

HEATHROW STATION ACCESS CONDITIONS¹²

20[16]

¹ TfL considers that the performance regime and charging structure currently proposed by HAL in its template station access documentation is inadequate to accommodate the specific circumstances of the Heathrow stations.

As HAL's regulatory structure is quite different to the regulatory structure within which Network Rail operates, the station access documentation must ensure that, in the absence of a licence, HAL is held to certain additional obligations to ensure that the Heathrow rail infrastructure is operated safely and effectively and that there is fairness and transparency in the proposed charging arrangements.

Given that each of the Central Terminals Area, Terminal 4 and Terminal 5 stations are independent facilities, each station should be independently contracted and charged for (although we note that the Crossrail services will only call at Central Terminals Area and Terminal 4 stations, necessitating only two station access agreements). The level of service required for each station will impact upon the charges at that station, although we note that our proposal is only to be responsible for directly incurred costs. Please see Part 6 of these Station Access Conditions for further details of TfL's proposed charging principles.

As HAL is exempt from the requirement to hold a station licence, HAL must be able to assure its Users that it is providing services to the standard expected of a reasonable prudent infrastructure manager. To demonstrate this, TfL requires the following:

- these Station Access Conditions must specify certain additional positive asset stewardship obligations that HAL must adhere to in its role as the "station facility owner"; and
- HAL must also be subject to a specified performance regime that measures HAL's performance of its station stewardship obligations.

The Change process should also provide a robust, workable process for improving stations that balances the interests of Users and the infrastructure manager. The model clauses in the Independent Station Access Conditions 2013 carefully strike this balance.

On the basis of the above, TfL has prepared Station Access Conditions, based on the Network Rail Independent Station Access Conditions 2013, that propose various amendments that TfL would expect to see in the context of the Heathrow stations.

² In a number of meetings with TfL, HAL indicated that it intends to sub-contract a significant majority of its obligations under these Station Access Conditions to HEOC. Whilst TfL acknowledges that HAL is entitled to sub-contract its obligations under these Station Access Conditions, it has material concerns as to how this structure will work in practice. Please see TfL's comments regarding sub-contracting at Footnote 1 of the Station Access Agreement, which describe TfL's concerns in more detail and which describe the practical arrangements that will need to be put in place.

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The following are the Heathrow Station Access Conditions

PART 1: ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS

1. General

1.1 General Interpretation: Unless the context otherwise requires:

- (A) These Station Access Conditions: References to these Station Access Conditions mean these Heathrow Station Access Conditions 20[16] and the Annexes to them each as modified from time to time.
- (B) Parts, Conditions, paragraphs and Annexes: References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Station Access Conditions and references to Annexes are to Annexes to these Station Access Conditions.
- (C) References to statutory provisions: References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as from time to time amended or modified or any enactment for the time being replacing or amending it.
- (D) Interpretation Act: Words and expressions defined in the Interpretation Act 1978 shall have the same meanings in these Station Access Conditions. The words "include" and "including" shall be construed without limitation.
- (E) Definitions in the Act: Terms and expressions defined in sections 1, 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meanings in these Station Access Conditions.³
- (F) Construction of agreements: Reference in any Station Access Agreement or these Station Access Conditions to an agreement or any other document includes that agreement or other document as from time to time supplemented, varied, amended or novated (any such being a "change") provided that where the document is a Station Access Agreement or these Station Access Conditions such change shall be included only if one of the following conditions shall have been satisfied:
 - (1) if the change is to any part of any Station Access Agreement other than to these Station Access Conditions the change will not result or be likely to result in a Relevant Restriction; or
 - (2) the change is one in respect of which the ORR shall have given its consent in writing; or
 - (3) the change is one which falls wholly within the terms of a general consent given by the ORR in writing for the purposes of the Station Access Agreement in question or these Station Access Conditions.

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

³ TfL notes that HAL is only exempt from certain sections of the Railways Act 1993. Sections 1, 81 to 83 (inclusive) and 151 of the Railways Act 1993 still apply to HAL.

- (G) Notices etc: Wherever in these Station Access Conditions provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Station Access Agreement and the words "notify", "consent" or "approve" (and cognate expressions) shall be construed accordingly.
- (H) References to person: Any reference to a person shall be construed as including, where appropriate, a reference to a firm, company, corporation, government, state or agency of a state, any association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any of the foregoing.
- (I) Conflict: In the event of any conflict (whether as to interpretation or otherwise) between the provisions of these Station Access Conditions and the provisions of a Station Access Agreement, the following order of precedence shall apply:
- (1) these Station Access Conditions; and
 - (2) the provisions of that Station Access Agreement.
- (J) Time Limits: Where in these Station Access Conditions any obligation of a person is required to be performed within a specified time limit, that obligation shall continue after that time limit if that person fails to comply with that obligation within the time limit.
- (K) Headings: The headings and references to headings shall be disregarded in construing these Station Access Conditions.
- (L) Companies Act definitions: The words "subsidiary", "holding company" and "company" shall have the same meanings in these Station Access Conditions as in the Companies Act 2006.
- (M) Use of present tense: Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.
- (N) Sub-Contractors: Where a party has sub-contracted its obligations under any Station Access Agreement or these Station Access Conditions references to that party in any Station Access Agreement or these Station Access Conditions shall include references to any sub-contractor so appointed.
- (O) Permission to use: References in these Station Access Conditions to the grant to a User of permission to use the Station shall, except where the context otherwise requires, be construed to mean:
- (1) the grant of permission for the User and its Associates to use the Common Station Amenities and to obtain the benefit of the Station Services or Light Maintenance Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway, whether or not the Station Facility Owner is to provide those services itself or to secure their provision by another; and
 - (2) to the extent reasonably necessary to give full effect to the permission in Condition 1.1(O)(1) and subject to Condition 1.1(P), permission for the User and its Associates to:

- (a) enter upon the Common Station Amenities, with or without vehicles;
- (b) bring things onto the Common Station Amenities and keep them there;
- (c) use and maintain any things kept, or buildings or other works constructed, on the Common Station Amenities (whether by the User or another);
- (d) carry out such works as shall have been approved in accordance with these Station Access Conditions;
- (e) exercise the rights over the Adjacent Property set out in Part 10; and
- (f) carry out Light Maintenance Services,

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

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

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

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

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

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

- (1) first if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumptions set out below) by the beneficiary by virtue of the relief;
- (2) secondly, if the indemnity is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under Condition 1.1(R)(1) such that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity payment equals the amount of the payment after any reduction under Condition 1.1(R)(1),

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

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

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

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

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

- (S) for the purposes of applying the above clauses on each occasion that an indemnity payment falls to be made, the beneficiary's "Taxable Profits" in the relevant accounting period shall be deemed to be the beneficiary's profits in such accounting period (as defined in section 6 of the Income and Corporation Taxes Act 1988 ("ICTA")), as reduced by all reliefs other than the relief referred to in Condition 1.1(R)(1) arising in respect of such occasion and trading losses carried back under sub-section 393A(1)(b) of ICTA but including for the avoidance of doubt charges on income, group relief and trading losses carried forward (to the extent not attributable to the relief referred to in Condition 1.1(R)(1) arising in respect of such occasion).

In any case where an indemnity payment falls to be made on an "after tax basis", the adjustments referred to above shall be calculated by the auditors of the beneficiary (acting as experts and not as arbitrators) whose calculations shall be binding on the parties in the absence of manifest error and whose costs shall be borne in equal shares by the beneficiary and the indemnifying party and, if such adjustments cannot be conclusively determined at the time when the indemnity payment is required to be made, the auditors shall provide an estimate of the adjustments which are likely to be required and the indemnity payment shall be made on the basis of such estimate and, as and when such adjustments can be conclusively determined, such payment will be made either by or to the beneficiary as may be required to give effect to the above paragraphs.⁴

1.2 **⁵Definitions:** In these Station Access Conditions, unless the context otherwise requires:

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

"Access Charge" has the meaning attributed to it in the Station Access Agreement;⁶

"Access Dispute Resolution Rules" means the rules regulating the resolution of disputes between parties to access agreements entitled "The Access Dispute Resolution Rules", the current form of which is annexed to the Network Rail Network Code⁷;

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

⁴ Paragraph (S) of the model clauses is not relevant in the context of the Heathrow stations as HAL is not related to Network Rail.

⁵ Definitions that are relevant specifically to Part 6 (Access Charging) and Part 6B (Access Charging, Fixing Charges for Control Period) have been deleted, pending finalisation of the charging model that will apply to the Heathrow stations, based on the principles set out in Part 6.

⁶ The definition of "Access Charge" (which is relevant to the abatement regime that is set out in the model clauses) will need to be amended to reflect TfL's proposed charging principles. Please see Part 6 of these Station Access Conditions for further details on TfL's proposed charging principles.

⁷ In a number of meetings with TfL, HAL has indicated that its intention is to use the Access Dispute Resolution Rules that are attached to the Network Rail Network Code. TfL notes however that the latest version of the HAL Network Code received by TfL on 10 March 2016 includes an amended version of the Network Rail ADRR, which indicates that HAL may be intending to create its own set of Access Dispute Resolution Rules. TfL considers that it would be simpler for HAL to use the Network Rail ADRR. If instead HAL proposes to use a different ADRR, TfL is likely to have further proposals to make on these Station Access Conditions.

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

"Act" means the Railways Act 1993;

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

"Affiliate" in relation to a company means:

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

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

"Associate" in relation to any person, includes⁸:

- (a) any servant, agent or independent contractor of his;
- (b) any passenger of his;
- (c) any person engaged in the provision of goods or services to or for him; and
- (d) any other person who deals or has business with him;

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

⁹"Business Day" means any weekday (other than a Saturday) on which banks are open for domestic business in the City of London;

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

"Change" means any of the following:

⁸ As HAL is exempt from section 17 of the Act, a full definition of "Associate" should be included which is consistent with the definition set out in the Act.

⁹ The definition of "British Rail Telecommunications Transfer Scheme" is not relevant in the context of the Heathrow stations as HAL has always been the sole owner and manager of the HAL infrastructure (including stations and track).

- (a) Works or activities at the Station which (whether during or after their completion) would be likely:
 - (i) materially to affect:
 - (1) the operation of trains to or from the Station; or
 - (2) the ability of a User's Associates to pass to or from trains operated by or on behalf of that User which stop at the Station; or
 - (3) the operation of the Station; or
 - (ii) to change materially the condition (or working order), standard or quantum of the Common Station Amenities or the Common Station Services at the Station, other than in accordance with the provisions of Parts 4 or 13; or
 - (iii) to make any amenity or service which is not a Common Station Amenity or Common Station Service, a Common Station Amenity or a Common Station Service (as the case may be) at the Station or vice versa; or
 - (iv) to alter the periods during which the whole or any part of the Station is open to the public or to any User or its Associates, other than in accordance with the provisions of Part 4; or
 - (v) to result in the relocation of any Core Facility as referred to in paragraph 21 of Annex 8 or any Station Facility as referred to in paragraph 10 of Annex 1;
- (b) (except where such may arise pursuant to an Existing Agreement) the entering into of any agreement or other arrangement or the variation of an existing agreement or arrangement the purpose or effect of which involves or is likely to involve any of the matters described in paragraph (a) of this definition (excluding any agreement or arrangement entered into pursuant to the agreements referred to in paragraph 1 of Annex 8) provided that this paragraph (b) shall not prevent the entry by the Station Facility Owner into an access contract;
- (c) any change to these Station Access Conditions or the Annexes (other than a Conditions Change carried out in accordance with Part 2) including but not limited to any change to the Plan; and/or
- (d) the grant of wayleaves, dedications or easements affecting the Station where such grant imposes a Relevant Restriction or prevents the use of the Station for the provision of Station Services

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

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

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

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

"Claims Allocation and Handling Agreement" means the document commonly known as the Claims Allocation and Handling Agreement;¹⁰

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

"Common Station Amenities" means:

- (a) in respect of a Passenger Operator, the amenities at the Station specified in paragraphs 1 and 2 of Annex 1; and
- (b) in respect of any operator of trains with permission to use the Station which is not a Passenger Operator, the amenities at the Station specified in paragraph 1 of Annex 1,

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

"Common Station Services" means:

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

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

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

- (a) Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power;
- (b) the ORR, except to the extent that it shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as it shall so specify;

¹⁰ This definition has been inserted as a result of the additional positive obligations that TfL requires that HAL adheres to, as set out in Part 14 of these Station Access Conditions.

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

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

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

"Conditions Change Consultees" means in the case of a Template Change all Users of every station on the Network and the Station Facility Owner, and in the case of a change to the Station Access Conditions or the Annexes, means all Users of the specific Station or set of Stations and the Station Facility Owner (excluding the Conditions Change Proposer);

"Conditions Change Decision Period" means a period of 15 Business Days following the end of the Conditions Change Consultation Period;

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

"Conditions Change Proposer" means a proposer of a Conditions Change Proposal;

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

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

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

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

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

- (a) where the Proposer and the Material Change Consultee are railway industry parties, the template Co-operation Agreement contained in Annex 14; and
- (b) where the Proposer is a Station Investor and the Material Change Consultee is a railway industry party the template Co-operation Agreement contained in Annex 15,

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

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

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

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

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

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

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

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

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

"Emergency" means:

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

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

"Environmental Condition" means:

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

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

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

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

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

"Environmental Liability Commencement Date" means the Conditions Efficacy Date;

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

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

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

"Excluded Equipment" means:

- (a) the items of Equipment (if any) referred to in Appendix 6 to Annex 1;
- (b) electronic communications apparatus within the extended definition in section 151 of the Telecommunications Act 2003 other than Excepted Equipment and Retail Telecom Systems as defined in Equipment Inventory paragraph (10); and
- (c) any item of equipment not included in paragraphs (a) or (b) of this definition or otherwise specified in the Equipment Inventory:
 - (i) which is (from time to time) used exclusively (whether by the Station Facility Owner or at its direction) for the purposes of the Station Facility Owner's railway undertaking or function; and/or
 - (ii) which from time to time forms part of the infrastructure (as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. No. 599 2006)) for which the Station Facility Owner is responsible as part of the infrastructure safety case as referred to in the above regulations;

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

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

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

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

whether or not the Financial Impact Test is satisfied;

"Existing Agreements" means:

- (a) those agreements and instruments listed or described in Annex 5;
- (b) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits affecting the Station (whether or not so listed in Annex 5) entered into or granted by the Station Facility Owner or its predecessors in title at any time before the Conditions Efficacy Date to:
 - (i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and
 - (ii) any other person;
- (c) NOT USED¹¹
- (d) all agreements and instruments completed or to be completed pursuant to any agreement referred to in paragraph 1 of Annex 8;

¹¹ Paragraph (c) of the Network Rail model clauses is not relevant in the context of the Heathrow stations as it relates to assets transferred to Network Rail (and not HAL).

