
ESSEX THAMESIDE STATION ACCESS
CONDITIONS 2014 (FRI LEASES)
(ENGLAND AND WALES)

ARRANGEMENT OF PARTS

PART A

Organisation of the Access Conditions and Definitions

A1	General	1
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PART B

Modifications to the Station Access Conditions

B1	Notification of a Conditions Change Proposal	31
B2	Approval or rejection of a Conditions Change Proposal	31
B3	The ORR's Approval or rejection of a Conditions Change Proposal	32
B4	Notification of Conditions Change Proposal	33
B5	Appeal Procedure	33
B6	Changes to the Station Access Conditions initiated by the ORR.....	34

PART C

Changes to the Station or to the Station Access Conditions

C1	Change	37
C2	Exempt Activities	37
C3	Notifiable Change	38
C4	Material Change	39
C5	Conditional Acceptance of a Material Change Proposal by Network Rail	43
C6	Non-Discretionary Change	44
C7	Approval by the ORR.....	44
C8	Submission of a Proposal to the ORR	44
C9	Notification of the ORR's decision	45
C10	Registration, Requisite Consents and Implementation	45
C11	Notice to determine	46
C12	Notices	46

PART D

Maintenance and Repair Works

D1	Restriction, suspension or alteration of permission to use	47
D2	Pre-conditions to restriction, suspension or alteration of permission to use	48
D3	Alternative arrangements	48
D4	The Station Facility Owner's obligations	49
D5	Equipment	49
D6	General Upkeep	49
D7	Conduits free from obstruction	49
D8	Standard of works	49

PART E

Insurance

E1	Responsibility of Relevant Operators for effecting insurance	51
E2	Destruction or damage to the Station	51
E3	Provision of documents	52
E4	Maintenance of insurance	52
E5	Increase of premium or invalidation of policy.....	53
E6	Rights of subrogation	53
E7	Power to insure in default.....	53

PART F

Access Charging

F1	Notice of charges	54
F2	Payment of charges	54
F3	Certificate of Residual Variable Charge	55
F4	Adjustments for excess payments	55
F5	Adjustments for short payments	55
F6	Calculation of interest	56
F7	Inspection of books, records and accounts	56
F8	Adjustments following inspection	56
F9	Accounts	57
F10	Calculation of number of Vehicles operated	58
F11	The Long Term Charge	60
F12	Review of Access Charge generally	62

PART G

Third Party Agreements and Third Party Rights

G1	General	64
G2	Costs of compliance	64
G3	Representations, warranties and undertakings	64
G4	Exercise of discretion/Grant of consent.....	64
G5	Network Rail's obligations.....	65
G6	Supplemental Agreements	66

PART H

Litigation and Disputes

H1	Notification by Station Facility Owner	70
H2	Notification by User	70
H3	Authority of Station Facility Owner	70
H4	Resolution of disputes and claims	71

PART I

Station Register

I1	Maintenance of the Register	72
I2	Content of the Register	72
I3	Exclusions from the Register	73
I4	Public interest	73
I5	Inspection and copies	74

PART J

Rights Granted Over Adjacent Property

J1	User's Rights.....	75
J2	Exercise and enjoyment of rights	76
J3	Works costs	76
J4	Property interests.....	76

PART K

Rights Reserved by Network Rail

K1	Works costs	77
----	-------------------	----

PART L

Remedies

L1	Application of this Part	78
L2	Abatement	78
L3	Self-help	78
L4	User's liabilities	79
L5	Indemnities	80
L6	Limitation on claims	81
L7	Default responsibility	82
L8	Force Majeure	82
L9	Mitigation	83

PART M

Environmental Protection

M1	General environmental obligations	84
M2	Remedial action required as a result of Relevant Operators' activities	84
M3	Remedial action required due to pre-existing Environmental Condition	85
M4	Network Rail remedial action	86
M5	Environmental indemnities	86
M6	Conduct of claims	87
M7	Confidentiality	87

PART N

Other Positive Obligations

N1	Station Facility Owner's obligations	88
N2	Users' obligations	91

PART O

Other Negative Obligations

O1	Planning	94
O2	Encroachments	94
O3	Signs	94
O4	Excavations/Excluded Equipment	94
O5	Use	94
O6	Overloading	95
O7	Improper use of Station	95
O8	Works to Station	95
O9	Not causing breach	96
O10	Damage caused through percolation of water and other substances	96

PART P

Attribution of Costs

P1	Application of this Part	97
P2	Compliance with obligations under Conditions	97
P3	Compliance with changes imposed by law	97
P4	Basis of accounting and payment	98
P5	Apportionment of costs	98
P6	Minimisation of costs	98

PART Q

General

Q1	Confidentiality	99
Q2	Payments, default interest and VAT	100
Q3	Invalidity and waiver	101

ANNEXES

- | | |
|----------|---|
| Annex 1 | Common Station Amenities and Services |
| Annex 2 | Qualifying Expenditure |
| Annex 3 | Common Station Amenities and Common Station Services which may be changed only by Unanimous Agreement of all Users |
| Annex 4 | Third Party Agreements |
| Annex 5 | Identified Abatable Charges for Common Station Amenities and Common Station Services |
| Annex 6 | Sliding scale of Abatement for failure to open Station during agreed opening times |
| Annex 7 | Miscellaneous Provisions |
| Annex 8 | Production of Specifications |
| Annex 9 | Repair and Maintenance Specifications |
| Annex 10 | Template Co-operation Agreement between Industry Parties (Network Rail and Relevant Operators) |
| Annex 11 | Template Co-operation Agreement where Proposer is a Station Investor and Material Change Consultee is Network Rail or a Relevant Operator |
| Annex 12 | Template Station Investor Participation Deed. |

PART A ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS

Condition A1 General

1.1 General Interpretation

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

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

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

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

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

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

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

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

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

1.1.7 Notices etc. Wherever provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Relevant Agreement and the words "notify",

"consent" or "approve" (and cognate expressions) shall be construed accordingly.

