

DAC/34/26/01

DATED 28 August 2026

**TEMPLE MILLS INTERNATIONAL DEPOT
DEPOT ACCESS CONDITIONS**

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PART A
ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS
Condition A1 - General

1.1 General Interpretation

Unless the context otherwise requires:

1.1.1 These Depot Access Conditions

References to these Depot Access Conditions mean these Depot Access Conditions as modified from time to time.

1.1.2 Parts, Conditions, paragraphs and Annexes

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Depot Access Conditions and references to Annexes are to Annexes to these Depot 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 in these Depot Access Conditions. The words "include" and "including" shall be construed without limitation.

1.1.5 Definitions in the Act

Terms and expressions defined in sections 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meanings in these Depot Access Conditions.

1.1.6 Notices etc

Wherever in these Depot Access Conditions provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the

Relevant Agreement and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.

1.1.7 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, association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any person.

1.1.8 Conflict

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

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

1.1.9 Time Limits

Where in these Depot Access Conditions or 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.

1.1.10 Headings

The headings and references to headings shall be disregarded in construing these Depot Access Conditions.

1.1.11 Companies Act definitions

The words "subsidiary", "holding company" and "company" shall have the same meanings in these Depot Access Conditions as in the Companies Act 2006.

1.1.12 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.

1.1.13 **Permission to use**

References in these Depot Access Conditions to the grant to a User of permission to use the Depot shall be construed to mean:

- (a) the grant of permission for the User and its Associates to use the Depot for the purpose of obtaining Depot 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 Depot Facility Owner is to provide those Depot 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 A1.1.13(a), and subject to Condition A1.1.14, permission for the User and its Associates to:
 - (i) enter upon the Depot, with or without vehicles;
 - (ii) bring things onto the Depot keep them there and remove them;
 - (iii) use and maintain any things kept, or buildings or other works constructed, on the Depot (whether by the User or another); and
 - (iv) carry out such works as shall have been approved in accordance with these Depot Access Conditions;

provided that the permissions in Conditions A1.1.13(a) and A1.1.13(b) shall be in common with, but not in priority to, any other User subject, in each case and in all respects, to:

- (1) these Depot Access Conditions;
- (2) any Relevant Restriction arising under any Existing Agreement; and
- (3) while the User is exercising any permissions conferred by Condition A1.1.13(b) any other restriction on such permissions which may from

time to time be reasonably imposed by the Depot Facility Owner in accordance with the Depot Access Agreement.

1.1.14 Permission to use under Condition A1.1.13(b)

In relation to the permissions specified in Condition A1.1.13(b):

- (a) the User shall, and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Depot 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 Depot when reasonably directed to do so by the Depot Facility Owner; and
- (c) while exercising any permissions conferred by Condition A1.1.13(b) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Depot Facility Owner shall specify.

1.1.15 Good Faith

All Relevant Operators shall, in exercising their respective rights and complying with their respective obligations under these Depot Access Conditions (including when conducting any discussions or negotiations arising out of the application of these Depot Access Conditions or exercising any discretion under them) at all times act in good faith.

1.1.16 "An after tax basis":

References to indemnity payments on an after tax basis shall be construed to mean payments of the monies which are the subject of the indemnity (in each case, the "indemnifying amount"), after:

- (a) first, if the loss or other matter in respect of which the indemnifying amount is to be paid gives rise to any relief from taxation for the beneficiary of the indemnity (for the purposes only of this Condition A.1.1.16 referred to as "the beneficiary"), reducing the indemnifying amount by the amount of tax saved (calculated on the basis of the assumption in paragraph (i) below) by the beneficiary by virtue of the relief; and

- (b) secondly, if the indemnity payment is subject to taxation in the hands of the beneficiary, increasing the indemnifying amount (after any reduction under paragraph (a) above) to an amount (the "grossed up amount") which is such that the net amount retained by the beneficiary from the indemnity payment, after the deduction of tax (calculated on the basis of the assumption in paragraph (ii) below) therefrom, equals the indemnifying amount (less any reduction under paragraph (a) above);

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

- (i) for the purposes of paragraph (a) above, the amount of tax saved is calculated as the difference between:

- (A) the amount of tax which would be 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

- (B) the amount of tax which would be 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; and

- (ii) for the purposes of paragraph (b) above, the amount of the deduction of tax from the indemnity payment is calculated as the difference between:

- (A) the amount of tax which would be payable by the beneficiary in respect of its accounting period in which the indemnity payment is taxable, if the beneficiary were subject to tax on its Taxable Profits in such accounting period; and

- (B) the amount of tax which would be payable by the beneficiary in respect of such accounting period, if the beneficiary were subject to tax on an

amount equal to its Taxable Profits in such accounting period minus the grossed up amount as calculated in paragraph (b) above;

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

- (iii) for the purposes of applying the above paragraphs 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 (accounting period for these purposes to be read in accordance with Chapter 2 of Part 2 of the Corporation Tax Act 2009), as reduced by all reliefs other than the relief referred to in paragraph (a) above arising in respect of such occasion and trading losses carried back under section 37 of the Corporation Tax Act 2010 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 paragraph (a) above 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.

1.2 Definitions

Unless the context otherwise requires:

"**Access Charge**" has the meaning set out in Part F;

"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 Depot Facility Owner on reasonable grounds;

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

"Act" means the Railways Act 1993;

"Adjacent Works" means the works listed in paragraph 3 of Annex 2;

"Affiliate" means, in relation to a party:

- (a) a company or corporation which is either a holding company or a subsidiary of that party; or
- (b) a company or corporation which is a subsidiary of a holding company of which that party is also a subsidiary;

"Alternate" means an alternate of a Relevant Operator appointed in accordance with Condition B1.2.3;

"Applicable Systems Interfaces" has the meaning attributed to it in the Depot Access Agreement;

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

"Base Utilisation Level" means, in relation to any Critical Equipment or Critical Elements of the Depot, the assumed level of use of that Equipment or Element of the Depot during any period as described in Column (5) of the Table set out in Appendix 5 to Annex 1;

"Beneficiary Train Preparation" means, in respect of any railway vehicle or combination of railway vehicles, any routine preparation works which a Beneficiary requires to be carried out to that railway vehicle or combination of railway vehicles before it departs from the Depot;

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

"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;

"Commencement Date" means the date upon which the relevant Depot Access Agreement becomes fully effective in accordance with its terms;

"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) whether of the United Kingdom or of the European Union, which has, in respect of a Relevant Agreement, jurisdiction over either or both of the parties to, or the subject matter of, that Relevant Agreement, provided that "Competent Authority" shall not include:

- (a) His 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 Regulator, except to the extent that he shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as he 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 Regulator under Condition B6) to change these Depot Access Conditions and any material modification to that proposal as referred to in Condition B3.4 (including, without prejudice to that generality, a proposal of the Depot Facility Owner to make any amendment to the allowance specified in Annex 7 in respect of the Depot Facility Owner's Minimum Level of Services or the Depot Facility Owner's Maximum Level of Services (as the case may be));

"Conditions Efficacy Date" means the date upon which these Depot Access Conditions first became effective being the earlier of the Relevant Date and the date upon which the first Relevant Agreement comes into effect in respect of the Depot;

"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 the period for consultation described in Condition B3.2.2;

"Consultee" means any Relevant Operator (other than the Sponsor) as consultee in relation to a Proposal for Change;

"Contingent Charges" means, in respect of each Accounting Period, the aggregate of the charges payable in respect of the Contingent Services provided during that Accounting Period;

"Contingent Services" means any Depot Services for which a Minimum Level of Services has not been specified;

"Corporate Representative" means any person appointed in accordance with Condition B1.2.5;

"Critical Elements of the Depot" means those Elements of the Depot listed in Column (1) of the Table contained in Appendix 5 to Annex 1;

"Critical Equipment" means those items of Equipment and/or the categories of Equipment listed in Column (1) of the Table contained in Appendix 5 to Annex 1;

"Decision Criteria" means the decision criteria set out in Condition R1;

"Decision Period" means the period referred to in Condition C1.5.3;

"Default Interest Rate" means the interest rate set out in paragraph 2 of Annex 1;

"Demarcation Agreements" means any demarcation agreement, whenever entered into prior to or after the Conditions Efficacy Date relating to the Depot or any part of it provided for in the agreement specified in paragraph 1 of Annex 5;

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

- (a) the buildings, structures, fixtures, fittings, the Depot Facility Owner's Conduits, and other works for the time being at the Depot, any alteration or additions to the Depot and anything which is part of the Depot pursuant to paragraphs 1 and 2 of Appendix 6 to Annex 1;
- (b) any canopies of the Depot 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 Depot and any right of support from such mines and minerals;

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

"Depot Facilities" means:

- (a) such plant, equipment, track and associated infrastructure and accommodation as is necessary for the provision of the Depot Services, the Depot Facility Owner's Own Services and any other services to be provided by the Depot Facility Owner to any person and which are likely to affect the ability of the Depot Facility Owner to provide the Depot Services or the Depot Facility Owner's Own Services or any such other services; and
- (b) such staff as are necessary to carry out the services referred to in paragraph (a) above;

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

"Depot Facility Owner's Contingent Services" means services which are provided by the Depot Facility Owner at or from the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner and which are not included in the Depot Facility Owner's Maximum Level of Services;

"Depot Facility Owner's Environmental Indemnity" means the indemnity given by the Depot Facility Owner pursuant to Conditions M1.3;

"Depot Facility Owner's Maximum Level of Services" means services to be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner, specified as such in Annex 7;

"Depot Facility Owner's Minimum Level of Services" means services to be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner, specified as such in Annex 7;

"Depot Facility Owner's Own Services" means the Depot Facility Owner's Minimum Level of Services, the Depot Facility Owner's Variable Level of Services and the Depot Facility Owner's Contingent Services;

"Depot Facility Owner's Running Maintenance Programme" means, in respect of each type of railway vehicle operated by the Depot Facility Owner, the specification for maintenance and Depot Facility Owner's Work Arising as set out in the documentation supplied to the Depot Facility Owner by the owner of that railway vehicle, as listed in Annex 7;

"Depot Facility Owner's Specification" means a specification referred to in Annex 7;

"Depot Facility Owner's Surveyor" means the suitably qualified person from time to time appointed by the Depot Facility Owner to act as its surveyor who may be a person employed by or otherwise connected with the Depot Facility Owner or the Board;

"Depot Facility Owner's Variable Level of Services" means services which may be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner in excess of the Depot Facility Owner's Minimum Level of Services but not exceeding the Depot Facility Owner's Maximum Level of Services;

"Depot Facility Owner's Work Arising" means further maintenance and repair work and procedures required to be carried out at the Depot on any railway vehicle operated by or on behalf of the Depot Facility Owner to prepare that railway vehicle for service and arising from maintenance, specified as such in Annex 7;

"Depot Lease" means the lease of the Depot entered into between the Secretary of State for Transport and the Depot Facility Owner on 30 September 2010 (as amended, novated, assigned or otherwise transferred from time to time) including any deed or licence supplemental or collateral to it;

"Depot Meeting" means a meeting convened in accordance with Condition B1.1.1;

"Depot Register" means the register maintained in accordance with Part I;

"Depot Services" means any services provided by the Depot Facility Owner to a User in accordance with any Depot Access Agreement;

"Depot Work Plan" has the meaning ascribed to it in Condition S1;

"Diagram" means a description of a service for the carriage of passengers or goods by railway proposed to be run by a Relevant Operator, showing the number and type of railway vehicles used for the purpose of that service and the start and end times and principal places of each relevant journey, as specified in the Depot Access Agreement to which the Relevant Operator is a party and, in the case of the Depot Facility Owner, in Annex 7;

"Diagram Departure Time" means, in respect of any railway vehicle or combination of railway vehicles, the time specified in the relevant Diagram for the presentation of that railway vehicle or combination of railway vehicles by the Depot Facility Owner at the appropriate departure signal as being ready for departure from the Depot;

"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 the Depot Facility Owner pursuant to its provisions;

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

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

"Emergency" means:

- (a) in relation to the Depot, any situation or circumstance which the Depot Facility Owner reasonably considers constitutes an emergency affecting the Depot or railway passenger services or services for the carriage of goods by railway; 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 Depot Facility Owner and any User as to what constitutes an emergency in relation to both the Depot and the operation of such services the Depot Facility Owner's determination made in good faith shall be final;

"Environment" means the air, water and land and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground;

"Environmental Condition" means:

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

at, in, under or originating from the Depot which (in either case) is in breach of Environmental Law and has resulted or could reasonably be expected to result in the Depot Facility Owner incurring any material liability or being subject to the direction of any Competent Authority under Environmental Law, or could reasonably be expected otherwise materially adversely to affect the continued use of the Depot for its present use from time to time in accordance with Condition O4;

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

"Environmental Indemnity" means the Depot Facility Owner's Environmental Indemnity or any User's Environmental Indemnity (as the case may be);

"Environmental Law" means any applicable Statute or common law relating to pollution or impairment of the Environment or the protection of the health of humans, animals or plants and any Railway Group Standard to the extent applicable to such matters, but excluding, for the

avoidance of doubt, those laws relating specifically to the health and safety of workers in the work place;

"Environmental Loss" means 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) which results from an Environmental Condition, but shall exclude any loss of revenue (including fare revenue, subsidy, access charge revenue and incentive payments);

"Equipment" means the items of equipment, plant, machinery and apparatus at the Depot owned by the Depot Facility Owner or HS1 Limited (as applicable) (whether or not listed in the Equipment Inventory) from time to time;

"Equipment Inventory" means the inventory contained in Appendix 3 to Annex 1;

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

"Excluded Equipment" means:

- (a) the items of Equipment (if any) referred to in Appendix 7 to Annex 1;
- (b) electronic communications apparatus within the extended definition in section 151 of the Telecommunications Act 2003 other than Excepted Equipment;
- (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 HS1 Limited or at its direction) for the purposes of HS1 Limited's railway undertaking or function; and/or
 - (ii) which from time to time forms part of the railway infrastructure (as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006

(S.I.No. 599 2006)) for which HS1 Limited and not the Depot 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 3;
- (b) all wayleaves, easements or licences (or agreements for the foregoing) relating to the passage of services or Conduits affecting the Depot (whether or not so listed in paragraph 1 of Annex 3) entered into or granted by HS1 Limited, the Depot Facility Owner or their predecessors in title at any time before the Conditions Efficacy Date, to:
 - (i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and
 - (ii) any other person;
- (c) agreements or instruments relating to land now owned by third parties;
- (d) the Demarcation Agreements; and
- (e) easements completed or to be completed pursuant to the agreement referred to in paragraph 3 of Annex 5 relating to BR Telecommunications Limited;

"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 and which are approved in accordance with Part C;

"Existing Works" means the works listed in paragraph 1 of Annex 2 and any other works which shall have been approved from time to time in accordance with Part C;

"Financial Undertaking" means an undertaking:

- (a) to pay the whole of the costs of carrying out a Proposal for Change together with:
 - (i) any other reasonable costs, direct losses and expenses (including loss of revenue) which are incurred by the Relevant Operator to whom it is given to the extent that such costs are directly attributable to, and are incurred in the carrying out of, the change in question; and
 - (ii) such part of any increased net costs of operating the Depot as shall be directly attributable to the carrying out of the change in question;
- (b) upon terms, and accompanied by such assurances of performance, as shall be reasonably acceptable to the person to whom it is given;