- (e) all rights of third parties arising, acquired or granted at any time before the Conditions Efficacy Date over or in respect of the occupation of (or the entitlement to occupy) any part of the Station;
- (f) all rights of third parties arising under Statute or by operation of law;
- (g) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction; and
- (h) NOT USED¹²
- (i) all other agreements entered into after the Conditions Efficacy Date the entering into of which is approved in accordance with Part 3;

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

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

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

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

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

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

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

"Forum" has the meaning given to it in the Access Dispute Resolution Rules;¹³

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

"HAL Exemption" means the exemption from certain provisions of the Act granted to the Station Facility Owner pursuant to the Railways (Heathrow Express) (Exemptions) Order 1994;

¹² "Superior Estate Grant" is not relevant in the context of the Heathrow stations, as TfL understands from discussions with HAL that HAL owns the freehold to the Stations.

¹³ TfL notes that this may be subject to change if HAL's intention is to create its own set of Access Dispute Resolution Rules.

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

"Insured Risks" means:

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

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

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

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

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

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

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

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

"Material Change Consultees" means:

- (a) in respect of a Material Change Proposal made by the Station Facility Owner or a User,
 - (i) each of the Station Facility Owner and/or any User, who is not the Material Change Proposer, and who satisfies the Financial Impact Test;
 - (ii) the Secretary of State if he may be affected by the implementation of the Material Change Proposal;¹⁴
 - (iii) the ORR;
 - (iv) Transport for London (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) any of them may be affected by the implementation of the Material Change Proposal;¹⁵ and
 - (v) any Station Investor who:
 - (1) has issued its own Material Change Proposal in relation to the Station before the Proposer makes the Material Change Proposal; or
 - (2) is within the five-year period from when the Station asset(s) identified in its Material Change Proposal became operationaland who satisfies the Financial Impact Test; or
- (b) in respect of a Material Change Proposal made by a Station Investor, all of the parties in paragraphs (a)(i) to (a)(v) above regardless of whether they satisfy the Financial Impact Test,
but a Station Investor shall cease to be a Material Change Consultee:
 - (i) upon notifying the Station Facility Owner that it no longer wishes to be a Material Change Consultee in relation to the Station;
 - (ii) after its own intended Material Change Proposal in relation to the Station has been abandoned or lapsed; or
 - (iii) five years after the Station asset(s) identified in its own Material Change Proposal became operational;

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

¹⁴ References to the "Scottish Ministers" are not relevant in the context of the Heathrow stations as the HAL infrastructure is located in England.

¹⁵ TfL, through its subsidiary Rail for London Limited, is the most appropriate entity to consult on a Material Change.

Change Consultee]¹⁶ to the extent that the same are directly attributable to the implementation of the Material Change Proposal but taking into account and netting off against such costs, losses and expenses:

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

"Material Change Proposal" means either:

- (a) a Change which if implemented would satisfy the Financial Impact Test in respect of one or more Material Change Consultee(s), but excluding any change to Excluded Equipment by Network Rail regardless of whether the Financial Impact Test is satisfied; or
- (b) a Change proposed by a Station Investor;

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

"Mayor of London" means the person elected to hold the office of Mayor of London with the powers and functions set out in the Greater London Authority Act 1999;

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

"Network" means the network of which the Station Facility Owner is the owner and which includes the Heathrow spur and associated stations;

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

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

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

- (a) to safeguard the safety or security of persons or property on or adjacent to the Network or any part of it (which may include the Network Rail network)¹⁷; or
- (b) where such situation or circumstance was unforeseen and could not reasonably have been foreseen, to maintain or restore the effective operation of the Network or any part of it;

¹⁶ TfL's proposal as set out in Part 6 of these Station Access Conditions is to only pay those costs which it directly incurs as a result of operating the Crossrail services. In the context of a Material Change Proposal, if TfL/MTR Corporation (Crossrail) Limited is a Material Change Consultee it must be left in no worse or better a position as a consequence of the Material Change, including in respect of Qualifying Expenditure. The definition of "Material Change Consultee's Costs" should be amended to reflect this.

¹⁷ A Network Emergency may affect those persons who are situated on the Network Rail network (given that the HAL infrastructure sits adjacent to the Network Rail network).

"Network Rail Network Code" means the document commonly known as the "Network Code" published by Network Rail which applies to the operation of railway vehicles on the NR Network;¹⁸

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

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

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

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

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

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

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

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

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

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

"Notifiable Change Proposal" means a Change which if implemented

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

¹⁸ This definition has been inserted as a consequence of necessary amendments to the definition of "Access Dispute Resolution Rules."

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

"NR Network" means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;¹⁹

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

["ORR Asset Protection Policies and Guidelines" means the policies and guidelines issued by the ORR in relation to the development of template forms of Asset Protection Agreement within the rail industry (and approved by the ORR as noted in the Investment Framework Consolidated Policy and Guidelines published by the ORR in October 2010 as amended from time to time) but in relation to asset protection requirements where the proposal relates to the commercial exploitation of land on or adjacent to the Network and/or the Station as opposed to primarily passenger enhancements to the Station, then such policies or guidelines are deemed to be amended so that the Station Facility Owner is fully indemnified or otherwise held harmless (at the option of the Station Facility Owner) by the Proposer in respect of those risks, costs and liabilities that would otherwise be subject to the Industry Rail Fund or the Network Rail Fee Fund (as those expressions are defined in the template forms of Asset Protection Agreement referred to in this definition);]²⁰

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

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

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

"Passenger Operator's Proportion" means, save as provided in Condition 41.5, as at any time, the proportion which the number of Passenger Operator's Departures bears to the number of Total Departures, as calculated pursuant to Condition 41 for the purposes of the Station Access Agreement;

"Performance Bonus" has the meaning attributed to it in Condition 67;²¹

"Performance Rebate" has the meaning attributed to it in Condition 67;²²

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

¹⁹ This definition has been inserted as a consequence of necessary amendments to the definition of "Access Dispute Resolution Rules."

²⁰ "ORR Asset Protection Policies and Guidelines" are applicable to Network Rail only. These Station Access Conditions will need to provide details of the asset protection policies and guidelines that HAL will be subject to for the purposes of settling the terms and conditions of any Asset Protection Agreement.

²¹ Please see our comments at footnote 68.

²² Please see our comments at footnote 70.

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

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

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

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

"Rail for London Limited" means the company registered in England and Wales under number 05465930 having its registered office at Windsor House, 42-50 Victoria Street, London, SW1H 0TL;²³

²⁴"Railway Group Standards" means the national technical rules and national safety rules applicable to the mainline railway system which are produced under the procedures set out in the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of that Code) that defines mandatory requirements in respect of the mainline railway system;

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

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

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

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

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

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

²³ A definition of "Rail for London Limited" has been included given that multiple references are made to Rail for London Limited in these Station Access Conditions.

²⁴ The definitions of "Railtrack" and "Railtrack Transfer Scheme" are only relevant to Network Rail and have not been included in the context of the Heathrow stations.

"Relevant Undertaking" means:

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

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

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

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

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

but does not include the carrying out of:

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

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

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

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

proportion of the Total Departures made by trains operated by or on behalf of any Passenger Operator);

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

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

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

"Sample Period" means, in respect of any Accounting Year, the period specified in paragraph 4 of Annex 2, or such other period as may be agreed between the Station Facility Owner and all Passenger Operators;²⁵

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

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

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

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

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

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

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

but excluding:

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

²⁵ References to "Scottish Ministers" have been deleted given that the Heathrow stations are in England.

"Station Access Agreement" means any particular access contract, whether or not entered into pursuant to the directions of the ORR under the Act incorporating these Station Access Conditions;²⁶

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

"Station Facility Owner" means the party specified as the Station Facility Owner in paragraph 1 of schedule 1 of the Station Access Agreement;

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

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

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

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

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

"Substantial Damage" means damage or destruction of a building on or at the Station or of any of the Equipment which is so extensive that repair or reinstatement of that building or that Equipment to its original form would not be economically viable;²⁷

"Template Change" means any change to the template generic form of the Heathrow Station Access Conditions 20[16] or the template generic form of the Annexes to the Heathrow Station Access Conditions 20[16] (but not a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations);

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

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

["Track Litter" means matter of whatever nature on:

²⁶ TfL notes that HAL is currently exempt from the requirement to obtain the ORR's approval prior to entering into a Station Access Agreement. TfL acknowledges however that HAL may not always be subject to such exemption and therefore has elected to leave this definition as drafted.

²⁷ The definitions of "Superior Estate Grant" and "Superior Estate Owner" are not relevant as TfL understands that HAL is the freehold owner of the land comprised on the stations.

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

where the presence of that matter is contrary to the provisions of the Environment Protection Act 1990 (or would be so contrary if such track or land were relevant land of a principal litter authority as defined by the said Act);²⁸

"Transport for London" means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;²⁹

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

³⁰"User's Daily General Charge" means, for the day in respect of which the calculation falls to be made, an amount calculated in accordance with the following formula:

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

where:

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

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

D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the User in question are due to depart from the Station as determined in accordance with Condition 41 in the case of a Passenger Operator or, in any other case, in accordance with the Station Access Agreement

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

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

"Vehicles" means railway vehicles (including non-passenger carrying vehicles) comprised in trains used for the purpose of providing services for the carriage of passengers by railway, excluding locomotives which are not capable of the carriage of passengers.³¹

²⁸ Obligations relating to "Track Litter" are not relevant in the context of the Heathrow stations if a charging mechanism of directly incurred costs is adopted. Please see our comments on the charging mechanism at Part 6 of these Station Access Conditions.

²⁹ A definition of "Transport for London" has been included given that multiple references are made to Transport for London in these Station Access Conditions.

³⁰ The definition of "User's Daily General Charge" (which is relevant for the purposes of the abatement regime set out in the model clauses) will need to be amended to reflect TfL's proposed charging principles. Please see Part 6 of these Station Access Conditions for further details on TfL's proposed charging principles.

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

³¹ The definition of "Welsh Government" is not relevant in the context of the Heathrow stations as the stations are located in England.

PART 2: MODIFICATIONS TO THE HEATHROW STATION ACCESS CONDITIONS

2. Notification of a Conditions Change Proposal

- 2.1 Any User of any station on the Network or the Station Facility Owner shall be entitled to make a Conditions Change Proposal. The Conditions Change Proposer shall submit any such proposal to each of the Conditions Change Consultees, the Station Facility Owner (unless made by the Station Facility Owner), Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) and Transport for London and shall:³²
- (A) be in writing;
 - (B) contain reasonable particulars of the change proposed;
 - (C) contain the proposed text of those Conditions affected by the change if the change were approved pursuant to this Part 2;
 - (D) be supported by an explanation in reasonable detail of the purpose of the proposed change; and
 - (E) specify the date on which the Conditions Change Consultation Period ends.
- 2.2 The Conditions Change Consultees, Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) and Transport for London may make representations on the Conditions Change Proposal to the Conditions Change Proposer during the Conditions Change Consultation Period.
- 2.3 The Conditions Change Proposer shall, within 5 Business Days following the end of the Conditions Change Consultation Period, notify the Conditions Change Consultees, Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) and Transport for London of the date on which the Conditions Change Decision Period ends and at the same time supply to each of them:
- (A) copies of all representations received pursuant to Condition 2.2; and
 - (B) if the Conditions Change Proposer consents, any modification to that proposal,
- provided that no such documents shall be supplied, if the Conditions Change Proposer materially modifies it.
- 2.4 If at any time a Conditions Change Proposal is materially modified, the Conditions Change Proposer shall treat the modified proposal as a new Conditions Change Proposal.
- 2.5 The Conditions Change Proposer shall promptly comply with all reasonable written requests for reasonable further clarification of the proposal.

3. Approval or rejection of a Conditions Change Proposal

- 3.1 Without prejudice to Condition 7, a Conditions Change Proposal shall have been approved only if:

³² As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should be consulted on a Conditions Change Proposal.

- (A) in the case of such a proposal which relates to a Template Change, at the end of the Conditions Change Decision Period not less than 80% of all Users of stations comprised in the Network shall have consented in writing to the Conditions Change Proposal; or
- (B) in the case of such a proposal which relates to a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations, the Requisite Majority shall have consented in writing to the Conditions Change Proposal (provided that the failure of a User to provide a written response shall be deemed to be a consent to that proposal);

And in each case

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

3.2 The Conditions Change Proposer shall, as soon as reasonably practicable following a reasonable request by any User, the Station Facility Owner, Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) or Transport for London to carry out further consultation in respect of any Conditions Change Proposal, carry out further reasonable consultation.³³

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

4.1 Decision to Approve:

- (A) The Conditions Change Proposer shall, as soon as reasonably practicable following the approval of a Conditions Change Proposal, submit the proposal to the ORR, together with a written memorandum:
 - (1) explaining the reasons for the proposed change;
 - (2) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition 2.2 which shall have been neither accepted nor withdrawn); and
 - (3) stating the reasons for any objections to the proposed change by any User or the Station Facility Owner.
- (B) The Users and the Station Facility Owner shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Conditions Change Proposal by the ORR.
- (C) No Conditions Change Proposal shall have effect unless the ORR gives notice to the Conditions Change Proposer in writing that it approves the proposal pursuant to section 22 of the Act.
- (D) If the ORR gives its approval of the Conditions Change Proposal, the Conditions Change Proposer shall notify all Conditions Change Consultees within the period of 14 days following receipt by the Conditions Change Proposer of the ORR's notice of approval.