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

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

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

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

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

1.1.12 Companies Act definitions The words "subsidiary", "holding company" and "company" shall have the same meanings as in the Companies Act 1985.

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

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

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

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

(iv) carry out such works as shall have been approved in accordance with these Station Access Conditions;

(v) carry out Light Maintenance Services,

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

(c) these Station Access Conditions;

(d) any Relevant Restriction arising under any Third Party Agreement; and

(e) whilst exercising any permissions conferred by Condition A1.1.15(b) any other restriction on such permissions which may from time to time be reasonably imposed by the Station Facility Owner in accordance with the Station Access Agreement.

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

(a) the User shall and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Station Facility Owner (which consent shall not be unreasonably withheld or delayed);

(b) the User shall promptly remove any vehicle or other thing so brought onto the Common Station Amenities when reasonably directed to do so by the Station Facility Owner; and

(c) whilst exercising any permissions conferred by Condition A1.1.15(b) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Station Facility Owner shall specify.

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

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

(a) first, if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumption set out below) by the beneficiary by virtue of the relief;

(b) secondly, if the indemnity is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under Condition A1.1.18(a) such

that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity payment equals the amount of the payment after any reduction under Condition A1.1.18(a);

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

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

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

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

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

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

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

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

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

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

of such occasion).

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

1.2 Definitions

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

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

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

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

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

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

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

"Act" means the Railways Act 1993;

"Additional Charge" means any additional access charges payable pursuant to a Station Access Agreement;

"Adjacent Property" means all or any part of the land, buildings, structures, Conduits or other works (excluding the Network) not forming part of the Station but adjoining, above, below or near the Station belonging to Network Rail for the time being including (but not limited to) any oversailing development raft whether wholly or partly within the area shown edged in blue on the Plan supporting an office building or similar commercial development together with any works, airspace,

building or development above, and supporting columns, structures and foundations beneath, such raft, and for the purpose of:

- (a) the Station Lease, 'Adjacent Property' includes any other property not belonging to Network Rail but over which Network Rail has rights for the time being sufficient to enable Network Rail to grant the rights referred to in Schedule 2 of the Station Lease; and
- (b) Part J of these Station Access Conditions, 'Adjacent Property' includes any other property not belonging to Network Rail but over which the Station Facility Owner has rights granted to it by the Station Lease that are for the time being sufficient to enable the Station Facility Owner to grant the rights referred to in Part J;

"Adopted Station Lease" means the Station Lease in place on the Conditions Efficacy Date, as amended (if applicable) by such amendments as are permitted by Condition N1.16;

"Affiliate" in relation to a company means:

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

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

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

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

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

"Caretaker Area" means the area (if any) shown coloured pink on the Plan;

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

"Change" means any of the following:

- (a) Works or activities at the Station which (whether during or after their completion) would be likely:
 - (i) materially to affect:
 - (1) the operation of trains to or from the Station; or

- (2) the ability of the Relevant Operator's Associates to pass to or from the trains operated by or on behalf of that operator which stop at the Station; or
 - (3) the operation of the Station; or
- (ii) to change materially the condition (or working order), standard or quantum of the Common Station Amenities or the Common Station Services at the Station, other than in accordance with the provisions of Parts D or M; or
 - (iii) to make any amenity or service which is not a common Station Amenity or Common Station Service, a Common Station Amenity or Common Station Service (as the case may be) at the Station or vice versa; or
 - (iv) to alter the periods during which the who or any part of the Station is open to the public or to any User and its associate, other than in accordance with the provisions of Part D; or
 - (v) to result in the relocation of any Core Facility as referred to in paragraph 17 of Annex 7 or any Station Facility as referred to in paragraph 9 of Annex 1;
- (b) (except where such may arise pursuant to an Existing Agreement) the entering into of any agreement or other arrangement or the variation of an existing agreement or arrangement the purpose or effect of which involves or is likely to involve any of the matters described in paragraph (a) of this definition (excluding any agreement or arrangement entered into pursuant to the agreements referred to in paragraph 2 of Annex 7) provided that this paragraph (b) shall not prevent the entry by the Station Facility Owner into an access contract;
 - (c) any change to these Station Access Conditions or the Annexes (other than a Conditions Change carried out in accordance with Part B) including by 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 the works or activities carried out in the performance of any obligation under these Station Access Conditions (including without limitation under Parts D or M) which is not expressed in these Station Access Conditions to require compliance with Part C whether or not such performance would otherwise fall within this definition;

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

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

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

(b) Value Added Tax;

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

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

(a) the Residual Variable Charge;

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

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

"Common Station Amenities" means:

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

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

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

"Common Station Services" means:

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

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

in each case to the extent they are available as at the Commencement Date unless otherwise specified in Annex 1 and in accordance with the specifications (if any) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 8, as modified by such changes as shall be implemented from time to time in accordance with Part C;

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

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

(b) the Office of Rail Regulation, except to the extent that they shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as they shall so specify;

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

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

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

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

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

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

"Conditions Efficacy Date" means the date upon which the first Relevant Agreement comes into effect in respect of the Station;

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

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

"Consultee" means the Notifiable Change Consultee or the Material Change Consultee 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 10; 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 11,

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 following amenities:

- (a) those spaces for the parking of motor vehicles by employees of a Relevant Operator which are necessary in order to facilitate the safe and/or efficient operation of trains to and from the Station by the Relevant Operator;
- (b) those offices and storage spaces which are necessary for use by a Relevant Operator in order to facilitate the safe and/or efficient operation of trains to and from the Station by the Relevant Operator;
- (c) those ticket sales and passenger information facilities which are necessary to obtain tickets for and information about the train services provided to or from the Station by a Relevant Operator; and
- (d) the messrooms, cloakrooms and staff toilets used by employees of a Relevant Operator;

