, or any of the respective employees, subcontractors or agents of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition L2.1 whether as a consequence of Force Majeure (as defined in Condition L9) or otherwise, there shall be no abatement of the Daily Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition Q2.2), nor seek payment of an amount in respect of it.

2.9 Where for the purposes of Condition L2.1 any amount is to be specified in or determined in accordance with the provisions of Annex 6 by reference to any period of time during which any service or amenity is unavailable or not provided in accordance with these Station Access Conditions then any such period of time shall only commence upon:-

(a) the Station Facility Owner being notified, or becoming aware, of such unavailability or failure; and

(b) where Network Rail is responsible under these Station Access Conditions for the Repair or Maintenance of any such amenity or any amenity which is required for the provision of any such service, Network Rail being also so notified

and in either case such notification need not be in writing.

Condition L3 Network Rail's liabilities

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

3.1 the Station Facility Owner failing to secure the opening of the Station in accordance with Condition N1.1; or

3.2 the Station Facility Owner failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 6,

Network Rail shall pay the Station Facility Owner an amount equal to X% of the lesser of:

3.3 the aggregate of:

(a) the amount by which any charges are required to be abated pursuant to Condition L2.1.2; and

(b) the proportion of the SFO's Daily Share specified in, or determined in accordance with, the provisions of Annex 6 or 7 (as applicable); and

3.4 in respect of any Relevant Agreement the amount by which any charges are required to be abated pursuant to the provisions (if any) contained in any Relevant Agreement to which that Relevant Operator is a party by which Condition L2.1.2 or the SFO's Daily Share is varied or disapplied,

where X% equals Network Rail's Default Responsibility in relation to the failure in question.

Condition L4 Station Facility Owner's liabilities

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

4.1 failing to secure the opening of the Station in accordance with Condition N1.1; or

4.2 failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 6,

the Station Facility Owner shall pay Network Rail an amount equal to Y% of the lesser of the amount by which any charges are required to be abated pursuant to:

4.3 Condition L2.1.1 and/or Condition L2.1.3; or

4.4 the provisions (if any) contained in any Relevant Agreement by which Condition L2.1.1 and/or Condition L2.1.3 is varied or disapplied,

where Y% equals the Station Facility Owner's Default Responsibility in relation to the failure in question.

Condition L5 User's liabilities

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

5.1 the Station Facility Owner failing to secure the opening of the Station in accordance with Condition N1.1; or

5.2 the Station Facility Owner failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 6,

the User shall pay:

5.3 the Station Facility Owner an amount equal to Z% of the lesser of:

5.3.1 the aggregate of:

(a) the amount by which any charges are required to be abated pursuant to Condition L2.1.2 ; and

(b) the proportion of the SFO's Daily Share specified in or determined in accordance with the provisions of Annex 6 or 7 (as applicable); and

5.3.2 the amount by which any charges are required to be abated pursuant to the provisions (if any) contained in the relevant Station Access Agreement by which Condition L2.1.2 or the SFO's Daily Share is varied or disapplied,

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

5.4 the Station Facility Owner an amount equal to Z% of the lesser of:

(a) the amount equal to the aggregate of the amount by which any charges are required to be abated pursuant to Conditions L2.1.1 and L2.1.3; and

(b) the amount by which any charges are required to be abated pursuant to the provisions (if any) contained in the relevant Station Access Agreement by which Conditions L2.1.1 or L2.1.3 are varied or disapplied,

where Z% equals the User's Default Responsibility in relation to the failure in question and upon receipt thereof the Station Facility Owner shall pay that amount to Network Rail under any Relevant Agreement.

Condition L6 Indemnities

6.1 Subject to Condition L7, Network Rail shall (on an after tax basis) indemnify each Relevant Operator, and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by Network Rail of any of its obligations under a Relevant Agreement to which it is party with Network Rail.

6.2 Subject to Condition L7, the Station Facility Owner shall (on an after tax basis) indemnify Network Rail and each User, and keep each of them respectively indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by each of them as a result of any breach by the Station Facility Owner of any of its obligations under a Relevant Agreement to which Network Rail or the User in question is party with the Station Facility Owner.

6.3 Subject to Condition L7, each User shall (on an after tax basis) indemnify the Station Facility Owner and Network Rail, and keep each of them respectively indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by each of them as a result of any breach by the User of any of its obligations under a Relevant Agreement to which the Station Facility Owner or Network Rail is party with the User.

6.4 Subject to Condition L7, the Station Facility Owner shall be responsible for and keep Network Rail indemnified against all actions, claims, losses, damages, costs, expenses and liabilities arising from the Defective Premises Act 1972 (except any that arise as a result of a

breach of the obligations of Network Rail in Condition D4), provided that the Station Facility Owner shall be entitled to defend any such actions or claims.

Condition L7 Limitation on claims

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

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

7.1.2 arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed:

(a) in the case of a claim against Network Rail, the amount specified in paragraph 14 of Annex 9;

(b) in the case of a claim against a passenger service operator, the amount specified in paragraph 15 of Annex 9; and

(c) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 16 of Annex 9;

7.1.3 unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:

(a) in the case of a claim against Network Rail, the amount specified in paragraph 17 of Annex 9;

(b) in the case of a claim against a passenger service operator, the amount specified in paragraph 18 of Annex 9; and

(c) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 19 of Annex 9,

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

provided that Conditions L7.1.2 and L7.1.3 shall not apply in respect of any obligation to pay any liquidated sum.

7.2 Save as otherwise expressly provided in any Relevant Agreement (including these Station Access Conditions), no party to a Relevant Agreement may recover or seek to recover from any other party to that agreement any amount in respect of any loss of revenue (including fare revenue, subsidy, access charges to third parties and incentive payments) in connection with the subject matter of such Relevant Agreement, which is or is alleged to be caused to it by the other party.

7.3 Save as otherwise expressly provided in any Relevant Agreement (including these Station Access Conditions), the remedies provided for in these Station Access Conditions and the Access Dispute Resolution Rules, to the extent applicable, shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

7.4 Save as expressly provided in any Relevant Agreement (including these Station Access Conditions) no person shall be entitled to recover damages, abate its Access Charge, or otherwise obtain reimbursement or restitution in respect of any claim under a Relevant Agreement if and to the extent that the loss in respect of which it is seeking to recover such damages, abatement, reimbursement or restitution has been recovered under any other agreement or by operation of law.

Condition L8 Default responsibility

8.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused any of the Common Station Amenities or Common Station Services identified in Annex 6 not to be provided for the relevant period specified in Annex 6, or the Station not to open for the periods specified in Annex 7, and where more than one person or event is the cause, so far as practicable, the extent to which each person or event is the cause.

8.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition L8.1, have due regard to all information available to it which is relevant in the circumstances.

8.3 As soon as reasonably practicable following the occurrence of a matter listed in Condition L8.1, the Station Facility Owner shall notify each User and Network Rail of the degree of causation, if any, of that occurrence attributed by the Station Facility Owner to itself, the User or Network Rail which shall unless disputed by the User or Network Rail within 5 Business Days of receipt of that notice be deemed to have been agreed by the User and Network Rail.

Condition L9 Force Majeure

9.1 "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstance or any combination of events or circumstances beyond the reasonable control of any party to a Relevant Agreement which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means. Without prejudice to that generality, "Force Majeure" under this Condition L9.1 shall include subject to Condition L9.1.2 the following events and circumstances:

9.1.1 war damage, enemy action, terrorism, the act of any government or government instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by Her Majesty's Government (or any department, minister, official or nominee of it) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God, strike or any industrial action by employees of any person other than the party claiming the benefit of this Condition L9 or of its Affiliates, or the provision by the Station Facility Owner of such assistance as may be reasonable to co-operate in alleviating the effects of an incident adversely affecting the safety or security of persons or property;

and shall exclude the following events and circumstances:

9.1.2 any act of the ORR, any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of this Condition L9 or of its Affiliates, or any accumulation (other than one of exceptional severity or of an exceptional nature) of ice, rain, water, snow or leaves on or affecting railway assets or any breach of a contractual obligation owed to the party claiming the benefit of this Condition L9.

9.2 No party to a Relevant Agreement shall be responsible for any failure to fulfil its obligations under such agreement if, and to the extent that, such failure shall be caused by, or directly or

indirectly by reason of, Force Majeure, which makes it impossible or impracticable for that party to comply with such obligations.

9.3 A party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under the Relevant Agreement.

9.4 As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the occurrence of the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under the Relevant Agreement.

9.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under the Relevant Agreement.

Condition L10 Mitigation

Nothing in any Relevant Agreement shall in any way restrict or limit the general principles at law relating to the mitigation of loss or damage resulting from breach of contract.

PART M ENVIRONMENTAL PROTECTION

Condition M1 General environmental obligations

1.1 The Station Facility Owner shall promptly notify Network Rail and each User shall promptly notify the Station Facility Owner (and in such case where such notification is given orally shall promptly confirm such notification in writing) of any Environmental Damage or any circumstance of which that person is aware and which it is reasonably foreseeable is likely to give rise to, or which has given rise to, an Environmental Condition. The Station Facility Owner and each User shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

1.2 No Relevant Operator shall take action which it knows, or ought reasonably to know, could materially:

1.2.1 increase the risk of Network Rail being liable under the Network Rail Environmental Indemnity or increase the extent of such liability;

1.2.2 prejudice the defence of any claim brought against Network Rail by a Competent Authority or any other person; or

1.2.3 increase the cost of remedying any Environmental Condition,

provided that an operator may in any event take such action either if required to do so by any Competent Authority or in order to comply with Environmental Law.

1.3 No Relevant Operator shall be liable for any Environmental Damage to the extent that it existed as at the Environmental Liability Commencement Date.

1.4 The rights and obligations of each Relevant Operator in respect of the Station under this Part M shall apply equally to any part of the Adjacent Property which is subject to an Environmental Condition resulting from the activities of the Relevant Operator at the Station.

Condition M2 Remedial action required as a result of Relevant Operators' activities

2.1 Where:

2.1.1 Network Rail becomes aware that, as a result of any activities of a Relevant Operator, or its Associates, an Environmental Condition exists or has occurred at the Station or the Adjacent Property and Network Rail reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or

2.1.2 Network Rail is given a Direction by a Competent Authority that any action is required to prevent, mitigate or remedy an Environmental Condition resulting from activities of a Relevant Operator or its Associates at the Station or the Adjacent Property,

Network Rail shall inform that Relevant Operator of the need to take such action.

2.2 Any Relevant Operator responsible for the Environmental Condition shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition and shall provide Network Rail and the Station Facility Owner with the opportunity to supervise such action (the reasonable costs of such supervision to be borne by the Relevant Operator). The Relevant Operator shall complete such action within a reasonable time and to the reasonable satisfaction of Network Rail and the Station Facility Owner.

2.3 Any action taken by the Relevant Operator pursuant to Conditions M2.1 and M2.2 shall be at its own cost.

2.4 Where the Relevant Operator fails to take or complete any action required by Condition M2.1 and M2.2 within a reasonable time and to the reasonable satisfaction of Network Rail, Network Rail shall be entitled to take or complete such action.

Condition M3 Remedial action required due to pre-existing Environmental Condition

3.1 Where the Station Facility Owner becomes aware that an Environmental Condition exists at the Station and the Station Facility Owner reasonably considers as an experienced operator of stations:

3.1.1 that the condition could give rise to Network Rail liability under the Network Rail Environmental Indemnity; and

3.1.2 that immediate action is necessary in order to mitigate the extent of such liability,

the Station Facility Owner shall take such action (without the need to comply with the provisions of Part C) and shall inform Network Rail of that action as soon as reasonably practicable. Where the Station Facility Owner takes such action, any liability of Network Rail pursuant to the Network Rail Environmental Indemnity shall include the Station Facility Owner's reasonable costs in so doing.

3.2 Subject to Condition M3.1, where the Station Facility Owner becomes aware of an Environmental Condition which could give rise to Network Rail liability under the Network Rail Environmental Indemnity and reasonably considers it necessary or appropriate to take any action to remedy or mitigate that condition, it shall give Network Rail 21 days notice of the action which it proposes to take including:

3.2.1 the details of the action proposed and the reasons for it;

3.2.2 the persons who will carry out any such action;

3.2.3 the estimated cost of the action; and

3.2.4 copies of all relevant data, reports, records, advice, statements, opinions, correspondence and any other relevant documentation.

3.3 Where Network Rail receives notification from the Station Facility Owner pursuant to Condition M3.2, Network Rail shall either consent to the action proposed (such consent not to be unreasonably withheld or delayed) or elect to prevent, remedy or mitigate the condition pursuant to Condition M4.1. Network Rail shall notify any such election to the Station Facility Owner within 21 days of the notification.

3.4 Subject to Condition M3.1, the Station Facility Owner shall not commence any action or enter into binding arrangements to do so unless Network Rail gives its consent pursuant to Condition M3.3.