³³ As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should be entitled to request further consultation on a Conditions Change Proposal.

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

5. Notification of a Conditions Change Proposal

5.1 The Conditions Change Proposer shall notify any change made in accordance with this Part 2 other than Condition 7 to all Users and the Station Facility Owner as well as to the ORR, Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) and Transport for London. Save as otherwise provided in Condition 7, the change in question shall have effect on the expiry of 21 days from the date of that notification.³⁴

5.2 The Conditions Change Proposer shall, following approval of a Conditions Change Proposal by the ORR and in any event prior to that Conditions Change Proposal having effect, supply to all Users, the Station Facility Owner, the ORR, Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) and Transport for London, a revised version of these Station Access Conditions incorporating the change.³⁵

6. Appeal procedure

6.1 If the Station Facility Owner shall have exercised its veto, any User shall be entitled to give a notice of appeal against it.

6.2 A notice of appeal shall:

- (A) be given to the ORR, the Station Facility Owner, the Conditions Change Proposer and each User not later than 35 days after the exercise of the Station Facility Owner veto;
- (B) contain the reasons why the User in question considers that the Station Facility Owner veto should not have effect; and
- (C) request the ORR to determine the matter.

6.3 No notice of appeal may be given unless:

- (A) the User shall be satisfied that the Station Facility Owner is entitled to exercise the Station Facility Owner veto; or
- (B) the entitlement of the Station Facility Owner to exercise its veto shall have been established pursuant to the Access Dispute Resolution Rules,

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

6.4 Without prejudice to Condition 6.5, the Station Facility Owner and the Users shall use their respective reasonable endeavours to procure that the ORR is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.

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

³⁴ As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should be notified of any changes to these Station Access Conditions.

³⁵ As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should receive a revised version of these Station Access Conditions.

- (A) to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
- (B) to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;
- (C) to determine whether the Station Facility Owner veto shall have effect; and
- (D) to make such orders as it shall think fit in relation to the proportions of the costs of the appeal which shall be borne by any of the parties.

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

- (A) be entitled to decline to determine the appeal if, having consulted the parties concerned, it shall determine that the appeal should not proceed, including on the grounds that:
 - (1) the matter in question is not of sufficient importance to the industry;
 - (2) the reference to it is frivolous or vexatious; or
 - (3) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
- (B) not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the appeal.

6.7 The determination of the ORR shall be final and binding on the Station Facility Owner, the Conditions Change Proposer and every User.

6.8 In this Condition 6:

"the exercise of the Station Facility Owner veto" means the reasonable giving by the Station Facility Owner of a notice of objection as provided for in Condition 3.1(C), and cognate terms and expressions shall be construed accordingly; and

"notice of appeal" means a notice given pursuant to Condition 6.2.

7. Changes to the Station Access Conditions initiated by the ORR

7.1 These Station Access Conditions shall have effect with the modifications (being the equivalent of either a Conditions Change or a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations) specified in any notice given by the ORR for the purposes of this Condition 7, provided that the ORR shall be satisfied as to the need for the modification as provided in Condition 7.2, the procedural requirements of Condition 7.3 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition 7.4.

7.2 A notice given by the ORR under Condition 7.1 shall have effect:

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

- (B) in the case of a notice given after the date six months after the Relevant Date, if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
- (1) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
 - (2) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.
- (C) For the purposes of Condition 7.2(B)(2):
- (1) "relevant person" means a User, the Station Facility Owner, an Access Option Holder and any other person who, in the opinion of the ORR, shall be likely to become a User; and
 - (2) "Access Option Holder" means any person who has an access option in respect of the Station, being a contract conferring an option to require the Station Facility Owner to secure that a person or any associate of that person obtains permission from the Station Facility Owner to use the Network or any station ancillary thereto.³⁶

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

- (A) in its consideration of the matters referred to in Condition 7.2, the ORR shall have consulted all Users, the Station Facility Owner, the Secretary of State (and Transport for London or Rail for London Limited (or such other Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station)³⁷), together with any other persons whom the ORR shall consider ought properly to be consulted, in relation to the modification which it proposes to make;
- (B) in the consultations referred to in Condition 7.3(A), the ORR shall have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
- (C) the ORR shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the modification to be made;

³⁶ As HAL is exempt from section 17 of the Railways Act 1993, TfL has replicated the wording (with minor amendments) of "access option" in this Condition.

³⁷ TfL, through its subsidiary Rail for London Limited, is the most appropriate entity for the ORR to consult with in relation to any changes that the ORR proposes to make to these Station Access Conditions.

- (D) the ORR shall have notified each person consulted pursuant to Condition 7.3(A) as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and
 - (E) in effecting the notifications required by Condition 7.3(D), the ORR shall have treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to the ORR or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
- 7.4 notice under Condition 7.1 shall come into effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances come into effect:
- (A) in the case of a notice given on or before the date six months after the Relevant Date:
 - (1) earlier than 30 days after the date upon which it shall have been given; or
 - (2) later than the date seven months after the Relevant Date; and
 - (B) in the case of a notice given after the date six months after the Relevant Date, earlier than 180 days after the date upon which it shall have been given.
- 7.5 A notice under Condition 7.1 shall not have effect in relation to any proposed modification of Conditions 7.1 to 7.4 (inclusive) or this Condition 7.5.

7A. Mandatory Conditions Change Proposal³⁸

- 7A.1 The Station Facility Owner and all Users acknowledge and agree that:
- (A) these Station Access Conditions have been prepared:
 - (1) using the Independent Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014) or certain associated documents as the starting point; but
 - (2) amending such documents on the basis that the HAL Exemption is in existence and will continue to subsist;
 - (B) the HAL Exemption is for a limited period and is expected to expire in 2028, or may otherwise be withdrawn or cease to apply in certain circumstances;
 - (C) if the HAL Exemption expires or is otherwise withdrawn or ceases to apply, the Station Facility Owner will no longer benefit from certain exemptions from the Act;

³⁸ The HAL Exemption is expected to expire in 2028 in accordance with the terms of the exemption (being 30 years from the date upon which services commenced on the Heathrow Rail Infrastructure). The station access documentation has been drafted on the basis that HAL benefits from certain exemptions from the Act; for example, the requirement to hold a station licence and the requirement for the ORR to pre-approve station access agreements. Therefore, on expiry of the licence, certain drafting found in the Independent Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014) will be needed in these Station Access Conditions. TfL therefore requires a mandatory process to facilitate changes to these Station Access Conditions on expiry of the HAL Exemption.

- (D) as a consequence of (C), these Station Access Conditions will require modification to take into account provisions of the Act which the Station Facility Owner is or will become subject to; and
- (E) in the circumstances set out in (D), these Station Access Conditions should be modified, so far as reasonably appropriate and practicable, to be substantially similar to the Independent Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014) or the equivalent at the relevant time.

7A.2 On or before the earlier of the date:³⁹

- (A) which falls 2 years prior to the anticipated expiry of the HAL Exemption; or
- (B) upon which the HAL Exemption is withdrawn or otherwise ceases to apply,

the Station Facility Owner shall make one or more Conditions Change Proposals in accordance with Condition 2 to modify these Station Access Conditions to implement the matters set out in Condition 7A.1(E).

7A.3 Subject to the requirements of Conditions 2 to 6, a Conditions Change Proposal made in accordance with Condition 7A.2 shall only be required to have effect:

- (A) (where such Conditions Change Proposal is made in accordance with Condition 7A.2(A)) upon the expiry of the HAL Exemption; or
- (B) (where such Conditions Change Proposal is made in accordance with Condition 7A.2(B)) promptly following the withdrawal of the HAL Exemption or the HAL Exemption otherwise ceasing to apply.

7A.4 If the Station Facility Owner does not make one or more Conditions Change Proposals to implement the matters set out in Condition 7A.1(E) on or before the date specified in Condition 7A.2, it shall constitute a material breach of the Station Facility Owner's obligations under the Station Access Agreements that are in force on the date specified in Condition 7A.2.⁴⁰

³⁹ This has been prepared on the basis that it is not expected that the HAL Exemption will be renewed.

⁴⁰ Condition 7A.4 has been included in case HAL fails to do what it is required to do under these Station Access Conditions. Specifying it to be a material breach of the Station Facility Owner's obligations under the Station Access Agreement ensures that this would constitute a Station Facility Owner Event of Default under the Station Access Agreement, triggering the remedies under the Station Access Agreement. This is essential given HAL, these Station Access Conditions and associated documentation would become subject to the Act but the documentation would not reflect this; therefore causing regulatory issues.

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

8. Change

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

9. Exempt Activities

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

10. Notifiable Change

- 10.1 The Proposer of a Notifiable Change Proposal shall submit that Proposal, together with any associated documentation, to each of the Notifiable Change Consultees. The

Proposal must set out details of the proposed change, any proposed changes to the Station Access Conditions and Annexes and the reason why it is intended to deal with it as a Notifiable Change. The Proposal must also specify the date on which the Representation Period ends.

- 10.2 If the responsible party is unsure of whether the proposed Change is a Notifiable Change it shall before submitting the Proposal serve on each of the Notifiable Change Consultees a Notifiable Change Notice and if any of the Notifiable Change Consultees believes the proposed Change is not a Notifiable Change it shall serve a Materiality Notice on the responsible party within 5 Business Days of receipt of the Notifiable Change Notice.
- 10.3 If, when a Notifiable Change Proposal is submitted, any of the Notifiable Change Consultees believes that any work or activity to which that Proposal relates is not a Notifiable Change it shall serve on each of the others a Materiality Notice at any time within the Representation Period.
- 10.4 If a Materiality Notice is served under Condition 10.2 or 10.3 the responsible party may elect either to
 - (A) treat the relevant work or activity as a Material Change and proceed accordingly;
or
 - (B) commence the Dispute Resolution Procedure,and if it fails to do either within 10 Business Days following the later of the end of the Representation Period and the further period referred to in Condition 10.8 (if any) then it shall be open to the relevant Notifiable Change Consultee to commence the Dispute Resolution Procedure.
- 10.5 If no Materiality Notice is served under Condition 10.2 or 10.3 within the relevant time limit then the relevant work or activity shall be a Notifiable Change.
- 10.6 If a Notifiable Change Proposal is made, and no Materiality Notice is served under Condition 10.3, the Notifiable Change Consultees may make representations on the Notifiable Change Proposal to the Proposer during the Representation Period.
- 10.7 The Proposer must consider any representations made and in doing so have due regard to the relevant Consultee's interests in the Station and its use and enjoyment of the Station.
- 10.8 The Proposer must advise the Notifiable Change Consultees within a further 10 Business Days following the end of the Representation Period of any revisions to the Notifiable Change Proposal as a result of any representations made and provide the Notifiable Change Consultees with written reasons for rejection where they are not incorporated into the final Notifiable Change as implemented.
- 10.9 If no representations are received during the Representation Period then the Notifiable Change Consultees are deemed to have accepted the Notifiable Change at the end of the Representation Period.
- 10.10 All the Notifiable Change Consultees may agree by notice to the Proposer at any time that the Representation Period shall be a shorter period than that specified in the Notifiable Change Proposal.
- 10.11 In accordance with the requirements set out in Conditions 15 and 17, the Proposer will forward all documentation (including any representations made during the

Representation Period and the Proposer's response) to the ORR to enable Registration of the Notifiable Change and of any consequential amendment of the Station Access Conditions.

10.12 Registration of a Notifiable Change shall be in accordance with the requirements set out in Condition 17, but such Registration does not remove the requirement to obtain other associated approvals either under any Relevant Agreement or under any standard industry procedures such as detailed technical approvals, method statements, lease amendments, etc. which, wherever possible, should be progressed as part of the Notifiable Change consultation process.

11. Material Change

11.1 The Proposer of a Material Change Proposal shall submit that Proposal, together with any associated documentation, to each of the Material Change Consultees. The Proposal must specify the date on which the Consultation Period ends and must include (in as much detail as is available at the time of the Proposal, recognising that it will not always be possible to give more than outline or generic information at the time of the Proposal):

- (A) an explanation of why the change is being made;
- (B) broad details of those parts of the Station which will be affected both during and after the implementation of the Proposal;
- (C) the nature and outline specification of the proposed work including (where appropriate and where details are available):
 - (1) Alternative Station Facilities;
 - (2) Alternative Accommodation if required;
 - (3) Changes to any Common Station Amenities and Common Station Services; and
 - (4) Estimated timetable for commencement and completion of the work;
- (D) information on any consents needed;
- (E) an irrevocable offer to become, where it is not already, a Resolution Service Party in accordance with Chapter J of the Access Dispute Resolution Rules;
- (F) an irrevocable offer (conditional on the relevant Material Change Consultee having Accepted the Proposal) to enter into a Co-operation Agreement with each of the relevant Material Change Consultees in the relevant form applicable to the Proposer and to that Material Change Consultee;
- (G) proposed changes to plans and any other proposed changes to the Station Access Conditions and Annexes and to any Relevant Agreement as a result of the Material Change Proposal;
- (H) a proposal in respect of a Relevant Undertaking;
- (I) if the Proposer is a Station Investor, it shall execute a deed in the form of Annex 16 (Template Station Investor Participation Deed) and send a copy of that deed to each Material Change Consultee;

- (J) pursuant to Condition 11.8, who (other than the Material Change Proposer) it is proposed should pay the costs of implementation and any increase in running costs; and, if it is proposed that a party should pay a proportion of such costs, what proportion it is proposed that such party should pay; and
- (K) information on any wayleaves or easements requests (where necessary).
- 11.2 The Proposer of a Material Change Proposal shall submit, together with any associated documentation, the same Proposal as required under Condition 11.1 to each Non-Qualifying Material Change Consultee, except it shall not include any documentation as required under Conditions 11.1(F) and 11.1(H).
- 11.3 Although the information contained in the Material Change Proposal may be of an outline or generic nature it must nevertheless contain such detail as is reasonably necessary and appropriate to enable the Material Change Consultees and Non-Qualifying Material Change Consultees to determine whether such Proposal if implemented would put that Consultee in breach of a Legal Requirement or of its franchise agreement or concession agreement⁴¹ (as the case may be).⁴²
- 11.4 During the Consultation Period, the Material Change Consultees may do one of the following:
- (A) give a response Accepting the Material Change Proposal unconditionally and agreeing to enter into the Co-operation Agreement; or
 - (B) give a response objecting to the Material Change Proposal; or
 - (C) give no response; and
 - (D) in addition, if the Material Change Consultee is the Station Facility Owner, the Station Facility Owner may give a response Accepting the Material Change Proposal conditionally pursuant to Condition 12;
- 11.5 During the Consultation Period, the Non-Qualifying Material Change Consultees may do one of the following:
- (A) make representations in respect of the Material Change Proposal;
 - (B) give a response objecting to the Material Change Proposal on the ground that the Material Change Proposal if implemented would put the Non-Qualifying Material Change Consultee in breach of a Legal Requirement or of its franchise agreement or concession agreement (as the case may be)⁴³; or
 - (C) give no response.
- 11.6 If no response is made by a Material Change Consultee during the Consultation Period then the relevant Material Change Consultee is deemed to have Accepted the Material

⁴¹ The only public service agreement-procured services in the Heathrow spur are expected to be Crossrail services which are let by TfL under a concession agreement. This has therefore been updated to reflect the Crossrail operation, in relation to which access is being sought. It is recognised that franchise services may be relevant in the future and this document will apply to both franchise and concession services, so references to franchise services have been retained.