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

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

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

where:

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

LTC = the Long Term Charge; and

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

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

"Default Interest Rate" means 2 per cent. above the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period;

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

"Demarcation Agreements" means any demarcation agreement, whether entered into prior to or after the Conditions Efficacy Date, relating to the Station or any part of it provided for in the agreements specified in paragraph 1 of Annex 7;

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

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

"Elements of the Station" means those constituent parts of the Station 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 or Network Rail's respective interest in the Station as an actual or potential railway asset for railway related uses which shall include (but not be limited to) any uses of the Station which are or may be permitted by Condition O5;

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

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

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

"Equipment" means the items of equipment, plant, machinery and apparatus at the Station from time to time;

"Excepted Equipment" means all telecommunications apparatus within the extended definition of schedule 2 of the Telecommunications Act 1984, absolutely owned by BR Telecommunications Limited or any other telecommunications operator licensed under that Act;

"Excess" means the figure specified in 5 of Annex 7, or such alternative figure as shall be approved by the Requisite Majority from time to time;

"Excluded Agreements" means:

(a) those agreements and instruments listed or described in paragraph 1 of Annex 4 which affect the Station and other property;

(b) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits affecting the Station and other property (whether or not so listed in paragraph 1 of Annex 4) entered into or granted by Network Rail or its predecessors in title at any time before the Conditions Efficacy Date, to:

(i) any public or local authority or public utility company or other person

carrying out the function of the provision of Services; and

- (ii) any other person;
- (c) agreements or instruments relating to land owned by third parties at the Conditions Efficacy Date, provided that the rights and liabilities arising under any such agreements or instruments (if any) entered into by British Railways Board were transferred to Network Rail under the Railtrack Transfer Scheme;
- (d) the Demarcation Agreements;
- (e) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;
- (f) easements completed or to be completed pursuant to the agreement referred to in paragraph 2 of Annex 7 relating to BR Telecommunications Limited;
- (g) all agreements and instruments completed or to be completed pursuant to any of the agreements referred to in paragraph 2 of Annex 7 relating to the Adjacent Property; and
- (h) any rights of third parties over and in respect of the Station which result or are likely to result in a Relevant Restriction that have been granted after the Conditions Efficacy Date as part of a scheme which was the subject of an approved Network Rail Change Proposal;

"Excluded Equipment" means:

- (a) telecommunications apparatus within the extended definition in schedule 2 of the Telecommunications Act 1984 excluding masts and other telecommunications apparatus installed by or on behalf of the Station Facility Owner or any previous facility owner, tenant or occupier; and
- (b) circuits connecting retail telecoms systems to remote locations (using intermediate and/or trunk telecoms cabling) or providing connections to other applications, such as a form of information generator, other than:
 - (i) Excepted Equipment; and
 - (ii) of any retail telecom systems public address systems, the information display systems, station clock systems, closed circuit TV for crowd control, customer terminal/premises equipment associated with such systems such as processors, displays, speakers and amplifiers and local cabling and wiring, including any local data/analogue communications devices associated with the Station; and
- (c) any item of equipment not included in paragraphs (a) or (b):
 - (i) which is (from time to time) used exclusively (whether by Network Rail or at its direction) for the purposes of Network Rail's railway undertaking or function; and/or

(ii) which from time to time forms part of the railway infrastructure infrastructure (as defined in The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI No 599 2006) for which Network Rail and not the Station Facility Owner is responsible as part of the safety certificate or authorisation as referred to in those regulations;

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

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

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

whether or not the Financial Impact Test is satisfied;

"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;

"Finishes" in relation to any structure or building means anything over, covering or attached to the underlying structure or building including, but not limited to, paint, plaster, tiles, cladding, stucco, wallpaper, rendering, dry lining, decorative panels, ceilings, flooring and screed;

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

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

"Full Replacement Cost" means the cost of replacing the Station to the standard set out in Condition E2.2.1 and shall include any Value Added Tax and other taxes payable, reasonable provision for costs escalation between the commencement or renewal date of insurance cover and the date of replacement, professional and statutory fees, demolition, site clearance and shoring up;

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

"Included Agreements" means:

- (a) those agreements or instruments listed or described in paragraph 1 of Annex 4 that relate exclusively to the Station and in paragraph 2 of Annex 4 ;
- (b) such other agreements or instruments completed or to be completed pursuant to the agreements referred to in paragraph 2 of Annex 7 other than:
 - (i) the Demarcation Agreements;
 - (ii) easements referred to in paragraph (f) of the definition of "Excluded Agreements"; and
 - (iii) any agreement or instrument relating to the Adjacent Property;
- (c) all rights of third parties arising acquired or granted at any time before the Conditions Efficacy Date (other than those in paragraph (c) of the definition of "Excluded Agreements") over or in respect of the occupation of (or the entitlement to occupy) any part of the Station;
- (d) all rights of third parties arising under Statute or by operation of law; and
- (e) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits exclusively affecting the Station (whether or not so listed in

paragraph 1 of Annex 4) entered into or granted by Network Rail or its predecessors in title at any time before the Conditions Efficacy Date, to:

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

““Initial Indexation Factor” is derived from the following formula:

$$\text{IIF} = \left(1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$$

where:

IIF means the Initial Indexation Factor;

RPI₂₀₁₂ means the RPI published or determined with respect to the month of November 2012; and

RPI₂₀₁₃ means the RPI published or determined with respect to the month of November 2013.”;

"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 may reasonably determine from time to time;

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

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

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

"Light Maintenance Services" means the services described in paragraph 19 of Annex 7;