3.5 Within 21 days of receiving notification of any act or potential claim, judgment, order, notice, direction or injunction which could give rise to Network Rail liability under the Network Rail Environmental Indemnity, the Relevant Operator shall provide Network Rail with written details thereof. Such details shall include copies of all relevant data, reports, advice, opinions, statements, correspondence and any other relevant document.

3.6 Where Network Rail receives notification from a Relevant Operator pursuant to Condition M3.5, Network Rail shall have a right to:

3.6.1 defend, contest, comply with or settle any claim, judgment, order, notice, direction or injunction; and/or

3.6.2 take any action or carry out any works to prevent, mitigate or remedy the condition of the Station pursuant to Condition M4 which could give rise to an obligation of Network Rail to indemnify the Relevant Operator under the Network Rail Environmental Indemnity.

Condition M4 Network Rail remedial action

4.1 If:

4.1.1 in Network Rail's reasonable opinion, urgent action is necessary in order to prevent, mitigate or remedy an Environmental Condition or to comply with a Direction of a Competent Authority; or

4.1.2 if it is in the circumstances not reasonably practicable for the Station Facility Owner to do so,

Network Rail may take (without the need to comply with Part C) reasonable steps to prevent, mitigate or remedy that Environmental Condition or to comply with that Direction. Network Rail shall inform the Station Facility Owner as soon as is reasonably practicable of any steps which it proposes to take pursuant to this Condition M4.1.

4.2 Subject to Condition M4.1, Network Rail may, if action is in its reasonable opinion necessary in order to prevent, mitigate or remedy an Environmental Condition at the Station for which a Relevant Operator is not responsible, take such action upon at least 6 months notice to the Station Facility Owner.

4.3 Where any action is taken pursuant to Conditions M3.1, M3.3, M4.1 or M4.2 to prevent, remedy or mitigate an Environmental Condition which is not the result of the activities of any Relevant Operator or its Associates or to the condition of the Station prior to the Environmental Liability Commencement Date, the cost of such action shall be borne between Network Rail and the Relevant Operators on a fair and equitable basis.

Condition M5 Environmental indemnities

5.1 The Station Facility Owner and each User shall indemnify Network Rail and keep it indemnified from and against all reasonable and proper expenses, costs and liabilities reasonably and properly incurred by Network Rail as a result of any Environmental Condition at the Station or the Adjacent Property which exists as a result of activities by that person or its employees, agents, contractors, subtenants or licensees since the Environmental Liability Commencement Date, or the proper undertaking by Network Rail in accordance with this Part M of any steps to prevent, mitigate or remedy such an Environmental Condition.

5.2 Network Rail shall indemnify each Relevant Operator from and against all Environmental Liability (including any costs under Condition M3.1) incurred by each Relevant Operator to the extent that such liability is due to the condition of the Station prior to the Environmental Liability Commencement Date, provided that Network Rail shall not be liable under this Condition M5.2 for any Environmental Liability which results from the Relevant Operator's failure to comply with the obligations contained in this Part M.

5.3 If any payment is made by:

- 5.3.1 Network Rail to a Relevant Operator under Conditions M4.3 or M5.2; or
- 5.3.2 a Relevant Operator to Network Rail under Condition M5.1,

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

- 5.3.3 the amount recovered from the third party; and
- 5.3.4 the amount paid by the payer pursuant to that Condition.

Condition M6 Conduct of claims

6.1 Whether or not Network Rail elects to act under Condition M3.6, the Relevant Operator shall on a timely basis keep Network Rail informed of the conduct and progress of all claims of the kind referred to in Condition M3.5. The Relevant Operator shall provide promptly to Network Rail copies of all relevant data, reports, records, pleadings, statements, correspondence, advice and opinions concerning any claim, judgment, order, notice, direction or injunction or the circumstances, events, conditions or activities which could give rise to any liability of Network Rail to indemnify the Relevant Operator under the Network Rail Environmental Indemnity.

6.2 The Relevant Operator shall not settle any claim of the kind referred to in Condition M3.5 without Network Rail's written consent (such consent not to be unreasonably withheld or delayed).

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

Condition M7 Confidentiality

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

PART N **OTHER POSITIVE OBLIGATIONS**

Condition N1 Station Facility Owner's obligations

The Station Facility Owner shall (or shall procure that another person on its behalf shall):

1.1 ensure that the Station is open for use by all Users and their Associates at such times and to such extent as are specified in paragraph 5 of Annex 1, subject to any restrictions or limitations which may apply or be imposed pursuant to these Station Access Conditions;

1.2 until Network Rail has entered into a Collateral Agreement, procure the performance of Network Rail's obligations set out in these Station Access Conditions;

1.3 use all reasonable endeavours to ensure that the Common Station Services are provided to a standard and in a quantum which is at least as good as their standard and quantum as at the Relevant Date or, if any permitted changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;

1.4 save as otherwise provided for or permitted by these Station Access Conditions:

1.4.1 not change materially the Common Station Services (whether in whole or in part) from the condition (or working order), standard or quantum referred to in Condition N1.3 without such change having been approved in accordance with these Station Access Conditions;

1.4.2 not change materially the Common Station Amenities (whether in whole or in part) without such change having been approved in accordance with these Station Access Conditions;

1.5 notwithstanding its obligations under its station licence, comply with any reasonable request of any User or Network Rail which is necessary to enable that User or Network Rail to:

1.5.1 deal with an Emergency or a Network Rail Emergency;

1.5.2 comply with its Safety Obligations;

1.5.3 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; and

1.5.4 maintain security in relation to persons and property at the Station or the Adjacent Property;

1.6 use all reasonable endeavours to minimise the costs of the operation of the Station:

1.6.1 by paying the best effective price reasonably obtainable for or in respect of any goods or services having regard to the efficient and economic operation of the Station for the benefit of each Relevant Operator in order to provide the Common Station Services and the Common Station Amenities; and

1.6.2 if:

(a) the Station Facility Owner intends to procure that any person other than the Station Facility Owner or its agents shall provide the Common Station Services or the Common Station Amenities, or any part of them, or that any such person shall provide to the Station Facility Owner or any person acting on his behalf any

goods or services in connection with the provision of the Common Station Services or the Common Station Amenities; and

(b) the amount which shall be payable for them shall reasonably be expected to be greater than the amount specified in paragraph 20 of Annex 9 in any period of 52 weeks,

then the Station Facility Owner shall, unless the Requisite Majority shall otherwise consent, obtain competitive tenders in respect of the provision of the relevant Common Station Services, Common Station Amenities or such goods or services by such other person, and in seeking such competitive tenders shall:

(c) issue invitations to submit tenders on terms that any bids must be:

(i) for the provision of such Common Station Services, Common Station Amenities or such goods or services by such other person in accordance with any specifications in respect thereof as may have been established in accordance with these Station Access Conditions or, if none has been so established, then a specification determined in accordance with the procedure set out in Annex 11; and

(ii) for such reasonable period as the Station Facility Owner may reasonably determine, after consultation with each of the Users and after having due regard to any representation made by any of them;

(d) (without limitation to the invitations to submit a tender which the Station Facility Owner may otherwise issue) where a User or any person nominated by a User pursuant to this Condition N1.6.2(d) satisfies any objective qualification criteria or requirements in respect of persons to whom it proposes to issue invitations to submit tenders issue an invitation to submit a tender to each User and, if any User shall within 14 days of the issue of that invitation to it notify the Station Facility Owner that it does not propose to submit a tender but nominates another person which is a reputable and appropriately experienced provider of goods or services of the same or similar nature to those in question, to any person so nominated. The qualification criteria and requirements shall be generally established by the Station Facility Owner in accordance with procedures which are fair and designed to exclude persons who may reasonably be regarded as unsuitable to provide goods and services. Such qualification criteria and requirements (and the procedures for their establishment) shall be entered in the Station Register pursuant to Condition I2;

(e) exercise reasonable skill and care, and act in good faith;

(f) as soon as the Station Facility Owner shall be aware, or ought with the exercise of reasonable diligence to have become aware, of its having any interest (whether direct or indirect) in the relevant proposed contract or any of the tenderers or any supplier or sub-contractor of a tenderer, give notice of that interest to each User;

(g) give notice to each User (other than a User which submits a bid) of every bid received, and any rebids, amendments to bids and subsequent negotiations, and the name and address of the person to whom the Station Facility Owner proposes to award the relevant contract, together with a statement of the Station Facility Owner's reasons for the selection; and

(h) have due regard before entering into the contract in question to any representations or objections made by any User (other than a User which submits a bid) within 5 Business Days after the giving of such notice, and promptly thereafter enter into the contract in question;

1.7 not less than 60 days prior to the expiry of any Exclusive Period, notify each User that the relevant exclusive use of the Exclusive Station Service at the Station is no longer reserved for the exclusive use of the User previously entitled;

1.8 save as otherwise specifically provided in these Station Access Conditions, provide or procure the provision of the Common Station Services and the Common Station Amenities;

1.9 without prejudice to Condition Q2.3, promptly pay to the relevant authority or person (or reimburse Network Rail for) all rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Station, including any assessed against Network Rail and a fair proportion (to be determined by Network Rail's Surveyor, acting reasonably) of all such sums which are not separately assessed or payable, but excluding:

1.9.1 tax assessable on Network Rail in respect of payments under any Relevant Agreement;

1.9.2 tax assessable on Network Rail in respect of consideration paid to Network Rail in connection with any dealing with its interest in the Station; or

1.9.3 interest or penalties payable by Network Rail in consequence of its delay or default;

1.10 promptly pay to the relevant person (or reimburse Network Rail) for all Services consumed on the Station or a fair proportion (to be determined by Network Rail's Surveyor, acting reasonably) of the cost to Network Rail in respect of the supply of such services to the Station, the Adjacent Property and any other premises;

1.11 observe and perform (or reimburse Network Rail for the whole or a due proportion, as the case may require, of the costs incurred by Network Rail in doing so) all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Station or its use;

1.12 pay to Network Rail from time to time on demand a fair proportion according to the use made by the Station Facility Owner or other Users or occupiers of the Station of the cost incurred (or payable as appropriate) by Network Rail from time to time in respect of inspecting, repairing, cleansing, maintaining, renewing, replacing, lighting and marking paths, roads, yards or other areas, conduits, walls, fences, works or other structures or facilities used or available to be used in common by the Station Facility Owner or other Users or occupiers of the Station and Network Rail or others or otherwise enjoyed by the Station similarly in common, provided that to the extent that any such cost would have been the responsibility of Network Rail had the subject matter of that item formed part of the Station then that item is not to be chargeable to the Station Facility Owner to that extent;

1.13 pay to Network Rail on demand the costs and expenses which Network Rail may properly incur in connection with:

1.13.1 preparing and serving, in respect of the Station, any notice under section 146 or section 147 Law of Property Act 1925 (even if forfeiture shall be avoided without a court order), or preparing and serving any notice under section 6 Law of Distress Amendment Act 1908 or section 81 Tribunals, Courts and Enforcement Act 2007;

- 1.13.2 preparing and serving notices and schedules relating to lack of repair or breaches of matters for which the Station Facility Owner is responsible under these Station Access Conditions and agreeing and inspecting or supervising (where reasonably required) the works needed to remedy such lack of repair or matters for which the Station Facility Owner is responsible (whether before or after the expiry of any Relevant Agreement); and
- 1.13.3 (save where Part C applies) dealing with any application by the Station Facility Owner for any consent or approval required in relation to the Station (whether or not it is given but not where consent is unreasonably withheld), including inspecting or supervising (where reasonably required) any approved works;
- 1.14 take all reasonable steps to prevent, and not to allow, any encroachment on the Station or the acquisition of any right or easement against the Station (save for the rights granted in accordance with these Station Access Conditions), provided that if the Station Facility Owner fails in any respect to comply with this Condition N1.14, then it shall be lawful for Network Rail to enter the Station for the purpose of taking such steps as Network Rail reasonably determines to be necessary or expedient and, where this is necessary for Network Rail to establish a locus standi or appropriate for any other legal reason, to bring all such actions and proceedings as Network Rail thinks fit in the name of the Station Facility Owner;
- 1.15 immediately the Station Facility Owner is (or ought reasonably to be) aware of any of them, give notice in writing to Network Rail of anything done or threatened by a third party which obstructs or would obstruct the access of light or air to any window or opening in the Station and of any encroachment threatened or made or any attempt to acquire any right or easement;
- 1.16 maintain at the Station a notice under section 55 British Transport Commission Act 1949;
- 1.17 supply to Network Rail a copy of any notice, order, direction, licence, consent or planning permission (or proposal for any of these) relating to the Station or its use or occupation as soon as reasonably practicable after receipt thereof by the Station Facility Owner (having regard to requirements or stated time limits of the notice or other document) and if so required by Network Rail to consult with it as regards the possibility of making, or joining Network Rail in making, such objections or representations against or in respect of any such matters as may be agreed;
- 1.18 provide and keep in working order at the Station such fire extinguishers and/or other fire safety equipment and maintain such fire precaution arrangements as shall ensure satisfactory safety from the risks of fire or explosion and as shall be to the reasonable satisfaction of Network Rail (but this shall not imply any obligation for Network Rail to investigate the arrangements, nor imply that the requirements of Network Rail take precedence over requirements of Statute);
- 1.19 be responsible for producing copies to Network Rail on request of those matters which the Station Facility Owner is to record in relation to the Station by virtue of the Regulatory Reform (Fire Safety) Order 2005; ;
- 1.20 use all reasonable endeavours to collect any sums payable by existing or future tenants of the Station Facility Owner on account of services or other matters for which Network Rail is responsible and on receipt of such sums, pay them immediately to Network Rail;
- 1.21 where the Railway Superstructure comprises or includes a railway arch, remove or procure that any undertenant at the undertenant's own expense removes, at the request of Network Rail, any cladding, false walls and ceilings, metal sheeting or other attachments now or later affixed in the arch to enable Network Rail to carry out (if it so wishes) periodic inspection and maintenance of the structure of the Railway Superstructure or Railway Substructure, provided that:

1.21.1 where the Station Facility Owner is to undertake such removal (as distinct from procuring that an undertenant does so), this shall be at the expense of the Station Facility Owner where the attachments were made after the date these Station Access Conditions first became effective or at Network Rail's reasonable expense in other cases (subject to Network Rail having the option to undertake or arrange for this work itself);

1.21.2 such request shall not be made more frequently than once every twelve months without reasonable cause;

1.21.3 if any underlease existing at 1st April 1994 (or a renewal of it) provides for removal of cladding to be at joint or at the lessor's expense, Network Rail shall indemnify the Station Facility Owner against all costs properly and reasonably paid to the undertenant in consequence of Network Rail's requirement for the cladding to be renewed;

1.22 observe and comply with its obligations under its Relevant Agreement with Network Rail insofar as failure to perform such obligations would, or would be likely to, operate to the detriment of a User; and

1.23 not (and shall use all reasonable endeavours to procure that no person shall) save pursuant to an Existing Agreement or the operation of a Relevant Agreement place any sales barrows or exhibition stand on the Station so as to obstruct:

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

1.23.2 the visibility of any Passenger Information System.

1.24 pay to Network Rail on demand 75% of the costs and expenses which Network Rail may demonstrate have been properly and exclusively incurred in procuring that all Track Litter is collected and disposed of in accordance with Condition N2.3.

Condition N2 Network Rail's obligations

2.1 Network Rail shall (or shall procure that another person on its behalf shall):

2.1.1 where the Station and the Adjacent Property receive Services through the Station, and the Station Facility Owner is primarily responsible to the supply authority in respect thereof, promptly pay (or reimburse the Station Facility Owner for) a fair proportion (to be determined by the Station Facility Owner's Surveyor, acting reasonably) of the cost to the Station Facility Owner in respect of the supply of such services to the Station and the Adjacent Property and any other premises;

2.1.2 observe and perform (or reimburse the Station Facility Owner for the whole or a due proportion, as the case may require, of the costs incurred by the Station Facility Owner in doing so) all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Adjacent Property or its use;

2.1.3 comply with any reasonable request of the Station Facility Owner or a User which is necessary to enable the Station Facility Owner or User to:

- (a) deal with an Emergency;
- (b) comply with its Safety Obligations;
- (c) maintain security in relation to persons and property at the Station; and

(d) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; and

2.1.4 keep the Railway Substructure and the Railway Superstructure in a safe condition to the extent that it is not the responsibility of any third party;

2.2 In exercising its rights in Part K Network Rail shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Relevant Agreement place any sales barrow or exhibition stand on the Station so as to obstruct:-

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

2.2.2 the visibility of any Passenger Information System.

2.3 Network Rail shall procure that all Track Litter is collected and disposed of to the extent required to ensure compliance with the Environmental Protection Act 1990 (or which would be so required if the track or land on which such Track Litter is present were relevant land of a principal litter authority as defined by the said Act).

Condition N3 Users' obligations

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

3.1 comply with any reasonable request of the Station Facility Owner or Network Rail which is necessary to enable the Station Facility Owner or Network Rail (as the case may be) to:

3.1.1 deal with an Emergency or Network Rail Emergency;

3.1.2 comply with its Safety Obligations;

3.1.3 maintain the security in relation to persons and property at the Station or the Adjacent Property; and

3.1.4 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;

3.2 take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition N3 insofar as they are applicable to them;

3.3 provide to the Station Facility Owner, for display at the Station, such information relating to changes in any railway passenger services provided by any User (including changes of a temporary nature) which shall be necessary or expedient in order to inform passengers of such changes in a timely manner;

3.4 timeously provide to the Station Facility Owner any notices which:

3.4.1 are required to be displayed at the Station;

3.4.2 contain or specify obligations binding on the User; and

3.4.3 are required to be provided by the User,

by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;

3.5 procure that the Station Facility Owner is provided with a copy of the User's passenger licence (if any) and the safety case referred to in such licence (to the extent that it shall not already have been provided to the Station Facility Owner) and any modification of it and any notices given under or in respect of it (including any notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of the Station Facility Owner under or in respect of the Station Access Agreement;

3.6 without prejudice to the provisions of Condition A1.1.15, timeously notify the Station Facility Owner if the User or any of its Associates wishes to:

3.6.1 carry out any material maintenance of, or work to, any thing kept on the Common Station Amenities;

3.6.2 bring things onto the Common Station Amenities which may affect the proper operation of the Common Station Amenities; or

3.6.3 enter upon the Common Station Amenities with vehicles;

3.7 use all reasonable endeavours to liaise and co-operate with other Users and the Station Facility Owner in relation to the exercise of their permission to use Common Station Amenities and Common Station Services in order to secure the efficient and economic use of the Station for the benefit of Users and their Associates;

3.8 perform and observe (or reimburse the Station Facility Owner for the whole or a due proportion, as the case may require, of the costs incurred by the Station Facility Owner in doing so) all present and future regulations and requirements of any utility supplying Services to the Station; and

3.9 perform and observe the covenants, obligations and conditions for the time being contained in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Station and bind Network Rail, except:

3.9.1 the covenants for payment of rent and (to the extent that the Station Facility Owner is not required to pay them under any other Relevant Agreement) any other money payable by Network Rail to the Superior Estate Owner under any Superior Estate Grant; and

3.9.2 any obligations assumed by the Station Facility Owner under these Station Access Conditions.

Condition N4 Standard of works

4.1 The Station Facility Owner and Network Rail shall procure that:

4.1.1 works referred to in Part D and any other works to any part of the Station or Adjacent Property permitted by these Station Access Conditions which are carried out by it or on its behalf are conducted in a proper and workmanlike manner in accordance with Safety Obligations and methods and practices customarily used in good and prudent building practice (including, where applicable, Railway Group Standards);

4.1.2 such works are conducted with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced building contractors engaged in a similar activity under similar circumstances and conditions; and

4.1.3 any physical damage to the Station or the Adjacent Property arising as a result of such works is made good as soon as reasonably practicable.

Condition N5 Collateral Agreement

In relation to any Station Access Agreement, Network Rail shall forthwith (and in any event before the date on which the Station Access Agreement is to take effect) upon written request by the Station Facility Owner or any potential User enter into a Collateral Agreement with the relevant User.

PART O OTHER NEGATIVE OBLIGATIONS

Condition O1 Planning

1.1 No Relevant Operator shall make any application for planning permission or for a determination that planning permission is not required in respect of the Station or in respect of any change of use of the Station without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed).

1.2 No Relevant Operator shall make any alteration or addition to or change of use of the Station (notwithstanding any other consent which may be granted by Network Rail) before all necessary planning permissions have been obtained.

Condition O2 Encroachments

2.1 No Relevant Operator shall stop up or obstruct any window or other opening at the Station except so far as such action shall be necessary to preserve the safety or security of persons or property at the Station and, if so necessary, the Relevant Operator in question shall notify Network Rail of the action taken if the window or opening opens onto land other than Adjacent Property.

2.2 No Relevant Operator shall give to any third party any acknowledgement that such Relevant Operator or any other person enjoys the access of light or air to any of the windows or openings in the Station by the consent of that third party, nor pay any money to or enter into any agreement with that third party for the purpose of inducing or binding it not to obstruct the access or light or air to any such windows or openings.

Condition O3 Signs

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

Condition O4 Excavations/Excluded Equipment and Excepted Equipment

4.1 No Relevant Operator shall carry out any continuous unsupported excavation at the Station, or do anything at the Station which will or is likely to endanger the safety or stability of any railway or of any Adjacent Property.

4.2 No Relevant Operator shall interfere with or endanger the Excluded Equipment or the Excepted Equipment.

Condition O5 Use

5.1 No Relevant Operator shall use the Station otherwise than:

5.1.1 in the case of the Station Facility Owner, for any of the following purposes:

- (a) providing or securing the provision of station services;
- (b) such other purposes as shall be necessary or expedient for giving full effect to the purposes in paragraph (a) above; and
- (c) such other purposes as may be approved in writing by Network Rail (such consent not to be unreasonably withheld or delayed), and which shall not be incompatible with, or detract from or interfere with:

- (i) the grant by the Station Facility Owner to any User of permission to use the Station; or
- (ii) the operation or maintenance of the Network; and

5.1.2 in the case of any Relevant Operator, for any of the purposes contemplated by Condition A1.1.15 (and for the purpose of construing this Condition O5.1.2, the Station Facility Owner shall be treated as though it were also a User).

5.2 Network Rail confirms, for the purposes of Condition O5.1.1(c), approval to those uses prescribed in the Existing Agreements in relation to the areas respectively covered by them.

5.3 An approval confirmed by Network Rail under Condition O5.2, or given by Network Rail under Condition O5.1.1(c), for any retail use of any part of the Station includes approval for any other retail use for the time being of that part of the Station.

5.4 No Relevant Operator shall do or, to the extent reasonably within its control, permit to be done on the Station anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to any other Relevant Operator or to Network Rail or its tenants or the occupiers of any neighbouring property or the public, provided that:

5.4.1 without prejudice to Condition M1.2, the proper use of the Station for any of the purposes set out in Condition O5.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition O5.4; and

5.4.2 nothing in Condition O5.4.1 shall operate to sanction anything which shall constitute a nuisance actionable by any third party.

5.5 Neither Network Rail nor any Relevant Operator shall bring or, to the extent reasonably within its control, permit to be brought onto the Station anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.

5.6 Without prejudice to Condition M1.2 nothing in Conditions O5.4, O5.5 and O5.7 shall prevent the lawful bringing onto the Station of anything which may reasonably be required for or in connection with use of the Station for the purposes permitted by Condition O5.1 or the proper performance by the Station Facility Owner of its obligations under a Station Access Agreement or Existing Agreement.

5.7 Neither Network Rail nor any Relevant Operator shall permit smoking or naked lights within the Station where the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 and the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 apply and no dispensation exists.

Condition O6 Overloading

Neither Network Rail nor any Relevant Operator shall overload structural parts of the Station, any Railway Superstructure or Railway Substructure or the works or structures by which it is supported, or do anything which will cause the designed capacity of any part of the Station or the Conduits at or used for the Station to be exceeded, to the extent that such capacity is reasonably capable of being ascertained in advance, or its adequacy reasonably capable of being called in question.

Condition O7 Improper use of Station

Except as otherwise permitted by the Relevant Agreement, no Relevant Operator shall take or omit to take (nor, to the extent reasonably within its reasonable control, permit to be taken or

omitted) any action which would involve improper use of the Common Station Amenities, increase the risk of loss or damage to those amenities or otherwise adversely affect Common Station Services.

Condition O8 Works to Station

No Relevant Operator shall:

8.1 cut into or injure the brickwork, foundations or any other part of the Railway Substructure or Railway Superstructure or install (without in either case the previous written approval of Network Rail) against or within the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace; or

8.2 carry out any paint spraying (other than water paint spraying) beneath the Railway Substructure or Railway Superstructure without any requisite licence from the local or other appropriate authority and without compliance with any requirements of such authority (including construction of any necessary booth unless formally exempted by the authority).

Condition O9 Not causing breach

9.1 Neither Network Rail nor a Relevant Operator shall do or omit to do, or permit any Associate (other than passengers) or agent of such person to do or omit to do, anything which may result in a breach of any obligation in these Station Access Conditions by any of the Relevant Operators or Network Rail to any other of them.

9.2 No Relevant Operator shall do anything in breach of, the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Station and bind Network Rail.

Condition O10 Damage caused through Railway Substructure and Railway Superstructure

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

PART P ATTRIBUTION OF COSTS

Condition P1 Application of this Part

The provisions of this Part P shall not affect the proportions in which Qualifying Expenditure or the Long Term Charge is borne by Passenger Operators and the Station Facility Owner.