⁴² As HAL is exempt from the requirement to hold a licence, references to "Station Operator Licence" and "Network Licence" have not been included.

⁴³ Please see our comments at footnote 41 above.

Change and to have agreed to enter into the Co-operation Agreement at the end of the Consultation Period.

- 11.7 All the Material Change Consultees and the Non-Qualifying Material Change Consultees may agree by notice to the Proposer at any time that the Consultation Period shall be a shorter period than that specified in the Material Change Proposal.
- 11.8 The cost of implementing an Accepted Material Change Proposal, and any increase in the running costs of the Station resulting directly from such implementation, may be apportioned between the Proposer and the Material Change Consultees in accordance with the terms set out in the Proposal.
- 11.9 If a Material Change Consultee wishes to object to a Material Change Proposal it may only do so on one of the grounds set out in this Condition by giving notice to the Proposer during the Consultation Period and stating the grounds for its objection with supporting evidence of those grounds in such detail as is reasonably necessary and appropriate to enable the Proposer to evaluate it properly having regard to the grounds of the objection. The only grounds on which a Material Change Consultee may object to a Material Change Proposal are that:
- (A) the information to consider the Material Change Proposal is incomplete or inaccurate having regard to:
 - (1) the nature of the Material Change Proposal; and
 - (2) the information required to accompany a Material Change Proposal (as set out in Condition 11.1 which to avoid doubt need only comprise outline or generic details of the Proposal having regard to the information available at the time the Proposal is made); and/or
 - (B) the Material Change Proposal if implemented would put the Material Change Consultee in breach of a Legal Requirement or of its franchise agreement or concession agreement (as the case may be)⁴⁴; and/or
 - (C) the Material Change Proposal is not consistent with the ORR's Investment Framework Policy and Guidelines as published from time to time; and/or
 - (D) a Material Change Consultee considers that the completed Material Change Proposal would be contrary to the safe and efficient operation of the Station; and/or
 - (E) implementation of the Material Change Proposal will result, or will be more likely than not to result, in a material adverse effect, whether permanent or temporary on
 - (1) the operation of the Station or the Network; or
 - (2) the use of the Station by any Material Change Consultee's passengers; or
 - (3) the Material Change Consultee's ability to perform any obligations or exercise any discretions which it has in relation to railway services; and/or
 - (F) in a manner specified by the Material Change Consultee, the implementation of the Material Change Proposal will, or will be more likely than not to, materially

⁴⁴ Please see our comments at footnote 41 above.

disrupt, interfere with, or otherwise be incompatible with the implementation of other specified works on or at the Station; and/or

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

Change Proposal (the "Second Consultation Period") shall be 20 Business Days (or longer if the Proposer so elects).

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

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

- 12.1 Where the Station Facility Owner is a Material Change Consultee it shall be entitled to require as a condition of its acceptance of a Material Change Proposal that the implementation of the Proposal (or any part or parts of it) is subject to:
 - (A) the Proposer having entered into an Asset Protection Agreement; and
 - (B) (where the Proposal is made by a Station Investor) the Proposer having entered into a Property Agreement,

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

- 12.2 The Station Facility Owner and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Asset Protection Agreement required under Condition 12.1(A) but the Station Facility Owner shall be entitled to require adherence to the current [ORR Asset Protection Policies and Guidelines]⁴⁵ in relation to settling the form of the Asset Protection Agreement.
- 12.3 The Station Facility Owner and the Proposer shall each act reasonably in relation to the settlement of the terms and conditions of any Property Agreement required under Condition 12.1(B).
- 12.4 In the event of failure to agree on any of the terms and conditions of any Asset Protection Agreement or Property Agreement required under Condition 12.1(A) or 12.1(B) either party may refer the matter to the Dispute Resolution Procedure.

13. Non-Discretionary Change

- 13.1 A party who is required to undertake an action which constitutes a Non-Discretionary Change shall submit a Proposal, together with any associated documentation, to each of the Notifiable Change Consultees as if that Proposal had been a Notifiable Change Proposal. The Proposal must set out the proposed change and the reason why it is a Non- Discretionary Change.
- 13.2 The Proposer of a Non-Discretionary Change shall be entitled to implement the relevant Non-Discretionary Change at any time whether or not the Representation Period has ended and regardless of whether it has received any representations if failure to do so would or would be reasonably likely to result in any breach of any relevant Legal Requirement, Direction or Safety Obligation, or would result in a breach of any provision of the Station Access Conditions. Under this Condition 13.2, the Proposer shall be entitled to implement the Non-Discretionary Change without regard to Conditions 14 (other than 14.1(A)), 15, 16 or 17.
- 13.3 Other than as set out in Condition 13.2 the Non-Discretionary Change shall be treated as though it had been a Notifiable Change.
- 13.4 The provisions of Condition 96 shall have effect in relation to any costs of complying with or in consequence of any Non-Discretionary Change referred to in Condition 13.1.

14. Approval by the ORR

- 14.1 No Proposal to change these Station Access Conditions or Annexes whose implementation would:
- (A) require consequential amendments to a Station Access Agreement; or
 - (B) materially diminish for a period in excess of 28 consecutive days the number of passengers or trains that are able to use the Station,

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

⁴⁵ The "ORR Asset Protection Policies and Guidelines" are applicable to Network Rail only. These Station Access Conditions will need to provide details of the equivalent asset protection policies and guidelines that HAL will be subject to for the purposes of settling the terms and conditions of any Asset Protection Agreement.

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

15. Submission of a Proposal to the ORR

15.1 On acceptance of a Notifiable Change, Material Change or Non-Discretionary Change in accordance with the procedures referred to in this Part the Proposer shall (subject to Condition 15.2) submit any Proposal requiring approval under Condition 14.1 to the ORR for its approval, together with a written memorandum explaining the reasons for the proposed change and setting out details of the conduct and outcome of the representation or consultation process (as the case may be) provided that no such approval shall be sought if and to the extent that (or, if applicable, for so long as):

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

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

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

16. Notification of the ORR's decision

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

17. Registration, Requisite Consents and Implementation

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

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

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

- 17.2 Any documentation required as a consequence of any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted under the procedures referred to in this Part shall be settled between the relevant parties each acting reasonably in relation to the settlement of the terms and conditions of any such document and in the event of failure to agree on any of the terms and conditions of any such document either party may refer the matter to the Dispute Resolution Procedure. This Condition 17.2 shall not impede or delay the registration requirement referred to in Condition 17.1.
- 17.3 The Proposer shall use its reasonable endeavours to obtain all Requisite Consents as soon as practicable having regard to the nature of that consent and the matter to which it relates and in any event prior to implementation of the Notifiable Change, Material Change or Non-Discretionary Change (as the case may be) or (if the relevant Requisite Consent relates to a phase of the Notifiable Change, Material Change or Non-Discretionary Change or can only be obtained after the commencement of the Notifiable Change, Material Change or Non-Discretionary Change) the relevant part of the Notifiable Change, Material Change or Non-Discretionary Change and the requirement to obtain Requisite Consents (if any) shall not impede or delay the procedures referred to in this Part nor be used as a ground for objection to any Proposal.
- 17.4 Following Registration and before implementing the Notifiable Change, Material Change or the Non-Discretionary Change (as the case may be), the Proposer will issue an Implementation Notice to all the relevant Consultees and the ORR.
- 17.5 If no Implementation Notice is issued within three years of Registration (which period may be extended by the Proposer with the consent of all relevant Consultees) the relevant Notifiable Change, Material Change or the Non-Discretionary Change shall lapse and no longer be effective.
- 17.6 If an Implementation Notice is issued the Proposer must implement the relevant Proposal and then proceed diligently with it and if the Proposer does not commence implementation of the Relevant Proposal within 20 Business Days (which period may be extended by the Proposer with the consent of all relevant Consultees) following the issue of the Implementation Notice the relevant Notifiable Change, Material Change or the Non- Discretionary Change shall lapse and no longer be effective.
- 17.7 If before the Notifiable Change, Material Change or (where applicable) the Non-Discretionary Change is implemented the Proposer wishes to withdraw it it may do so by notice to the relevant Consultees and to the ORR.

18. Notices

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

PART 4: WORKS, REPAIRS AND MAINTENANCE

19. Existing Works, Third Party Works and Emergencies

19.1 Subject to Condition 21, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary:

- (A) to permit the carrying out of Existing Works or Non-Discretionary Third Party Works, provided that in the case of Existing Works the Station Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in Annex 4;
- (B) to safeguard the safety or security of persons or property in an Emergency at or affecting the Station; or
- (C) in a Network Emergency.

20. Repairs and Maintenance and other works

20.1 Subject to Conditions 20.3 and 21.1, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary to:

- (A) permit Repair, Maintenance, Discretionary Third Party Works or Exempt Activities to be made or carried out at or in relation to the Station without complying with the requirements for change in Part 3 (save, in relation to Exempt Activities, the requirements of Condition 9);
- (B) permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part 13 subject to compliance with the provisions of Part 3 insofar as such action is not an Exempt Activity and falls within the definition of Change (save where otherwise provided for in Part 13);
- (C) permit any works conducted in accordance with an obligation under Part 5, to be made or carried out, subject to compliance with the provisions of Part 3 where such works are undertaken to remedy Substantial Damage;
- (D) permit any works which fall within the definition of Non-Discretionary Change subject to compliance with the provisions of Condition 13; and
- (E) permit any works carried out in accordance with the provisions of Condition 68.3 without complying with the requirements for change in Part 3..

20.2 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in accordance with Condition 20.1 when reasonably requested to do so by any User in order to enable such User either to comply with its obligations under Part 13 or to exercise its rights under Condition 68.3.

20.3 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station in accordance with Condition 20.1 (otherwise than in a trivial respect) and a User shall, if it requests the Station Facility Owner to impose such a restriction, suspension or alteration (otherwise than in a trivial respect) pursuant to Condition 20.2:

- (A) provide at least 10 Business Days' notice in writing to each User (and the Station Facility Owner where a User so requests) of:

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

21. Alternative Arrangements

- 21.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Conditions 19 or 20, it shall, to the extent reasonably practicable, make timeous and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Station provided for in the Station Access Agreement, for:
- (A) suitable alternative arrangements in respect of access to and egress from the highway;
 - (B) each User's Associates to pass to and from trains operated by or on behalf of that User which stop at the Station and for any Passenger Operator's passengers to buy tickets for railway passenger services; and
 - (C) the provision of up-to-date train running information and toilet amenities,
- and the Station Facility Owner shall use all reasonable endeavours to make timeous and adequate provision for suitable alternative arrangements in respect of all other Common Station Amenities and Station Services so as to enable each User and its Associates to use the Station with minimum disruption, difficulty or inconvenience.
- 21.2 Each User shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition 21.1 as a result of a request by it pursuant to Condition 20.2.

22. Station Facility Owner's obligations⁴⁶

22.1 The Station Facility Owner shall ensure that:

- (A) Maintenance and/or Repair (as the case may be) is carried out to all Equipment and all parts of the Station and that renewal shall be undertaken where it is reasonably necessary and the most economic method of repair⁴⁷; and
- (B) [any Element of the Station or item of Equipment specified in Annex 9 the Repair of which is listed in the Elements Inventory or the Equipment Inventory as being Qualifying Expenditure, shall insofar and to the extent that it is as at the Conditions Efficacy Date in a state of actual disrepair (or, as the case may be, not in working order) be brought into a proper state of repair (or, as the case may be, working order) as soon as reasonably practicable and otherwise in accordance with the terms of Annex 9.]⁴⁸

22.2 The Station Facility Owner's obligations in Condition 22.1 shall extend to adequately painting and decorating (which shall include the application of preservative treatments where appropriate) the interior and exterior of any buildings forming part of the Station.

22.3 The Station Facility Owner shall not be in breach of its obligations under Conditions 22.1 and 22.2 if the Station or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Conditions 22.1 and 22.2, the Station Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.