"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;

"Fleet Vehicle" means those railway vehicles in respect of which Depot Services are to be provided;

"Full Replacement Cost" means the cost of replacing the Depot to the standard set out in Condition E2.2.1 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 listed in paragraph 3 of Annex 3, for the time being affecting the Depot and at least one other light maintenance depot (whether or not also affecting other land);

"Hand-Over Time" means, in respect of any railway vehicle or combination of railway vehicles, the Diagram Departure Time less that period of time specified in Annex 8 as the time allowed for Beneficiary Train Preparation for that type of railway vehicle or combination of railway vehicles;

"HS1 Access Dispute Resolution Rules" means the set of rules known as the HS1 Access Dispute Resolution Rules regulating the resolution of disputes between parties regarding access agreements to the Network published on HS1 Limited's website from time to time;

"HS1 Lease" means the lease dated 30 September 2010 between the Secretary of State and HS1 Limited pursuant to which a leasehold interest in respect of high-speed network infrastructure (including the Depot) is granted to HS1, subject to (and with the benefit of), the Depot Lease;

"HS1 Limited" means HS1 Limited, a company incorporated in England and Wales (Company Number 03539665) with its registered office at 5th Floor, Kings Place, 90 York Way, London, England N1 9AG;

"HS1 Limited Emergency" means any situation or circumstance which HS1 Limited 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 thereof; 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 thereof;

"Included Existing Agreements" means:

- (a) those agreements or instruments listed or described in paragraph 2 of Annex 3;
- (b) such other agreements or instruments completed or to be completed pursuant to the agreements referred to in paragraph 3 of Annex 5 other than:
 - (i) the Demarcation Agreements; and
 - (ii) easements referred to in paragraph (f) of the definition of "Excluded Existing Agreements";
- (c) all rights of third parties 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 Depot; and

- (d) all rights of third parties arising under Statute or by operation of law;

"Industry Committee" means the committee for the resolution of disputes between participants in the railway industry established in accordance with Part A of the HS1 Access Dispute Resolution Rules;

"Insured Risks" means:

- (a) (to the extent that these are normally insurable in respect of the Depot 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
- (b) such other insurable risks as the Depot Facility Owner and the Relevant Operators may agree in accordance with the terms of these Depot 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 Depot Access Agreement;

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

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

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

"Maintenance" means:

- (a) in relation to every part of the Depot:
 - (i) any treatment, operation, attendance or work of a routine and foreseeable nature whether necessary at regular or irregular intervals which is required from time to time to facilitate the efficient and safe operation and/or use of the relevant part for any purpose permitted by Condition O4 in compliance with the requirements of any Statute;
 - (ii) the replacement of such parts of the Depot as are designed for regular replacement; and
 - (iii) any inspection or certification required by Statute or for the purpose of any treatment, operation or works described in this paragraph (a);
- (b) in relation to the Equipment (except the Critical Equipment), all treatment, operations and works which are recommended in a current manufacturer's operating or maintenance manual at the intervals and in the manner so recommended but where there are no such manuals in relation to any Equipment, such treatment, operations or works as accord with current railway industry practice in relation to the maintenance of such Equipment; and
- (c) in relation to the Critical Equipment and the Critical Elements of the Depot, all treatment, operations and works as are specified or described in relation to such Equipment or Elements of the Depot in the relevant Maintenance Specification;

"Maintenance Specification" means a maintenance specification specified or described in Column (4) of the Table contained in Appendix 5 to Annex 1;

"Maximum Level of Services" means the maximum volume of Depot Services which the Depot Facility Owner has undertaken to provide to a User in respect of each Accounting Period, pursuant to and as specified in the relevant Depot Access Agreement;

"Minimum Charge" means, in respect of each Accounting Period, the aggregate of the charges payable in respect of the Minimum Level of Services prescribed for that Accounting Period;

"Minimum Level of Services" means the minimum volume of Depot Services which each User has undertaken to pay for and the Depot Facility Owner has undertaken to provide to that User in respect of each Accounting Period, pursuant to and as specified in the relevant Depot Access Agreement;

"Minimum Sum" shall have the meaning given to it in Condition E2.3;

"Minor Works" means any works required or permitted to be carried out pursuant to a Relevant Agreement other than Existing Works, Third Party Works or works which are subject to a Proposal for Change in accordance with Part C;

"Network" means the network of which HS1 Limited is the facility owner;

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

"Notice of Objection" means a notice given by a User to the Depot Facility Owner or given by the Depot Facility Owner each User during the Decision Period which contains a statement that the Relevant Operator objects to the Proposal for Change in question on the grounds that the change in question would have a material and adverse effect on its use of or interest in the Depot, as the case may be;

"Notifiable Condition" means such condition (if any) as shall be specified in Schedule 18 to a Depot Access Agreement;

"Off-Depot Services", in relation to a User, has the meaning ascribed to it in Schedule 11 of the Depot Access Agreement to which that User is a party, and, in the case of the Depot Facility

Owner, means services outside the Depot which the Depot Facility Owner shall provide to railway vehicles operated by or on behalf of the Depot Facility Owner using the Depot Facilities;

"Output Specification" means a level of performance measured by output and specified or described in Column (6) of the Table contained in Appendix 5 to Annex 1;

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

"Passenger Services" means those railway passenger services provided by or on behalf of a User pursuant to the permission to use track granted in accordance with the access agreement for the use of track specified in the Depot Access Agreement;

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

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

"Potential Users" means such persons notified by the Regulator to the Depot Facility Owner, following a request for such notification, as being potential or prospective beneficiaries at the Depot including any other persons which the Depot Facility Owner has identified as being a potential or prospective beneficiary at the Depot and has notified to the Regulator;

"Proposal for Change" means a proposal:

- (a) for any works in relation to the Depot which, if implemented in accordance with its terms, would or could reasonably be expected to have the effect of changing materially and affecting adversely whether during its implementation or after its completion:
 - (i) the ability of the Depot Facility Owner to provide the Depot Services; or
 - (ii) the ability of the Depot Facility Owner to carry out the Depot Facility Owner's Own Services; or

- (b) (except when such may arise pursuant to an Existing Agreement) to enter into any agreement or other arrangement the purpose or effect of which involves or could reasonably be expected to involve any of the matters described in (a) above; or
- (c) to close all or part of the Depot;
- (d) (except when such may arise pursuant to an Existing Agreement) to enter into an agreement or other arrangement which will result or could reasonably be expected to result in a Relevant Restriction;

provided that paragraphs (b) and (d) above shall not include the entry by the Depot Facility Owner into an access contract.

"Railway Group Standards" means:

- (a) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and
- (b) operating procedures with which the operators of railway assets must comply,

in each case as authorised pursuant to the document known as the Railway Group Standards Code as amended, supplemented or replaced;

"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 6 to Annex 1;

"Railway Superstructure" means such part of any bridge which belongs to HS1 Limited, viaduct, railway arch, raft or overlying structure which is either shown by red hatching on the Plan or identified pursuant to Appendix 6 to Annex 1;

"Regulator" means the Office of Rail and Road or any successor body or regulator;

"Relevant Agreement" means any agreement or other instrument incorporating any or all of these Depot Access Conditions;

"Relevant Date" means, in relation to a Depot Access Agreement, the first date upon which a Depot Access Agreement in respect of the Depot comes into effect;

"Relevant Operator" means each of the Depot Facility Owner and any User;

"Relevant Restriction" means:

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

"Repair" means:

- (a) in relation to every part of the Depot (including the Equipment), the carrying out of any work required so that the Depot is safe for operation and/or use for any purpose permitted by Condition O4 in compliance with the requirements of any Statute; and
- (b) in relation to the Critical Equipment and the Critical Elements of the Depot, the carrying out to any part of the Depot of any work required in order to keep such Equipment or Element of the Depot in such condition as will allow the relevant Output Specification in relation to that Equipment or Element of the Depot to be achieved; and
- (c) in relation to every part of the Depot (including the Equipment) other than the Critical Equipment and the Critical Elements of the Depot the carrying out of any work required to keep the Depot in no worse a state than evidenced by the Statement of Condition;

but does not include the carrying out of:

- (d) any Maintenance;
- (e) any work to the Depot which is the responsibility of any third party now or in the future entitled to occupy any part of the Depot under any of the Existing Agreements; or

- (f) renewal of any item of Equipment or Element of the Depot save where it is fair and equitable that renewal should be undertaken having regard to the matters described in Condition D12;

"Requisite Majority" means passenger service operators whose train departures from the Depot, expressed as a percentage of Total Departures, together are at least equal to the percentage specified in paragraph 4 of Annex 5 of the Total Departures as at the relevant date (or such other percentage as the Regulator may specify by notice to the Depot 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 Depot, a Change in Control of the Depot Facility Owner or any Passenger Operator or any event which results in a material change to the proportion of the Total Departures made by the Depot Facility Owner or any Passenger Operator);

"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;

"Secretary of State" means the Secretary of State referred to in section 1 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;

"Sponsor" means a person who makes a Proposal for Change;

"Statement of Condition" means the report of the condition of the Depot structure and parts of it contained in Appendix 2 to Annex 1;

"Statute" includes (with the exception of the Act) every existing or future Act of Parliament 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;

"Subrogation" means the right of the insurer to legally pursue a third party to recover the amount of the claim paid to the insured for their loss.

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

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

- (a) under which the Secretary of State for the time being holds the Depot; or
- (b) for the time being expectant (immediately or mediately) 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; or
- (d) under which HS1 Limited holds an interest in the Depot;

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

"System" means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site;

"Systems Interface" means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them;

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

"Threshold Sums Index" means the gross domestic product deflator at market prices (code DJDT) published by the Central Statistics Office Quarterly National Accounts;

"Total Departures" means the aggregate departures of trains from the Depot where provided for in Diagrams during the immediately preceding six Accounting Periods (or such lesser number of whole Accounting Periods as shall have elapsed from the Commencement Date);

"Track Access Conditions" means the track access agreement entered into between any User and HS1 Limited pursuant to which the User is entitled to access the Network and/or the network code applying to the Network, in each case as modified from time to time;

"Train Ready Time" means, in respect of any train, the time at which that train is presented by the Depot Facility Owner at the appropriate depot departure signal as being ready for departure from the Depot;

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

"User's Environmental Indemnity" means the indemnity given by any User pursuant to Condition M1.5;

"User's Specification" means any specification referred to in any schedule to a Depot Access Agreement;

"Value Added Tax" or **"VAT"** means value added tax within the meaning of the Value Added Tax Act 1994;

"Variable Charges" means in respect of each Accounting Period, the aggregate of the charges payable in respect of the Variable Level of Services provided during that Accounting Period;

"Variable Level of Services" means Depot Services provided by the Depot Facility Owner to a User in excess of the Minimum Level of Services but not exceeding the Maximum Level of Services specified in the Depot Access Agreement;

"Work Arising", in relation to any User, has the meaning ascribed to it in the Depot Access Agreement between the Depot Facility Owner and that User; and

"Working Timetable" has the meaning ascribed to it in the Track Access Conditions.

1.3 **Several Liability**

Each Relevant Operator 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, save as provided elsewhere in any Relevant Agreement, not be responsible for the acts, omissions, costs and liabilities of any other person.

1.4 **Relevant Special Conditions**

These Depot Access Conditions incorporate the provisions (if any) set out in paragraph 5 of Annex 5.

1.5 **Construction of agreements**

References in any Depot Access Agreement or these Depot Access Conditions to an agreement or any other document (including any Diagram, Running Maintenance Programme or any Depot Facility Owner's Running Maintenance Programme) include that agreement or other document as from time to time supplemented, varied, amended or novated (any such being a "change") only if one of the following conditions shall have been satisfied:

- (a) if the change is the amendment of an access agreement, the provisions of Condition B9 shall have been satisfied;
- (b) not used; or
- (c) if the change is the amendment of an access agreement (whether it is a change made pursuant to the terms of the document in question or in any other manner), the change shall be one:
 - (i) in respect of which the Regulator shall have given his consent in writing; or
 - (ii) which falls wholly within the terms of a general consent given by the Regulator in writing for the purposes of the Depot Access Agreement in question or these Depot Access Conditions.

A general consent of the kind referred to in sub-paragraph (c)(ii) above may be revoked by the Regulator 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.

PART B
MODIFICATIONS TO THE DEPOT ACCESS DOCUMENTATION
Condition B1 - Depot Meetings

1.1 Convening of Depot Meetings

1.1.1 The Depot Facility Owner shall:

- (a) within 14 days following receipt of notice in writing from any User requisitioning a Depot Meeting and specifying the business proposed to be carried out at that meeting; and
- (b) in respect of any Conditions Change Proposal, within 5 Business Days following the end of the Consultation Period relating to that proposal,

convene a meeting by giving not less than 14 days, and not more than 28 days, notice to all Users specifying:

- (c) the date, venue and time of that meeting; and
- (d) the business of the meeting (which shall include any necessary supporting documentation).

1.1.2 The Depot Facility Owner may at any time convene a Depot Meeting by giving notice in the manner prescribed in Condition B1.1.1.

1.1.3 The period of notice for convening a Depot Meeting notified in accordance with Conditions B1.1.1 or B1.1.2 may be waived prospectively or retrospectively with the consent in writing of all Relevant Operators.

1.1.4 Those entitled to attend and speak at a Depot Meeting are all Relevant Operators and their professional advisers.

1.2 Conduct of Depot Meetings

1.2.1 Save as otherwise provided in this Condition B1.2, Relevant Operators may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that:

- (a) any resolution in respect of such business, adjournment or regulation shall only be approved if Relevant Operators constituting the Requisite Majority shall have voted in favour of that resolution; and
 - (b) the failure of a Relevant Operator timeously to cast its vote in respect of a resolution shall be deemed to be a vote in favour of that resolution.
- 1.2.2 The Depot Facility Owner's Corporate Representative shall be the chairman of the Depot Meeting. If such representative is not present within 30 minutes of the time appointed for the meeting, those present at a Depot Meeting shall elect the chairman of that meeting. The chairman shall have no casting vote.
- 1.2.3 Any person entitled to attend a Depot Meeting (other than that person's professional advisers, an Alternate or a Corporate Representative) may appoint any other person who is willing to act as his alternate and may remove that person from office.
- 1.2.4 An Alternate shall be entitled to receive notice of all Depot Meetings which his appointor is entitled to attend, to attend and vote at any such meeting at which his appointor is not personally present, and generally to perform all the functions of his appointor in his absence. An Alternate shall cease to be an Alternate if his appointor ceases to be a person entitled to attend a Depot Meeting.
- 1.2.5 The Depot Facility Owner and each User may by notice to each other appoint such person as it thinks fit to act as its representative at any Depot Meeting. The person so authorised shall be entitled to exercise all the powers of his appointor in accordance with this Part B.
- 1.2.6 A unanimous decision in writing, executed by or on behalf of every Relevant Operator, shall be as valid and effective as if it had been passed at a duly convened Depot Meeting and may consist of several documents each signed by one or more persons.
- 1.2.7 Any appointment or removal of a Corporate Representative or an Alternate shall be by notice signed by the person making or revoking the appointment and given to the Depot Facility Owner and every other User.