Condition P2 Compliance with obligations under Conditions

If Network Rail or any Relevant Operator shall reasonably incur any costs in complying with their respective obligations under Conditions G5.3, N1.11, N1.12, N1.13 and N2, the liability for the payment of those costs as between Network Rail and each Relevant Operator shall be determined on a fair and equitable basis, having regard to the following criteria:

2.1 if the costs arise from a Proposal that has been accepted in accordance with Part C (other than a Material Change Proposal made pursuant to Condition C4) the costs shall be attributed in accordance with the terms of such proposal (if applicable);

2.2 if the costs arise from the grant, after the Conditions Efficacy Date, of any underlease for residential purposes (except a grant by way of the compulsory renewal of a residential underletting which subsisted on 1 April 1994), then the costs shall be wholly those of the Station Facility Owner; and

2.3 if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Station or Equipment (other than Excluded Equipment), then such costs shall be attributed to the Station Facility Owner or to Network Rail in accordance with their respective obligations under Conditions D5 and D4.

Condition P3 Compliance with changes imposed by law

If any Relevant Operator shall reasonably incur any costs in complying with, or in consequence of, any Change of Law or any Direction of any Competent Authority (other than any body appointed in accordance with Condition H5), or in complying with Non-Discretionary Changes under Condition C6, the liability for the payment of those costs as between any of Network Rail and the Relevant Operators shall be determined on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act and subject to those matters:

3.1 the expectations which:

3.1.1 the Relevant Operator in question could reasonably have had when he entered into the Station Access Agreement; and

3.1.2 Network Rail reasonably has in respect of its interests in relation to the Station;

3.2 the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by Network Rail and each Relevant Operator upon such change being carried out;

3.3 the benefits or disadvantages which have accrued and are likely to accrue to Network Rail and each Relevant Operator in consequence of the change;

3.4 the scale of disruption to Network Rail's and each Relevant Operator's business which is likely to occur in consequence of the change; and

3.5 any Relevant Operator's franchise term (as defined in section 23(3) of the Act) (if applicable),

provided that there shall not for these purposes be taken into account the existence or terms of any contract entered into by Network Rail after 1 April 1994 except to the extent that the tribunal shall be satisfied that they ought properly to be taken into account.

Condition P4 Basis of accounting and payment

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

4.2 Network Rail and each Relevant Operator shall promptly make such payments as are necessary to discharge their respective liabilities for the payment of the costs to which Conditions P2 and P3 relate.

Condition P5 Apportionment of costs

Any costs incurred both in relation to:

5.1 Qualifying Expenditure; and

5.2 any other matter or thing,

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

Condition P6 Minimisation of costs

Network Rail and the Station Facility Owner shall pay the best effective price reasonably obtainable in respect of any costs and expenses which they are respectively entitled under these Station Access Conditions to recoup or obtain reimbursement from any other of them or from any User.

PART Q **GENERAL**

Condition Q1 Confidentiality

1.1 Except as permitted by Condition Q1.2 or Condition Q1.3, all data and information acquired or received by any party under or pursuant to the Relevant Agreement shall be held confidential during the continuance of such agreement and for the period specified in paragraph 21 of Annex 9 thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.

1.2 Any party to the Relevant Agreement shall be entitled in good faith to divulge any data or information to which Condition Q1.1 applies without the approval of the other party to the following third parties and, where relevant, in the following circumstances:

1.2.1 to the Secretary of State;

1.2.2 to the ORR;

;

1.2.3 to the Health and Safety Executive;

1.2.4 to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;

1.2.5 to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under the Relevant Agreement or to enforce its rights under such Agreement, upon obtaining an undertaking of strict confidentiality from such person (other than such an officer or employee of the party in question);

1.2.6 to any person who has entered into bona fide discussions with the Station Facility Owner in relation to the entry by that person into a Station Access Agreement, in respect of information:

(a) contained on the Station Register; or

(b) in any set of financial accounts (and supporting information) in respect of the Common Station Amenities and Common Station Services,

upon obtaining an undertaking of strict confidentiality from such person;

1.2.7 to any lender, security trustee, bank or other financial institution from whom such party or any person referred to in Conditions Q1.2.4 to Q1.2.6 is seeking or obtaining finance, upon obtaining an undertaking of strict confidentiality from such entity or advisers;

1.2.8 to any professional advisers or consultants of such party or any of the foregoing persons and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

1.2.9 to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

1.2.10 to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;

1.2.11 pursuant to the order of any court or tribunal of competent jurisdiction;

1.2.12 where the Relevant Agreement is a lease, to any person;

1.2.13 to London Underground Limited to the extent that:-

(a) such information is in respect of the interaction between the operations of the Station Facility Owner and the Users and the operation of railway passenger services by London Underground Limited; and

(b) it is necessary to divulge such information for the safety and efficiency of any of such operations or services; or

1.2.14 to the relevant passenger transport executive or its successor to the extent that the party disclosing the same is legally obliged to do so.

1.3 Network Rail may disclose information to which this Condition Q1 applies if and to the extent that Part 9 of Schedule 7 of any access agreement conferring permission to use track for the purpose of operation of trains on that track for the carriage of passengers by railway so provides.

Condition Q2 Payments, default interest and VAT

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

2.2 Payments gross All sums due under the Relevant Agreement shall be paid:

2.2.1 without deduction or withholding in respect of duties, taxes, taxation or charges otherwise of a taxation nature, unless the deduction or withholding is required by law, in which event the payer shall:

(a) ensure that the deduction or withholding does not exceed the minimum amount legally required;

(b) account to the relevant taxation or other authorities within the period for payment permitted by the applicable law for the full amount of the deduction or withholding; and

(c) furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

2.2.2 free and clear of any other deduction, withholding, set-off or counterclaim save only as may be required by law or in accordance with the Relevant Agreement.

2.3 VAT Where:

2.3.1 any taxable supply for VAT purposes is made under or in connection with the Relevant Agreement by a party to that agreement to any other party, the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of that supply;

2.3.2 under the Relevant Agreement a party to that agreement has agreed to reimburse or indemnify any other party in respect of any payment made or cost incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the indemnified party is treated as a member of a group for VAT purposes, under sections 25 and 26 of the Value Added Tax Act 1994; and

2.3.3 any rebate or repayment of any amount is payable by one party to a Relevant Agreement to any other party, and the first party is entitled as a matter of law or of H.M Revenue & Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

Condition Q3 Invalidity and waiver

3.1 Invalidity If any provision in the Relevant Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of the Relevant Agreement but the legality, validity and enforceability of the remainder of such agreement shall not be affected.

3.2 Waiver No waiver by any party of any default by any other in the performance of any of the provisions of the Relevant Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under the Relevant Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy under the Relevant Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

ANNEXES TO NATIONAL STATION ACCESS CONDITIONS 2013

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ANNEX 1

COMMON STATION AMENITIES AND SERVICES

1 Common Station Amenities for all Users

1.1 All forecourts, concourses, platforms, subways, overbridges, and other parts of the Station necessary or expedient to enable access to and egress from the Station and access to, egress from and the use of the amenities listed in paragraphs 1.2 and 1.3 (other than such areas of the concourse (if any) as are described in paragraph 24 of Annex 9 and for the duration(s) therein mentioned);

1.2 staff amenities for the non-exclusive use of each User's staff and the staff of its Associates and any person engaged by a User or any of its Associates;

1.3 first aid amenities available for all users of the Station (where set out and to the standard set out in the safety case relating to the Station);

1.4 fire detection, fire alarm, fire prevention and fire fighting equipment and sprinkler systems and other safety equipment reasonably considered by the Station Facility Owner to be necessary for the safe operation of the Station; and

1.5 machinery and equipment necessary for the proper use of the amenities set out in paragraphs 1.1 to 1.3 (inclusive), including all lifts and escalators subject to any restrictions which the Station Facility Owner may reasonably consider appropriate and notify to each User, having regard to the nature or condition of such machinery.

2 Common Station Amenities for Passenger Operators

2.1 All forecourts, concourses, platforms, subways, overbridges and other parts of the Station necessary or expedient to enable access to, egress from and the use of the amenities listed in paragraphs 2.2 to 2.7 (inclusive) and paragraph 2.15;

2.2 public toilets;

2.3 left luggage amenity;

2.4 a reasonable number of public and emergency telephones;

2.5 short and long stay car parking amenities and taxi set down/pick up areas for use by railway passengers;

2.6 waiting rooms;

2.7 lost property amenities;

2.8 fixed timetable departure boards on the concourse and each platform (where appropriate), for use by each Passenger Operator and its Associates to advertise the departure times of its Passenger Services from the Station and boards for the display of the statutory and compulsory notices supplied by each User, both with reasonable prominence and equal prominence with the notices of the Station Facility Owner and other Passenger Operators;

2.9 a reasonable number of moveable boards for use by each Passenger Operator and its Associates to inform its or their customers of any alteration to train timetables or movements, the Station Services or the Common Station Amenities, which cannot be efficiently communicated by the use of any available electronic passenger information systems;

- 2.10 directional signing including to and from car parks to facilitate railway passenger movement and emergency exit with reasonable prominence;
- 2.11 electronic passenger information systems, in positions of reasonable prominence;
- 2.12 a public address system which is clearly audible throughout the Station;
- 2.13 passenger self-help trolleys;
- 2.14 a public clock;
- 2.15 a customer service centre;
- 2.16 the areas open to the public adjacent to or adjoining any ticket, booking or passenger information outlet;
- 2.17 wheelchair or other suitable transport for passengers with impaired mobility and ramps to allow safe wheelchair access to trains; and
- 2.18 clear and unambiguous directional signage within the Station.

3 Common Station Services for all Users

- 3.1 Cleaning of the Station;
- 3.2 heating, ventilating and cooling of the Station to such temperatures as the Station Facility Owner reasonably determines and securing the provision of adequate quantities of hot water to the Common Station Amenities;
- 3.3 proper lighting of the Station;
- 3.4 such policing as may be required by statute and such security measures as the Station Facility Owner reasonably considers are necessary;
- 3.5 display of the notices provided by a User;
- 3.6 punctual despatch of trains operated by or on behalf of any User;
- 3.7 the provision of competent and appropriately trained staff to supervise the arrival and departure of trains; and
- 3.8 any Light Maintenance Services

4 Common Station Services for Passenger Operators

- 4.1 Procure the production and display of timetable departure sheets in "A-Z" format and unbranded by any User or the Station Facility Owner updated to reflect changes to timetabled services (subject to receipt by the Station Facility Owner of up to date timetable information) which show the times and all calling points, train branding, catering symbols and train names where appropriate of all railway passenger services operated by Passenger Operators departing from the Station with equal prominence to the timetable departure sheets of each other Passenger Operator and its Associates;
- 4.2 display of emergency or temporary timetables and notices of engineering works;

4.3 the provision of sufficient numbers of competent and appropriately trained staff who will wear uniforms maintained in good order, including a name badge to provide reasonable customer services and assistance to each Passenger Operator's passengers (including any who are disabled), including customer assistance in relation to boarding and alighting from trains, and handling of luggage;

4.4 the provision of sufficient numbers of competent and appropriately trained staff to provide reasonable mobility assistance to each Passenger Operator's passengers (including any who are disabled);

4.5 display or announcement (with visibility and/or audibility which is at least equal to that given to the display or announcement of every Passenger Operator and its Associates), on or through all such Passenger Information Systems as shall be available at the Station, of such up-to-date and comprehensible information relating to the railway passenger services operated by Passenger Operators as the Station Facility Owner is reasonably capable of displaying or announcing and as is available to the Station Facility Owner;

4.6 display at the Station of information as to the availability of tickets for travel on all railway passenger services operated by Passenger Operators (with equal prominence) and where they may be purchased;

4.7 communication to passengers of such up-to-date train running information as is available to the Station Facility Owner and as relates to, or is likely to relate to, or be relevant in relation to, all railway passenger services operated by Passenger Operators;

4.8 liaison with the local authority to ensure, as far as reasonably practical, that access to the Station is signposted from all the main access routes for both motorist and pedestrians, and that all signs are clear and unambiguous;

4.9 display in the taxi pick-up area of a sign indicating how a taxi is called when none is immediately available;

4.10 provision to the relevant Passenger Operator of details of Station reception arrangements provided by the Station Facility Owner for disabled customers who have reserved journeys via the disabled persons reporting system on the Station "help-page" of the computer reservation system maintained by the relevant Passenger Operator, and updating of this information as necessary;

4.11 management of the arrival/departure of road services substituted for rail services for whatever cause; and

4.12 until 31st December 1998, the provision of domestic poster sites on concourses, platforms, subways and overbridges for use by Passenger Operators in promoting railway services in proportion to shares of Qualifying Expenditure free of charge but so that no Passenger Operator shall be entitled to part only of a poster site and any partial entitlement shall be rounded down (subject to a minimum of one poster site for each Passenger Operator).