23. Equipment

⁴⁶ In addition to the obligations already listed, TfL considers that, in the absence of a network/station licence, HAL should also be required to adhere to further asset stewardship obligations relating to renewal, enhancement, maintenance and repair, specifically:

- (1) HAL should maintain, enhance and/or repair the Station in accordance with a specified standard. TfL considers that this should be in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of Users of the Station;
- (2) HAL should consult upon, take into account the views of Users and subsequently publish its asset maintenance strategy, and implement the asset maintenance strategy in accordance with its terms. Users of the Station should also have effective remedies if HAL does not maintain the Stations either to the standard specified in (1) above or in accordance with the maintenance strategy and plans referred to in this paragraph (2);
- (3) HAL should also prepare delivery plans setting out how its overarching asset stewardship obligations will be met, and implement such plans in accordance with their terms; and
- (4) HAL should be required to maintain and update an asset register for the Station.

⁴⁷ The definition of "repair" refers to a Statement of Condition. HAL has not provided TfL with a Statement of Condition but TfL expects HAL to provide a Statement of Condition in due course.

⁴⁸ Please see TfL's proposed charging principles in Part 6. Only to the extent that the repair of any Element of the Station or item of Equipment under this condition 22(B) is a directly incurred cost should it be payable by TfL.

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

24. General Upkeep

24.1 The Station Facility Owner shall, so far as practicable:

- (A) keep the Station (and any adjoining road frontage where litter emanates from the Station) free from refuse, and in a clean and tidy condition; and
- (B) clean all windows and glass comprised in the Station.

25. Conduits free from obstruction

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

PART 5: INSURANCE

26. Responsibility for effecting insurance

- 26.1 The Station Facility Owner shall insure and keep insured the Station against:
- (A) property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent station operator would effect and maintain insurance (other than the Insured Risks); and
 - (B) the Insured Risks with a member of the Association of British Insurers or with Lloyds of London underwriters upon reasonable commercial terms provided that the terms of such insurance shall not unreasonably restrict any User's use of the Station.
- 26.2 The Station Facility Owner shall, in respect of any insurance effected pursuant to Condition 26.1(B), use all reasonable endeavours to procure that:
- (A) such insurance is effected for the Full Replacement Cost (less such excess as shall constitute the Minimum Sum) provided that such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one station at which the Station Facility Owner is the facility owner (being referred to in this Part 5 collectively as the "Affected Major Stations" and separately as an "Affected Major Station") such excess shall apply only once in respect of that occurrence to the Affected Major Stations as a whole; and
 - (B) such insurance is effected so that in the event of Substantial Damage to the Station, it shall be replaced with a modern equivalent building of a size and specification to meet modern requirements (unless exact replacement of the Station is required by any public body pursuant to listed building or other legislation⁴⁹).
- 26.3 Each User shall, if it is not a public service operator, effect and maintain appropriate insurance with a member of the Association of British Insurers or with Lloyds of London underwriters against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.
- 26.4 Each User shall, in respect of any insurance policy to which Condition 26.3 applies, provide that Station Facility Owner with suitable evidence, promptly upon receipt of a request from the Station Facility Owner for such evidence, that such insurance policy is in full force and effect, that all premiums have been paid up to date and that no circumstances exist which might lead to that policy being avoided.

27. Destruction or Damage to the Station

- 27.1 If the Station is destroyed or damaged by an Insured Risk then:
- (A) an amount up to the Minimum Sum; and
 - (B) all monies payable under insurance policies effected by the Station Facility Owner pursuant to Condition 26.1(B),

shall be applied by the Station Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Station, subject to:

⁴⁹ References to "Superior Estate Owner" have been deleted as HAL is the superior estate owner of the HAL infrastructure.

- (C) agreement pursuant to Condition 27.2; and
- (D) the Station Facility Owner obtaining all necessary permissions and approvals which the Station Facility Owner shall use all reasonable endeavours to obtain as soon as reasonably practicable,

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

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

- (A) the necessary reinstatement works, which in the case of Substantial Damage (and save where required by reason of the listed building or similar status of the Station⁵⁰) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed; and
- (B) the programme for the carrying out of such reinstatement works,

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

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

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

28. Provision of Documents

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

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

29. Maintenance of Insurance

⁵⁰ References to "Superior Estate Owner" have been deleted as HAL is the superior estate owner of the HAL infrastructure.

- 29.1 In respect of each insurance policy to which Condition 28 applies, the Station Facility Owner shall procure that:
- (A) if and to the extent that any User has an insurable interest capable of being covered by such policy and to the extent that any User reasonably so requests, any User is named as a co-insured under such policy on such terms as shall be reasonable;
 - (B) the policy is maintained and all claims are duly filed, and all proper steps to collect proceeds are duly taken in respect of such policy; and
 - (C) if such insurance policy is not required under a station licence held by the Station Facility Owner or the Station Facility Owner does not hold a station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to any User by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given.

30. Increase of premium or invalidation of policy

- 30.1 A User shall not, and shall procure that its Associates (other than passengers) do not, bring onto or do or omit to do at the Station anything which it is aware, or it ought reasonably to be aware, would:
- (A) invalidate any insurance of the Station or any Adjacent Property; or
 - (B) increase the premium payable for that insurance; or
 - (C) render wholly or partly irrecoverable the monies which otherwise would have been payable under that insurance,

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

- 30.2 The User responsible for any act or omission contemplated by Condition 30.1 shall pay to the Station Facility Owner on demand the amount of:
- (A) any increase in premium referred to in Condition 30.1(B); and
 - (B) any irrecoverable insurance monies referred to in Condition 30.1(C),

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

31. Rights of Subrogation

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

PART 6: ACCESS CHARGING

The Station Access Charges that will be payable for services using facilities at HAL's Central Terminals Area (CTA) station and Terminal 4 station are set out below.

A "per call" charge for each station (in 2015/6 prices) is set out in the table below for the use of its CTA and Terminal 4⁵¹ stations respectively:

Station	Charge (£, 2015/16 prices)
CTA Station Charge (per call)	7.72
T4 Station Charge (per call)	5.06

During each railway reporting period, the total charge for the use of the CTA station located on the Heathrow Rail Infrastructure shall be calculated in accordance with the following formula:

$$\text{Total CTA Station Charge} = \text{Rail Period Calls at CTA} * \text{CTA Station Charge}$$

where:

Rail Period Calls at CTA is the total number of calls made by Crossrail per railway reporting period at the CTA station;

CTA Station Charge is the CTA Station Charge per call of £7.72; and

During each railway reporting period, the total charge for the use of the T4 station located on the Heathrow Rail Infrastructure shall be calculated in accordance with the following formula:

$$\text{Total T4 Charge} = \text{Rail Period Calls at T4} * \text{T4 Station Charge}$$

where:

Rail Period Calls at T4 is the total number of calls made by Crossrail per railway reporting period at the Terminal 4 station;

T4 Station Charge is the Terminal 4 Station Charge per call £5.06.

Both station charges are specified in 2015/16 prices. For years commencing 1 April 2016 onwards, the station charges will follow the standard terms of annual indexation used by Network Rail as set out below:

$$X_t = X_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

Where:

X_t is the station charge in question (either the CTA Station Charge or T4 Station Charge);

⁵¹ Since there are no plans for Crossrail services to call at the Terminal 5 station, we do not (at this stage) propose establishing a Station Charge for access to the Terminal 5 station.

RPI_{t-1} means the RPI CHAW published or determined with respect to the month of November in Relevant Year t-1; and

RPI_{t-2} means the RPI CHAW published or determined with respect to the month of November in Relevant Year t-2.

The payment of charges will follow the same terms (including periodicity, timing and set off) as stated in Network Rail's standard form Station Access Agreement.

41. Calculation of number of Vehicles operated⁵²

41.1 The Station Facility Owner shall:

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

(B) after each material change of the kind referred to in Condition 41.3,

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

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

(D) any Passenger Operator shall request that such number be so recalculated.

41.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 41.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

41.3 For the purposes of Condition 41.1(B), a material change shall be deemed to have occurred if any event or circumstance (including entry by the Station Facility Owner into a new access agreement permitting a passenger service operator to use the Station, or amendment or termination of any existing access agreement permitting such use) shall have occurred which materially affects or is likely materially to affect the number of Vehicles operated by or on behalf of any Passenger Operator which stops at the Station.

⁵² Condition 41 should still be retained as the calculation of the number of Vehicles operated is still relevant for the purpose of determining the "Requisite Majority".

PART 6B: ACCESS CHARGING, FIXING CHARGES FOR CONTROL PERIOD⁵³

⁵³ Please see our comments at Part 6 above in relation to charging.

PART 7: EXISTING AGREEMENTS AND THIRD PARTY RIGHTS⁵⁴

44. **General**

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

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

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

46. **Exercise of discretion/Grant of consent**

- 46.1 Where any Existing Agreement contains rights and/or obligations:
- (A) whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by the Station Facility Owner; and
 - (B) the rights in respect of which may be exercised so as to protect the permission to use of any User,
- the Station Facility Owner, shall when exercising such discretion or granting such consent, approval or waiver, subject to the terms of that Existing Agreement, consult with and have due regard to any representations which may be made by any User and shall at all times ensure, so far as reasonably practicable, that any disruption to the operation and/or use of the Station is minimised in all respects.
- 46.2 Where any works are proposed to be carried out under the terms of any Existing Agreement:

⁵⁴ TfL expects HAL to provide details of any Existing Agreements (such as general title documentation, arrangements for third party undertakings) and the restrictions that they propose.

- (A) where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts 3 and 4 as if the exercise of the discretion in question were a Proposal for Change; and
 - (B) where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition 21.1.
- 46.3 At the request of any User, the Station Facility Owner shall take all reasonable steps to exercise such rights, which shall include (without limitation) enforcing the collection of any contribution or compensation payable by a third party in respect of any works carried out in relation to the Station under any Existing Agreement.
- 47. Wayleave grants**
- 47.1 The Station Facility Owner may grant wayleaves or easements at the Station to any public or local authority or public utility company or other persons, including (without limitation) rights of way, which do not impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services.
- 47.2 The Station Facility Owner may retain the benefit of grants pursuant to Condition 47.1 including rents or other payments arising under them except for any compensation for damage suffered by each User which shall be paid to the User in question promptly upon receipt.
- 47.3 No grant shall be made pursuant to Condition 47.1 until each User has been consulted and the Station Facility Owner shall have had due regard to that User's interests in the Station including the operational integrity of the Station and that User's existing and future plans for its use and enjoyment of the Station.
- 47.4 Any grant of rights of way made pursuant to Condition 47.1 shall require the grantee to comply with the Station Facility Owner's reasonable requirements in relation to safety or security and to give due consideration to its and any User's representations regarding the effect of the exercise of the rights in question on its and the User's operations. Any grant of a right of entry to carry out works made pursuant to Condition 47.1 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Station no less beneficial than the provisions of Conditions 20.3(B) and 83.
- 47.5 Where the Station Facility Owner wishes to grant wayleaves or easements at the Station which impose a Relevant Restriction or prevent the use of the Station for the provision of Station Services the provisions of Part 3 shall apply.

48. NOT USED⁵⁵

49. NOT USED⁵⁶

⁵⁵ This Condition is not relevant in the context of the Heathrow stations, as TfL understands that HAL is the freehold owner of the land comprised in the Heathrow stations and therefore is the "Superior Estate Owner".

⁵⁶ This Condition is not relevant in the context of the Heathrow stations, as HAL has always been the sole owner and manager of the HAL Infrastructure (including stations and track).

PART 8: LITIGATION AND DISPUTES

50. Notification by Station Facility Owner

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

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

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

51. Notification by User

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

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

52. Authority of Station Facility Owner

52.1 The Station Facility Owner:

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

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

- (C) the dispute is likely materially to affect the Station Facility Owner's ability to operate the Station; or

- (D) the Station Facility Owner proposes to account for the costs or amount of such a dispute as part of [the Qualifying Expenditure]⁵⁷ or other consideration payable under the Station Access Agreement and the amount of the dispute and/or the total amount of the damages together with costs are likely to exceed the amount specified in paragraph 9 of Annex 8.

53. Resolution of disputes and claims

- 53.1 Save as otherwise provided in these Station Access Conditions, any dispute or claim arising out of or in connection with these Station Access Conditions or a Station Access Agreement shall be resolved in accordance with the following escalation process:
 - (A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this Condition, the appropriate managers of the parties shall discuss the dispute with a view to resolution;
 - (B) if the parties are unable to resolve the dispute in accordance with Condition 53.1(A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
 - (C) if the parties are unable to resolve the dispute in accordance with Condition 53.1(B), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate directors for resolution;
 - (D) if the dispute is not resolved pursuant to Conditions 53.1(A) to 53.1(C) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.
- 53.2 Nothing in Condition 53.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this procedure directly (whether or not the dispute has been escalated in accordance with Condition 53.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

⁵⁷ Part 6 of these Station Access Conditions sets out TfL's proposed charging principles for the stations. Given that TfL will only be responsible for the costs that it directly incurs as a result of the Crossrail services accessing the station, TfL should only bear the cost of a dispute as part of the Qualifying Expenditure where such cost constitutes a directly incurred cost.

PART 9: STATION REGISTER

54. Maintenance of the Register

- 54.1 The Station Facility Owner shall, in such form as it may reasonably determine, maintain at the premises referred to in paragraph 9 of Annex 1 a register for the purposes of this part 9 and shall, upon ceasing to be the owner of the Station, deliver to the person succeeding it as owner:⁵⁸
- (A) such register; and
 - (B) a copy of each set of financial accounts and supporting information referred to in Condition 40.1.