Condition B2 - Administration of Depot Meetings

- 2.1 The Depot Facility Owner shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Depot Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings.
- 2.2 The Depot Facility Owner shall provide a list of the names and addresses for service of all Users promptly to any User who requests it.
- 2.3 The Depot Facility Owner shall attend each Depot Meeting, take accurate minutes of each meeting and distribute such minutes to each User within the period of 14 days following that Depot Meeting. Such minutes shall be discussed and, if thought fit, approved (with or without modification) at the next Depot Meeting.

Condition B3 - Receipt and Notification of a Conditions Change Proposal

- 3.1 Any Relevant Operator shall be entitled to make a Conditions Change Proposal. Any such proposal shall be sent to the Depot Facility Owner (unless made by the Depot Facility Owner) and shall:
 - 3.1.1 be in writing;
 - 3.1.2 contain reasonable particulars of the change proposed;
 - 3.1.3 contain the proposed text of those Conditions affected by the change as if the change had been approved pursuant to this Part B; and
 - 3.1.4 be supported by an explanation in reasonable detail of the purpose of the proposed change.
- 3.2 The Depot Facility Owner shall, within 5 Business Days following receipt of a Conditions Change Proposal or, if later, within 5 Business Days following receipt of any clarification that the Depot Facility Owner may, within the initial 5 Business Days, reasonably request from the person making that proposal, and immediately upon the making of a proposal by the Depot Facility Owner:
 - 3.2.1 supply a copy of that proposal to each User; and

- 3.2.2 invite the submission to the Depot Facility Owner of written representations in respect of that proposal within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition B3.2.1.
- 3.3 The Depot Facility Owner shall, following the end of the Consultation Period:
- 3.3.1 convene a Depot Meeting in accordance with Condition B1.1.1(b); and
- 3.3.2 supply to each person referred to in Condition B3.2.1 at least 5 Business Days before the date of the meeting:
- (a) copies of all representations received pursuant to Condition B3.2.2; and
- (b) if the person making the proposal consents, any modification to that proposal,
- provided that no such meeting shall be convened or documents supplied, if the person making the proposal materially modifies it.
- 3.4 If at any time a Conditions Change Proposal is materially modified, the Depot Facility Owner shall treat the modified proposal as a new Conditions Change Proposal.
- 3.5 The person making a Conditions Change Proposal shall promptly comply with all reasonable written requests of the Depot Facility Owner for reasonable further clarification of the proposal.

**Condition B4 - Consideration of a Conditions
Change Proposal at a Depot Meeting**

- 4.1 Without prejudice to Condition B8, and subject to Condition G1.3, a Conditions Change Proposal shall have been approved only:
- 4.1.1 if either:
- (a) the Requisite Majority shall have voted in favour of that proposal at the relevant Depot Meeting or that proposal is approved in accordance with Condition B1.2.6; or

- (b) an expert or the Regulator (as the case may be) shall have determined, pursuant to Condition B10, that it should have effect; and

4.1.2 where the Secretary of State and/or HS1 Limited's consent is required in relation to the Conditions Change Proposal pursuant to the terms of the Depot Lease / HS1 Lease (as applicable), such consent has been provided to the Depot Facility Owner in writing. The Depot Facility Owner acknowledges that it must use reasonable endeavours to secure such consent pursuant to Condition G1.4.

Condition B5 -Approval or Rejection of Conditions Change Proposal by the Regulator

5.1 Decision to Approve

5.1.1 The Depot Facility Owner shall, as soon as reasonably practicable following the approval of a Conditions Change Proposal, submit the proposal to the Regulator, 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 B3.2.2 which shall have been neither accepted nor withdrawn); and
- (c) stating the reasons for any objections to the proposed change by any Relevant Operator.

5.1.2 Relevant Operators shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Conditions Change Proposal by the Regulator.

5.1.3 No Conditions Change Proposal shall have effect unless the Regulator gives notice to the Depot Facility Owner in writing that he approves the proposal pursuant to section 22 of the Act.

5.1.4 If the Regulator gives his approval to the Conditions Change Proposal, the Depot Facility Owner shall so notify all those entitled to attend a Depot Meeting, with the exception of professional advisers, within the period of 14 days following receipt by the Depot Facility Owner of the Regulator's notice of approval.

5.2 Decision to Reject

The Depot Facility Owner shall, following the rejection by the Regulator of a Conditions Change Proposal, notify:

- 5.2.1 the person making that proposal of that decision as soon as reasonably practicable; and
- 5.2.2 all other Relevant Operators of that decision within 14 days of the receipt of the notice of such rejection.

Condition B6 - Modification by the Regulator

6.1 These Depot Access Conditions shall have effect with the modifications specified in any notice given by the Regulator for the purposes of this Condition B6, provided that the Regulator shall be satisfied as to the need for the modification as provided in Condition B6.2, the procedural requirements of Condition B6.4 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition B6.5.

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

6.2.1 in the case of a notice issued on or before the date which is 150 days after the Relevant Date if he 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 issued after the date which is 150 days after the Relevant Date if he 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 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 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.

- 6.3 For the purposes of Condition B6.2.2 "relevant person" means a Relevant Operator and any Potential User.
- 6.4 The procedural requirements which shall require to have been followed for the purposes of Condition B6.1 are:
- 6.4.1 in his consideration of the matters referred to in Condition B6.2, the Regulator shall have consulted all Relevant Operators, Potential Users and the Secretary of State, together with any other persons whom the Regulator shall consider ought properly to be consulted, in relation to the modification which he proposes to make;
- 6.4.2 in the consultations referred to in Condition B6.4.1, the Regulator shall have made available to each person so consulted such drafts of the proposed modification as he shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
- 6.4.3 the Regulator 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 his decision on the modification to be made;
- 6.4.4 the Regulator shall have notified each person so consulted as to his 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 his reasons for those conclusions; and
- 6.4.5 in effecting the notifications required by Condition B6.4.4, the Regulator 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 Regulator or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
- 6.5 A notice under Condition B6.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect:

- 6.5.1 in the case of a notice given on or before the date which is 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
- 6.5.2 in the case of a notice given later than the date which is six months after the Relevant Date, earlier than 180 days after the date upon which it shall have been given.
- 6.6 A notice under Condition B6.1 shall not have effect in relation to any proposed modification of Conditions B6.1 to B6.5 (inclusive) or this Condition B6.6.

Condition B7 - Notification of Conditions Change Proposal

- 7.1 The Depot Facility Owner shall notify any change made in accordance with this Part B other than Condition B6 to all Users and the Regulator. The change in question shall have effect on the expiry of 21 days from the date of that notification.
- 7.2 The Depot Facility Owner shall, as soon as reasonably practicable following issue of a notice under Condition B6.1 and following approval of a Conditions Change Proposal by the Regulator, supply to all Users and the Regulator a revised version of these Depot Access Conditions incorporating the change.

Condition B8 – Not Used

8.1

Condition B9 - Amendment to the Depot Access Agreement

- 9.1 Without prejudice to any other provisions in these Depot Access Conditions no amendment shall be made to a Depot Access Agreement unless in writing and signed by duly authorised representatives of the parties; and
- 9.1.1 approved by the Regulator pursuant to the Act; or
- 9.1.2 where the Regulator has given a general approval under section 22(2) or 22(3) of the Act, such amendment is wholly within its terms.

Condition B10 - Appeal procedure - Depot Facility Owner's Own Services

10.1 Right of Depot Facility Owner to refer Conditions Change Proposal for expert determination

If a Conditions Change Proposal of the Depot Facility Owner to make any amendment to the allowance specified in Annex 7 in respect of the Depot Facility Owner's Minimum Level of Services or the Depot Facility Owner's Maximum Level of Services (as the case may be) shall not have been approved by a vote of the Requisite Majority pursuant to Condition B4.1.1, the Depot Facility Owner shall be entitled to refer the matter for the determination of an expert pursuant to Part D of the HS1 Access Dispute Resolution Rules.

10.2 Determination by expert

An expert acting on a reference made pursuant to Condition B10.1 shall determine whether the Conditions Change Proposal in question should have effect. In making his determination, the expert shall have regard to:

- (a) the matters as respects which duties are imposed on the Regulator by section 4 of the Act; and
- (b) such criteria which the Regulator shall have most recently published (and identified as such) in relation to the utilisation of the capacity of light maintenance depots.

10.3 Right of appeal to Regulator

If either the Depot Facility Owner or any User shall be dissatisfied with the determination of the expert, he shall be entitled to refer the matter for determination to the Regulator. No such reference shall be made on grounds other than that the determination of the expert shall have been so unreasonable that no reasonable expert could have made it.

10.4 Powers and immunities of Regulator

Where either the Depot Facility Owner or a User shall have made a reference to the Regulator under Condition B10.3, the Regulator shall:

- (a) be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the expert, he shall determine that the reference should not proceed, including on the grounds that:
 - (i) the matter in question is not of sufficient importance to the Depot Facility Owner and the Users;
 - (ii) the reference to him is frivolous or vexatious; or
 - (iii) the conduct of the person making the reference ought properly to preclude its being proceeded with; and
- (b) not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

10.5 **Determinations by Regulator - supplemental**

Paragraph E3 of the HS1 Access Dispute Resolution Rules shall apply to a reference to the Regulator made pursuant to Condition B10 as it applies to references made to the Regulator pursuant to the Track Access Conditions.

10.6 **Amendment of allowance**

Annex 7 of these Depot Access Conditions shall have effect with the amendments determined by the expert or the Regulator (as the case may be) following a reference pursuant to this Condition B10.

Condition B11 - Unilateral Amendment of Diagrams and Running Maintenance Programmes

11.1 The Depot Facility Owner shall be entitled at any time and from time to time to make such variations or amendments to any of the Depot Facility Owner's Diagrams or any of the Depot Facility Owner's Running Maintenance Programmes or Depot Facility Owner's Specifications as it may in its absolute discretion determine provided that:

- (a) any such variation or amendment would not or could not reasonably be expected to have the effect of changing materially and affecting adversely the ability of the Depot Facility Owner to provide Depot Services;

- (b) any such variation or amendment will have effect from the date which is 5 Business Days after the date when the Depot Facility Owner gives notice to each User of such variation or amendment; and
- (c) the variation or amendment is one which is permitted by a general approval or general consent of the kind contemplated by Condition A1.5.

11.2 Any User shall be entitled at any time and from time to time to make such variations or amendments to any of the User's Diagrams or any of the User's Running Maintenance Programmes or User's Specifications as it may in its absolute discretion determine provided that:

- (a) such variation or amendment would not or could not reasonably be expected to have the effect of changing materially and affecting adversely the ability of the Depot Facility Owner to provide Depot Services or the Depot Facility Owner's Own Services;
- (b) any such variation or amendment will have effect from the date which is 5 Business Days after the date when the User gives notice to the Depot Facility Owner of such variation or amendment; and
- (c) the variation or amendment is one which is permitted by a general approval or general consent of the kind contemplated by Condition A1.5.

PART C
CHANGES TO THE DEPOT
Condition C1 - Proposal for Change

- 1.1 No Relevant Operator shall take any action falling within the definition of a Proposal for Change, save in accordance with this Part C, except:
 - 1.1.1 in performance of an obligation imposed on it under these Depot Access Conditions which is expressed not to require compliance with this Part C; or
 - 1.1.2 in exercise of a right granted, excepted or reserved to it under Condition M2.15 or M3.1;
 - 1.1.3 where a restriction, suspension or alteration to any permission to use the Depot to permit that action may be imposed under Condition D1 or D2.1 and the relevant Condition is not expressed to require compliance with this Part C; or
 - 1.1.4 where Condition G8.5 provides that this Part C does not apply.
- 1.2 Any Relevant Operator shall be entitled at any time to make a Proposal for Change.
- 1.3 A Proposal for Change shall be sent to the Depot Facility Owner, together with sufficient copies of such proposal to enable the Depot Facility Owner to distribute a copy to each person entitled to receive one.
- 1.4 A Proposal for Change shall be in writing and shall contain such information in relation to the proposal as shall be reasonably necessary to enable each of the persons to whom it is required to be sent in accordance with Condition C1.5 to evaluate the effect which the change in question or the process of its implementation, if made in accordance with the terms of the proposal, will have or is likely to have on their customers and their businesses (where applicable) and any proposals for apportionment of the costs of carrying out the change in question and any Financial Undertaking.
- 1.5 A Depot Facility Owner shall, on making a Proposal for Change, or on receipt of such a proposal from a User:

- 1.5.1 promptly provide a copy of such proposal to each User (other than its Sponsor) together with any information required to be provided by it, or received by it from the person making such a proposal, under Condition C1.4;
 - 1.5.2 invite the submission of representations on the proposal from the persons to whom the Proposal for Change has been sent pursuant to Condition C1.5.1 and give such persons a reasonable time (not being less than 30 days) to make representations in respect of the proposal (which time shall not be longer than the period for Users to object to the proposal specified in Condition C1.5.3); and
 - 1.5.3 give a reasonable period (not being less than 45 days) to each User to submit a Notice of Objection in relation to the proposal.
- 1.6 Copies of any representations or objections received by the Depot Facility Owner from any person listed in Condition C1.5.1, or made by the Depot Facility Owner on his own behalf, shall be provided to the relevant Sponsor and every other User within 5 Business Days of their receipt by the Depot Facility Owner, or when made by the Depot Facility Owner shall be provided promptly.
- 1.7 The Depot Facility Owner shall consult with the relevant Sponsor in relation to that proposal and that person shall be entitled to amend the proposal and resubmit it to the Depot Facility Owner in accordance with the procedures laid down in this Condition C1.

**Condition C2 - Evaluation and response to a Proposal
for Change**

- 2.1 Each Consultee shall be entitled to be paid in accordance with Conditions C2.10 and C2.11 100% of all costs reasonably incurred by it in evaluating and responding to any Proposal for Change.
- 2.2 Each Consultee shall, in respect of any Proposal for Change, if requested to do so in writing by the Depot Facility Owner, provide (at no cost to the Sponsor), a preliminary written response (which, unless the Consultee indicates otherwise, shall be binding on it). Such response shall be provided as soon as practicable, and in any event within the period of 28 days commencing on the date of the request for a preliminary response, and any such preliminary response in

which the Consultee dissents from the Proposal for Change shall include the reasons for such dissent.

- 2.3 Each Consultee shall, in respect of any such Proposal for Change upon request from the Depot Facility Owner from time to time, provide the Depot Facility Owner with:
 - 2.3.1 a written estimate of the costs which may be reasonably incurred by it in evaluating and responding to such proposal; and
 - 2.3.2 such information as may be reasonably necessary to assess the reasonableness of any such estimate.
- 2.4 It shall be a condition of every Proposal for Change that the Sponsor thereof shall, if requested by any Consultee, provide to that Consultee reasonable assurances of payment in respect of any material work to be carried out for the purposes of its evaluation and response, before commencing such work.
- 2.5 Each Consultee shall ensure that any estimates given by it pursuant to Condition C2.3 are, so far as reasonably practicable, accurate on the basis of the information available to it.
- 2.6 A Consultee shall incur no further costs (except any costs which cannot reasonably be avoided) in evaluating and responding to a Proposal for Change with which the Sponsor does not wish to proceed, upon receipt of notice to that effect.
- 2.7 Each Consultee shall use its reasonable endeavours to minimise its costs of evaluating and responding to any Proposal for Change and shall, where it reasonably considers it appropriate, liaise with other Consultees in order to achieve that minimisation.
- 2.8 Any Sponsor other than the Depot Facility Owner shall use all reasonable endeavours to facilitate consultation by the Depot Facility Owner with the persons specified in Condition C1.5.1 to the extent reasonably necessary so as to enable those persons properly to evaluate and respond to that proposal.
- 2.9 The Depot Facility Owner shall, at the cost of the Sponsor, exercise its rights under this Condition C2 (including the enforcement of the obligations of a Consultee to the Depot Facility

Owner under this Condition C2) in accordance with such reasonable requests as may from time to time be made by the Sponsor.