5 The Station shall be open for the use of the staff of Users and their Associates (other than passengers) for the following hours:

[]

and to the public for the following hours:

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[]

provided that the following amenities shall be open only for the periods indicated below:

The Public Toilets: []

Left Luggage: []

Lost Property: []

Customer Service Centre: []

[other]

6 Station: []

Station name: []

Address/location: []

County or London Borough: []

The Station is shown edged in blue on the Plan and includes the boundary walls, fences and gates belonging to the Station (whether or not identified by lettering on the Plan).

The following features (where marked "YES") where so indicated under "Treatment" are included in, or excluded from, the Station and in each case are denoted on the Plan by the marking or lettering indicated below:

<u>Colour</u>	<u>Included on Plan</u>	<u>Treatment</u>
Yellow	YES/NO	Represents subway outside blue edging but included in the Station.
Green	YES/NO	Represents bridge, raft or station roof outside blue edging but included in the Station.
Red hatch	YES/NO	Represents bridge, raft, viaduct, arch or other overlying structure which is within blue edging but excluded from the Station.
Green hatch	YES/NO	Represents bridge, viaduct, arch, tunnel or other underlying structure which is within blue edging but excluded from the Station.
Purple	YES/NO	Represents the route of an emergency access from the Station referred to in Part J.
Black Part cross hatch	YES/NO	Represents car parking spaces referred to in K.
Brown colour and/or brown colour hatched	YES/NO	Represents a right of way referred to in Part J.

Uncoloured brown hatch and/or cross hatch	YES/NO	Represents a right of way referred to in Part K.
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Lettering	YES/NO	Represents boundary walls fences and gates belonging to the Station between the lettered points.
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7 Default Interest Rate

An interest rate of 0 per cent. for so long as all parties to the Relevant Agreement are public sector operators.

With effect from the date upon which any party to the Relevant Agreement ceases to be a public sector operator, the interest rate shall be 2 per cent. above the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period.

8 Core Facilities

8.1 Those spaces for the parking of motor vehicles by employees of a User which are necessary in order to facilitate the safe and/or efficient operation of trains to and from the Station by the relevant User;

8.2 those offices and storage spaces which are necessary for use by a User in order to facilitate the safe and/or efficient operation of trains to and from the Station by the relevant User;

8.3 those ticket sales and passenger information facilities which are necessary to obtain tickets for and information about the train services provided to or from the Station by a User; and

8.4 the messrooms, cloakrooms and staff toilets used by employees of a User.

9 Location of Station Register

[]

10 Station Facilities

The following, to the extent that they exist at the Station:

10.1 Platforms;

10.2 forecourts, concourses, subways and footbridges;

10.3 points of access to and egress from the Station and the platforms;

10.4 ticket, booking and passenger information offices;

10.5 public toilets;

10.6 waiting rooms;

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- 10.7 short and long stay car parking for use by railway passengers and essential staff of Users;
- 10.8 mess room, cloakroom and staff toilets for use by Users and their Associates' staff;
- 10.9 canopies;
- 10.10 electronic passenger information systems;
- 10.11 lifts and escalators;
- 10.12 Services;
- 10.13 public telephones;
- 10.14 public address system; and
- 10.15 public clocks.

APPENDIX 1 TO ANNEX 1

Specification for Common Services

[Insert output type specifications for those of the Common Station Services (eg Cleaning) (if any) which are to be further specified and where the specification is agreed. If not agreed, then Annex 11 can provide for this to be determined]

APPENDIX 2 TO ANNEX 1

The Plan

[Insert the Plan.]

APPENDIX 3 TO ANNEX 1

[Insert the Statement of Condition]

APPENDIX 4 TO ANNEX 1
 [_____] STATION - EQUIPMENT INVENTORY
 ALLOCATION OF RESPONSIBILITY

<u>Description</u>	<u>Present at Station</u>	<u>Quantity (where applicable)</u>	<u>Responsibility for Maintenance</u>	<u>Responsibility for Repair</u>
(1) Traction supply equipment (includes OHLE structures and/or feeder cables to conductor rails, but not the rails)	YES/NO	N/A	Network Rail	Network Rail
(2) Signalling equipment (includes gantries cables and other apparatus)	YES/NO	N/A	Network Rail	Network Rail
(3) Gas water and electricity utility supply equipment and transmission media	YES/NO	N/A	Network Rail	Network Rail

(4)	Sub-stations Meter rooms and main switch gear housing	YES/NO	N/A	Station Facility Owner	Network Rail
(5)	Boilers and heating systems	YES/NO	N/A	Station Facility Owner	Network Rail
(6)	Station Facility Owner's temporary buildings	YES/NO	N/A	Station Facility Owner	Station Facility Owner
(7)	Sprinkler	YES/NO	N/A	Station Facility Owner	Network Rail
(8)	Security Installations (including CCTV) and Fire Alarm Systems	YES/NO	N/A	Station Facility Owner	Network Rail
(9)	Air Conditioning Plant and Equipment	YES/NO	N/A	Station Facility Owner	Network Rail

(10)	Retail Telecomms Systems. This means the systems identified in (a) below, including (but not limited to) items mentioned in (b) below but excluding items mentioned in (c) below;	YES/NO	N/A		
(a)	public address systems information display systems (including LED, LCD, or flap-type (Solari boards) and monitoring monitor based systems)	YES/NO		Station Facility Owner	Network Rail (except that the Station Facility Owner is responsible for this in respect of tubes and (whether due to breakdown or timetable change) flaps on displays)
	Station clock systems	YES/NO		Station Facility Owner	Network Rail

	closed circuit TV for crowd control	YES/NO		Station Facility Owner	Network Rail
(b)	customer terminal/premises equipment associated with such systems e.g. processors, displays, speakers and amplifiers	YES/NO		Station Facility Owner	Network Rail
	local cabling and wiring, including any local data/analogue communication devices associated with the Station	YES/NO		Station Facility Owner	Network Rail

(c) Circuits connecting retail telecomms systems to remote locations (using intermediate and/or trunk telecomms cabling) or providing connections to other applications (for example, a form of information generator)

(11)	External lighting including platforms	YES/NO	N/A	Station Facility Owner	Network Rail
------	---------------------------------------	--------	-----	------------------------	--------------

(12)	Drainage	YES/NO	N/A	Station Facility Owner	Network Rail
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(13)	Gas installations, fittings and fixed appliances	YES/NO	N/A	Station Facility Owner	Network Rail
(14)	Electrical installations including fixed appliances	YES/NO	N/A	Station Facility Owner	Network Rail
(15)	Electrical power supply sockets and light fittings	YES/NO	N/A	Station Facility Owner	Station Facility Owner
(16)	Driver only operation equipment	YES/NO	N/A	Station Facility Owner	Network Rail
(17)	Central heating systems	YES/NO	N/A	Station Facility Owner	Network Rail
(18)	Sanitary installations and fittings where accessible and/or visible	YES/NO	N/A	Station Facility Owner	Station Facility Owner

(19)	Sanitary installations and fittings where not accessible or visible	YES/NO	N/A	Network Rail	Network Rail
(20)	Hot and cold water & soil waste plumbing installations where accessible and/or visible	YES/NO	N/A	Station Facility Owner	Station Facility Owner
(21)	Hot and cold water and soil waste plumbing installations where not accessible or visible	YES/NO	N/A	Network Rail	Network Rail
(22)	Flues	YES/NO		Station Facility Owner	Network Rail
(23)	Fixed seats	YES/NO		Station Facility Owner	Network Rail

(24)	Train despatch equipment	YES/NO	N/A	Station Facility Owner	Network Rail
(25)	Fixed and moveable fire appliances	YES/NO		Station Facility Owner	Network Rail (except that the Station Facility Owner is responsible for this in respect of extinguishers equipment and arrangements required to ensure (a) satisfactory safety from the risks of fire or explosion to the reasonable satisfaction of Network Rail or (b) obtaining or maintenance of any necessary fire certificate for the Station)
(26)	Pumping station	YES/NO	N/A	Station Facility Owner	Network Rail

(27)	Traffic management system controlling vehicular entry to any Station or any Car Park	YES/NO		Station Facility Owner	Network Rail
(28)	Lift installations	YES/NO		Network Rail	Network Rail
(29)	Escalator installations	YES/NO		Network Rail	Network Rail
(30)	Glasden ticket units	YES/NO		Station Facility Owner	Network Rail
(31)	Platform barriers	YES/NO		Station Facility Owner	Network Rail
(32)	Cycle racking	YES/NO	N/A	Station Facility Owner	Station Facility Owner
(33)	Waiting room furniture	YES/NO	N/A	Station Facility Owner	Station Facility Owner
(34)	Left luggage units	YES/NO		Station Facility Owner	Station Facility Owner

(35)	Customer service telephones & equipment	YES/NO	N/A	Station Facility Owner	Station Facility Owner
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APPENDIX 5 TO ANNEX 1

[] STATION - ELEMENTS INVENTORY

ALLOCATION OF RESPONSIBILITY

<u>Description</u>	<u>Responsibility for Maintenance</u>	<u>Responsibility for Repair</u>
A. <u>Substructures (excluding any finishes)</u>		
(1) Foundations	N/A	Network Rail
(2) Basements	N/A	Network Rail
(3) Basement tanking/waterproofing	N/A	Network Rail
(4) Arches and subways	N/A	Network Rail
(5) Structural slabs at ground level or below	N/A	Network Rail
(6) Damp proof membrane at ground floor level and below	N/A	Network Rail
(7) Retaining walls	N/A	Network Rail

B. Superstructure

(8)	Damp proof course	N/A	Network Rail
(9)	Frames, beams columns (excluding finishes)	N/A	Network Rail
(10)	Structural slabs (above ground floor level)	N/A	Network Rail
(11)	Floors (excluding finishes)	N/A	Network Rail
(12)	External staircases (excluding finishes)	Network Rail	Network Rail
(13)	Internal staircase (excluding finishes)	Network Rail	Network Rail
	<u>Roofs (Excluding Canopies)</u>		
(14)	Roof structure	Network Rail	Network Rail
(15)	Decking, coverings insulation	Network Rail	Network Rail
(16)	Roof access ladders, walkways and guardrails	Network Rail	Network Rail

(17)	Roof lights	Network Rail	Network Rail
(18)	Roof drainage	Station Facility Owner	Network Rail
(19)	Parapets	Network Rail	Network Rail
(20)	Chimneys above roof level	Network Rail	Network Rail
(21)	Station roof glazing	Network Rail	Network Rail
(22)	Tankrooms and roof mounted plant above the roof line	Network Rail	Network Rail
	<u>Canopies</u>		
(23)	Canopies, supports and glazing	Network Rail	Network Rail
(24)	Roof access ladders, walkways and handrails	Network Rail	Network Rail
(25)	Canopy drainage	Network Rail	Network Rail
	<u>Walls and Cladding</u>		
(26)	External and load bearing walls (excluding finishes)	N/A	Network Rail

(27)	External cladding	Station Facility Owner	Network Rail (except where due to vandalism) Station Facility Owner (where due to vandalism)
(28)	Internal load bearing walls (excluding finishes)	N/A	Network Rail
(29)	Internal non-load bearing walls (excluding finishes)	Station Facility Owner	Station Facility Owner
(30)	Partitions	Station Facility Owner	Station Facility Owner
(31)	Windows external and internal excluding glass	Station Facility Owner	Network Rail
(32)	External doors	Station Facility Owner	Network Rail
(33)	Internal doors	Station Facility Owner	Network Rail
C.	<u>Finishes and surface</u>		
(34)	External & internal wall finishes and coating including paint	Station Facility Owner	Station Facility Owner
(35)	Floor (except terrazzo) finishes within buildings	Station Facility Owner	Station Facility Owner

(36)	Terrazzo finishes (except platforms)	Station Facility Owner	Network Rail
(37)	Finishes to frames beams columns (other than (37)(A))	Station Facility Owner	Station Facility Owner
(37)	Fire resistant coatings/finishes	Station Facility Owner	Network Rail
(A)			
(38)	Staircase finishes	Station Facility Owner	Station Facility Owner
(39)	Train shed roof finishes	Network Rail	Network Rail
(40)	Canopy finishes	Network Rail	Network Rail
(41)	Ceiling finishes	Station Facility Owner	Station Facility Owner
(42)	Internal joinery (skirtings architraves)	Station Facility Owner	Network Rail
(43)	Other glazing including windows and doors	Station Facility Owner	Station Facility Owner
D.	<u>Platforms and external structures</u>		
(44)	Platform structure including supporting and retaining walls	Network Rail	Network Rail

(45)	Platform copers	Network Rail	Network Rail
(46)	Platform wearing surfaces (except terrazzo)	Network Rail	Network Rail
(47)	Platform terrazzo surfaces	Network Rail	Network Rail
(48)	Footbridge (except finishes)	Network Rail	Network Rail
(49)	Footbridge and subway finishes (including wearing surfaces handrails etc)	Station Facility Owner	Network Rail
(50)	Fixed ramps	Network Rail	Network Rail
(51)	Loading docks	Network Rail	Network Rail
(52)	Waiting shelters	Station Facility Owner	Network Rail
(53)	Fencing	Station Facility Owner	Network Rail
(54)	Retaining walls	Network Rail	Network Rail

E. Other

(55)	Road, pavement and forecourt surfaces and substructures	Network Rail	Network Rail
(56)	Car park surfaces and substructures	Network Rail	Network Rail
(57)	Car park equipment including ticket machines, signs and road markings	Station Facility Owner	Station Facility Owner
(58)	Main drainage outfall	Network Rail	Network Rail
(59)	Other underground drainage installations	Network Rail (except Station Facility Owner to keep clear and free flowing)	Network Rail
(60)	Nominated signs	Station Facility Owner	Station Facility Owner
(61)	Station signage	Station Facility Owner	Station Facility Owner
(62)	Landscaping and planting	Station Facility Owner	Station Facility Owner

[Condition A1.2]

APPENDIX 6 TO ANNEX 1

Items (1) and (2) of Appendix 4 to this Annex 1, if present on or at the Station.
[Insert any other Excluded Equipment]

APPENDIX 7 TO ANNEX 1

1 Railway Superstructure

1.1 Within the area edged blue on the Plan, any bridge, viaduct, railway arch, raft or overlying structure which is not coloured or hatched in any manner on the Plan shall:

1.1.1 not be Railway Superstructure if it is listed in Column 1 of Table 1; and

1.1.2 be Railway Superstructure if it is listed in Column 2 of Table 1.