"Long Term Charge" means the amount set out in paragraph 3 of Annex 7 subject to variation in accordance with Condition F11.1;

"Long Term Charge Commencement Date" means the Conditions Efficacy Date;

"Maintenance" means the carrying out of the following in each case in accordance with the specifications (if any) set out in Annex 9 or determined pursuant to Annex 8:

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

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

"Material Change Consultees" means

- (a) in respect of a Material Change Proposal made by Network Rail, the Station Facility Owner or a User,
 - (i) each of Network Rail, the Station Facility Owner, and/or any User, who is not the Material Change Proposer, and who satisfies the Financial Impact Test;
 - (ii) the Secretary of State and Scottish Ministers if they may be affected by the implementation of the Material Change Proposal;
 - (iii) the ORR;
 - (iv) the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by the implementation of the Material Change Proposal; and

- (v) any Station Investor who
 - (1) has issued its own Material Change Proposal in relation to the Station before the Proposer makes the Material Change Proposal; or
 - (2) is within the five-year period from when the Station asset(s) identified in its Material Change Proposal became operational
 and who satisfies the Financial Impact Test; or
- (b) in respect of a Material Change Proposal made by a Station Investor, all of the parties in paragraphs (a)(i) to (a)(v) above regardless of whether they satisfy the Financial Impact Test, but a Station Investor shall cease to be a Material Change Consultee:
 - (i) upon notifying the Station Facility Owner that it no longer wishes to be a Material Change Consultee in relation to the Station;
 - (ii) after its own intended Material Change Proposal in relation to the Station has been abandoned or lapsed; or
 - (iii) five years after the Station asset(s) identified in its own Material Change Proposal became operational;

"Material Change Consultees Costs"

means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the Material Change Consultee in evaluating and responding to the Material Change Proposal (whether or not the Material Change Proposal is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue), and any net increase in Qualifying Expenditure incurred by the Material Change Consultee to the extent that the same are directly attributable to the implementation of the Material Change Proposal but taking into account and netting off against such costs, losses and expenses:

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

"Material Change Proposal" means either:

- (a) a Change which if implemented would satisfy the Financial Impact Test in respect of one or more Material Change Consultee(s), but excluding 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 C2.2 or C2.3, or under Condition C3.2 or C3.3;

"Minimum Sum"

has the meaning attributed to it in Condition E2.3;

"Network" means the network of which Network Rail is the facility owner situated in England, Wales and Scotland and which is defined in s.83 of the Act (being any railway line, or combination of two or more railway lines, and any installations associated with any of the track comprised in that line or those lines, together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains) being further described in the sketches shown for illustrative purposes only in Appendix 5 to Annex 1 including (but not limited to):

- (a) all telecommunications apparatus and cables within the extended definition of schedule 2 of the Telecommunications Act 1984, absolutely owned by BR Telecommunications Limited or any other telecommunications operator licensed under that Act;
- (b) traction supply equipment and cables (including overhead line equipment structures and/or feeder cables to the conductor rails);
- (c) signalling equipment and cables (including gantries and other apparatus);
- (d) electronic train despatch equipment and cables affixed to the Station;
- (e) driver only operation equipment and cables affixed to the Station;
- (f) the structure surrounding the Finishes and airspace of any station subway, passageway, archway or tunnel which directly supports any track or forms an integral part of a track supporting structure;
- (g) any bridge, ramp or staircase over the Network (other than one providing access exclusively to or from the Station or which connects one part of the Station to another);
- (h) any other structures which support whether exclusively or in part any elements of the Network including without limitation any foundations, structural slabs, embankments and retaining walls; and
- (i) the Excluded Equipment;

but excluding:

- (j) any structures which exclusively support, any elements of the Station including without limitation any foundations, structural slabs, embankments and retaining wall

"Network Code" means the document entitled 'Network Code', as incorporated into the access contract of all parties who have a contractual right of access to the Network, as modified from time to time;

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

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

(a) to safeguard the safety or security of persons or property on or adjacent to the Network or any part of it; or

(b) where such situation or circumstance was unforeseen and could not reasonably have been foreseen, to maintain or restore the effective operation of the Network or any part of it;

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

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

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

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

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

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

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

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

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

(a) Network Rail, the Station Facility Owner, and/or any User; and/or

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

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

“Notifiable Change Proposal” means a Change which if implemented

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

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

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

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

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

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

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

“Passenger Timetable” means any timetable of passenger railway services published or procured to be published by Network Rail;

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

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

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

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

"Railway Substructure" means within the area edged blue on the Plan, such part of any underlying structure not falling within the definition of 'Station', including any bridge, viaduct, raft, tunnel or subway

"Railway Superstructure" means, within the area edged blue on the Plan, such part of any overlying structure not falling within the definition of 'Station', including any raft supporting an office building or similar commercial development, any road bridge, rail bridge or footbridge;

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

"Railway Group Standards" means technical standards and operating procedures authorised pursuant to the Railway Group Standards Code issued by Rail Safety and Standards Board Limited and approved by the Office of Rail Regulation;

"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 entered into;

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

"Relevant Restriction" means:

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

"Relevant Undertaking" means:

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

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

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

"Repair" means in relation to every part of the Station the carrying out, in accordance with the specifications (if any) set out in Annex 9 or determined pursuant to Annex 8, of:

- (a) any work required to keep the Station in no worse a state than evidenced by the Statement of Condition; and
- (b) any work required so that the Station is safe for operation and/or use in compliance with the requirements of any Statute for any purpose permitted by the Relevant Agreement;
- (c) in relation to any Caretaker Area, means keeping the fences on and surrounding such area in good repair;

but does not include the carrying out of:

- (d) any Maintenance;
- (e) 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 Third Party Agreements; or
- (f) renewal of any item for so long as repair may still reasonably be undertaken and the costs of Maintenance are not in consequence increased above a reasonable level;