- 2.10 If the Depot Facility Owner is the Sponsor, it shall make the payments specified in Condition C2.1.
- 2.11 If the Depot Facility Owner is not the Sponsor, such Sponsor shall pay to the Depot Facility Owner an amount sufficient to enable the Depot Facility Owner to make the payment specified in Condition C2.1 (and the amount due to the Depot Facility Owner) and the Depot Facility Owner shall thereupon make the payments specified in Condition C2.1.

Condition C3 – Not Used

Condition C4 - Acceptance of a Proposal for Change

- 4.1 Without prejudice to Condition C5 and subject to the remaining provisions of this Condition C4, a Proposal for Change shall be deemed to have been accepted at the expiry of a Decision Period if no Relevant Operator has have given a Notice of Objection.
- 4.2 Any dispute as to the validity of a Notice of Objection shall be resolved in accordance with Condition H5.
- 4.3 Notwithstanding the failure of a Proposal for Change to be accepted pursuant to Condition C4.1 and subject to Condition C4.5, it shall be deemed to have been accepted if a Financial Undertaking has been given within the Decision Period by any Relevant Operator or number of Relevant Operators individually or collectively to the remaining Relevant Operators.
- 4.4 The Depot Facility Owner shall, as soon as reasonably practicable after the expiry of 8 Business Days from the end of the Decision Period, notify each User of the acceptance or rejection of the relevant Proposal for Change and of any notice given under Condition C4.5 and received within that period.
- 4.5 A Proposal for Change shall not be accepted or rejected if:
 - 4.5.1 a Relevant Operator shall have:

- (a) given notice to all other Relevant Operators if the notice is given by a Relevant Operator within 30 days after the end of the Decision Period of his intention to commence proceedings of the kind referred to in Condition C4.5.2; and
 - (b) commenced such proceedings not later than 30 days after the giving of such notice; and
- 4.5.2 the objector shall establish in final proceedings in accordance with Condition H5 that if the Proposal for Change in question is carried out, or not carried out, as the case may be, in accordance with its terms:
 - (a) its interests under or in respect of the Relevant Agreement would be, or are likely to be, unfairly prejudiced; and
 - (b) any such prejudice which it would or would be likely to sustain outweighs, or is likely to outweigh, any prejudice which any other Relevant Operator shall have established that, whether alone or together with any other Relevant Operator, it would or would be likely to sustain in respect of its interests under or in respect of a Relevant Agreement if the Proposal for Change were carried out, or not carried out (as the case may be), in accordance with its terms.
- 4.6 In determining whether the interests of any Relevant Operator shall be, or shall be likely to be, prejudiced for the purposes of Condition C4.5, the primary considerations shall be the matters as respects which duties are imposed on the Regulator by section 4 of the Act and subject thereto there shall also be taken into account:
 - 4.6.1 the expectations which the Relevant Operator in question has in respect of its interests in relation to the Depot;
 - 4.6.2 the expenses which will be, or are likely to be, incurred or saved if the Proposal for Change is or is not carried out in accordance with its terms;
 - 4.6.3 the interests of other users of the Depot; and
 - 4.6.4 any Relevant Operator's track access contract term;

provided that there shall not for the purposes of this Condition C4.6 be taken into account the existence or terms of any contract (subject always to Condition G.1).

- 4.7 A Proposal for Change shall be accepted or rejected in accordance with the outcome of such final proceedings.
- 4.8 Notwithstanding the other provisions of this Condition C4, a Proposal for Change shall be deemed to have been accepted if every Relevant Operator (other than the Sponsor) shall consent in writing to that Proposal for Change.
- 4.9 Where a Proposal for Change is deemed to be accepted pursuant to Condition C4.8:
 - 4.9.1 the Decision Period in relation to that Proposal for Change shall be deemed to have ended on the date on which the condition specified in Condition C4.8 shall have been satisfied; and
 - 4.9.2 Condition C4.5 shall not apply in respect of that Proposal for Change.

**Condition C5 - Submission of a Proposal for
Change to the Regulator**

- 5.1 On acceptance of a Proposal for Change in accordance with Condition C4, the Depot Facility Owner shall submit any proposed consequential amendments to the Depot Access Agreement to the Regulator for his approval, provided that no such approval shall be sought (unless the Proposal for Change shall in the case of Condition C5.1.3 or C5.1.4 otherwise specify) if and to the extent that (or, if applicable, for so long as):
 - 5.1.1 the change in question shall fall within a relevant general approval given by the Regulator pursuant to sections 22(2) or 22(3) of the Act;
 - 5.1.2 a notice has been served and proceedings commenced in accordance with Condition C4.5 and the result of final proceedings of the kind referred to in Condition C4.5.2 is pending;
 - 5.1.3 the change in question requires the implementation and completion of any procedure pursuant to the Track Access Conditions, and the result of that procedure is pending; or

- 5.1.4 any other consents or approvals are required by any Statute to or from any third party to enable the implementation of that proposal, and have not yet been obtained.
- 5.2 The Depot Facility Owner shall submit details of a Proposal for Change accepted in accordance with Condition C4 but which has not yet been approved in accordance with Condition C5 to the Regulator for approval on satisfaction of the relevant conditions in Conditions C5.1.2, C5.1.3 and C5.1.4.

Condition C6 - Approval by the Regulator

No Proposal for Change whose implementation would:

- 6.1 require consequential amendments to the Depot Access Agreement; or
- 6.2 be likely materially and adversely to affect the capacity of the Depot in relation to the provision of light maintenance services for a period longer than 28 days;

shall take effect or be implemented unless and until any such Proposal for Change and any such consequential amendments have been approved by the Regulator.

Condition C7 - Notification of Regulator's decision

The Depot Facility Owner shall, as soon as reasonably practicable after it receives notice of the Regulator's decision on an application for approval of an amendment pursuant to Condition C5, notify each User of such decision.

Condition C8 - Implementation of a Proposal for Change

- 8.1 Not used.
- 8.2 Subject to Condition C5, the Depot Facility Owner shall carry out the changes proposed in accordance with any Proposal for Change which shall have been approved pursuant to this Part C.

- 8.3 Insofar as such costs are not the subject of any Financial Undertakings, the cost of implementing a Proposal for Change shall be apportioned between each Relevant Operator in accordance with the provisions of that Proposal for Change.

Condition C9 - Changes imposed by law

- 9.1 Where the Depot Facility Owner is required (other than at its own request or instigation) to implement a change which would otherwise be the subject of a Proposal for Change, as a result of any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition H5, the Depot Facility Owner shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions C1.5.1 and C1.5.2 in respect of that change as if it were a Proposal for Change, as the case may be, and shall thereafter keep each Relevant Operator fully informed of the progress in or towards implementing that change but shall otherwise be entitled to implement such change without being required to comply with any other requirement of this Part C.
- 9.2 The provisions of Condition P2 shall have effect in relation to any costs of complying with or in consequence of any change referred to in Condition C9.1.

Condition C10 – Not Used

PART D
WORKS, REPAIRS AND MAINTENANCE

Condition D1 - Existing Works, Third Party Works and Emergencies

- 1.1 Subject to Conditions D2.4 and D.3 and notwithstanding the provisions of its light maintenance depot licence, the Depot Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Depot 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 Depot Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in Annex 2; or
 - 1.1.2 safeguard the safety or security of persons or property in an Emergency at or affecting the Depot.
- 1.2 Notwithstanding the provisions of its light maintenance depot licence, the Depot Facility Owner shall, when reasonably requested to do so by HS1 Limited, restrict, suspend or alter any permission to use the Depot in a HS1 Limited Emergency.

Condition D2 - Repairs and Maintenance and other works

- 2.1 Subject to Conditions D2.3 and D3.1, the Depot Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Depot if and to the extent that it is reasonably necessary to:
 - 2.1.1 permit Repair, Maintenance, Discretionary Third Party Works or Minor Works to be made or carried out at or in relation to the Depot including work to be carried out in accordance with Condition D4.3;
 - 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 involve a Proposal for 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 involves a Proposal for 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; and
- 2.1.5 permit any works conducted in accordance with the Direction of any Competent Authority or as a result of any Change of Law, subject to compliance with the provisions of Condition C9.
- 2.2 Not used.
- 2.3 The Depot Facility Owner shall, if it intends to restrict, suspend or alter any permission to use the Depot in accordance with Condition D2.1 (otherwise than in a trivial respect):
 - 2.3.1 provide reasonable notice to each User 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 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 Relevant Operator who may be affected.
- 2.4 The Depot Facility Owner shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Condition D1.
- 2.5 Where any Existing Works are proposed to be carried out:

- 2.5.1 where the Depot 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 it shall, so far as reasonably practicable, comply with Condition D3.

Condition D3 - Alternative arrangements

- 3.1 Where the Depot Facility Owner restricts, suspends or alters permission to use the Depot in accordance with Condition D1 or D2, it shall, to the extent reasonably practicable, make prompt and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Depot provided for in the Relevant Agreement, for:
 - 3.1.1 suitable alternative arrangements in respect of access to and egress from the highway; and
 - 3.1.2 each Relevant Operator's Associates (other than passengers) to pass to and from trains operated by or on behalf of that Relevant Operator which obtain Depot Services at the Depot,

and the Depot Facility Owner shall use all reasonable endeavours to make prompt and adequate provision for suitable alternative arrangements so as to enable each Relevant Operator and its Associates to obtain Depot Services at the Depot with minimum disruption, difficulty or inconvenience.

Condition D4 – Not Used

Condition D5 - The Depot Facility Owner's obligations

- 5.1 The Depot 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 those Elements of the Depot listed (whether individually or by category) as the Depot Facility Owner's responsibility in the Equipment Inventory and the Elements Inventory, provided that the Depot Facility Owner shall be under no obligation to carry out Repair to any such Elements of the Depot 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 Depot Facility Owner or its employee, agent, licensee or invitee, but excluding any User;

- 5.1.2 Maintenance is carried out to those items of Equipment and those Elements of the Depot not listed (whether individually or by category) as the responsibility of the Depot Facility Owner in the Equipment Inventory or the Elements Inventory; and
- 5.1.3 in respect of the Equipment and Elements of the Depot referred to in Condition D5.1.1 for the Repair of which the Depot Facility Owner is responsible, renewal shall be undertaken where reasonably required having regard to asset condition, safety, operational requirements and good industry practice, as well as the matters described in Condition D12.
- 5.2 The Depot 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 Depot.
- 5.3 The Depot Facility Owner shall not be in breach of its obligations under Conditions D5.1 and D5.2 if, and to the extent that, the Depot 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 Depot 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.
- 5.4 Where the Depot Facility Owner intends to undertake a renewal in accordance with Condition D5.1.3, it shall notify each User in writing (such notice being a “**Renewal Notice**”) and following the date of such notice either Party to a Depot Access Agreement may formally review the Access Charge with the counterparty. The purpose of such review shall be to ensure that the Access Charge is adjusted to reflect the impact of the renewal set out in the Renewal Notice on the costs incurred by the Depot Facility Owner (including capital costs and operational costs), it being agreed that any such costs shall be apportioned on a fair and equitable basis between the Depot Facility Owner and each User, taking into account (amongst other relevant considerations) the proportion of use of the relevant Equipment or Element of

the Depot by each party. At the conclusion of the review, the parties shall negotiate with a view to reaching agreement on any amendments to the Access Charge within 30 days following the conclusion of such review, such amendments to take effect on completion of the relevant renewal, subject to the approval of the Office of Rail and Road. If the parties to a Depot Access Agreement reach agreement with each other on any such amendments, the Depot Facility Owner shall promptly submit to the Regulator for approval under section 22 of the Act the proposed amendments. If the parties fail to reach agreement with each other on such amendments within 60 days following the conclusion of such review or such other period which had been agreed between the parties, the matters in dispute may be referred by either of them for determination by an arbitrator appointed and acting in accordance with the relevant provisions of the HS1 Access Dispute Resolution Rules. Such determination shall:

- (a) be made having regard to the terms set out in this Condition D5.4 and the terms of Clause 7 of the relevant Depot Access Agreement;
- (b) be final and binding on the parties to a Depot Access Agreement; and
- (c) establish the proposed amendments to these Depot Access Conditions and any relevant Depot Access Agreement, which shall be submitted by the arbitrator to the Regulator for approval under section 22 of the Act on behalf of the parties to a Depot Access Agreement.

Condition D6 – Equipment

The Depot 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 - Conduits free from obstruction

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

Condition D8 – Not Used

Condition D9 – Not Used

Condition D10 – Not Used

Condition D11 – Not Used

Condition D12 - Renewal Considerations

The matters to which regard shall be had in deciding whether it is fair and equitable that renewal of Equipment or Elements of the Depot should be undertaken are primarily those matters as respects which duties are imposed on the Regulator by section 4 of the Act and subject to those matters:

- 12.1 the expectations which the Relevant Operator in question has in respect of its interests in relation to the Depot;
- 12.2 the costs and expenses which will be, or are likely to be, incurred or saved by each Relevant Operator in consequence of the renewal taking place and of it not taking place;
- 12.3 the benefits or disadvantages which will accrue, or are likely to accrue, to each Relevant Operator in consequence of the renewal taking place and of it not taking place;
- 12.4 the scale of disruption to each Relevant Operator's business which is likely to occur in consequence of the renewal taking place and of it not taking place; and
- 12.5 any Relevant Operator's track access agreement term.

Condition D13 – Not Used

PART E
INSURANCE

Condition E1 - Responsibility of Relevant Operators for effecting insurance

- 1.1 The Depot Facility Owner shall insure and keep insured the Depot against:
- 1.1.1 property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent operator of the Depot would effect and maintain insurance; and
- 1.1.2 the Insured Risks;
- provided that the terms of such insurance shall not unreasonably restrict any User's use of the Depot.
- 1.2 (Not used)
- 1.3 (Not used)
- 1.4 Unless otherwise agreed by the Depot Facility Owner in writing, each User shall effect and maintain appropriate insurance with a member of the Association of British Insurers regulated against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.
- 1.5 Each User shall, in respect of any insurance policy to which Condition E1.4 applies, provide the Depot Facility Owner 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 – Not Used

Condition E3 - Destruction of or damage to the Depot

- 3.1 If the Depot is destroyed or damaged by an Insured Risk or an act of terrorism) then all monies payable under insurance policies effected by the Depot Facility Owner pursuant to Condition E1 shall be applied (taking the amounts referred to in Condition E3.1.1 first where applicable) by the Depot Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Depot, subject to the Depot Facility Owner obtaining all necessary permissions and approvals from HS1 Limited, which the Depot Facility Owner shall use all reasonable endeavours to obtain as soon as reasonably practicable.
- 3.2 Subject to Condition G1, as soon as practicable following the destruction or damage referred to in Condition E3.1, the Depot Facility Owner shall consult with the Relevant Operators and HS1 Limited 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 Depot 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 at a Depot Meeting 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 thereto, the Depot Facility Owner shall proceed as soon as reasonably practicable to procure or effect such reinstatement works.
- 3.3 The Depot Facility Owner shall be responsible for Repair and/or Maintenance of any part of the Depot or Equipment which has been subject to destruction or damage as a result of an Insured Risk pending its repair, reinstatement or making good.