55. Content of the Register

- 55.1 Subject to Conditions 56 and any notice given under Condition 57, the Station Facility Owner shall cause to be entered in the Station Register:
- (A) so far and as soon as reasonably practicable, but in any event not later than the date first mentioned in Condition 55.2, in relation to Existing Agreements of which it is aware, the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) a copy or a true and fair description of the material terms of every Existing Agreement;
 - (2) a copy or a true and fair description of the material terms of every amendment (however described) of any such Existing Agreement; and
 - (3) a copy or a true and fair description of the material terms of every consent, approval, waiver or other discretion which shall have been given, made or exercised under or in respect of any such Existing Agreement;
 - (B) in relation to Existing Works, all material information in relation to the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) all Existing Works;
 - (2) every amendment (however described) to any such Existing Works; and
 - (3) every consent, approval, waiver or other discretion which shall have been given, made or exercised in respect of any such Existing Works;
 - (C) in relation to any Proposal described in Part 3, the provisions of:
 - (1) such proposal;
 - (2) any representations and/or objections made in respect of such proposal;
 - (3) any consent to such proposal; and
 - (4) the result of any decisions made by the ORR in respect of such proposal;

⁵⁸ The term "facility owner" is not applicable to HAL as HAL is exempt from section 17(6) of the Railways Act 1993. TfL understands that HAL is the owner of the freehold land comprised on the Stations, and condition 54 has been amended to reflect this.

- (D) the Statement of Condition;
- (E) every Direction of any Competent Authority (other than a Statute) which relates to the Station or to the operation of the Station and which either:
 - (1) is likely to result in or affect a Relevant Restriction; or
 - (2) [is likely materially to increase the amount of the Qualifying Expenditure],⁵⁹
 provided that such Direction is not applicable to stations generally;
- (F) in relation to any Vehicle count referred to in Condition 41, details of:
 - (1) the date of each such count;
 - (2) the person or persons responsible for such count;
 - (3) a summary of the results of such count; and
 - (4) any challenges and objections made by any Passenger Operator in relation to the results of any such count;
- (G) a copy of the Station Facility Owner's station licence (unless the Station Facility Owner is exempt from the requirement to hold a station licence, in which case the Station Facility Owner shall cause to be entered in the Station Register a copy of its exemption to hold a station licence)⁶⁰ and the safety validation documentation in relation to the Station and any modification of it, any notices given under or in respect thereof (including any notice of revocation or termination, howsoever expressed, and any provisional or final order given under Section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of a User under or in respect of its Station Access Agreement; and

55.2 The date referred to in Condition 46.1 and Condition 55.1(A) shall be:

- (A) the date which falls 30 days prior to the date on which the Secretary of State issues an invitation to tender pursuant to section 26 of the Act in respect of any railway passenger services operated by any User; or
- (B) the date which falls 30 days prior to the date on which Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station) issues an invitation to tender in respect of any railway passenger services operated by any User.⁶¹

⁵⁹ Part 6 of these Station Access Conditions sets out TfL's proposed charging principles. Whilst any Direction of a Competent Authority should be entered on the Station Register if it is likely to materially increase the amount of Qualifying Expenditure, TfL should only bear any material increase in the amount of Qualifying Expenditure arising from the Direction of a Competent Authority to the extent that such increase relates to Qualifying Expenditure which is directly incurred as a result of operating the Crossrail services.

⁶⁰ As noted in footnote 1 above, HAL is exempt from the requirement to hold a station licence. TfL is therefore of the view that HAL should be required to keep a copy of this exemption in the Station Register.

⁶¹ The only public service agreement-procured services on the Heathrow spur are expected to be Crossrail services which are let by Rail for London Limited under a concession agreement. This has therefore been updated to reflect the Crossrail operation, in relation to which access is being sought. It is recognised that franchise services may be relevant in the future and this document

56. Exclusions from the Register

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

57. Public Interest

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

58. Inspection and Copies

- 58.1 The contents of the Station Register shall be available at the place where it is required to be maintained for inspection by any User, the ORR, the Secretary of State, Transport for London, Rail for London Limited (or such other Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station)⁶² and any person whom the ORR shall nominate as a prospective User during normal business hours, without payment of any fee.
- 58.2 Any User and any person nominated by the ORR for the purposes of Condition 58.1 may, on the payment of such reasonable fee as the Station Facility Owner may from time to time specify with the approval of the ORR, require the Station Facility Owner to supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.
- 58.3 If requested to do so by the ORR or the Secretary of State, the Station Facility Owner, without payment of any fee, shall supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.

will apply to both franchise and concession services, so references to franchise services have been retained.

⁶² As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should be able to inspect the contents of the Station Register without payment of any fee.

PART 10: RIGHTS GRANTED OVER ADJACENT PROPERTY

59. Rights of Way

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

60. Barrow Crossings

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

61. Emergency Rights

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

62. Entry upon the Adjacent Property

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

63. Exercise and enjoyment of Rights

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

64. Works costs

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

PART 11: STATION FACILITY OWNER'S PROPERTY RIGHTS

65. Property Interests

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

66. Exercise of Rights Granted

- 66.1 The Station Facility Owner shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Station Access Agreement
- (A) overload Conduits on, or obstruct a right of way over the Station, so as materially to prejudice any User's permission to use the Station; or
 - (B) place any sales barrow or exhibition stand on the Station so as to obstruct:
 - (1) access or egress to or from the highway or trains operated by any User or its Associates or any ticket office at the Station; or
 - (2) the visibility of any Passenger Information Systems.
- 66.2 Where an Existing Agreement contains a legally binding obligation on the part of the Station Facility Owner to regrant existing rights or privileges over the Station, the Station Facility Owner may regrant such rights or privileges to the person for the time being entitled to enforce such obligation.

PART 12: PERFORMANCE MONITORING REGIME AND REMEDIES

67. Performance Monitoring Regime⁶³

- 67.1 The Station Facility Owner and each Passenger Operator shall procure that with effect from 01 April 2018⁶⁴ Performance Audits are carried out in accordance with this Condition 67 and that in respect of the Accounting Year commencing on 01 April 20[18]⁶⁵ the following are determined in accordance with Condition 67.6:
- (A) the Audit Representatives;
 - (B) the Initial Performance Audit Form; and
 - (C) the Initial Baseline Mark for each Audit Question.
- 67.2 A Performance Audit shall be carried out on each Audit Date and the Station Facility Owner and the Audit Representatives shall on each Audit Date, subject to Condition 67.6(E), jointly complete a Performance Audit Form in respect of that Performance Audit by
- (A) allocating the appropriate Audit Mark to each Audit Question;
 - (B) stating the relevant Audit Score; and
 - (C) signing the Performance Audit Form.
- 67.3 Where an Audit Score represents an Increase, the Station Facility Owner shall be entitled to receive from each Passenger Operator a Performance Bonus, which shall be paid in accordance with Condition 33.6.
- 67.4 Where an Audit Score represents a Decrease, each Passenger Operator shall be entitled to receive from the Station Facility Owner a Performance Rebate, which shall be made in accordance with Condition 68.1.
- 67.5 The Station Facility Owner shall within 7 days of the completion of a Performance Audit Form pursuant to Condition 67.2:
- (A) notify each Passenger Operator of:
 - (1) the relevant Audit Score stated in that Performance Audit Form; and
 - (2) any entitlement to a Performance Bonus or Performance Rebate arising pursuant to Condition 67.3 or Condition 67.4; and
 - (B) provide to each Passenger Operator a copy of that Performance Audit Form.

⁶³ As HAL is exempt from the requirement to hold a station licence, TfL requires a performance regime to be included in these Station Access Conditions that measures HAL's performance of its station stewardship obligations. This performance regime needs to include all assets and needs to be on a Station-by-Station basis. HAL has provided TfL with a "Part L" performance regime as part of the HAL Network Code. TfL will consider "Part L" but notes that the assets listed in "Part L" are slightly narrower than what TfL would expect to see in such a performance regime. TfL also notes that any performance regime based on "Part L" should be included in these Station Access Conditions as a replacement for the industry standard performance regime (and not left in the HAL Network Code).

⁶⁴ This date is not relevant in the context of the Heathrow stations. It has been updated to reflect the introduction of the Crossrail services in May 2018.

⁶⁵ This date has been updated to reflect the commencement date of the Crossrail services.

67.6 The identity of the Audit Representatives, the terms of the Performance Audit Form and, where necessary, the Baseline Mark and Baseline Position shall be determined in accordance with the following provisions:

(A) The person or persons who are to act on behalf of the Passenger Operators for the purposes of this Condition 67 shall be that person or those persons (but not more than two) each being an employee of a Passenger Operator whose names are jointly notified to the Station Facility Owner by the Passenger Operators from time to time.

(B) If in accordance with the terms of these Station Access Conditions:

(1) any amenity or service becomes or ceases to be a Common Station Amenity or Common Station Service; or

(2) there is a change to the terms upon which any Audit Station Amenity or Audit Station Service is provided to Passenger Operators; or

(3) any Audit Station Amenity or Audit Station Service to which an Audit Question relates which was previously adversely affected by any works permitted pursuant to Part 3 or Part 4 ceases to be adversely affected in such way,

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

(a) the Performance Audit Form;

(b) the Baseline Marks; or

(c) the Baseline Position,

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

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

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

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

Audit Mark means in respect of any Audit Question:

(a) if (save where paragraph (c) below applies) the Station Facility Owner and the Audit Representatives jointly agree that the Audit Question is:

(i) satisfied, the Points Available; or

(ii) not satisfied, nil

save that where an Audit Representative is an employee, officer or contractor of a Passenger Operator which supplies on behalf of the Station Facility Owner any Audit Station Service that Audit Representative shall be disregarded for the purpose of determining whether it is so agreed that any Audit Question in respect of that Audit Station Service is or, as the case may be, is not satisfied; or

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

Audit Question means a question on the Performance Audit Form in respect of which an Audit Mark is required to be allocated on a Performance Audit Form pursuant to a Performance Audit;

Audit Representatives means the person or persons from time to time determined pursuant to Condition 67.6(A) as being those who are to act on behalf of the Passenger Operators for the purposes of this Condition 67;

Audit Score means the total of the Audit Marks allocated on a Performance Audit Form pursuant to a Performance Audit expressed as a percentage of the Total Points Available;

Audit Station Amenity means any Common Station Amenity to which an Audit Question relates;

Audit Station Service means any Common Station Service to which an Audit Question relates;

Baseline Mark means in relation to an Audit Question:

- (a) which arises in respect of any Performance Audit carried out in the Accounting Year commencing 01 April 2018⁶⁶, the Initial Baseline Mark for the relevant Audit Question; or
- (b) which arises in respect of any Performance Audit carried out in any subsequent Accounting Year, the average of those Audit Marks allocated to the relevant Audit Question pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Mark for that Accounting Year; or
- (c) where Condition 67.6(D) has applied the number of points determined in relation to the relevant Audit Question pursuant to that Condition;

Baseline Position means in relation to a Performance Audit:

- (a) carried out in the Accounting Year commencing 01 April 2018⁶⁷, the Initial Baseline Position;

⁶⁶ This date refers to the proposed year in which the Crossrail services will be introduced.

- (b) carried out in any subsequent Accounting Year, the average of the Audit Scores allocated pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Position for that Accounting Year; or
- (c) where Condition 67.6(D) has applied the number of points determined pursuant to that Condition

expressed, in each case as a percentage of the Total Points Available;

Decrease means that the relevant Audit Score is less than the Baseline Position;

Increase means that the relevant Audit Score exceeds:

- (a) in the case of the First Performance Audit in any Accounting Year, the Baseline Position, or
- (b) in the case of any subsequent Performance Audit in any Accounting Year, the Audit Score for the immediately preceding Performance Audit,

and references to an Increase being of a certain percentage shall be construed as referring to the number of percentage points which such excess represents;

Initial Baseline Mark means that number of points which is determined pursuant to Condition 67.6(C) in relation to the relevant Audit Question;

Initial Baseline Position means the total of the Initial Baseline Marks expressed as a percentage of the Total Points Available;

Initial Performance Audit Form means the form set out in Annex 13 subject to such modifications as may be determined, pursuant to Condition 67.6(B);

Performance Audit means:

- (a) a review of the Audit Station Amenities and the Audit Station Services for the purpose of agreeing whether each Audit Question is, or is not, satisfied on the relevant Audit Date; and
- (b) subject to Condition 67.6, an allocation of the appropriate Audit Mark to each Audit Question and calculation of the relevant Audit Score,

in each case jointly by the Station Facility Owner and the Audit Representatives;

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

Performance Bonus means an amount calculated in accordance with the following formula:⁶⁸

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

where:⁶⁹

⁶⁷ This date refers to the proposed year in which the Crossrail services will be introduced.

⁶⁸ Calculation of the performance bonus will depend upon the agreed charging structure. Please see Part 6 for TfL's outline principles for charging. Please also see footnote 63 above on the performance regime.

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

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

- Z =
- (a) where the relevant Audit Score is less than or equal to 35% of the Total Points Available and the Increase is of at least 20 percentage points, 0.25;
 - (b) where the relevant Audit Score is greater than 35% but less than or equal to 70% of the Total Points Available and the Increase is of at least 5 percentage points, 0.5; or
 - (c) where the relevant Audit Score is greater than 70% of the Total Points Available and the Increase is of at least 2 percentage points, 1;

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

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

where:⁷⁰

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

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

Z = 1, save where for the previous two or more Performance Audits the Audit Score has also represented a Decrease when Z shall be 5;

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

Total Points Available means the total of the Points Available on all Audit Questions.

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

68. Abatement and self help remedies⁷¹

⁶⁹ The concept of a "Residual Variable Charge" is has been deleted in its entirety as this concept applies prior to 1 April 2009.

⁷⁰ As per footnote 69 above, the concept of a Residual Variable Charge has been deleted in its entirety as this concept only applies prior to 1 April 2009. Calculation of the performance rebate will depend upon the agreed charging structure. Please see Part 6 for TfL's outline principles for charging. Please also see footnote 63 above on the performance regime.