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

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

"Requisite Majority" means, as at any particular time, passenger service operators whose Vehicle departures from the Station, expressed as a percentage of Total Departures, as at the relevant date, together are at least equal to the percentage specified in paragraph 4 of Annex 7 (or such other percentage as the Office of Rail Regulation may specify by notice to the Station Facility Owner and

to each Passenger Operator as the new percentage which is to apply for these purposes following the entry into, variation, amendment or termination of an access contract permitting a passenger service operator to use the Station, a Change in Control of the Station Facility Owner or any Passenger Operator or any event which results in a material change to the proportion of the Total Departures made by trains operated by or on behalf of the Station Facility Owner or any Passenger Operator);

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

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

"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, a period of one Week being taken from each of the two periods bound by the most recent consecutive Timetable Change Dates, each such Week shall be awarded weighted significance determined by reference to the respective number of complete Weeks comprised in the published period of the Passenger Timetable in which Week falls for these purposes;

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

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

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

where:

LTC = the Long Term Charge;

SFOP = the SFO's Proportion; and

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

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

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

$$QEx \times SFOP$$

D

where:

- QEx = the amount of the Qualifying Expenditure for the Accounting Year in question;
- SFOP = the SFO's Proportion; and
- D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the Station Facility Owner are due to depart from the Station as determined in accordance with Condition F10

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

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

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

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

"Station" means all of the land shown edged in blue on the Plan and further described in paragraph 6 of Annex 1 and in the sketches shown for illustrative purposes only in Appendix 4 to Annex 1 including (but not limited to):

- (a) the buildings, structures, foundations, boundary walls, fences, gates, fixtures, fittings and other works for the time being within the area shown edged in blue on the Plan and any alteration or additions to any of them;
- (b) any Conduits within or leading to or from the Station which exclusively serve the Station and which do not form part of:
 - (i) public utility services; or
 - (ii) the Network;
- (c) the airspace, Conduits and Finishes within any subway, passageway, archway, basement or tunnel providing access exclusively to or from the Station or which connects one part of the Station to another under or through the Network or Adjacent Property;

(d) any bridge, ramp or staircase providing access exclusively to or from the Station or which connects one part of the Station to another and which spans the Network or Adjacent Property;

(e) any canopies, train shed roofs, platform copers, supporting beams and other structures or features attached to or forming part of any station building or structure which project beyond the blue edging on the Plan and thereby oversail the Network or Adjacent Property;

(f) all items of equipment, plant, machinery and apparatus within the area shown edged in blue on the Plan from time to time which are not Excluded Equipment, Network or Adjacent Property;

(g) any other structures which exclusively support any elements of the Station including without limitation any foundations, structural slabs, embankments and retaining walls and

(h) any items of equipment or apparatus (including without limitation notices, information boards and directional signs) approved by Network Rail at locations approved by it on the Adjacent Property or pursuant to any Included Existing Agreement

but excluding:

(i) any part of the Network or Adjacent Property within the area shown edged in blue on the Plan;

(j) any structures which support, whether exclusively or in part, any elements of the Network including without limitation any foundations, structural slabs, embankments and retaining walls;

(k) the mines and minerals in and beneath the area shown edged in blue on the Plan and (where mines and minerals are not owned by Network Rail) any right of support from such mines and minerals other than any such transmissible rights which are enjoyed by Network Rail; and

(l) the Excluded Equipment and the Excepted Equipment;

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

"Station Facilities" means the following, to the extent that they exist at the Station:

(a) platforms;

(b) forecourts, concourses, subways and footbridges;

(c) points of access to and egress from the Station and the platforms;

(d) ticket, booking and passenger information offices;

- (e) public toilets;
- (f) waiting rooms;
- (G) short and long stay car parking for use by railway passengers and essential staff of Users;
- (h) mess room, cloakroom and staff toilets for use by Users and their Associates' staff;
- (i) canopies;
- (j) electronic passenger information systems;
- (k) lifts and escalators;
- (l) Services;
- (m) public telephones;
- (n) public address system; and
- (o) public clocks;

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

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

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

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

"Station Lease" means the Relevant Agreement entered into between Network Rail and the Station Facility Owner, or a predecessor in title of the Station Facility Owner, pursuant to which the Station Facility Owner derives its interest in the Station;

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

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

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

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

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

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

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

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

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

"Third Party Agreements" means the Included Agreements, the Excluded Agreements, any Superior Estate Grant and any new Included Agreements, Excluded Agreements and Superior Estate Grants entered into after the Conditions Efficacy Date, where the entering into of the same has been approved in accordance with Part C (where necessary), but shall not include the Station Lease;

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

"Timetable Change Dates" means the implementation dates of the two annual revisions to the Passenger Timetable implemented pursuant to the Network Code;

"Total Departures" means, as at any particular time by reference to which the Passenger Operator's Proportion or the SFO's Proportion may be calculated, the number of Vehicles operated by or on behalf of all passenger service operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition F10 and a reference to a person "representing" Total Departures means the

departures in question are made by Vehicles operated by or on behalf of the person concerned;

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

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

where:

VC_n is the Total Variable Charge for the relevant period in question

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

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

QEn is the Qualifying Expenditure for the Accounting Year in question

"relevant periods" means:

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

"change date" means the date upon which the Passenger Operator's Proportion changes in the Accounting Year pursuant to Part F;

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

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

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

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

Station Access Agreement;

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

$$\frac{AC - A}{D}$$

where:

- AC = the Access Charge for the Accounting Year in question;
- A = (in the case of a User which is a Passenger Operator) the Passenger Operator's Proportion of the Long Term Charge for the User in question or (in the case of any other User) nil; and
- D = the number of days in the Accounting Year in question on which Vehicles operated by or on behalf of the User in question are due to depart from the Station as determined in accordance with Condition F10 in the case of a Passenger Operator or, in any other case, in accordance with the Station Access Agreement

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

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

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

"Week" means a calendar week measure Sunday to Saturday (inclusive) and not containing a bank or other public holiday.