Condition E4 - Provision of documents

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

- 4.1 evidence of the insurance policy under, or in respect of which, the Relevant Operator has an interest and which relates to the Depot or any risk of, or in any way associated with, the operation of the Depot;
- 4.2 reasonable details of any amount payable by any Relevant Operator in respect of any such insurance policy; and
- 4.3 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 any Relevant Operator.

Condition E5 - Maintenance of insurance

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

- 5.1 if and to the extent that any Relevant Operator has an insurable interest capable of being covered by such policy and to the extent that any Relevant Operator reasonably so requests, any Relevant Operator is named as a co-insured under such policy on such terms as shall be reasonable;
- 5.2 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
- 5.3 if such insurance policy is not required under a light maintenance depot licence held by that person or that person does not hold a light maintenance depot licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to 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 No Relevant Operator shall bring on to or do or omit to do at the Depot anything which could reasonably be expected to:
 - 6.1.1 invalidate any insurance of the Depot; 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.
- 6.2 The person responsible for any act or omission contemplated by Condition E6.1 shall pay:
- 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.

Condition E7 - Waiver of Rights

The Depot Facility Owner shall 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 each Relevant Operator.

Condition E8 – Not used

PART F
ACCESS CHARGING

Condition F1 - The Access Charge

- 1.1 The Access Charge shall, in respect of each Accounting Period, be the aggregate of the following in respect of that Accounting Period:
- 1.1.1 the Minimum Charge payable for that Accounting Period;
 - 1.1.2 the Variable Charges payable for that Accounting Period; and
 - 1.1.3 the Contingent Charges payable for that Accounting Period.
- 1.2 At the end of each Accounting Period, the Depot Facility Owner shall submit to each User an invoice which covers the Minimum Charge, the Variable Charges and the Contingent Charges for that Accounting Period, in sufficient detail to enable such User to make a proper assessment of the charges being levied.
- 1.3 The Depot Facility Owner shall transmit together with the invoice any performance and any other supporting information reasonably required by the relevant User to be produced by the Depot Facility Owner in accordance with the Depot Access Agreement.
- 1.4 Subject to any contrary provision in the Depot Access Agreement, the User shall pay the Access Charge in accordance with Condition F2.1. If liability to pay any part of an invoice shall be in dispute or questioned by the User, the User shall not pay that part which shall be in dispute or questioned but the balance not in dispute shall be paid by the User in accordance with Condition F2.

Condition F2 - Payment

- 2.1 Subject to any contrary provision in the Depot Access Agreement, each User shall pay the Access Charge for each Accounting Period within 28 days of the receipt of the invoice for the same delivered in accordance with Condition F1.2.
- 2.2 All invoices other than VAT invoices which shall be supplied in accordance with Condition Q2.3.1 shall be sent to the address for service of the recipient set out in the Depot Access Agreement with a copy to the bank or other financial institution providing the payment facility referred to in Condition F2.3.

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

Condition F3 - Accounts

- 3.1 Without prejudice to any obligation of the Depot Facility Owner under its light maintenance depot licence, the Depot Facility Owner shall keep financial records in such a way as to enable all material revenue and expenditure to be clearly distinguishable and analysed in respect of each of the Depot Services provided to each User in respect of which a fixed price is not specified in that User's Depot Access Agreement.
- 3.2 The Depot Facility Owner shall make available to each User, the financial records in respect of the Depot Services to be provided to that User referred to in Condition F3.1.

Condition F4 - Review of Access Charge

- 4.1 Either party to a Depot Access Agreement may:
- (a) formally review the Access Charge with the counterparty:
 - (iv) once at any time in the twelve month period following the Commencement Date or such other longer first period as may be agreed between the parties; and
 - (ii) once at any time in every successive twelve month period following the first twelve month period or such other longer first period referred to in Condition F4.1(a)(i) as may be agreed between the parties; and
 - (b) at the conclusion of any such review, negotiate with each other with a view to reaching agreement on any amendments within 60 days following the conclusion of such review or such other period as may be agreed between the parties, such amendments to take effect subject to the approval of the Regulator from the date specified by the parties provided that such date shall be no earlier than the end of the review period specified in Condition F4.1(a)(i) or (ii).

4.2 If the parties to a Depot Access Agreement reach agreement with each other on any such amendments, the Depot Facility Owner shall promptly submit to the Regulator for approval under section 22 of the Act the proposed amendments.

4.3 If the parties to a Depot Access Agreement fail to reach agreement with each other on such amendments within 60 days following the conclusion of such review or such other period which had been agreed between the parties, the matters in dispute may be referred by either of them for determination by an arbitrator appointed and acting in accordance with the relevant provisions of the HS1 Access Dispute Resolution Rules. Such determination shall:

(b) be made having regard to:

(i) the terms of Clause 7 of the relevant Depot Access Agreement;

(ii) Legal Requirements;

(iii) the matters as respects which duties are imposed on the Regulator under section 4 of the Act; and

(iv) any guidance which may be issued to the arbitrator by the Regulator from time to time;

(b) be final and binding on the parties to a Depot Access Agreement; and

(c) establish the proposed amendments to these Depot Access Conditions and any relevant Depot Access Agreement, which shall be submitted by the arbitrator to the Regulator for approval under section 22 of the Act on behalf of the parties to a Depot Access Agreement.

4.4 **Approval by the Regulator**

If any proposed amendments to these Depot Access Conditions or any Depot Access Agreement which have been submitted to the Regulator pursuant to Condition F4.2 or F4.3 are approved by the Regulator, such proposed amendments shall be made and become effective in accordance with the terms of his 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 Not used.
- 1.2 No Relevant Operator shall do, or permit to be done, anything which might reasonably be expected to cause a breach of any obligations contained in any Existing Agreement in so far as it is aware of any such obligations or such obligations are disclosed in the Depot Register and such obligations relate to the Depot or any part of it. Failure to comply with this Condition G1.2 shall be a material breach of any applicable Relevant Agreement.
- 1.3 Nothing in any Depot Access Agreement (including these Depot Access Conditions) shall require the Depot Facility Owner to take, or refrain from taking, any action where to do so could (in the Depot Facility Owner's reasonable opinion) result in a breach of any Existing Agreement. The Depot Facility Owner shall not be liable to any User for any losses arising where the Depot Facility Owner acts or (or refrains from acting) in reliance upon this Condition G1.3.
- 1.4 Where the Depot Facility Owner requires the consent of the Secretary of State / HS1 Limited pursuant to the terms of the Depot Lease / HS1 Lease (as applicable) before taking an action (or refrains from taking an action) that it would otherwise be required to take pursuant to the terms of a Depot Access Agreement (including these Depot Access Conditions) the Depot Facility Owner shall act timeously and use all reasonable endeavours to secure the necessary consent.
- 1.5 Users shall facilitate entry to, movements around, and performance of activities at the Depot by:
- 1.5.1 Secretary of State / HS1 Limited (or their nominated agents) to the extent that the Secretary of State / HS1 Limited is entitled to take such action pursuant to the terms of the Depot Lease / HS1 Lease or any applicable law; and/or
 - 1.5.2 the beneficiary of an interest (or their agents) under any Superior Estate Grant entitling them to such access.

The Depot Facility Owner shall use reasonable endeavours to procure that reasonable notice is provided to any affected Users (and in any event that such notice is provided as soon as is

reasonably practicable following the Depot Facility Owner being notified by HS1 Limited or the relevant beneficiary (as applicable) of the relevant request for access).

Condition G2 - Costs of compliance

- 2.1 Not used.
- 2.2 The Depot 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 The Depot Facility Owner represents, warrants and undertakes to each User that:
 - 3.1.1 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 Depot Access Conditions; and
 - 3.4.2 subject to Condition I3 and any notice given under Condition I4 all Included Existing Agreements the terms of which result or are likely to result in a Relevant Restriction have been disclosed in the Depot Register in accordance with the provisions of Part I.

Condition G4 – Not Used

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 the Depot 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 Depot Facility Owner's interest in the Depot,

the Depot 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 any User, and shall at all times ensure, so far as reasonably practicable, that any disruption to the operation and/or use of the Depot 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 the Depot 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, it shall, so far as reasonably practicable, comply with Condition D3.1.

5.3 At the request of any User the Depot 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 Depot under any Existing Agreement.

Condition G6 – Not Used

Condition G7 - Superior Estate Owner consent

Where, under these Depot Access Conditions, the consent of the Depot Facility Owner is required, and such consent may be given by the Depot Facility Owner only with the permission of a Superior Estate Owner arising under a Superior Estate Grant, it is a condition precedent to the grant of that consent that such permission is first obtained, provided that the Depot Facility Owner 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) any agreement or other arrangement, whether or not of a similar nature,

which in any such case is contemplated by the Depot Lease, the HS1 Lease or any other Superior Estate Grant.

8.2 If the Depot Facility Owner intends to take any relevant action it 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 Depot; and

8.2.3 referring to this Condition G8.

8.3 Subject to Condition G8.4, 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 the Depot Lease, the HS1 Lease or any other Superior Estate Grant:

8.3.1 to implement or amend the Depot Lease, the HS1 Lease or any other Superior Estate Grant; 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 the Depot Lease, the HS1 Lease or any other Superior Estate Grant 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 Depot for the purposes of its undertaking in a way that was and has continued to be continuous and apparent and, as

against the Depot 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 Depot occupied (or to be occupied) by Royal Mail Group (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 The Depot 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 the Depot Facility Owner (including any contractual obligations entered into prior to the Conditions Efficacy Date to take the relevant action) and all Users;

8.6.4 the nature and extent of the rights to use or occupy the Depot which were being lawfully exercised on the Conditions Efficacy Date;

8.6.5 the reasonable expectations of Relevant Operators when they entered into their Relevant Agreements; and

8.6.6 the other matters as respects which duties are imposed on the Regulator 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 in question should be created shall be

determined by arbitration by a single arbitrator who (failing agreement between the parties) shall be nominated upon the application of any of the parties by the President for the time being or other appropriate officer of the Royal Institution of Chartered Surveyors and the provisions of the Arbitration Acts 1950-1979 shall apply to such determination and the proceedings hereunder shall be commenced within 30 days of receiving a notice under Condition G8.2 by the party objecting to the relevant action serving notice upon the party which served the notice under Condition G8.2 stating the reason why it considers that it is not fair and reasonable that the Relevant Restriction in question should be created.

8.8 If any party to the dispute shall be dissatisfied with the determination of the arbitrator acting on a reference of the kind referred to in Condition G8.7, it may refer the matter to the Regulator for final determination. No such reference to the Regulator may be made later than 14 days after the date of the arbitrator's award.

8.9 Where any party to the dispute has made a reference to the Regulator under Condition G8.8 the Regulator shall:

8.9.1 be entitled to decline to act on the reference if, having consulted the parties concerned, he determines that the reference should not proceed on the grounds that:

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

or on any other ground whether or not in the nature of the foregoing.

8.9.2 not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

8.10 If and to the extent that the Depot Facility Owner (as the case may be) 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 - Not Used

Condition H2 - Notification by Depot Facility Owner

2.1 Not Used

2.2 Without prejudice to Part M, the Depot Facility Owner shall promptly notify each User of:

2.2.1 any incidents, accidents or circumstances causing damage to the Depot, the cost of remedying which is likely to exceed the amount specified in paragraph 10 of Annex 5; and

2.2.2 any claim, litigation, lien, demand or judgment relating to the Depot or the provision of the Depot Services 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 11 of Annex 5,

which in any case may materially and adversely affect the interests of that User in the Depot or under any Relevant Agreement.

Condition H3 - Notification by User

Without prejudice to Part M:

3.1 Not Used

3.2 Each User shall promptly notify the Depot Facility Owner of any claim, litigation, lien, demand or judgment brought by it or against it which is likely to affect the operation of the Depot, the provision of the Depot Services or the Depot Facility Owner's Own Services which in any case may materially and adversely affect the interests of the Depot Facility Owner in the Depot or under any Relevant Agreement.

3.3 Notwithstanding Conditions H2 and H4, a User shall have the right to participate in any prosecution, defence or settlement conducted in accordance with such Conditions at its sole

cost and expense, provided that such participation shall neither prejudice its conduct by the Depot Facility Owner nor reduce the User's share of the cost of such action.

Condition H4 - Authority of Depot Facility Owner

- 4.1 Without prejudice to Part M, the Depot Facility Owner shall have the authority to commence, prosecute, defend, pursue or settle any claim, litigation, lien, demand or judgment relating to the operation of the Depot or the provision of the Depot Services or the Depot Facility Owner's Own Services (other than between the Depot Facility Owner and a User) on behalf of both itself and, if appropriate, any Users, provided that the Depot Facility Owner shall have no such authority or obligation without the prior consent of Relevant Operators representing the Requisite Majority where:
- 4.1.1 the dispute is likely materially and adversely to affect the Depot Facility Owner's ability to operate the Depot; or
- 4.1.2 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 12 of Annex 5.

Condition H5 - Resolution of disputes and claims

- 5.1 Save as otherwise provided in these Depot Access Conditions, any dispute or claim arising out of or in connection with these Depot Access Conditions or a Relevant Agreement shall be resolved by the Industry Committee (save where the parties agree to submit the dispute to mediation instead), followed, if either party shall be dissatisfied with the decision of the Industry Committee or the ruling of the Chairman thereof (as the case may be), by referral to such other mechanism (other than mediation) as the Industry Committee shall specify, pursuant in each case to the HS1 Access Dispute Resolution Rules.
- 5.2 Any dispute or claim in respect of the matters referred to in Conditions D5.2, D11.6, D11.8 and M4.4 shall be resolved by expert determination pursuant to the HS1 Access Dispute Resolution Rules.

PART I
DEPOT REGISTER

Condition I1 - Maintenance of the Register

1.1 The Depot Facility Owner shall, in such form as it may reasonably determine maintain at the premises referred to in paragraph 3 of Annex 1 a register for the purposes of this Part I and shall, upon ceasing to be the facility owner of the Depot, 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 records referred to in Condition F3.1.

1.2 Not used.

Condition I2 - Content of the Register

2.1 Subject to Condition I3 and any notice given under Condition I4, the Depot Facility Owner shall cause to be entered in the Depot Register:

2.1.1 so far and as soon as reasonably practicable, in relation to Existing Agreements of which it is aware, a copy or a true and fair description of the material terms of each of the following insofar as they are likely to result in or affect a Relevant Restriction:

(a) every Existing Agreement;

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

(c) 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, respectively, likely to result in or affect 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 Conditions Change Proposal described in Part B or any Proposal for Change described in Part C, the provisions of:
 - (a) such proposal;
 - (b) any representations and/or objections made in respect of such proposal;
 - (c) the result of any decisions made by those entitled to vote in respect of, or consent to, such proposal; and
 - (d) the result of any decisions made by the Regulator in respect of such proposal;
- 2.1.4 a copy of every Direction of any Competent Authority which relates to the Depot or to the operation of the Depot and which is likely to result in or affect a Relevant Restriction provided that such Direction is not applicable to light maintenance depots generally;
- 2.1.5 a copy of the Depot Lease;
- 2.1.6 a copy of the current Depot Work Plan;
- 2.1.7 the documents which the Depot Facility Owner is required to maintain in accordance with Part M;
- 2.1.8 a copy of these Depot Access Conditions;
- 2.1.9 a copy of the Depot Facility Owner's light maintenance depot licence in relation to the Depot and any modification of it, 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 a User under or in respect of its Depot Access Agreement;

2.1.10 a copy of the Depot Facility Owner's Diagrams and all Diagrams delivered to the Depot Facility Owner by any User in accordance with Condition N3.10; and

2.1.11 a copy of the HS1 Lease .