⁷¹ TfL notes that the documentation currently proposed by HAL (whereby station access charges are levied under the Track Access Agreement and a nominal charge of £1 is specified for station access under the Station Access Agreement) makes an abatement regime unworkable. TfL

- 68.1 The Daily Charge of a User shall be abated by the amounts specified in, or determined in accordance with the provisions of:
- (A) Annex 6 or Annex 7 (as applicable) if, otherwise than in circumstances expressly provided for under these Station Access Conditions, any of the Common Station Amenities or Common Station Services identified in Annex 6 are not provided to a User which has a right to use such amenities or services for the relevant period specified in Annex 6, or the Station is not open for the periods specified in Annex 7; and
 - (B) Condition 67 where the User is entitled to receive a Performance Rebate from the Station Facility Owner pursuant to Condition 67.
- 68.2 Any amount abated pursuant to Condition 68.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be deducted by the party in question from the Daily Charge for the relevant Accounting Period. If and to the extent that the Daily Charge for such period has already been paid, the amount to be abated shall be paid by the party required to grant such abatement to the party entitled to benefit from it, within ten Business Days of the first mentioned party being notified of the relevant cause of abatement.
- 68.3 If the Station Facility Owner fails to carry out any work in accordance with Condition 22 and such failure would have a material adverse affect on the lawful business of a User carried on at the Station then that User, having consulted with each other User, may give the Station Facility Owner written notice of its intention to carry out such work unless, within a reasonable period after receipt of such notice, the Station Facility Owner remedies such breach.
- 68.4 If, after expiry of such reasonable period as is referred to in Condition 68.3, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition 68.3 or where more than one the User referred to in Condition 68.5 may carry out the work in accordance with the relevant provisions of these Station Access Conditions and the Station Facility Owner shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.
- 68.5 Where more than one User has given notice under Condition 68.3 then unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Qualifying Expenditure shall be the User referred to in Condition 68.4, provided always that where the User is carrying out any works in accordance with Condition 68.4, the Station Facility Owner shall not take any steps to remedy the relevant breach.
- 68.6 If the Station Facility Owner fails to secure the provision of any of the Common Station Services in accordance with its obligations under these Station Access Conditions any User shall, subject to Condition 68.7, be entitled to procure that such services are carried out in accordance with the relevant provisions of these Station Access Conditions during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the User's Daily General Charge payable by it to the Station Facility Owner for the relevant Accounting Period. If and to the extent that the User's Daily General Charge has already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within ten Business Days of the Station Facility Owner being notified of the amount of the relevant cost.

requires that access to each Station is charged separately on a facility-by-facility basis and that the abatement regime is retained with amendments as necessary to reflect the proposed charging principles set out in Part 6.

- 68.7 A User shall be entitled to the remedies referred to in Condition 68.6 only if:
- (A) each other User has agreed that the User may exercise those remedies or the User bears the greatest proportion of Qualifying Expenditure;
 - (B) the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and
 - (C) the breach remains unremedied by the Station Facility Owner at the end of that period.
- 68.8 If none of the Station Facility Owner, any User, or any of the employees, subcontractors or agents of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition 68.1 whether as a consequence of Force Majeure (as defined in Condition 73.1) or otherwise, there shall be no abatement of the Daily Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition 101.2), nor seek payment of an amount in respect of it.
- 68.9 Where for the purposes of Condition 68.1 any amount is to be specified in or determined in accordance with the provisions of Annex 6 by reference to any period of time during which any service or amenity is unavailable or not provided in accordance with the Station Access Conditions then any such period of time shall only commence upon the Station Facility Owner being notified, or becoming aware, of such unavailability or failure and such notification need not be in writing.

69. User's liabilities

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

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

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

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

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

70. Indemnities

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

71. Limitation on claims

- 71.1 Save as otherwise expressly provided in any Station Access Agreement (including these Station Access Conditions), no party to a Station Access Agreement shall be liable in respect of any breach of a Station Access Agreement:
- (A) unless notice of it is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant or could, with reasonable diligence, have become so known;
 - (B) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed:
 - (1) in the case of a claim against the Station Facility Owner, the amount specified in paragraph 10 of Annex 8;
 - (2) in the case of a claim against a passenger service operator, the amount specified in paragraph 11 of Annex 8; and
 - (3) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 12 of Annex 8;
 - (C) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:
 - (1) in the case of a claim against the Station Facility Owner the amount specified in paragraph 13 of Annex 8;
 - (2) in the case of a claim against a passenger service operator, the amount specified in paragraph 14 of Annex 8; and
 - (3) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 15 of Annex 8,in any Accounting Year, in which case the liability of the respondent to the claimant shall be limited to the amount of the excess over those amounts respectively,

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

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

72. Default Responsibility

- 72.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused:
- (A) any of the Common Station Amenities or Common Station Services identified in Annex 6 not to be provided for the relevant period specified in Annex 6, or the Station not to open for the periods specified in Annex 7; and
 - (B) a Performance Rebate to be receivable from the Station Facility Owner pursuant to Condition 67

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

- 72.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition 72.1, have due regard to all information available to it which is relevant in the circumstances.
- 72.3 As soon as reasonably practicable following the occurrence of a matter listed in Condition 72.1, the Station Facility Owner shall notify each User of the degree of causation, if any, of that occurrence attributed by the Station Facility Owner to itself or to the User which shall unless disputed by the User, within 5 Business Days of receipt of that notice be deemed to have been agreed by the User.

73. Force Majeure

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

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

and shall exclude the following events and circumstances:

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

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

73.3 A party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under the Station Access Agreement.

73.4 As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the occurrence of the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under the Station Access Agreement.

73.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under the Station Access Agreement.

74. Application of this Part and Mitigation

74.1 The provisions of this Part 12 shall apply in respect of any Station Access Agreement save to the extent varied or disappplied in such Station Access Agreement.

74.2 Nothing in any Station Access Agreement shall in any way restrict or limit the general principles at law relating to the mitigation of loss or damage resulting from breach of contract.

PART 13: ENVIRONMENTAL PROTECTION⁷²

75. **General environmental obligations**

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

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

- 76.1 Where:
- (A) the Station Facility Owner becomes aware that, as a result of any activities of a User, or its Associates, an Environmental Condition exists or has occurred at the Station or the Adjacent Property and the Station Facility Owner reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
 - (B) the Station Facility Owner is given a Direction by a Competent Authority that any action is required to prevent, mitigate or remedy an Environmental Condition resulting from activities of a User or its Associates at the Station or the Adjacent Property,

the Station Facility Owner shall inform that User of the need to take such action.

⁷² TfL considers that HAL as Station Facility Owner (and given the absence of a licence) should also have specific environmental obligations under these access conditions. Further drafting should be included in these access conditions to require HAL to have a written environmental policy designed to protect the environment from the HAL Infrastructure. This drafting should also ensure that HAL has operational objectives and management arrangements in place to give effect to its environmental policy and that HAL regularly reviews, consults upon and updates its environmental policy. HAL should also be required to have regard to its environmental policy and objectives in undertaking its obligations under the Station Access Agreement and these access conditions, and should also be required to use reasonable endeavours to operate its environmental policy effectively.

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

77. The Station Facility Owner's remedial action

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

78. Environmental indemnities

- 78.1 Each User shall indemnify the Station Facility Owner and keep it indemnified from and against all reasonable and proper expenses, costs and liabilities reasonably and properly incurred by the Station Facility Owner as a result of any Environmental Condition at the Station or the Adjacent Property which exists as a result of activities by that User or its employees, agents, contractors, subtenants or licensees since the Environmental Liability Commencement Date, or the proper undertaking by the Station Facility Owner in

accordance with this Part 13 of any steps to prevent, mitigate or remedy such an Environmental Condition.

78.2 The Station Facility Owner shall indemnify each User from and against all Environmental Liability incurred by each User to the extent that such liability is due to the condition of the Station prior to the Environmental Liability Commencement Date, provided that the Station Facility Owner shall not be liable under this Condition 78.2 for any Environmental Liability which results from the User's failure to comply with the obligations contained in this Part 13.

78.3 If any payment is made by:

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

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

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

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

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

79. Conduct of claims

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

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

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

80. Confidentiality

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

PART 14: OTHER POSITIVE OBLIGATIONS⁷³

81. Station Facility Owner's obligations

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

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

⁷³ A further positive obligation on HAL as Station Facility Owner should be included that requires HAL to grant access to the Station as may be necessary or expedient when a Network Emergency occurs. TfL would expect to see an Emergency Access Code in place that deals with such rights of access.

outgoings relating to the Station and a fair proportion of all such sums which are not separately assessed or payable, but excluding:

- (1) tax assessable on the Station Facility Owner in respect of payments under any Station Access Agreement;
 - (2) tax assessable on the Station Facility Owner in respect of consideration paid to the Station Facility Owner in connection with any dealing with its interest in the Station; or
 - (3) interest or penalties payable by the Station Facility Owner in consequence of its delay or default;
- (I) promptly pay to the relevant person for all Services consumed on the Station or a fair proportion of the cost to the Station Facility Owner in respect of the supply of such services to the Station, the Adjacent Property and any other premises;
- (J) observe and perform all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Station or its use;
- (K) take all reasonable steps to prevent, and not to allow, any encroachment on the Station or the acquisition of any right or easement against the Station (save for the rights granted in accordance with these Station Access Conditions);
- (L) maintain at the Station a notice under section 55 British Transport Commission Act 1949;
- (M) provide and keep in working order at the Station such fire extinguishers and/or other fire safety equipment and maintain such fire precaution arrangements as shall ensure satisfactory safety from the risks of fire or explosion;
- (N) be responsible for obtaining and/or maintaining any necessary fire certificate for the Station;
- (O) keep the Railway Substructure and the Railway Superstructure in a safe condition to the extent that it is not the responsibility of any third party;
- (P) [collect and dispose of Track Litter to the extent required to ensure compliance with the Environmental Protection Act 1990 (or which would be so required if the track or land on which such Track Litter is present were relevant land of a principal litter authority as defined by the said Act);]⁷⁴ and
- (Q) if a lease of any Core Facility⁷⁵ as is referred to in paragraph 21 of Annex 8 is to be terminated or expires in accordance with the terms of such lease (but not if such a lease is terminated and relet, on terms substantially the same as those that applied to the previous letting, in consequence of a franchise agreement being entered into pursuant to section 26 of the Act or a concession agreement entered into by Transport for London or a subsidiary of Transport for London⁷⁶),

⁷⁴ Obligations relating to "Track Litter" are not relevant in the context of the Heathrow stations due to the mechanism of directly incurred costs. Please see our comments on the charging principles set out in Part 6 of these Station Access Conditions.

⁷⁵ TfL expects to have a lease of ticket sales and passenger information facilities.

⁷⁶ The only public service agreement-procured services in the Heathrow spur are expected to be Crossrail services which are let by Rail for London Limited under a concession agreement. Additional wording has been included here to reflect the Crossrail operation. Franchise services

offer to let such Core Facility subject to the provisions of Part 3 and on terms substantially the same as those that applied to the previous letting save as to the term of that letting:

- (1) where such Core Facility is not a ticket office, to the Passenger Operators (other than the Passenger Operator to whom the previous letting had been granted) any such offer being made first to whichever of those Passenger Operators shall operate the greatest number of Vehicles departing the Station calculated pursuant to Condition 41.1⁷⁷ and, if not accepted within 7 days by that Passenger Operator, being so made to each of the other of those Passenger Operators in turn in descending order of the number of departing Vehicles operated by them, provided that if any such offer is not accepted by any of those Passenger Operators the Station Facility Owner shall offer to so let such Core Facility to such person (if any) as the Secretary of State shall nominate within 14 days of being requested to do so by the Station Facility Owner; and
 - (2) where such Core Facility is a ticket office, to such person as the ORR shall, within six months of being requested to do so by the Station Facility Owner, notify the Station Facility Owner as being the lead retailer from time to time having the obligation to operate one or more ticket offices at the Station.
- (R) as soon as reasonably practicable,⁷⁸ take all reasonable steps to obtain appropriate contributions, by way of service charge, in respect of the use of any Common Station Amenity or Common Station Service, from any person having rights of occupation of any part of the Station under a lease or licence, where the relevant leased or licensed premises enjoy the benefit of or are recipients of such Common Station Amenity or Common Station Service, such steps to include to the extent reasonable:
- (1) where the relevant lease or licence contains provisions for payment of such a service charge, the prompt and efficient calculation, invoicing and collection (including the taking of all appropriate debt recovery procedures and steps) of the same;
 - (2) where the relevant lease or licence contains provisions for the negotiation of such a service charge, the due, prompt and proper exercise of all rights available to the Station Facility Owner under such provisions;
 - (3) where the relevant lease or licence does not contain any provision for such a service charge, upon the renewal of such lease or licence, the

may be relevant in the future and this document will apply to both franchises and concessions, so references to franchise services have been retained.

⁷⁷ Part 6 of these Station Access Conditions sets out TfL's proposed charging principles for the stations. As these will be based on the costs directly incurred as a result of the Crossrail services accessing the station, the typical "Qualifying Expenditure" arrangements are not appropriate as these do not necessarily reflect the costs directly incurred. Given "Qualifying Expenditure" is no longer relevant, it cannot be included in this provision; however, we have kept as close as possible to the intention of this provision by referring to Vehicle departures (which is the basis Qualifying Expenditure would have been calculated on). TfL therefore considers that the first offer to let a Core Facility should be made to the Passenger Operator which operates the greatest number of Vehicles departing the Station.

⁷⁸ This date is specific to the Network Rail arrangements and therefore is not relevant in the context of Heathrow stations.

inclusion (subject to any statutory rights exercised by the relevant tenant or licensee) in such renewed lease or licence, of provision for such a service charge; and

- (4) subject to the provisions of Condition 81.1(R)(3) on the granting of any new lease or licence, the inclusion in such new lease or licence of provision for such a service charge.
- (S) ⁷⁹comply with such Railway Group Standards as may be relevant to stations on the Network.⁸⁰
- (T) cooperate with the Mayor of London and Transport for London, as the statutory body responsible for transportation in London, for the purposes of:
 - (1) ensuring the efficient operation of railway services and the provision of railway facilities; and
 - (2) co-ordinating, where possible, anticipated investment projects,to the extent that such matters affect or may affect both the Station Facility Owner's, Transport for London's and/or the Mayor of London's provision of railway services.⁸¹
- (U) act in a fair and non-discriminatory manner towards all Users and any prospective Users of the Station and not discriminate between persons or classes of persons.⁸²
- (V) at the commencement date of a Station Access Agreement and on an on-going basis during the term of that Station Access Agreement, provide information to Users demonstrating how the Station Facility Owner's governance structure and decision-making processes meet the requirements of the Railways Infrastructure (Access and Management) Regulations 2005 (or replacement regulations, as the case may be).⁸³
- (W) on or before the Conditions Efficacy Date, become a party to and thereafter remain a party to the Claims Allocation and Handling Agreement.⁸⁴

⁷⁹ TfL has included additional obligations in this Condition 81 that it considers are important requirements for HAL to comply with as the party responsible for the Heathrow stations (and because HAL does not have a licence).