1.3 Several Liability

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

1.4 Relevant special conditions

These Station Access Conditions incorporate the provisions (if any) set out in paragraph 15 of Annex 7.

1.5 Applicability of these Station Access Conditions to Network Rail

Of these Station Access Conditions, only Parts A, B, C, E and Q and Conditions G1.1, G4.2, G5, G6, H4, M2.2, M4 and M7 and Annexes 1, 4 and 7 are incorporated into the Station Lease and apply to Network

Rail.

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

Condition B1 Notification of a Conditions Change Proposal

- 1.1 Any Relevant Operator of any station in England and Wales or Network Rail shall be entitled to make a Conditions Change Proposal. The Conditions Change Proposer shall submit any such proposal to each of the Conditions Change Consultees and the Secretary of State (and the appropriate PTE, Transport for London or Welsh Government if any of them may be affected by such proposal) and shall:
 - 1.1.1 be in writing;
 - 1.1.2 contain reasonable particulars of the change proposed;
 - 1.1.3 contain the proposed text of those Conditions affected by the change as if the change were approved pursuant to this Part B;
 - 1.1.4 be supported by an explanation in reasonable detail of the purpose of the proposed change; and
 - 1.1.5 specify the date on which the Conditions Change Consultation Period ends.
- 1.2 The Conditions Change Consultees and the Secretary of State may make representations on the Conditions Change Proposal to the Conditions Change Proposer during the Conditions Change Consultation Period.
- 1.3 The Conditions Change Proposer shall within 5 Business Days following the end of the Conditions Change Consultation Period notify the Conditions Change Consultees and the Secretary of State of the date on which the Conditions Change Decision Period ends and at the same time supply to each of them:
 - 1.3.1 copies of all representations received pursuant to Condition B1.2; and
 - 1.3.2 if the Conditions Change Proposer consents, any modification to that proposal, provided that no such documents shall be supplied, if the Conditions Change Proposer materially modifies it.
- 1.4 If at any time a Conditions Change Proposal is materially modified, the Conditions Change Proposer shall treat the modified proposal as a new Conditions Change Proposal.
- 1.5 The Conditions Change Proposer shall promptly comply with all reasonable written requests for reasonable further clarification of the proposal.

Condition B2 Approval or rejection of a Conditions Change Proposal

- 2.1 Without prejudice to Condition B6, a Conditions Change Proposal shall have been approved only if:
 - 2.1.1 in the case of such a proposal which relates to a Template Change, at the end of the Conditions Change Decision Period not less than 80% of all Relevant Operators of

every station in England and Wales shall have consented in writing to the Conditions Change Proposal; or

- 2.1.2 in the case of such a proposal which relates to a change to the Station Access Conditions or Annexes which relate only to the Station or to a specific set of Stations, the Requisite Majority shall have consented in writing to the Conditions Change Proposal (provided that the failure of a Relevant Operator to provide a written response shall be deemed to be a consent to that proposal);

And in each case

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

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

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

3.1 Decision to Approve

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

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

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

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

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

3.2 Decision to reject

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

Condition B4 Notification of Conditions Change Proposal

- 4.1 The Conditions Change Proposer shall notify any change made in accordance with this Part B other than Condition B6 to all Relevant Operators and Network Rail as well as to the ORR and the Secretary of State. Save as otherwise provided in Condition B6, the change in question shall have effect on the expiry of 21 days from the date of that notification.
- 4.2 The Conditions Change Proposer shall, following approval of a Conditions Change Proposal by the ORR and in any event prior to that Conditions Change Proposal having effect, supply to all Relevant Operators, Network Rail, the ORR and the Secretary of State a revised version of these Station Access Conditions incorporating the change.

Condition B5 Appeal procedure

- 5.1 If Network Rail shall have exercised its veto, any Relevant Operator shall be entitled to give a notice of appeal against it.
- 5.2 A notice of appeal shall:
 - 5.2.1 be given to the ORR, Network Rail, the Conditions Change Proposer and each other Relevant Operator not later than 35 days after the exercise of the Network Rail veto;
 - 5.2.2 contain the reasons why the Relevant Operator in question considers that the Network Rail veto should not have effect; and
 - 5.2.3 request the ORR to determine the matter.
- 5.3 No notice of appeal may be given unless:
 - 5.3.1 the Relevant Operator shall be satisfied that Network Rail is entitled to exercise the Network Rail veto; or
 - 5.3.2 the entitlement of Network Rail to exercise its veto shall have been established pursuant to the Access Dispute Resolution Rules,

and evidence satisfactory to the ORR shall have been provided to it to that effect.
- 5.4 Without prejudice to Condition B5.5, Network Rail and the Relevant Operators shall use their respective reasonable endeavours to procure that the ORR is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.
- 5.5 In relation to any such appeal, the ORR shall, in determining it, have the power:
 - 5.5.1 to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
 - 5.5.2 to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;
 - 5.5.3 to determine whether the Network Rail veto shall have effect; and

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

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

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

(a) the matter in question is not of sufficient importance to the industry;

(b) the reference to it is frivolous or vexatious; or

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

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

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

5.8 In this Condition B5:

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

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

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

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

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

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

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

(a) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and

(b) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Condition C1 Change

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

Condition C2 Exempt Activities .