Condition I3 - Exclusions from the Register

In entering any document or information in the Depot Register, the Depot 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 Depot Facility Owner, seriously and prejudicially affect the interests of that person.

Condition I4 - Public interest

The Depot Facility Owner shall not enter any document or information in the Depot Register, and shall remove any document or information so entered, if the Regulator shall, following an application made to him by any person, have given notice to the Depot Facility Owner that, in his 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 Depot Register.

Condition I5 - Inspection and Copies

- 5.1 The contents of the Depot Register shall be available at the place where it is required to be maintained for inspection by any User, the Regulator and any Potential User during normal business hours, without payment of any fee.
- 5.2 Any User and any Potential User may, on the payment of such reasonable fee as the Depot Facility Owner may from time to time specify with the approval of the Regulator, require the Depot Facility Owner to supply it with a copy of, or extract from, any part of the Depot Register, being a copy or extract which is certified by the Depot Facility Owner to be a true copy or extract.
- 5.3 If requested to do so by the Regulator, the Depot Facility Owner, without payment of any fee, shall supply him with a copy of, or extract from, any part of the Depot Register, being a copy or extract which is certified by the Depot Facility Owner to be a true copy or extract.

PART J
NOT USED

PART K
NOT USED

PART L
REMEDIES
Condition L1 – Delays

- 1.1 The Depot Facility Owner shall each day record accurately the Train Ready Time in respect of each train operated by or on behalf of a Relevant Operator. If any such train is cancelled or for any other reason no Train Ready Time occurs in respect of it, the Depot Facility Owner shall record that fact. The Depot Facility Owner shall maintain such record up to date and shall make the same available to any User upon request at reasonable times and from time to time.

Condition L2 – Not Used

Condition L3 – Not Used

Condition L4 - Force Majeure

- 4.1 "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 L4.1 shall, subject to Condition L4.1.2, include the following events and circumstances:

- 4.1.1 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 thereof) 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 L4 or of its Affiliates, or the provision by the Depot 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:

- 4.1.2 any act of the Regulator, any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of this Condition L4 or of its Affiliates, 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 L4.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.

PART M
ENVIRONMENTAL PROTECTION
Condition M1 - Environmental Indemnities

- 1.1 Not Used
- 1.2 Not Used
- 1.3 The Depot Facility Owner shall (on an after tax basis) indemnify each User and keep it indemnified against all Environmental Loss incurred or suffered by that User save to the extent that the Environmental Condition which resulted in such Environmental Loss results from:
 - 1.3.1 breach by that User of its obligations contained in a Relevant Agreement to which it is a party with the Depot Facility Owner;
 - 1.3.2 breach of Environmental Law by that User; or
 - 1.3.3 any action taken against the Depot Facility Owner by a Competent Authority or third party in relation to Environmental Damage which is due to any act of that User.
- 1.4 Each User shall (on an after tax basis) indemnify the Depot Facility Owner and keep it indemnified against all Environmental Loss incurred or suffered by the Depot Facility Owner to the extent that the Environmental Condition which resulted in such Environmental Loss results from:
 - 1.4.1 breach by that User of its obligations contained in a Relevant Agreement to which it is a party;
 - 1.4.2 breach of Environmental Law by that User; or
 - 1.4.3 any action taken against the Depot Facility Owner by a Competent Authority or third party in relation to Environmental Damage which is due to any act of that User.
- 1.5 If any payment is made pursuant to any Environmental Indemnity and the payee subsequently recovers or procures the recovery from a third party of any amount in respect of any Environmental Loss in respect of which the payee shall have been indemnified the payee shall repay to the payer an amount equal to the lesser of:

1.5.1 the amount received from the third party; and

1.5.2 the amount paid by the payer pursuant to the relevant Environmental Indemnity.

Condition M2 - Environmental Protection Conditions

2.1 Not Used

2.2 Not Used

2.3 The Depot Facility Owner shall not negligently cause or negligently permit to be caused:

2.3.1 at, in, under or originating from the Depot any discharge, spill, leak, deposit or other release into the Environment of any pollutants of any kind in a quantity or concentration which either alone or in combination with any other event or circumstances or any substances or materials present in the Environment it is reasonably foreseeable would give rise to pollution of the Environment or harm to human health and which in either case would entitle a Competent Authority or any third party to take action under Environmental Law or would do so if a Competent Authority or third party were aware of the situation; or

2.3.2 any other Environmental Condition which it is reasonably foreseeable would give rise to pollution of the Environment or harm to human health and which in either case would entitle a Competent Authority or any third party to take action under Environmental Law or would do so if a Competent Authority or third party were aware of the situation.

2.4 To the extent that an Environmental Condition exists at the Depot which results from any of the matters specified in Conditions M1.3.1, M1.3.2 and M1.3.3 the Depot Facility Owner shall take the following action:

2.4.1 notify the relevant Competent Authority where it is obliged to do so under Environmental Law or where it is reasonably foreseeable that a Competent Authority would have the power under Environmental Law to determine the nature and extent of any action to mitigate or remedy such Environmental Condition;

- 2.4.2 notify any relevant User of all appropriate details of the Environmental Condition forthwith and of the action it considers is appropriate to mitigate or remedy such Environmental Condition and prevent its recurrence; and
 - 2.4.3 take the action appropriate to mitigate or remedy such Environmental Condition.
- 2.5 The Depot Facility Owner shall create and maintain a register of events or circumstances at the Depot which the Depot Facility Owner reasonably considers have given rise or which the Depot Facility Owner is aware could reasonably be expected to give rise (either alone or in combination with other events or circumstances) to an Environmental Condition. The register shall include:
 - 2.5.1 reasonable details of any such events or circumstances and shall include the date, time and location and, where there has been Environmental Damage, an appropriate assessment of such Environmental Damage;
 - 2.5.2 a description of any action taken to prevent, mitigate or remedy any Environmental Condition;
 - 2.5.3 reasonable details of any action taken or remedial plans made to prevent recurrence of any Environmental Condition; and
 - 2.5.4 copies of all notices given to and received from third parties and any Competent Authority relating to any Environmental Condition and the dates of such notices.
- 2.6 Not used.
- 2.7 Not used.
- 2.8 The Depot Facility Owner shall take all reasonable steps to inform itself of any events or circumstances in connection with activities or operations at the Depot which (either alone or in combination with other events or circumstances) could give rise to any Environmental Condition.
- 2.9 Not Used.

- 2.10 Not Used.
- 2.11 Not used.
- 2.12 Not used.
- 2.13 Not used.
- 2.14 Not used.
- 2.15 Where the Depot Facility Owner reasonably considers that the failure to take urgent action to prevent, mitigate or remedy any Environmental Condition will give rise to a Direction or notice by a Competent Authority or a claim by any third party under Environmental Law against it, or that urgent action is necessary to avoid or minimise any Environmental Loss, the Depot Facility Owner shall be entitled to carry out appropriate action (without the need to comply with the provisions of Part C).
- 2.16 Where the Depot Facility Owner is aware of an Environmental Condition, the Depot Facility Owner shall not take any action which it is reasonably likely would worsen the Environmental Condition.
- 2.17 Not Used.
- 2.18 Not Used.
- 2.19 The Depot Facility Owner shall take all reasonable precautions to prevent trespassers entering and maliciously interfering with the Depot and any installation, plant or equipment at the Depot or depositing any substance, article or waste at the Depot in a manner which it is reasonably foreseeable would give rise to an Environmental Condition.
- 2.20 Not Used.

Condition M3 – Not Used

Condition M4 – Not Used

Condition M5 – Not Used

Condition M6 - User's obligations

- 6.1 Without prejudice to Part O, no User shall do or permit any Associates (other than passengers) or agents to do anything which is likely to result in a breach by the Depot Facility Owner of its obligations in this Part M.
- 6.2 Without prejudice to the generality of Condition M6.1 each User shall not negligently cause or negligently permit to be caused:
 - 6.2.1 at, in, under or originating from the Depot any discharge, spill, leak, deposit or other release into the Environment of any pollutants of any kind in a quantity or concentration which either alone or in combination with any other event or circumstances or any substances or materials present in the Environment it is reasonably foreseeable would give rise to pollution of the Environment or harm to human health and which in either case would entitle a Competent Authority or any third party to take action under Environmental Law or would do so if a Competent Authority or third party were aware of the situation; or
 - 6.2.2 any other Environmental Condition which it is reasonably foreseeable would give rise to pollution of the Environment or harm to human health and which in either case would entitle a Competent Authority or any third party to take action under Environmental Law or would do so if a Competent Authority or third party were aware of the situation.
- 6.3 Where any User becomes aware of any events or circumstances which it reasonably believes are reasonably likely to give rise to an Environmental Condition that User shall promptly notify the Depot Facility Owner of the details of such events or circumstances and where such notification is given orally it shall be confirmed in writing as soon as practicable and in any event no more than 14 days from that User becoming aware of the events or circumstances.
- 6.4 Where the Depot Facility Owner carries out any action to address an Environmental Condition, the User shall not unreasonably take any action which would materially increase the cost of any such action and shall provide all reasonable assistance as the Depot Facility Owner shall require to carry out such action in an efficient and cost effective manner.

6.5 Where any User is aware of an Environmental Condition, that User shall not take any action which it is reasonably likely would:

6.5.1 worsen the Environmental Condition or materially increase the probability of a claim against the Depot Facility Owner by a third party or Competent Authority;

6.5.2 materially increase the extent of any action against the Depot Facility Owner or claim under the Depot Facility Owner's Environmental Indemnity;

6.5.3 prejudice the defence of any action or proceedings commenced against the Depot Facility Owner in relation to such Environmental Condition by making any admission of liability without the Depot Facility Owner's consent,

provided that this Condition M6.5 will not be interpreted so as to preclude or inhibit that User from claiming under the Depot Facility Owner's Environmental Indemnity in Condition M1.3.

6.6 Each User shall provide details to the Depot Facility Owner of all substances which are substances hazardous to health as defined in the Control of Substances Hazardous to Health Regulations 1994 which that User or any of its Associates (other than passengers) has brought on to or used at the Depot.

PART N
OTHER POSITIVE OBLIGATIONS
Condition N1 - Depot Facility Owner's obligations

The Depot Facility Owner shall (or shall procure that another person on its behalf shall):

- 1.1 Not Used;
- 1.2 provide the Depot Services in a proper and workmanlike manner in accordance with methods and practices customarily used in good and prudent railway industry practice (including Railway Group Standards and Safety Obligations) and with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced and competent operators of light maintenance depots engaged in similar activities under similar circumstances and conditions;
- 1.3 use all reasonable endeavours either to obtain ISO 9002 certification for Depot procedures or to ensure that the Depot procedures retain ISO 9002 certification or such other equivalent certification as may be available from time to time and that such certification is renewed periodically and ensure that its employees are competent to carry out the Depot Services;
- 1.4 in providing the Depot Services use goods and materials which comply with Railway Group Standards, any relevant British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or such other equivalent specifications or codes of practice as may replace such specifications or codes of practice or as may be agreed from time to time;
- 1.5 promptly notify the User if:
 - 1.5.1 it is unable to or, having had due regard to the Decision Criteria it has determined that it should not, perform any of the Depot Services; or
 - 1.5.2 it becomes aware that it is likely to present Fleet Vehicles at the relevant Hand-Over Time in a Notifiable Condition, giving accurate particulars as to the condition of those Fleet Vehicles sufficient to enable the User to make a determination in respect of them pursuant to Condition N3.14.

- 1.6 keep records in accordance with Railway Group Standards, on an appropriate System, of Depot Services carried out in respect of each Fleet Vehicle and, as far as is practicable, ensure that such records are made available within a reasonable period of time on an Applicable Systems Interface to the relevant User and any other operator of a light maintenance depot nominated by the relevant User;
- 1.7 allow the User's nominated and appropriately qualified representatives reasonable access, at all reasonable times and upon reasonable prior notice, to the Depot in order to permit such representatives to carry out any work to any Fleet Vehicle which is necessary or expedient to prepare that vehicle for service provided that such representatives shall not have permission to carry out Depot Services;
- 1.8 notwithstanding its obligations under its light maintenance depot licence, comply with any reasonable request of any User or HS1 Limited which is necessary to enable that User or HS1 Limited to:
 - 1.8.1 deal with an Emergency or a HS1 Limited Emergency;
 - 1.8.2 comply with its Safety Obligations;
 - 1.8.3 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; or
 - 1.8.4 maintain security in relation to their respective interests in the Depot;
- 1.9 in respect of any Depot Services for which a fixed charge is not specified in the relevant Depot Access Agreement use all reasonable endeavours to minimise the costs of the operation of the Depot:
 - 1.9.1 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 Depot for the benefit of each Relevant Operator in order to provide such Depot Services; and
 - 1.9.2 if:

- (a) the Depot Facility Owner intends to procure that any person other than the Depot Facility Owner or its agents shall provide such Depot Services or any part thereof, or that any such person shall provide to the Depot Facility Owner or any person acting on his behalf any goods or services in connection with the provision of such Depot Services; and
- (b) the amount which shall be payable in respect thereof shall reasonably be expected to be greater than the amount specified in paragraph 20 of Annex 5 in any period of 52 weeks,

then the Depot Facility Owner shall, unless the User whose Depot Services are concerned shall otherwise consent, obtain competitive tenders in respect of the provision of the relevant Depot Services or part thereof, or any goods or services in connection therewith by such other person (the "Supplier"), and in seeking such competitive tenders shall:

- (c) exercise reasonable skill and care;
- (d) as soon as the Depot 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;
- (e) give notice to each User of every bid received, and any rebids, amendments to bids and subsequent negotiations, and the name and address of the person to whom the Depot Facility Owner proposes to award the relevant contract, together with a statement of the Depot Facility Owner's reasons for the selection; and
- (f) have due regard before entering into the contract in question to any representations or objections made by any User within 5 Business Days after the giving of such notice, and promptly thereafter enter into the contract in question;

1.10 procure that each User is provided with a copy of the Depot Facility Owner's light maintenance depot licence (to the extent that it shall not already have been provided to the User) and any modification thereof and 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 the User under or in respect of its Depot Access Agreement;

- 1.11 without prejudice to Condition Q2.3, promptly pay to the relevant authority or person all rates, payments in lieu of rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Depot;
- 1.12 promptly pay the relevant person for all Services consumed on the Depot;
- 1.13 observe and perform all present and future regulations and requirements of any utility supplying Services to the Depot, insofar as such regulations and requirements relate to the Depot or its use;
- 1.14 Not used;
- 1.15 Not used;
- 1.16 take all reasonable steps to prevent, and not knowingly to allow, any encroachment on the Depot or the acquisition of any right or easement against the Depot (save for the rights granted in accordance with these Depot Access Conditions);
- 1.17 Not Used;
- 1.18 maintain at the Depot a notice substantially in the same form as a notice required to be displayed at stations under section 55 British Transport Commission Act 1949;
- 1.19 Not used;
- 1.20 provide and keep in working order at the Depot 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;
- 1.21 be responsible for obtaining and/or maintaining any necessary fire certificate for the Depot;
- 1.22 Not used;

- 1.23 Not used;
- 1.24 having performed any Depot Services in accordance with any Depot Access Agreement, present the relevant Fleet Vehicles for collection by or on behalf of the User at the relevant Hand-Over Time unless the User shall determine pursuant to Condition N3.14 that those Fleet Vehicles should not leave the Depot and enter service at that time;
- 1.25 observe and comply with its obligations under the Depot Lease insofar as failure to perform such obligations would, or would be likely to, result in the Depot Facility Owner ceasing to be the facility owner of the Depot or otherwise operate to the detriment of a User;
- 1.26 subject to the User having complied with Condition N3.13, use all reasonable endeavours to accommodate Fleet Vehicles which are delivered to the Depot other than in accordance with Condition N3.13 at the actual time of delivery of such vehicles and thereafter to carry out the relevant Depot Services or, by agreement, part thereof, in accordance with the provisions, if any, of the Depot Work Plan; and
- 1.27 Not Used.