Table 1

<u>Column 1</u>	<u>Column 2</u>
1 footbridge providing access from one station platform to another	4 raft supporting office building or similar commercial development, together with all leased parts of such building or development
2 any area subject to a station trading tenancy	5 road bridge
3 any area at first and/or upper floor levels subject to a residential tenancy	6 rail bridge
	7 footbridge (except one described in item 1)

1.2 The Station shall:

1.2.1 include the land and airspace within and covered by the arches or spans of the Railway Superstructure, any boundary structures sealing off the mouth of any such arches or spans and the land airspace and works beneath the raft; and

1.2.2 exclude any part of the Railway Superstructure and the works and airspace above it.

2 Railway Substructure

2.1 Any bridge, viaduct, railway arch, raft, tunnel, passageway or substructure which is not coloured or hatched in any manner on the Plan shall:

2.1.1 not be Railway Substructure if it is listed in Column 1 of Table 2; and

2.1.2 be part of Railway Substructure if listed in Column 2 of Table 2.

Table 2

Column 1

Column 2

1 subway or tunnel connecting station buildings or platforms

3 arch space (except one described in item 2)

2 arch space used as station car park or to provide access to the Station or otherwise integral to the operation of the Station as a railway station

4 subway or tunnel (except one described in item 1)

2.2 The Station shall:

2.2.1 include the surface of the ground or soil (if any) over the Railway Substructure and the ballast, sleepers, and metals laid there together with all airspace above the ground or soil surface (or if there is no such surface, then above the surface of the Railway Substructure itself) and also includes the airspace within any tunnel or passageway which is part of the Railway Substructure; and

2.2.2 exclude any part of the Railway Substructure, the airspace within any arches or spans beneath it and the land and works below it.

[Part F and
definition of
"Total Variable Charge"]

ANNEX 2

QUALIFYING EXPENDITURE

1 Expenses of Common Station Services and Common Station Amenities

1.1 Subject to paragraph 3, all costs and expenses reasonably payable or incurred by the Station Facility Owner in providing or procuring the provision of the Common Station Amenities or the Common Station Services to Relevant Operators (and their Associates), or which can be properly attributed directly or indirectly to the operation of the Station for or in connection with the provision by Relevant Operators of services for the carriage of passengers by railway or services for the carriage of goods by railway together with all (or, where the same relate to the whole of the Station, such proportion as can be properly attributed to that part of the Station used by Relevant Operators directly or indirectly for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway) of the costs and expenses reasonably payable or incurred in or in procuring:

1.1.1 compliance with administrative and secretarial and other incidental obligations of the Station Facility Owner in Parts B, C and I and Conditions E4, E5, E7, F10 and L8;

1.1.2 the payment of any existing or future taxes, rates, charges, duties, assessments, impositions and other outgoings paid or payable by the Station Facility Owner in respect of the Station excluding:

(a) Value Added Tax, except to the extent that such Value Added Tax is not available for credit for the Station Facility Owner, or for any person with which the Station Facility Owner is treated as a member of a group for Value Added Tax purposes, under Sections 25 and 26 of the Value Added Tax Act 1994 and then only to the extent that such Value Added Tax is not recoverable under the Station Access Agreement;

(b) tax on the overall net income of the Station Facility Owner;

(c) taxes, interest and penalties arising by virtue of the Station Facility Owner's delay or default or failure to make an appropriate claim for relief or make such a claim timeously; and

(d) taxes which do not relate to the period or events within the period of the Station Access Agreement;

1.1.3 the making or defending of any claim, litigation, lien, demand or judgement in respect of the Common Station Services and Common Station Amenities in accordance with these Station Access Conditions;

1.1.4 the payment of the fees and expenses of any professional adviser or valuer reasonably engaged by the Station Facility Owner in connection with any of the provisions of this Annex 2 of these Station Access Conditions;

1.1.5 insurance in accordance with Conditions E1.1, after deducting any commission or discount to, or to any person on behalf of, the Station Facility Owner for effecting the relevant insurance policy;

1.1.6 the payment of any sum payable by the Station Facility Owner pursuant to Condition E1.2 (subject to the proviso to Condition E3.1) on the occurrence of an Insured Risk; and

1.1.7 the Maintenance and/or Repair of those Elements of the Station and those items of Equipment the responsibility for the Maintenance and/or Repair of which is listed in the Elements Inventory or the Equipment Inventory as being that of the Station Facility Owner, the Maintenance of any part of the Station which forms part of the Common Station Amenities or any item of Equipment which is not referred to in the Elements Inventory or the Equipment Inventory, any works required pursuant to Condition D5.1.5 and the painting and decorating of buildings forming part of the Common Station Amenities pursuant to Condition D5.2.

1.2 Such fee in respect of the overheads of the Station Facility Owner and by way of a management fee for operating or procuring the operation of the Station, as shall have been notified to and approved by the ORR within 90 days after the Relevant Date or such longer period as the ORR shall, after consultation of the parties, determine.

1.3 All sums payable by the Station Facility Owner to Network Rail pursuant to Condition N1.24 in respect of the collection and disposal of Track Litter.

2 Calculation of Qualifying Expenditure

In calculating the Qualifying Expenditure, the Station Facility Owner shall give credit for:

2.1 any money received by way of service charge or otherwise) from any user of the Station other than Users, in respect of the Common Station Amenities or the Common Station Services (other than receipts for car parking) save to the extent that the costs in respect of which such money has been received do not form part of Qualifying Expenditure pursuant to Condition P5;

2.2 any money received from Users other than Passenger Operators, in respect of the use of the Common Station Amenities or the Common Station Services, by way of service charge or otherwise;

2.3 any insurance proceeds received in respect of matters which would otherwise have given rise to expenses for the purposes of calculation of Qualifying Expenditure; and

2.4 any money paid to the Station Facility Owner by way of damages to compensate for, or reimbursement of, costs which would otherwise be treated as expenses for the purposes of calculation of Qualifying Expenditure.

3 Excluded Costs and Expenses

The following costs and expenses shall not form part of the costs and expenses described in paragraph 1.1 of this Annex 2:

3.1 the costs and expenses of:

3.1.1 executing the Existing Works;

3.1.2 carrying out the Repair and Maintenance obligations of Network Rail under Part D, whether carried out by Network Rail or the Station Facility Owner;

3.1.3 the services of the British Transport Police at the Station

3.2 any amount payable by the Station Facility Owner to Network Rail or any other person as a result of the failure of the Station Facility Owner to perform any obligation or of any warranty given by the Station Facility Owner not being true and accurate in all respects;

3.3 costs incurred pursuant to Conditions E3.4, G2.2, G4.5, G5.3, L4, L6.4, M2.2, M4.3, M5.1, M6.3, N1.13, N1.20, N1.21.1, N3.9, 09.2, Q2.1 and any costs incurred by the Station Facility Owner as the Proposer of a Material Change Proposal made in accordance with Part C;

3.4 any consideration payable by the Station Facility Owner to Network Rail pursuant to a Relevant Agreement between the Station Facility Owner and Network Rail.

4 Sample Period

[Specify short period during an Accounting Year, comprising a typical sample of average weekly departures from the Station]

COMMON STATION AMENITIES AND COMMON STATION SERVICES
WHICH MAY BE CHANGED ONLY BY UNANIMOUS AGREEMENT OF ALL USERS

[Opening Periods]

ANNEX 4

EXISTING WORKS AND ADJACENT WORKS

1 Existing Works
 []

2 Adjacent Works
 []

ANNEX 5

EXISTING AGREEMENTS

- 1 Excluded Existing Agreements
- 2 Included Existing Agreements
- 3 Global Agreements

ANNEX 6

IDENTIFIED ABATABLE CHARGES FOR
COMMON STATION AMENITIES AND COMMON STATION SERVICES

<u>Amenity/service</u>	<u>Period</u>	<u>% of [User's Daily General Charge] [Daily Long Term Charge] [SFO's Daily Share] [SFO's Daily Long Term Charge] applicable to amenity/service</u>
------------------------	---------------	---

[]

[]

[]

ANNEX 7

SLIDING SCALE OF ABATEMENT FOR FAILURE TO OPEN
STATION DURING AGREED OPENING TIMES

COLLATERAL AGREEMENT

THIS AGREEMENT is made on 20[] BETWEEN:-

(1) Network Rail Infrastructure Limited, a company registered in England under registered number 2904587 having its registered office at 90 York Way, London N1 9AG ("Network Rail"); and

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

WHEREAS:-

(A) The Beneficiary has entered into the Station Access Agreement with the Station Facility Owner whereby the Station Facility Owner granted to the Beneficiary permission to use the Station for or in connection with the operation of trains by itself or its Associates.

(B) Network Rail has certain obligations to the Station Facility Owner in respect of the Station.

(C) Network Rail has agreed with the Beneficiary to undertake on the terms and conditions of this Agreement to perform certain obligations in respect of the Station set out in the Station Access Conditions.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, where the context admits:

"Collateral Commencement Date" means the date on which the condition precedent in Clause 2.1 is satisfied;

"Station Access Conditions" means the Station Access Conditions and the annexes referred to in paragraph 2 of Schedule 1;

"Station Access Agreement" means the agreement referred to in paragraph 3 of Schedule 1 for permission to use the Station, as such agreement shall be modified from time to time; and

"Station Facility Owner" means the person whose name and registered office are specified in paragraph 4 of Schedule 1.

1.2 References to Schedules, etc. 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 any Condition shall be construed as a reference to the relevant Station Access Condition.

1.3 Headings Headings shall be disregarded in construing this Agreement.

1.4 Station Access Conditions Where the context admits, words and expressions defined in (or of which the meanings are construed) the Station Access Conditions shall bear the same meanings in this Agreement and the rules of interpretation set out in the Station Access

Conditions shall apply throughout this Agreement, and where the context requires, references to the Station Access Conditions in such words, expressions and rules shall be construed as references to this Agreement.

2. CONDITION

2.1 Condition precedent

Subject to Clause 2.2.1, the provisions of this Agreement shall have effect upon the Station Access Agreement becoming fully effective and enforceable in accordance with its terms;

2.2 Entry into effect

2.2.1 Clauses 1, 2, 3.1, 6, 7 and 8 shall come into effect and be binding on the parties immediately upon signature of this Agreement.

2.2.2 All other clauses shall come into effect and be binding on the parties on the Collateral Commencement Date.

2.3 Non-satisfaction

If the condition precedent in Clause 2.1 shall not have been satisfied in full on or before the Commencement Date, as defined in the Station Access Agreement, this Agreement shall lapse and neither party shall have any liability to the other under or in respect of it.

3. STATION ACCESS CONDITIONS

3.1 Incorporation

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

3.2 Performance

During the term of this Agreement, each party shall duly and punctually perform, observe and comply with:

3.2.1 its obligations to the other set out in the Station Access Conditions as incorporated in this Agreement pursuant to Clause 3.1; and

3.2.2 its other obligations under a Relevant Agreement insofar as failure to perform such obligations would, or would be likely to, operate to the detriment of the other party hereto.

4. TERM

4.1 By reference to Station Access Agreement

Subject to Clause 2.3, this Agreement shall terminate on the lapse, expiry or termination by any other means of the Station Access Agreement.