⁸⁰ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to comply with relevant standards (as is required under the terms and conditions of a standard network and station licence).

⁸¹ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to cooperate with the Mayor of London and Transport for London (given that the HAL infrastructure is situated in London).

⁸² As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to act in a fair and non-discriminatory manner to all Station users (as is required under the terms and conditions of a licence).

⁸³ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to provide information to Users demonstrating how its government structure and decision-making processes meet the requirements of the Railways Infrastructure (Access and Management) Regulations 2005 (or replacement regulations, as the case may be).

⁸⁴ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to become a party to the Claims Allocation and Handling Agreement (as is required under the terms and conditions of a licence).

- (X) procure that all Users become party to and thereafter remain party to the Claims Allocation and Handling Agreement.
- (Y) cooperate with Passenger Operators so far as reasonably necessary to enable Passenger Operators to meet their obligations to provide information to passengers.⁸⁵
- (Z) as soon as reasonably practicable, put in place a persons with reduced mobility protection policy designed to protect such persons when they use the Station,⁸⁶ and:
 - (1) ensure that all arrangements, procedures and services that form part of such policy are in place;
 - (2) regularly review and consult upon any proposed amendments to such policy; and
 - (3) provide copies of such policy promptly and free of charge to any person who requests a copy of such policy.
- (AA) make available and easily accessible on its website copies of these Station Access Conditions, any Station Access Agreement and such other documents referred to in these Station Access Conditions and/or any Station Access Agreement as each User and/or Passenger Operator may reasonably require in connection with accessing the Station.
- (BB) regularly update its website to ensure that the latest editions of the documents referred to in Condition 81.1(AA) are made available.⁸⁷

82. Users' obligations

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

- (A) comply with any reasonable request of the Station Facility Owner which is necessary to enable the Station Facility Owner (as the case may be) to:
 - (1) deal with an Emergency or a Network Emergency;
 - (2) comply with its Safety Obligations;
 - (3) maintain security in relation to persons and property at the Station; and
 - (4) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;

⁸⁵ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to cooperate with operators with regards to provision of information to passengers (as is required under the terms and conditions of a licence).

⁸⁶ As HAL is exempt from the requirement to hold a licence, HAL should be required under these Station Access Conditions to put in place a persons with reduced mobility protection policy (as is required under the terms and conditions of a licence).

⁸⁷ TfL requires additional Conditions 81.1(AA) and 81.1(BB) to be included so that there is certainty at any point in time of the requirements for accessing the Stations and relevant information is made available in connection therewith to allow Users and Passenger Operators to understand requirements and restrictions. In the absence of the requirement for HAL to hold a station licence (which TfL accepts) it is essential for there to be a contractual obligation to ensure that this information is made available and is kept up-to-date.

- (B) take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition 82 insofar as they are applicable to them;
- (C) provide to the Station Facility Owner, for display at the Station, such information relating to changes in any railway passenger services provided by any User (including changes of a temporary nature) which shall be necessary or expedient in order to inform passengers of such changes in a timely manner;
- (D) timeously provide to the Station Facility Owner any notices which:
 - (1) are required to be displayed at the Station;
 - (2) contain or specify obligations binding on the User; and
 - (3) are required to be provided by the User,
 by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- (E) procure that the Station Facility Owner is provided with a copy of the User's passenger licence (if any) and the safety case referred to in such licence (to the extent that it shall not already have been provided to the Station Facility Owner) and any modification of it and any notices given under or in respect of it (including any notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of the Station Facility Owner under or in respect of the Station Access Agreement;
- (F) without prejudice to the provisions of Condition 1.1(P), timeously notify the Station Facility Owner if the User or any of its Associates wishes to:
 - (1) carry out any material maintenance of, or work to, any thing kept on the Common Station Amenities;
 - (2) bring things onto the Common Station Amenities which may affect the proper operation of the Common Station Amenities; or
 - (3) enter upon the Common Station Amenities with vehicles;
- (G) use all reasonable endeavours to liaise and co-operate with other Users and the Station Facility Owner in relation to the exercise of their permission to use Common Station Amenities and Common Station Services in order to secure the efficient and economic use of the Station for the benefit of Users and their Associates;
- (H) perform and observe (or reimburse the Station Facility Owner for the whole or a due proportion, as the case may require, of the costs incurred by the Station Facility Owner in doing so) all present and future regulations and requirements of any utility supplying Services to the Station; and
- (I) NOT USED⁸⁸

⁸⁸ Condition 82.1(I) of the model clauses is not relevant in the context of the Heathrow stations as HAL is the owner of the freehold land comprised on the Heathrow stations.

- (J) comply with any reasonable requests of the Station Facility Owner to minimise so far as practicable:
 - (1) emissions from any diesel trains operated by or on behalf of the User from the Station;
 - (2) the costs of cleaning the Common Station Amenities and any track adjacent to platforms within the Station.

83. Standard of works

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

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

PART 15: OTHER NEGATIVE OBLIGATIONS

84. Planning

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

85. Encroachments

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

86. Signs

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

87. Excavations/Excluded Equipment

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

88. Use

- 88.1 No User shall use the Station otherwise than for any of the purposes contemplated by Condition 1.1(O).
- 88.2 No User shall do or, to the extent reasonably within its control, permit to be done on the Station anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to any other User or to the Station Facility Owner or its tenants or the occupiers of any neighbouring property or the public, provided that:
- (A) without prejudice to Condition 75.2, the proper use of the Station for any of the purposes referred to in Condition 88.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition 88.2; and
 - (B) nothing in Condition 88.2(A) shall operate to sanction anything which shall constitute a nuisance actionable by any third party.

- 88.3 Neither the Station Facility Owner nor any User shall bring or, to the extent reasonably within its control, permit to be brought onto the Station anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.
- 88.4 Without prejudice to Condition 75.2 nothing in Conditions 88.2, 88.3 or 88.5 shall prevent the lawful bringing onto the Station of anything which may reasonably be required for or in connection with use of the Station for the purposes permitted by Condition 88.1 or the proper performance by the Station Facility Owner of its obligations under a Station Access Agreement or an Existing Agreement.
- 88.5 Neither the Station Facility Owner nor any User shall permit smoking or naked lights within the Station where the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 and the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 apply and no dispensation exists.

89. Overloading

- 89.1 Neither the Station Facility Owner nor any User shall overload structural parts of the Station, any Railway Superstructure or Railway Substructure or the works or structures by which it is supported, or do anything which will cause the designed capacity of any part of the Station or the Conduits at or used for the Station to be exceeded, to the extent that such capacity is reasonably capable of being ascertained in advance, or its adequacy reasonably capable of being called in question.

90. Improper use of Station

- 90.1 Except as otherwise permitted by the Station Access Agreement, no User shall take or omit to take (nor, to the extent reasonably within its reasonable control, permit to be taken or omitted) any action which would involve improper use of the Common Station Amenities, increase the risk of loss or damage to those amenities or otherwise adversely affect Common Station Services.

91. Works to Station

- 91.1 No User shall:
- (A) cut into or injure the brickwork, foundations or any other part of the Railway Substructure or Railway Superstructure or install (without in either case the previous written approval of the Station Facility Owner) against or within the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace; or
 - (B) carry out any paint spraying (other than water paint spraying) beneath the Railway Substructure or Railway Superstructure without any requisite licence from the local or other appropriate authority and without compliance with any requirements of such authority (including construction of any necessary booth unless formally exempted by the authority).

92. Not causing breach

- 92.1 Neither the Station Facility Owner nor a User shall do or omit to do, or permit any Associate (other than passengers) or agent of such person to do or omit to do, anything which may result in a breach of any obligation in these Station Access Conditions by any of the Users or the Station Facility Owners to any other of them.

92.2 NOT USED⁸⁹

93. Damage caused through Railway Substructure and Railway Superstructure

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

⁸⁹ Condition 92.2 of the model clauses is not relevant in the context of the Heathrow stations as HAL is the owner of the freehold land comprised on the Heathrow stations.

PART 16: ATTRIBUTION OF COSTS

94. Application of this Part

94.1 The provisions of this Part 16 shall not affect the proportions in which Qualifying Expenditure or the Long Term Charge is borne by Passenger Operators.⁹⁰

95. Compliance with obligations under Conditions

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

- (A) if the costs arise from a Proposal for Change that has been accepted in accordance with Part 3 (other than a Proposal for Change made pursuant to Condition 18.1) the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- (B) if the costs arise from the grant, after the Conditions Efficacy Date, of any lease or underlease for residential purposes, then the costs shall be wholly those of the Station Facility Owner; and
- (C) [if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Station or Equipment (other than Excluded Equipment), then such costs shall be Qualifying Expenditure to the same extent that the costs of Maintenance and/or Repair thereof would be Qualifying Expenditure.]⁹¹

96. Compliance with changes imposed by law

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

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

⁹⁰ This Condition will need to be amended to reflect TfL's proposed charging principles, as set out in Part 6 of these Station Access Conditions.

⁹¹ Please see TfL's proposed charging principles in Part 6. Only to the extent costs under Condition 95.1(C) are directly incurred should they be taken into account for the purposes of Condition 95.1(C).

- (C) the benefits or disadvantages which have accrued and are likely to accrue to the Station Facility Owner and each User in consequence of the change;
- (D) the scale of disruption to the Station Facility Owner's and each User's business which is likely to occur in consequence of the change; and
- (E) any User's franchise term (as defined in section 23(3) of the Act) or the term of any User's concession agreement⁹² (if applicable),

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

97. Basis of accounting and payment

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

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

98. [Apportionment of costs

98.1 Any costs incurred both in relation to:

- (A) Qualifying Expenditure; and
- (B) any other matter or thing,

shall be attributed as between them on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the ORR by section 4 of the Act and taking into account generally accepted accounting principles applicable in the United Kingdom.]⁹⁴

99. Minimisation of costs

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

⁹² The Crossrail services are let by Rail for London Limited under a concession agreement, so additional wording has been included to provide for the particular circumstances of the Crossrail services.

⁹³ This wording is only relevant to Network Rail and has not been included in the context of the Heathrow stations.

⁹⁴ Please see TfL's proposed charging principles in Part 6. Only to the extent that the costs specified in Condition 98 are directly incurred costs should they be taken into account under this provision.

PART 17: GENERAL

100. Confidentiality

- 100.1 Except as permitted by Condition 100.2 or Condition 100.3, all data and information acquired or received by any party under or pursuant to a Station Access Agreement shall be held confidential during the continuance of such agreement and for the period specified in paragraph 17 of Annex 8 thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.
- 100.2 Any party to the Station Access Agreement shall be entitled in good faith to divulge any data or information to which Condition 100.1 applies without the approval of the other party to the following third parties and, where relevant, in the following circumstances:
- (A) to the Secretary of State;
 - (B) to the ORR;
 - (C) to Transport for London;
 - (D) to Rail for London Limited (or such Affiliate of Transport for London responsible for the procurement of passenger rail services to the Station);⁹⁵
 - (E) to the Health and Safety Executive;
 - (F) to any Affiliate (other than, in the case of the Station Facility Owner, to an Affiliate which is a railway undertaking) of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;
 - (G) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under the Station Access Agreement or to enforce its rights under such Agreement, upon obtaining an undertaking of strict confidentiality from such person (other than such an officer or employee of the party in question);
 - (H) to any person who has entered into bona fide discussions with the Station Facility Owner in relation to the entry by that person into a Station Access Agreement, in respect of information:
 - (1) contained on the Station Register; or
 - (2) in any set of financial accounts (and supporting information) in respect of the Common Station Amenities and Common Station Services,upon obtaining an undertaking of strict confidentiality from such person;
 - (I) to any lender, security trustee, bank or other financial institution from whom such party or any person referred to in Conditions 100.2(D) to 100.2(F) is seeking or obtaining finance, upon obtaining an undertaking of strict confidentiality from such entity or advisers;

⁹⁵ As TfL, through its subsidiary Rail for London Limited, provides the Crossrail services, these entities should be entitled to receive confidential information regarding these Station Access Conditions.

- (J) 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;
- (K) 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;
- (L) to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;
- (M) pursuant to the order of any court or tribunal of competent jurisdiction; or
- (N) to London Underground Limited to the extent that:
 - (1) such information is in respect of the interaction between the operations of the Station Facility Owner and the Users and the operation of railway passenger services by London Underground Limited; and
 - (2) it is necessary to divulge such information for the safety and efficiency of any such operations or services.⁹⁶

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

101. Payments, default interest and VAT

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

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

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

⁹⁶ Paragraph (O) is not relevant in the context of the Heathrow stations.

- (B) free and clear of any other deduction, withholding, set-off or counterclaim save only as may be required by law or in accordance with the Station Access Agreement.

101.3 VAT:

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

102. Invalidity and waiver

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

103. Notices to Transport for London⁹⁷

- 103.1 If:

⁹⁷ The only public service agreement-procured services in the Heathrow spur are expected to be Crossrail services which are let by TfL under a concession agreement. This has therefore been updated to reflect the Crossrail operation, in relation to which access is being sought.

- (A) Transport for London (or an Affiliate of Transport for London) enters into a concession agreement in relation to railway passenger services with a Passenger Operator; and
- (B) a notice is at any time given or issued by any party to a Station Access Agreement to which that Passenger Operator is a party in the exercise of any right to terminate that Station Access Agreement,

then the party giving or issuing that notice shall promptly after it has done so send a copy of it to Transport for London or such Affiliate (as the case may be).