Condition N2 – Not Used

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 Depot Facility Owner which is necessary to enable the Depot Facility Owner to:
 - 3.1.1 deal with an Emergency or HS1 Limited Emergency;
 - 3.1.2 comply with its Safety Obligations;
 - 3.1.3 maintain the security in relation to its interests in relation to the Depot; or
 - 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 timeously provide to the Depot Facility Owner any notices which:
 - 3.3.1 are required to be displayed at the Depot;
 - 3.3.2 contain or specify obligations binding on the User; and
 - 3.3.3 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;
- 3.4 procure that the Depot 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 the same shall not already have been provided to the Depot Facility Owner) and any modification thereof and 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 the Depot Facility Owner under or in respect of the Depot Access Agreement;
- 3.5 without prejudice to the provisions of Condition A1.1.15, timeously notify the Depot Facility Owner if the User or any of its Associates wishes to:
 - 3.5.1 carry out any material maintenance (with the exception of light maintenance) of, or work to, any thing kept on the Depot;
 - 3.5.2 bring things onto the Depot which may affect the proper operation of the Depot; or
 - 3.5.3 enter upon the Depot with vehicles;
- 3.6 use all reasonable endeavours to liaise and co-operate with other Users and the Depot Facility Owner in relation to the exercise of their permission to use the Depot and the provision of the

Depot Services in order to secure the efficient and economic use of the Depot for the benefit of Users and their Associates;

- 3.7 observe and perform all present and future regulations and requirements of any utility supplying Services to the Depot;
- 3.8 observe and perform the covenants, obligations and conditions for the time being contained or referred to in the Depot Lease, the HS1 Lease and every other Superior Estate Grant in existence so far as they affect the Depot except:
 - 3.8.1 the covenants for payment of rent and (to the extent that the Depot Facility Owner, the Secretary of State for Transport, or HS1 Limited are not required to pay them under any other Relevant Agreement) any other money payable by the Depot Facility Owner under the Depot Lease or HS1 Limited or the Secretary of State for Transport under any Superior Estate Grant and
 - 3.8.2 any obligations assumed by the Depot Facility Owner under these Depot Access Conditions;
- 3.9 in respect of vehicles which have received Depot Services or otherwise entered the Depot, notify the Depot Facility Owner of any defect in the Depot Services or their provision or any damage suffered by such vehicles while such vehicles were under the control of the Depot Facility Owner as soon as is reasonably practicable after becoming aware of the defect or damage;
- 3.10 supply to the Depot Facility Owner up to date details of Diagrams for each Fleet Vehicle at the Commencement Date and otherwise as soon as reasonably practicable before that Diagram is scheduled to take effect and, in the case of a Diagram which has resulted from the acceptance of a spot bid, as soon as reasonably practicable after such acceptance;
- 3.11 consult the Depot Facility Owner in respect of any changes to the timing, level or nature of Depot Services which the User may require as a result of a change to the Working Timetable;
- 3.12 in connection with any Depot Service,
 - 3.12.1 deliver Fleet Vehicles to the Depot at the times set out in the relevant Diagram;

- 3.12.2 collect Fleet Vehicles from the Depot at the relevant Hand-Over Time;
 - 3.12.3 carry out or procure Beneficiary Train Preparation to any train which requires it within the time specified for such Beneficiary Train Preparation in respect of that type of train in Annex 8; and
 - 3.12.4 ensure, insofar as it lies within its power to do so, that Fleet Vehicles depart from the Depot at the relevant Diagram Departure Time;
- 3.13 if it becomes aware that it is likely to fail to:
- 3.13.1 deliver any Fleet Vehicles at the times set out in the relevant Diagram;
 - 3.13.2 collect any Fleet Vehicles at the relevant Hand-Over Time;
 - 3.13.3 carry out any Beneficiary Train Preparation within the time permitted; or
 - 3.13.4 ensure that any Fleet Vehicles depart from the Depot at the relevant Diagram Departure Time,
- promptly notify the Depot Facility Owner of its best estimate of the time at which it will do so;
- 3.14 on receipt of a notification from the Depot Facility Owner pursuant to Condition N1.5, acting reasonably, promptly determine whether the Fleet Vehicles the subject of such notification should leave the Depot and enter service and, if so when; and
- 3.15 comply with the requirements of the Channel Tunnel (Security) Order 1993 (including by taking any action that the Depot Facility Owner (acting reasonably) requires the User to take in order to ensure compliance with the terms of that order). Failure to comply with this Condition N 3.15 shall be a material breach of any applicable Relevant Agreement.

Condition N4 - Standard of Works

- 4.1 The Depot Facility Owner shall procure that:

- 4.1.1 works referred to in Part D and any other works to any part of the Depot permitted by these Depot 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 and competent building or engineering contractors engaged in a similar activity under similar circumstances and conditions; and
- 4.1.3 any physical damage to the Depot arising as a result of such works is made good as soon as reasonably practicable.

Condition N5 – Not Used

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 Depot or in respect of any change of use of the Depot without the prior written consent of the Depot Facility Owner (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 Depot (notwithstanding any other consent which may be granted by the Depot Facility Owner) before all necessary planning and other requisite permissions have been obtained.

Condition O2 - Encroachments

- 2.1 No Relevant Operator shall stop up or obstruct any window or other opening at the Depot except so far as such action shall be necessary to preserve the safety or security of persons or property at the Depot and, if so necessary, the Relevant Operator in question shall notify the Depot Facility Owner of the action taken.
- 2.2 No Relevant Operator shall knowingly 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 Depot 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 him not to obstruct the access or light or air to any such windows or openings.

Condition O3 - Excavations/Excluded Equipment and Excepted Equipment

- 3.1 No Relevant Operator shall carry out any continuous unsupported excavation at the Depot, or do anything at the Depot which will or is likely to endanger the safety or stability of any railway.
- 3.2 No Relevant Operator shall interfere with or endanger the Excluded Equipment or the Excepted Equipment.

Condition O4 - Use

- 4.1 No Relevant Operator shall use the Depot otherwise than:
 - 4.1.1 in the case of the Depot Facility Owner, for any of the following purposes:

- (a) providing or securing the provision of Depot Services, the Depot Facility Owner's Own Services, heavy maintenance services, or any other services of an engineering nature compatible with the foregoing;
- (b) such other purposes as shall be necessary or expedient for giving full effect to the purposes in paragraph (a) above; and
- (c) complying with the Depot Facility Owner's obligations under the Depot Lease; and

4.1.2 in the case of any Relevant Operator, for any of the purposes contemplated by Condition A1.1.14 (and for the purpose of construing this Condition O4.1.2, the Depot Facility Owner shall be treated as though it were also a User).

4.2 Not Used

4.3 No Relevant Operator shall do or, to the extent reasonably within its control, permit to be done on the Depot anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to the Depot Facility Owner, any other Relevant Operator, the occupiers of any neighbouring property or the public, provided that:

4.3.1 without prejudice to Part M, the proper use of the Depot for any of the purposes set out in Condition O4.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition O4.3; and

4.3.2 nothing in Condition O4.3.1 shall operate to sanction anything which shall constitute a nuisance actionable by any third party.

4.4 No Relevant Operator shall bring or, to the extent reasonably within its control, permit to be brought onto the Depot anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.

4.5 Without prejudice to Part M, nothing in this Condition O4 shall prevent the lawful bringing onto the Depot of anything which may reasonably be required for or in connection with use of the Depot for the purposes permitted by Condition O4.1.

Condition O5 - Overloading

No Relevant Operator shall overload structural parts of the Depot, 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 Depot or the Conduits at or used for the Depot 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 O6 - Improper use of Depot

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 Depot or increase the risk of damage to the Depot.

Condition O7 - Works to Depot

No Relevant Operator shall:

- 7.1 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 the Depot Facility Owner) against or within the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace;
- 7.2 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) and all Safety Obligations.

Condition O8 - Not causing breach

- 8.1 No Relevant Operator shall do, or permit any of their Associates (other than passengers) or agents to do anything which is likely to result in a breach of any obligation in these Depot Access Conditions (other than an obligation under Part M) by any of the Relevant Operators.
- 8.2 Not used.

Condition O9 - Damage caused through Railway Substructure and Railway Superstructure

- 9.1 No Relevant Operator shall make any claim whatsoever on the Depot Facility Owner or its employees or agents (other than such as arises from a breach of any obligation of, or the negligence of, the Depot Facility Owner 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.
- 9.2 The Depot Facility Owner shall not make any claim whatsoever on any Relevant Operator or its employees or agents (other than such as arises from a breach of any obligation of, or the negligence of, the Relevant Operator or its employees or agents) in respect of any damage, loss or inconvenience which may be suffered by the Depot Facility Owner 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.

Condition O10 - Depot Work Plan

No Relevant Operator shall take any action which will or which is likely to prevent or materially interfere with the proper implementation of the Depot Work Plan.

PART P
ATTRIBUTION OF COSTS

Condition P1 - Compliance with obligations under Conditions

If any Relevant Operator reasonably incurs any costs in complying with their respective obligations under Conditions G5.3 and N1.13, the liability for the payment of those costs as between the Depot Facility Owner and each User shall be determined on a fair and equitable basis, save that:

- 1.1 if the costs arise from a Proposal for Change that has been accepted in accordance with Part C (other than a Proposal for Change made pursuant to Condition C9) the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- 1.2 if the costs arise from the grant, after these Depot Access Conditions first become effective, 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 Depot Facility Owner; and
- 1.3 if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Depot or Equipment (other than Excluded Equipment), then such costs shall be attributed to the Depot Facility Owner.

Condition P2 - 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 or any body appointed in accordance with Condition H5, or in complying with Condition C9, the liability for the payment of those costs as between the Depot Facility Owner and each User shall be determined on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the Regulator by section 4 of the Act and subject to those matters:

- 2.1 the expectations which the Relevant Operator in question has in respect of its interests in relation to the Depot
- 2.2 the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by each Relevant Operator upon such change being carried out;
- 2.3 the benefits or disadvantages which have accrued and are likely to accrue to each Relevant Operator in consequence of the change;

- 2.4 the scale of disruption to each Relevant Operator's business which is likely to occur in consequence of the change; and
- 2.5 any Relevant Operator's track access agreement term.

Condition P3 - Basis of accounting and payment

- 3.1 Without prejudice to the obligations of any person under a licence granted to it under section 8 of the Act, any costs incurred by any Relevant Operator which are required under these Depot 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.
- 3.2 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 P1 and P2 relate.

Condition P4 - Minimisation of costs

The Depot Facility Owner shall each pay the best effective price reasonably obtainable in respect of any costs and expenses which they are respectively entitled under these Depot 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 Conditions Q1.2 and Q1.3, all data and information acquired or received by any party under or pursuant to a Relevant Agreement shall be held confidential during the continuance of such agreement and for the period specified in paragraph 21 of Annex 5 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 a 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 Regulator;
 - 1.2.3 Not used;
 - 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;
 - 1.2.6 to any person who has entered into bona fide discussions with the Depot Facility Owner in relation to the entry by that person into a Depot Access Agreement, in respect of information:
 - (a) contained on the Depot Register; or
 - (b) in any set of financial accounts (and supporting information) in respect of the Depot 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 (including the Industry Committee or any sub-committee of it);
- 1.2.12 in the case of the Depot Lease / HS1 Lease, to any person; or
- 1.2.13 to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker.

1.3 Not used.

Condition Q2 - Payments, default interest and VAT

2.1 Default interest

If any party to a 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 a 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 or permitted by law or in accordance with the Relevant Agreement.

2.3 VAT

2.3.1 Where any taxable supply for VAT purposes is made under or in connection with a 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 Where under a 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.

- 2.3.3 Where 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 Customs & Excise 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 a 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 a 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 a 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 a Relevant Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

PART R

DECISION CRITERIA, UNREGULATED CONTRACTS AND DEFEASIBLE RIGHTS

Condition R1 - Decision Criteria

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

- 1.1 enabling the Depot Facility Owner and any User to operate trains in accordance with the Working Timetable and to comply with any contract to which it is a party, giving priority to any contract for the provision of railway services (unless the giving of due weight to the considerations specified in Conditions R1.2 and R1.4 otherwise requires), in each case to the extent that the Depot Facility Owner is aware or has been informed of such contracts;
- 1.2 sharing the capacity of, providing the services at and securing the development of the Depot in the most efficient and economical manner in the interests of all Relevant Operators having regard, in particular, to safety, the effect on the environment of the provision of services and the proper maintenance, improvement and future use of the Depot;
- 1.3 enabling the Depot Facility Owner to maintain, renew and carry out other necessary work on, or in relation to, the Depot; and
- 1.4 enabling all Relevant Operators to plan their businesses with a reasonable degree of assurance.

Condition R2 - Application of Decision Criteria

The Depot Facility Owner shall have due regard to the Decision Criteria when:

- (a) revising and confirming each Depot Work Plan pursuant to Condition S1.2;
- (b) determining whether and to what extent it shall carry out any User's Variable Level of Services and the Depot Facility Owner's Variable Level of Services;
- (c) determining whether and to what extent it shall carry out any Contingent Services or the Depot Facility Owner's Contingent Services;
- (d) determining whether and to what extent it should not perform services carried forward from one Accounting Period to another pursuant to a Depot Access Agreement;

- (e) determining whether and to what extent it shall carry out any services pursuant to a contract to which Condition R3 applies; and
- (f) determining any other matter in respect of which a Depot Access Agreement or the conditions of any general approval given by the Regulator pursuant to section 22 of the Act shall so provide.

Condition R3 - Unregulated Contracts

3.1 Unregulated contracts to contain provisions for rationing of capacity according to Decision Criteria

Subject to Condition R3.2, the Depot Facility Owner shall ensure that all contracts which it enters into after these Depot Access Conditions first become effective and which:

- (a) are not contracts to which section 17 or 18 of the Act applies;
- (b) require the Depot Facility Owner to provide services at the Depot or the use of any Depot Facilities; and
- (c) if performed in accordance with their terms, would involve the use of any part of the Depot Facilities to an extent which is more than may reasonably be regarded as trivial in relation to the Depot

contain provisions which entitle the Depot Facility Owner not to perform the services in question to an extent which the Depot Facility Owner shall determine having due regard to the Decision Criteria.