4.2 Notice

The Beneficiary shall forthwith notify Network Rail of the occurrence of any event referred to in Clause 4.1.

4.3 Exclusion of common law termination rights

This Agreement shall terminate only in the circumstances set out in this Clause 4 and Clause 6.6. The parties shall have no other rights to terminate this Agreement whether pursuant to its terms or at law

5. TERMINATION OF STATION ACCESS AGREEMENT AND STATION FACILITY OWNER'S INTEREST

In the event that an Insolvency Event (as defined in the Station Access Agreement) occurs in relation to the Station Facility Owner and is continuing, the Beneficiary shall promptly upon the written request of Network Rail exercise any rights it may have under the Station Access Agreement to terminate it in accordance with its terms on such minimum period of notice as the Station Access Agreement may permit.

6. WHOLE AGREEMENT, VARIATION AND ASSIGNMENT

6.1 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 in respect thereof. This Clause 6.1 shall not have the effect of excluding any term implied by law.

6.2 Counterparts

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

6.3 Amendment

6.3.1 No amendment of this Agreement (other than as expressly otherwise contemplated by this Agreement) shall be effective unless in writing and signed by duly authorised representatives of the parties;

6.3.2 The Beneficiary shall as soon as reasonably practicable notify Network Rail of any amendments made to the Station Access Agreement (other than the Station Access Conditions) insofar as they affect its obligations referred to in Clause 3.2.2.

6.4 Assignment

Subject to Clauses 6.5 and 6.6, 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.

6.5 Novation of Beneficiary's rights and obligations

If the Beneficiary is a franchise operator, each party agrees to take all such steps as may be necessary to give effect to the novation of the Beneficiary'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 (including by means of an exercise of his powers under section 51 of the Act), provided that any such novation shall be on terms that:

6.5.1 the Station Access Agreement is novated to the Secretary of State or his nominee before or at the same time as this Agreement is novated to the Secretary of State;

6.5.2 the other party 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 duties performed under 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

6.5.3 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 6.5.2.

6.6 Termination and novation of Network Rail's rights and obligations

6.6.1 Termination

Without prejudice to accrued rights and obligations, Network Rail's rights and obligations under this Agreement shall terminate if both the following occur:

(a) Network Rail disposes of its freehold or leasehold interest in the Station to any transferee who is not at that time an Affiliate of Network Rail; and

(b) such transferee offers to assume Network Rail's future obligations under this Agreement (provided that such transferee shall reasonably be acceptable to the Beneficiary).

6.6.2 Novation

Network Rail undertakes to the Beneficiary that it shall take all such steps as may be reasonably necessary to novate (subject to the consent of the Beneficiary not to be unreasonably withheld or delayed) Network Rail's rights and obligations under this Agreement to the person who has acquired its freehold or leasehold interest in the Station.

6.7 Sub-contracting and agency

The parties may sub-contract their respective rights and obligations under this Agreement provided that no such action shall release a contracting party of its obligations under this Agreement and such 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. NOTICES AND COMMUNICATIONS

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

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

7.2.1 if sent by hand, recorded delivery or pre-paid first class post, when so delivered; and

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

8. GOVERNING LAW AND SUBMISSION TO JURISDICTION

8.1 Governing law

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

8.2 Jurisdiction

Subject to the provisions of 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.

IN WITNESS whereof this Agreement has been duly executed.

SCHEDULE 1

Contract Particulars

1. Beneficiary: []

Name: []

Registered office: []

2. Station Access Conditions

(a) The National Station Access Conditions 2013 [(England and Wales)]
[(Scotland)]; and

(b) the annexes relating to the Station (ORR Ref: [])

as each is modified in respect of the Station from time to time with the approval of the ORR and as each is incorporated in the Station Access Agreement.

3. Station Access Agreement

Access Agreement dated [] 20[] between the Station Facility Owner and the Beneficiary, granting the Beneficiary permission to use [] station as modified from time to time with the approval of the ORR.

4. Details of Station Facility Owner:

Name: []

Registered Office: []

SCHEDULE 2

Addresses for Service

1. Address for service on Network Rail:

(Attention: [])
[Address]

[Fax No.]

2. Address for service on the Beneficiary:

(Attention: [])
[Address]

[Fax No.]

SIGNED by [])
on behalf of NETWORK RAIL)
INFRASTRUCTURE LIMITED)

SIGNED by [])
on behalf of [])

ANNEX 9

MISCELLANEOUS PROVISIONS

- (1) The Demarcation Agreements are provided for in the [details of relevant all Supplemental Agreements].
- (2) The agreement referred to in the definition "Included Existing Agreements" is the [Supplemental Agreement] made [1994] between [] and [] which forms part of the Railtrack Transfer Scheme [British Rail Telecommunications Transfer Scheme,] [The Waterloo and City Transfer Scheme and Putney Bridge to Wimbledon Transfer Scheme].
- (3) The amount referred to in the definition "Long Term Charge" is £ per annum.
- (4) The percentage referred to in the definition "Requisite Majority" is [].
- (5) The percentage of turnover referred to in Condition E2.3 is 0.15%.
- (6) The sum to which the Minimum Sum will be rounded down and the sum which the minimum will not be less than in Condition E2.3 are £5,000.
- (7) The amount which the Minimum Sum will not be greater than in Condition E2.3 is £175,000.
- (8) The number of days referred to in Condition F2.3 is 7.
- (9) The amount referred to in Condition F10.5.2 is []%.
- (10) The number of days referred to in Condition G4.2 is the number of days comprised in the period commencing on the date on which these Station Access Conditions first become fully effective and ending on the date which is 30 days prior to the date on which the Secretary of State issues an invitation to tender pursuant to section 26 of the Act in respect of any railway passenger services operated by the Station Facility Owner.
- (11) The amount referred to in Condition H2.1 is £5,000.
- (12) The amount referred to in Condition H2.2 is £5,000.
- (13) The amount referred to in Condition H4.4 is £20,000.
- (14) The amount referred to in Condition L7.1.2(a) is 1% of the Relevant Operator's share of the Long Term Charge subject to a minimum of £1,000.
- (15) The amount referred to in Condition L7.1.2(b) is 1% of the Relevant Operator's share of Qualifying Expenditure subject to a minimum of £1,000.
- (16) The amount referred to in Condition L7.1.2(c) is 1% of the Access Charge payable by the User in question subject to a minimum of £1,000.
- (17) The amount referred to in Condition L7.1.3(a) is 5% of the Relevant Operator's Long Term Charge subject to a minimum of £3,000.
- (18) The amount referred to in Condition L7.1.3(b) is 5% of the Relevant Operator's share of Qualifying Expenditure subject to a minimum of £3,000.
- (19) The amount referred to in Condition L7.1.3(c) is 5% of the Access Charge payable by the User in question subject to a minimum of £3,000.

- (20) The amount referred to in Condition N1.6.2(b) is £[].
- (21) The number of years referred to in Condition Q1.1 is 6.
- (22) The provisions referred to in Condition A1.4 are: [].
- (23) The parking spaces referred to in Condition K8 are: [] permits for Network Rail parking within any car parks for the time being at the Station.
- (24) The area(s) of the concourse and the durations referred to in paragraph 1.1 of Annex 1 are [].
- (25) The display of posters at the domestic poster sites (if any) referred to in paragraph 4.12 of Annex 1 shall be offered to the relevant Passenger Operator making use of such sites as at 31 December 1998 as an Exclusive Station Service at no greater than the prevailing market rate.
- (26) The Core Facilities referred to in the definition "Change" are those ticket sales and passenger information facilities and the messrooms, cloakrooms and staff toilets referred to in Annex 1 in the paragraph headed "Core Facilities" (if any).
- (27) The Long Term Charge Commencement Date is [].
- (28) The Light Maintenance Services to be provided (other than on an exclusive basis) referred to in the final sub-paragraph of Annex 1 are such Light Maintenance Services as were being provided (other than on an exclusive basis) at the Station on 4 February 1996.

ANNEX 10

DISREPAIRS TO BE REMEDIED

- 1 [list Elements of the Station or Equipment which are in disrepair, where Repair is the responsibility of the Station Facility Owner and the disrepair is to be remedied]
- 2 [state any timescale and cost limits, if any, on such repair]

ANNEX 11

PRODUCTION OF SPECIFICATIONS

- 1 This Annex shall apply to the determination of specifications for the performance of the following obligations by the Station Facility Owner:

[insert details of those Common Services and/or those items of Repair and/or Maintenance which are the obligations of the Station Facility Owner where specifications are required] ("the Specifications")
- 2 The Station Facility Owner shall, as soon as reasonably practicable and by no later than [] [in respect of [] and no later than in respect of []], deliver to each User its proposals for the Specifications, including any appropriate quality, quantum or response time standards.
- 3 The Station Facility Owner and all Users shall negotiate with each other with a view to reaching agreement, subject to approval of the ORR, on the Specifications proposed by the Station Facility Owner or on any amendments to them that any User may consider necessary or desirable in respect of any such matters.
- 4 If the Station Facility Owner and the Users reach agreement with each other on the Specifications, the Station Facility Owner shall promptly submit the Specifications to the ORR for its approval.
- 5 If the Station Facility Owner and the Users fail to reach agreement with each other on any of the Specifications within [90] days of the delivery of the Station Facility Owner's proposals for such Specifications, the matters in dispute may be referred by any of them for determination in accordance with the relevant provisions of the Access Dispute Resolution Rules. Such determination shall:
 - 5.1 be made having regarding to:
 - 5.1.1 the matters as respects which duties are imposed on the ORR under section 4 of the Act;
 - 5.1.2 the Station Facility Owners and each Users requirements in respect of the relevant obligation; and
 - 5.1.3 the principle that any Specification should detail on a fair and reasonable basis how the relevant obligation referred to in paragraph 1 is to be performed and should not otherwise increase the burden of such obligations;
 - 5.2 be final and binding on the Station Facility Owner and the Users; and
 - 5.3 establish the relevant Specifications, which shall be submitted by the arbitrator to the ORR for approval under section 22 of the Act on behalf of the Station Facility Owner and each User.
- 6 If any Specifications which have been submitted to the ORR pursuant to this Annex are approved by the ORR, such Specifications shall become effective in accordance with the terms of his approval. If not so approved, such Specifications shall not have effect.

ANNEX 12

REPAIR AND MAINTENANCE SPECIFICATIONS

[If Repair and Maintenance to be carried out by the Station Facility Owner are to be further specified and the specifications are agreed, insert the specifications. If not agreed, then Annex 11 can be used to determine them.]

ANNEX 13

TEMPLATE CO-OPERATION AGREEMENT BETWEEN INDUSTRY PARTIES (NETWORK
RAIL AND RELEVANT OPERATORS)

Co-operation Agreement

between

[] LIMITED

as the Proposer

and

[] LIMITED

as the MCC

relating to

[] Station

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

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THIS AGREEMENT is dated

and made

BETWEEN:

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

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

WHEREAS:

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

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

“MCC’s Business” means the business of [operating the Station, running services for the carriage of passengers by railway and acting in its capacity as tenant of the Station] [operating the Network and acting in its capacity as landlord of the Station];

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

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

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

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

“Relevant Agreement” means [a lease] [an access agreement] dated [] made between the Proposer and the MCC incorporating the SACs;

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

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

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

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

“Station” means [] Station;

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

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

- (A) References in the singular shall include the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (B) References to a particular clause or sub-clause shall be references to that clause or sub-clause in this Agreement (except to the extent that the context requires otherwise);
- (C) Reference to this Agreement is a reference to this agreement as amended, supplemented or novated from time to time and includes a reference to any document

which amends, is supplemental to, novates, or is entered into, made or given pursuant to it or in accordance with any terms of it;

- (D) Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it;
- (E) Headings are included for convenience only and are to be ignored for the purposes of interpretation; and
- (F) Unless a contrary intention appears, words and expressions defined in the SACs shall have the same meanings when used in this Agreement.

2. CO-OPERATION

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

3. FINANCIAL UNDERTAKING

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

4. PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM

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

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

5. NOTICE OF A REQUIRED INTERFERENCE

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

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

6. ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE

- 6.1 This clause 6 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 6.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 5.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 6.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 14.
- 6.3 The MCC's response to the Proposer under clause 6.2 shall:

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

6.4 The Proposer shall be entitled

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

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

7. UNPLANNED MATERIAL INTERFERENCE WITH THE MCC'S BUSINESS

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

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

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

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

- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating

clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 14;

- (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
- (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 11 and estimate the costs of performing such obligations.

7.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 7.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 14.

8. PAYMENT OF MCC COSTS

8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.

8.2 The Proposer shall pay any MCC Costs within 20 Business Days of agreement or determination (whether under clause 6.4 or 7.3 in relation to MCC Costs arising from the Required Interference or the Unplanned Interference, or under clause 14 in relation to other MCC Costs) of the level and manner of payment of the MCC Costs (or the relevant instalment of them).