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

Condition C3 Notifiable Change

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

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

Condition C4 Material Change

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

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

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

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

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

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

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

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

Condition C6 Non-Discretionary Change

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

Condition C7 Approval by the ORR

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

Condition C8 Submission of a Proposal to the ORR

- 8.1 On acceptance of a Notifiable Change, Material Change or Non-Discretionary Change in accordance with the procedures referred to in this Part the Proposer shall (subject to Condition C8.2) submit any Proposal requiring approval under Condition C7.1 to the ORR for its approval, together with a written memorandum explaining the reasons for the proposed change and setting out details of the conduct and outcome of the representation or consultation process (as the case may be) provided that no such approval shall be sought if and to the extent that (or, if applicable, for so long as):
- 8.1.1 the change in question shall fall wholly within a relevant general approval given by the ORR pursuant to sections 22(2) or 22(3) of the Act;

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

Condition C9 Notification of the ORR's decision

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

Condition C10 Registration, Requisite Consents and Implementation

- 10.1 Any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted (including a conditional acceptance under Condition C5) under the procedures referred to in this Part (including without limitation approval by the ORR under Condition C8) shall be registered with the ORR by Registration by:
- 10.1.1 the Proposer; or
 - 10.1.2 any Relevant Operator or Network Rail if the relevant Proposer fails to do so following acceptance of such Proposal under the procedures referred to in this Part,
- but in the event that no party takes the necessary steps to achieve Registration within two months (which period may be extended with the consent of the Proposer and the relevant Consultee(s)) following acceptance of the relevant Proposal, then such Proposal shall lapse and no longer be effective.
- 10.2 Any documentation required as a consequence of any Notifiable Change, Material Change or Non-Discretionary Change which has been accepted under the procedures referred to in this Part shall be settled between the relevant parties each acting reasonably in relation to the settlement of the terms and conditions of any such document and in the event of failure to agree on any of the terms and conditions of any such document either party may refer the matter to the Dispute Resolution Procedure. This Condition C10.2 shall not impede or delay the registration requirement referred to in Condition C10.1.
- 10.3 The Proposer shall use its reasonable endeavours to obtain all Requisite Consents as soon as practicable having regard to the nature of that consent and the matter to which it relates and in any event prior to implementation of the Notifiable Change, Material Change or Non-Discretionary Change (as the case may be) or (if the relevant Requisite Consent relates to a phase of the Notifiable Change, Material Change or Non-Discretionary Change or can only be obtained after the commencement of the Notifiable Change, Material Change or Non-Discretionary Change) the relevant part of the Notifiable Change, Material Change or Non-Discretionary Change and the requirement to obtain Requisite Consents (if any) shall not

impede or delay the procedures referred to in this Part nor be used as a ground for objection to any Proposal.

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

Condition C11 Notice to determine

- 11.1 If a Material Change Proposal made by Network Rail is accepted in accordance with this Part and, where relevant, approved by the ORR pursuant to Condition C8, Network Rail shall be entitled to serve notice to determine any Relevant Agreement between it and the Station Facility Owner at such time and in respect of such part or parts of the Station as shall be specified in the Material Change Proposal (if any). If no date is specified in the Material Change Proposal, the Relevant Agreement in question shall determine on the day which falls 150 days after the date of service of Network Rail's notice.
- 11.2 The date of expiration of any notice served by Network Rail pursuant to Condition C11.1 shall, if any conditions in the Material Change Proposal remain to be satisfied by Network Rail at the expiration date, be postponed to the date 15 Business Days after satisfaction of the last such condition unless the failure to satisfy is due to the default of the Station Facility Owner or its servants, agents or contractors.

Condition C12 Notices

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

PART D MAINTENANCE AND REPAIR WORKS

Condition D1 Restriction, suspension or alteration of permission to use

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

1.1.1 permit the carrying out of Non-Discretionary Third Party Works;

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

1.1.3 permit Minor Works, Maintenance, Repair or Discretionary Third Party Works to be made or carried out at or in relation to the Station;

1.1.4 permit any works conducted pursuant to the Station Lease, subject to compliance with the provisions of Part C insofar as such works involve a Proposal for Change;

1.1.5 permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part M subject to compliance with the provisions of Part C insofar as such action involves a Proposal for Change (save where otherwise provided for in Part M);

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

1.1.7 permit any works conducted in accordance with the Direction of any Competent Authority or as a result of any Change of Law, subject to compliance with the provisions of Condition C9;

1.1.8 permit any works carried out in accordance with the provisions of Condition L3; or

1.1.9 permit works to be carried out or rights to be exercised by Network Rail pursuant to a request issued under Condition D1.2, or by a User pursuant to a request issued under Condition D1.3.

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

1.2.1 in a Network Rail Emergency;

1.2.2 to undertake works pursuant to Condition M4; or

1.2.3 to enable Network Rail to exercise a right reserved to it under the Station Lease.

1.3 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in

accordance with Condition D1.1 when reasonably requested to do so by any User either in order to enable such User to comply with its obligations under Part M or to exercise its rights under Condition L3.

Condition D2 Pre-conditions to restriction, suspension or alteration of permission to use

2.1 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station (otherwise than in a trivial respect), where and to the extent practicable, provide to each User:

- (a) at least 10 Business Days notice in writing of the date and time proposed for the restriction, suspension or alteration; and
- (b) a reasonable programme of works for the carrying out of the works in question;

2.2 A User shall if it requests the Station Facility Owner to impose such a restriction, suspension or alteration pursuant to Condition D1:

2.2.1 (except in an Emergency, when as much notice as possible shall be given) provide at least 10 Business Days notice in writing to the Station Facility Owner of:

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

2.2.2 consult with the Station Facility Owner in relation to such restriction, suspension or alteration.

2.3 The Station Facility Owner and any User shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Conditions D1 having regard to the likely effect of the relevant works on the business of each Relevant Operator who may be affected.

2.4 Any dispute or claim in respect of a programme of works referred to in Condition D2.1 Certificate shall be resolved by expert determination pursuant to the Access Dispute Resolution Rules.