3.2 Exceptions where dedicated facilities acquired or Users consent

Condition R3.1 shall not apply to the extent that:

- (a) the Depot Facility Owner shall have increased the Depot Facilities wholly or mainly for the purpose of performing the contract in question; or
- (b) all Users so consent in writing subject to such (if any) conditions as shall be specified in the consent.

Condition R4 - Defeasible rights

4.1 Defeasance

The rights specified in Condition R4.2 shall be defeasible to the extent that:

(a) the Depot Facilities which:

- (i) if the right in question were exercised, would be required; or
- (ii) if the right in question has been exercised, are required

to perform the services in question are required for the provision of the Minimum Level of Services under a section 17 agreement; and

(b) at the relevant date, either:

- (i) the Depot Facilities in question shall not be required to be used for any relevant purpose; or
- (ii) if such Depot Facilities are required to be used for any relevant purpose, the User in question, the Depot Facility Owner or the relevant counterparty (as the case may be) shall have:
 - (aa) exercised its right to require the provision of the services (or, in the case of the Depot Facility Owner, exercised its entitlement to perform the services) in question or to use the Depot Facilities within the period of 3 years before the relevant date; and
 - (bb) failed to satisfy the Regulator that the purpose of such exercise was not to secure that there would be insufficient Depot Facilities available to satisfy the requirements of the applicant for its Minimum Level of Services.

4.2 Rights subject to defeasance

The rights referred to in Condition R4.1 are:

- (a) each User's right to receive services forming part of its Variable Level of Services and to receive Contingent Services;
- (b) the Depot Facility Owner's entitlement to perform services forming part of the Depot Facility Owner's Variable Level of Services and to perform any part of the Depot Facility Owner's Contingent Services; and
- (c) the rights of any person to receive services or the use of Depot Facilities under a contract of the kind referred to in Condition R3.1 to the extent to which that Condition applies to the contract.

4.3 **Effective time and extent of defeasance**

The defeasance referred to in Condition R4.1 shall have effect:

- (a) immediately before the relevant date;
- (b) to the extent necessary to give full effect to the directions in relation to the Minimum Level of Services provided for in the section 17 agreement; and
- (c) without prejudice to any obligations which shall have accrued in respect of Depot Services performed or to be performed before the relevant date.

4.4 **Definitions**

In this Condition R4:

"applicant" means the beneficiary under the section 17 agreement in question;

"relevant counterparty" means a person (other than the Depot Facility Owner) who is a party to a contract of the kind referred to in Condition R3.1;

"relevant date" means the date on which the section 17 agreement in question is to become effective or such later date as the Regulator shall specify in a notice given to the Depot Facility Owner, each User and each relevant counterparty of whom the Regulator is aware, for the purposes of this Condition R4;

"relevant purpose" means:

- (a) in relation to a User, the provision to that User of any part of its Variable Level of Services or Contingent Services;
- (b) in relation to the Depot Facility Owner, the performance by the Depot Facility Owner of services forming any part of the Depot Facility Owner's Variable Level of Services or Depot Facility Owner's Contingent Services; and
- (c) in relation to a relevant counterparty, the provision to that person of services or the affording to him of use of Depot Facilities under a contract of the kind referred to in Condition R3.1; and

"section 17 agreement" means a Depot Access Agreement into which the Depot Facility Owner shall have been directed to enter by the Regulator pursuant to section 17 of the Act.

PART S
DEPOT WORK PLAN

Condition S1 - Preparation and revision of Depot Work Plan

1.1 Contents of Depot Work Plan

The Depot Work Plan shall be a plan drawn up by the Depot Facility Owner which, subject to Condition S2, specifies:

- (a) the scheduling, method of resourcing and the utilisation of the Depot Facilities for carrying out:
 - (i) each User's Minimum Level of Services;
 - (ii) the Depot Facility Owner's Minimum Level of Services;
 - (iii) the amounts of the Variable Level of Services of each User which the User in question has required the Depot Facility Owner to provide at the Depot and which the Depot Facility Owner shall have determined, having due regard to the Decision Criteria, should be provided;
 - (iv) the amounts of the Depot Facility Owner's Variable Level of Services which the Depot Facility Owner shall have determined, having due regard to the Decision Criteria, should be provided;
 - (v) any other services to be provided by the Depot Facility Owner to any person and which are likely to affect the ability of the Depot Facility Owner to provide the Depot Services or the Depot Facility Owner's Own Services; and
- (b) contingency plans and procedures for prioritising work following an event or circumstance which prevents or disrupts the scheduling, method of resourcing or utilisation of the Depot Facilities for the provision of the services referred to in paragraph (a) above,

and which shall show separately:

- (A) each allowance for Work Arising in relation to each User's Minimum Level of Services and Variable Level of Services;

- (B) each allowance for Depot Facility Owner's Work Arising in relation to the Depot Facility Owner's Minimum Level of Services and the Depot Facility Owner's Variable Level of Services;
- (C) in relation to each User, that User's Maximum Level of Services; and
- (D) in relation to the Depot Facility Owner, the Depot Facility Owner's Maximum Level of Services.

1.2 **Revision or confirmation of Depot Work Plan after certain changes**

The Depot Facility Owner shall revise or confirm the current Depot Work Plan as soon as reasonably practicable after:

- (a) there has been a change in the Working Timetable, a Change of Law, a Direction of a Competent Authority, the implementation of a Proposal for Change or any other event or circumstance which has an effect on the utilisation of the Depot Facilities, in any such case where the change is more than may reasonably be regarded as trivial in relation to the Depot or any Relevant Operator;
- (b) the Depot Facility Owner reasonably considers that the current Depot Work Plan, if implemented in accordance with its terms, would no longer be likely to secure the objectives specified in Conditions R1.1 to R1.4;
- (c) each new Depot Access Agreement is entered into or a Depot Access Agreement is amended, in any such case where the change is more than may reasonably be regarded as trivial in relation to the Depot or any Relevant Operator;
- (d) the Depot Facility Owner's Minimum Level of Services or the Depot Facility Owner's Variable Level of Services shall have been amended, in any such case where the change is more than may reasonably be regarded as trivial in relation to the Depot or any Relevant Operator.

A copy of the revised Depot Work Plan shall be provided to each User as soon as reasonably practicable after such revision. In any case where the Depot Work Plan shall be confirmed

pursuant to this Condition R1.2, notice of that confirmation shall be given to each User as soon as reasonably practicable thereafter.

1.3 Consultation before revising or confirming Depot Work Plan

Before revising or confirming the Depot Work Plan pursuant to Condition R1.2, the Depot Facility Owner shall:

- (a) provide Users with a draft of the proposed Depot Work Plan and a reasoned explanation for its material features, or, in the case of a proposed confirmation, a reasoned explanation why the Depot Facility Owner considers that the Depot Work Plan should not be amended; and
- (b) take into account any representations or objections (other than any which are trivial or vexatious) which any of them shall timeously make.

Where the revision or confirmation of the Depot Work Plan is to be made in consequence of an amendment of the Minimum Level of Services or Maximum Level of Services of any User or of the Depot Facility Owner's Minimum Level of Services or the Depot Facility Owner's Maximum Level of Services, in this Condition S1.3 "User" shall include "Potential User".

1.4 Obligation to comply with Depot Work Plan

The Depot Facility Owner shall comply in all material respects with the Depot Work Plan in carrying out work at the Depot.

Condition S2 - Challenge of allowances for Work Arising

2.1 Right to object to allowance for Work Arising

If any User (in this Condition S2, an "objector") shall be of the opinion that:

- (a) in relation to any other User, the allowance for Work Arising made in any Depot Access Agreement; or
- (b) in the case of the Depot Facility Owner, the allowance for Depot Facility Owner's Work Arising,

shall, notwithstanding the application by the Depot Facility Owner of the Decision Criteria in the case of the confirmation or revision of the Depot Work Plan, be of an amount which is not reasonably necessary to ensure that the trains in question are operated in accordance with the Working Timetable, it shall be entitled to issue a relevant objection.

2.2 Requirement for reasoned justification

A relevant objection shall be a notice given by the objector stating that the objector requires the Depot Facility Owner to provide it with a reasoned justification of the allowance made for Work Arising or the Depot Facility Owner's Work Arising in the case in question.

2.3 Provision of reasoned justification

The Depot Facility Owner shall provide the objector with a reasoned justification of the kind referred to in Condition S2.2 within a reasonable time of being required to do so.

2.4 Right to refer matter to arbitration

If the objector shall be dissatisfied with the justification provided pursuant to Condition S2.3, it shall be entitled to refer the matter for determination by an arbitrator appointed and acting in accordance with the relevant provisions of the HS1 Access Dispute Resolution Rules.

2.5 Determination by arbitration

The arbitrator acting on a reference made pursuant to Condition S2.4 shall determine whether the allowance in question shall, notwithstanding the application by the Depot Facility Owner of the Decision Criteria, have been an amount which was reasonably necessary to ensure that the trains in question are operated in accordance with the Working Timetable. Such determination shall:

- (a) be made having regard to the matters as respects which duties are imposed on the Regulator under section 4 of the Act and any guidance which may be issued to the arbitrator by the Regulator from time to time;
- (b) be final and binding on the Depot Facility Owner and the Users; and
- (c) establish the proposed amendments to these Depot Access Conditions and the relevant Depot Access Agreement, which shall be submitted by the arbitrator to the Regulator for approval under section 22 of the Act on behalf of the Depot Facility owner and each User.

2.6 Approval by the Regulator

If any proposed amendments to the Depot Access Conditions or any Depot Access Agreement which have been submitted to the Regulator pursuant to Condition S2.5 are approved by the Regulator, such proposed amendments shall be made and become effective in accordance with the terms of his approval. If not so approved, such amendments shall not be made or have effect.

Condition S3 - Challenge to Depot Work Plan

3.1 Right to Object to Depot Work Plan

Subject to Condition S3.10, if any User (in this Condition S3, an "objector") shall be of the opinion that the Depot Work Plan or any revision or confirmation of the same pursuant to Condition S1.2 shall, notwithstanding the application by the Depot Facility Owner of the Decision Criteria in the case of such revision or confirmation, be such as to affect materially and adversely the commercial interests of the objector it shall be entitled to issue a requisite objection.

3.2 Requirement for reasoned justification

A requisite objection shall be a notice given by the objector stating that the objector requires the Depot Facility Owner to provide it with a reasoned justification of the Depot Work Plan in the case in question.

3.3 Provision of reasoned justification

The Depot Facility Owner shall provide the objector with a reasoned justification of the kind referred to in Condition S3.2 within a reasonable time of being required to do so.

3.4 Right to refer matter to expert determination

If the objector shall be dissatisfied with the justification provided pursuant to Condition S3.3, it shall be entitled to refer the matter for the determination of an expert pursuant to Part D of the HS1 Access Dispute Resolution Rules. No such reference may be made later than 30 days after the receipt by the objector of the justification.

3.5 Determination by expert

- 3.5.1 An expert acting on a reference made pursuant to Condition S3.4 shall determine whether the Depot Work Plan in question is, notwithstanding the application by the Depot Facility Owner

of the Decision Criteria, such as to affect materially and adversely the commercial interests of the objector. If the expert shall determine that it has that effect, he shall, having due regard to the Decision Criteria, determine:

- (a) whether the Depot Work Plan should, notwithstanding that effect, have effect in accordance with the decision of the Depot Facility Owner; or
- (b) whether the Depot Work Plan should be revised so as to remove or alleviate that effect.

3.5.2 The expert shall not be entitled to make any determination which would cause any revision to be made to the Depot Work Plan in respect of:

- (a) the matters set out in paragraphs (i) and (ii) of Condition S1.1(a); or
- (b) the matters set out in Condition S1.1(b) insofar as that element also relates to any of the matters set out in paragraphs (i) and (ii) of Condition S1.1(a).

3.6 **Right of appeal to Regulator**

If either the Depot Facility Owner or the objector shall be dissatisfied with the determination of the expert, it shall be entitled to refer the matter for determination to the Regulator. No such reference shall be made on grounds other than that the determination of the expert shall have been so unreasonable that no reasonable expert could have made it.

3.7 **Powers and immunities of Regulator**

Where either the Depot Facility Owner or an objector shall have made a reference to the Regulator under Condition S3.6, the Regulator shall:

- (a) be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the expert, he shall determine that the reference should not proceed, including on the grounds that:
 - (i) the matter in question is not of sufficient importance to the Depot Facility Owner and the Users;
 - (ii) the reference to him is frivolous or vexatious; or

(iii) the conduct of the person making the reference ought properly to preclude its being proceeded with; and

(b) not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.

3.8 Determinations by Regulator - supplemental

Paragraph E3 of the HS1 Access Dispute Resolution Rules shall apply to a reference to the Regulator made pursuant to Condition S3.6 as it applies to references made by the Regulator pursuant to the Track Access Conditions.

3.9 Alteration of Depot Work Plan

The Depot Facility Owner shall make such adjustment to the Depot Work Plan as shall be necessary to implement the decision of an expert or the Regulator (as the case may be) following a reference pursuant to this Condition S3.

3.10 Extent of challenge

An objector shall not be entitled to issue a requisite objection under this Condition S3 in relation to any matter in respect of which it is entitled to issue a relevant objection under Condition S2.

Condition S4 - Review of allowance of Work Arising

4.1 Review mechanism

The Depot Facility Owner and each User shall not more than thirteen months from the Commencement Date formally review with each other whether:

- (i) in the case of that User, each allowance for Work Arising in any Depot Access Agreement; and
- (ii) in the case of the Depot Facility Owner, each allowance for the Depot Facility Owner's Work Arising in these Depot Access Conditions,

shall, notwithstanding the application by the Depot Facility Owner of the Decision Criteria, be of an amount which is reasonably necessary to ensure that the trains in question are operated in accordance with the Working Timetable with a view to reaching agreement, subject to approval of the Regulator, on any amendments to these Depot Access Conditions and the relevant Depot Access Agreement.

4.2 Agreement between the parties

If the Depot Facility Owner and the relevant User reach agreement with each other on any such amendments, the Depot Facility Owner shall promptly submit the proposed amendments to the Regulator for approval under section 22 of the Act.

4.3 Failure to agree

If the Depot Facility Owner and any User fail to reach agreement on such amendments within 90 days after the date which is twelve months from the Commencement Date, the matters in dispute may be referred by any of them for determination by an arbitrator appointed and acting in accordance with the relevant provisions of the HS1 Access Dispute Resolution Rules. Such determination shall:

- (a) be made having regard to the matters as respect which duties are imposed on the Regulator under section 4 of the Act and any guidance which may be issued to the arbitrator by the Regulator from time to time;
- (b) be final and binding on the Depot Facility Owner and the relevant User; and
- (c) establish the proposed amendments to these Depot Access Conditions and the relevant Depot Access Agreement, which shall be submitted by the arbitrator to the Regulator for approval under section 22 of the Act on behalf of the Depot Facility Owner and each User.

4.4 Approval by the Regulator

If any proposed amendments to these Depot Access Conditions or any Depot Access Agreement which have been submitted to the Regulator pursuant to Conditions S4.2 or S4.3 are approved by the Regulator, such proposed amendments shall be made and become effective in accordance with the terms of his approval. If not so approved, such amendments shall not be made or have effect.