8.3 At the request of the MCC and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the MCC's Business, the Proposer shall make payments on account of the MCC Costs payable under clause 8.2 on a without prejudice basis of such sums and at such intervals as the Proposer and the MCC may agree but in default of agreement over the circumstances in which it would be reasonable to make payments on account, or over the amount or frequency of such payments, the same may be referred by either party to dispute resolution under clause 14.

9. REPAYMENT OF OVERPAID MCC COSTS

9.1 As soon as practicable after the total amount of MCC Costs (the "**Final MCC Costs**") is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the "**Total MCC Costs Paid**") and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the "**Overpaid MCC Costs**").

9.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 14.

9.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within [20] Business Days of agreement or determination of the amount of such costs under clauses 9.1 and 9.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 9.1 (the "**Interest Commencement Date**"), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.

9.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 9 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

10. FAILURE TO IMPLEMENT MCP

10.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the “**Partial MCC Costs Amount**”) (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).

10.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer’s notice, or either party may refer the same to dispute resolution under clause 14.

10.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 10.2 of the level of the Partial MCC Costs Amount.

10.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer’s notice given under clause 10.1 exceeds the Partial MCC Costs Amount then the provisions of clause 9 shall apply mutatis mutandis to any such overpaid amount.

11. MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION

11.1 The MCC is required to take all reasonable steps which are within its power and which are not prohibited by or in breach of any existing Legal Requirement to reduce the extent of the MCC Costs resulting from the implementation of the MCP by the Proposer and without prejudice thereto (without being obliged to incur additional expenditure or loss of revenue unless these are compensated for by the Proposer) take all reasonable steps to mitigate and minimise any adverse impact on the MCC’s Business of the implementation of the MCP and to conduct its business in such manner as responds efficiently to the occurrence of any Required Interference and/or Unplanned Interference.

11.2 The Proposer may submit suggestions (each of which is a “**Savings Suggestion**”) to the MCC identifying potential opportunities for making savings in MCC Costs arising from the implementation of the MCP and if the MCC at its discretion accepts the Savings Suggestion then the MCC shall implement the same.

11.3 If the MCC accepts and implements the Savings Suggestion then the Proposer shall pay the reasonable and direct losses and expenses of implementation of the Savings Suggestion including loss of profit (but not consequential costs, losses or expenses save for loss of profit) recoverable under this Agreement but the MCC must provide the Proposer with such supporting evidence as it reasonably requires showing the extent of the same.

12. LIMITATIONS ON THE FINANCIAL UNDERTAKING

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

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

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

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

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

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

13. **ALTERNATIVE ACCOMMODATION**

13.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 13.2 (the “**Additional Accommodation**”) used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:

- (A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC’s Business having regard to the functionality of its previous accommodation; and
- (B) arrangements for and timing of the relocation to the alternative accommodation

have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and

(C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.

13.2 If the MCC identifies any Station Facility:

(A) which is affected by the Proposer's MCP;

(B) that is reasonably necessary for use in connection with its rail business; and

(C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

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

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

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

14. DISPUTES

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

(A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;

(B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;

(C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

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

15. ASSIGNMENT

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

16. GENERAL

- 16.1 This Agreement shall not create or be taken to evidence any partnership, joint venture or agency between the parties. Neither party is hereby authorised to act as agent of the other, without the other party's prior written consent.
- 16.2 No indulgence granted by either party shall constitute or be construed as a waiver of the other party's strict rights under this Agreement.
- 16.3 If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
- 16.4 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement.
- 16.5 Each party admits that it has not entered into this Agreement in reliance upon any representation or promise of the other party.
- 16.6 No variation of any of the terms of this Agreement shall be effective unless it is in writing and signed on behalf of each of the parties.

17. NOTICES

- 17.1 Any notice or other document to be given or served under this Agreement shall be in writing and sent by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or delivered to or sent by first class post or facsimile to the other party to be served at its registered office.
- 17.2 Any such notice or document shall be deemed to have been served:
- (A) If sent by e-mail, at the time it leaves the electronic gateway of the sender;
 - (B) if delivered, at the time of delivery;
 - (C) if sent by facsimile, upon receipt of the appropriate confirmation report; or
 - (D) if posted by pre-paid first class post, on the second Business Day following that on which the envelope containing the same was posted.

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

18. VAT

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

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

19. COUNTERPARTS

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

20. THIRD PARTIES

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

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

Signed by

for and on behalf of [

] **LIMITED**

.....
(Signature of named signatory)

Signed by

for and on behalf of [

] **LIMITED**

.....
(Signature of named signatory)

ANNEX 14

TEMPLATE CO-OPERATION AGREEMENT WHERE PROPOSER IS A STATION INVESTOR
AND MATERIAL CHANGE CONSULTEE IS NETWORK RAIL OR A RELEVANT OPERATOR

Co-operation Agreement

between

[] LIMITED

as the Proposer

and

[] LIMITED

as the MCC

relating to

[] Station

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

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THIS AGREEMENT is dated
made

and

BETWEEN:

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

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

WHEREAS:

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

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

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

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

“**Fixed Sum**” has the meaning given that expression in clause 6.1 of this Agreement;

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

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

“**MCC’s Business**” means the business of [operating the Station, running services for the carriage of passengers by railway and acting in its capacity as tenant of the Station] [operating the Network and acting in its capacity as landlord of the Station];

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

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

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

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

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

“**Relevant Agreement**” means [a lease] [an access agreement] dated [] made between [Network Rail and the MCC] [the MCC and []] incorporating the SACs;

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

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

“**SACs**” means the Station Access Conditions and Annexes applicable to the Station;

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

“**Station**” means [] Station;

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

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

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

2. PARTICIPATION

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

3. LIMITATION

3.1 The Proposer shall not acquire under this Agreement:

- (A) any rights or liabilities in connection with any other MCP; or
- (B) any rights or liabilities from or to Network Rail or from or to any Relevant Operator in connection with the MCP other than as set out in this Agreement or in Part C of the SACs.

3.2 The rights and liabilities set out in this Agreement shall be without prejudice to the rights and liabilities set out in the [APA,] [Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station made between the Proposer and Network Rail to the extent that the rights and liabilities set out in the [APA,] [the Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station do not conflict with the rights and liabilities set out in this Agreement or in Part C of the SACs.

4. CO-OPERATION

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

5. FINANCIAL UNDERTAKING

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

6. PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM

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

(on the assumption that, wherever possible, the MCC should be entitled to receive instalments as and when costs are incurred by it) but in default of agreement over the circumstances in which it would be reasonable to pay by instalments, or over the amount or frequency of such instalments, the same may be referred by either party to dispute resolution under clause 16.

7. NOTICE OF A REQUIRED INTERFERENCE

7.1 Where the Proposer is able to reasonably anticipate that the implementation of the MCP or a phase of the MCP will result in Required Interference then the Proposer shall so far as reasonably possible provide 40 Business Days' written notice to the MCC of the relevant Required Interference together with:

- (A) a description of the relevant Required Interference and those parts of the MCC's Business that the Proposer considers are likely to be materially affected by it; and
- (B) such supporting information as is available to the Proposer at that time and which will be reasonably required by the MCC for the purpose of complying with its obligations under clause 8.3 (save that such supporting information does not need to be provided where compensation for MCC Costs is being paid by way of a Fixed Sum under clause 6).

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

8. ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE

8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.

8.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 7.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 8.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 16.

8.3 The MCC's response to the Proposer under clause 8.2 shall:

- (A) confirm whether or not MCC Costs will be directly attributable to the relevant Required Interference Proposal and if so provide the Proposer with reasonable information in support thereof;
- (B) state the estimated amount of any MCC Costs directly attributable to the relevant Required Interference Proposal and provide the Proposer with reasonable information in support thereof;

- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) in relation to the relevant Required Interference Proposal;
- (D) make any proposals for reaching agreement in relation to the terms on which any MCC Costs are to be compensated; and
- (E) make any proposals for satisfying the mitigation obligation under clause 13 and estimate the costs of performing such obligation.

8.4 The Proposer shall be entitled

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

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

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

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

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

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

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

- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 16;

- (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
 - (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
 - (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 13 and estimate the costs of performing such obligations.
- 9.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 9.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 16.

10. PAYMENT OF MCC COSTS

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

11. REPAYMENT OF OVERPAID MCC COSTS

- 11.1 As soon as practicable after the total amount of MCC Costs (the "**Final MCC Costs**") is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the "**Total MCC Costs Paid**") and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the "**Overpaid MCC Costs**").
- 11.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 16.
- 11.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within [20] Business Days of agreement or determination of the amount of such costs under clauses 11.1 and 11.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 11.1 (the "**Interest Commencement Date**"), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of

Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.

- 11.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 11 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

12. FAILURE TO IMPLEMENT MCP

- 12.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the “**Partial MCC Costs Amount**”) (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).
- 12.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer’s notice, or either party may refer the same to dispute resolution under clause 16.
- 12.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 12.2 of the level of the Partial MCC Costs Amount.
- 12.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer’s notice given under clause 12.1 exceeds the Partial MCC Costs Amount then the provisions of clause 11 shall apply mutatis mutandis to any such overpaid amount.

13. MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION

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

14. LIMITATIONS ON THE FINANCIAL UNDERTAKING

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

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

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

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

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

14.3 Notwithstanding the provisions of clause 14.2(A), in circumstances where the implementation of the MCP straddles more than one [franchise term] [Control Period] [concession agreement] and the MCC costs have not been taken into account by the [Secretary of State] [ORR] in the calculations relating to any subsequent [franchise term] [concession agreement] [Control Period] after the one in which the MCP is made, then the Proposer shall continue to pay the MCC Costs arising during the remainder of the time period set out in clause 14.2(A) to the extent such costs have not been taken into account.

15. ALTERNATIVE ACCOMMODATION

15.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 15.2 (the “**Additional Accommodation**”) used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:

(A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC’s Business having regard to the functionality of its previous accommodation; and

(B) arrangements for and timing of the relocation to the alternative accommodation

have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and

(C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.

15.2 If the MCC identifies any Station Facility:

(A) which is affected by the Proposer’s MCP;

(B) that is reasonably necessary for use in connection with its rail business; and

(C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

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

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

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

16. DISPUTES

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

(A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;

(B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties’ appropriate senior managers for resolution;

- (C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

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

17. ASSIGNMENT

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

18. GENERAL

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

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

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

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

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

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

19. NOTICES

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

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

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

Provided that, for the purposes of clauses 19.2(A), 19.2(B) and 19.2(C) where the

notice is delivered or transmitted outside the hours of 9 a.m. to 5 p.m. on a Business Day, or at any time on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next Business Day.

20. VAT

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

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

21. COUNTERPARTS

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

22. THIRD PARTIES

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

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

Signed by

for and on behalf of [] LIMITED

.....
(Signature of named signatory)

Signed by

for and on behalf of [] LIMITED

.....
(Signature of named signatory)

ANNEX 15

TEMPLATE STATION INVESTOR PARTICIPATION DEED

Template Station Investor Participation Deed

Part 1: Template Station Investor Participation Deed (England & Wales)

This DEED is dated _____ and is made by

- (1) **[STATION INVESTOR]** (the “**Station Investor**”) in favour of
- (2) each other person having rights or obligations in relation to the making of Material Changes under the Station Access Conditions (the “**Conditions**”) relating to **[insert details of Station]** (the “**Material Change Consultees**”).

WHEREAS:

- (A) The Station Investor has made a Material Change Proposal in respect of the Station dated _____, to which this Deed is attached (the “**Specified Proposal**”);
- (B) The Material Change Consultees wish the Station Investor to be bound by the provisions of Part C of the Conditions in respect of the Specified Proposal.

NOW THIS DEED WITNESSES:

1 DEFINITIONS

Unless the context requires otherwise, words and phrases defined in Part A of the Conditions shall have the same meanings in this Deed.

2 PARTICIPATION

In all matters relating to or arising from the Specified Proposal, the Station Investor shall comply with, and be liable under, the provisions of Part C of the Conditions as if it was a Relevant Operator as set out in Part A of the Conditions.

3 LIMITATION

The Station Investor shall not acquire under this Deed:

- (a) any liability in connection with any other Material Change Proposal; or
- (b) except as provided in Clause 4.2, any other liability to any Material Change Consultee in connection with the Specified Proposal.

4 GOVERNING LAW AND DISPUTE RESOLUTION

4.1 Governing law

This Deed shall be governed by and construed in accordance with the laws of England and Wales.

4.2 Dispute resolution

Any dispute which may arise out of, or in connection with, this Deed shall be referred for resolution under the Dispute Resolution Procedure, and for these purposes, the Station Investor shall have the same rights and obligations as any other relevant party under the Dispute Resolution Procedure.

5 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

5.1 Subject to Clause 5.2, no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

5.2 ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under Part C of the Conditions.

EXECUTED as a DEED by)

[STATION INVESTOR])

in the presence of:)