Condition D3 Alternative arrangements

3.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Condition D1, it shall, to the extent reasonably practicable, make timely 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:

- 3.1.1 suitable alternative arrangements in respect of access to and egress from the public highway;
- 3.1.2 each Relevant Operator's Associates to pass to and from trains operated by or on

behalf of that Relevant Operator which stop at the Station and for any Passenger Operator's passengers to buy tickets for railway passenger services; and

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

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

3.2 The User (as appropriate) shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition D3.1 as a result of a User request pursuant to Condition D1.3.

Condition D4 The Station Facility Owner's obligations

4.1 The Station Facility Owner shall ensure that:

4.1.1 Maintenance; and

4.1.2 Repair

is carried out to all Equipment (except Excluded Equipment) and to all Elements of the Station;

4.2 The Station Facility Owner shall not be in breach of its obligations under Condition D4.1 if the Station or the relevant part of it is subject to any Third Party Agreement and, having taken all reasonable steps to fulfil its obligations under Condition D4.1, the Station Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Third Party Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.

Condition D5 Equipment

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

Condition D6 General upkeep

The Station Facility Owner shall, so far as practicable keep the Station (and any adjoining road frontage where litter emanates from the Station) free from refuse, and in a clean and tidy condition.

Condition D7 Conduits free from obstruction

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

Condition D8 Standard of works

The Station Facility Owner shall procure that:

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

PART E INSURANCE

Condition E1 Responsibility of Relevant Operators for effecting insurance

1.1 The Station Facility Owner shall insure and keep insured the Station with a member of the Association of British Insurers against:

1.1.1 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; and

1.1.2 the Insured Risks,

provided that the terms of such insurance shall not unreasonably restrict any User's use of the Station.

1.2 The Station Facility Owner shall effect insurance of the Station for the Full Replacement Cost (less the Excess) at the best effective price reasonably obtainable and such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one Affected Facility such excess shall apply only once in respect of that occurrence to the Affected Facilities as a whole.

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

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

Condition E2 Destruction or damage to the Station

2.1 If the Station is destroyed or damaged then all monies payable under insurance policies effected by the Station Facility Owner pursuant to Condition E1 together with an amount equal to the Excess 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:

2.1.4 Condition E2.2; and

2.1.5 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 Facilities then any monies paid pursuant to Condition E1 shall be required to be applied to the Station only in the same proportion as the amount of insured damage suffered at the Station from the occurrence of the Insured Risk bears to the total amount of insured damage so suffered at all Affected Facilities.

2.2 As soon as practicable following the destruction of or damage referred to in Condition E2.1,

the Station Facility Owner shall consult with the Relevant Operators and Network Rail and shall use all reasonable endeavours to agree:

2.2.1 the necessary reinstatement works, which in the case of Substantial Damage (and unless exact replacement of the Station is required by any public body pursuant to listed building or other legislation or by a Superior Estate Owner) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed; and

2.2.2 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.

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

2.4 If the monies recovered under any insurance policy maintained by the Station Facility Owner are not sufficient to meet the cost to the Station Facility Owner of fulfilling its obligations under Condition E2.2, the Station Facility Owner shall bear the shortfall.

Condition E3 Provision of documents

3.1 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 Network Rail or any Relevant Operator provide such person with:

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

3.1.2 reasonable details of any amount payable by any Relevant Operator in respect of any such insurance policy; and

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

Condition E4 Maintenance of insurance

4.1 In respect of each insurance policy to which Condition E3 applies, the Station Facility Owner shall procure that:

4.1.1 if and to the extent that Network Rail or any Relevant Operator has an insurable interest capable of being covered by such policy and to the extent that Network Rail or any Relevant Operator reasonably so requests, that party's interest is noted on the relevant policy;

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

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

Condition E5 Increase of premium or invalidation of policy

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

5.1.1 invalidate any insurance of the Station; or

5.1.2 increase the premium payable for that insurance; or

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

and Network Rail and any Relevant Operator shall procure that their Associates (other than passengers) and the Station Facility Owner shall procure that any undertenant or any person deriving title under or authorised by the Station Facility Owner to enter the Station shall comply with this Condition E5.1.

5.2 The person responsible for any act or omission contemplated by Condition E5.1 shall pay to the person effecting such insurance on demand the amount of:

5.2.1 any increase in premium referred to in Condition E5.1.2; and

5.2.2 any irrecoverable insurance monies referred to in Condition E5.1.3,

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

Condition E6 Rights of subrogation

The Station Facility Owner shall use all reasonable endeavours to procure that any insurance policy to which Condition E3 applies shall include a waiver of the relevant insurer's right of subrogation against Network Rail and each Relevant Operator.

Condition E7 Power to insure in default

If the Station Facility Owner fails to insure the Station in accordance with Condition E1, then Network Rail shall be entitled to insure instead and to pay the premiums payable from time to time, and the amount of such payments and any related costs incurred by Network Rail shall be repaid by the Station Facility Owner to Network Rail within ten Business Days of demand.

PART F **ACCESS CHARGING**

Condition F1 Notice of charges

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

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

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

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

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

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

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

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

Condition F2 Payment of charges

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

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

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

Condition F3 Certificate of Residual Variable Charge

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

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

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

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

Condition F4 Adjustments for excess payments

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

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

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

Condition F5 Adjustments for short payments

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

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

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

Condition F6 Calculation of interest

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

Condition F7 Inspection of books, records and accounts

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

Condition F8 Adjustments following inspection

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

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

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

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

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

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

8.3.2 less than 5% of the Residual Variable Charge, each relevant Passenger Operator or Passenger Operators shall pay the Station Facility Owner an amount equal to the Station

Facility Owner's reasonable costs and expenses (if any) incurred in carrying out or procuring the relevant inspection.

8.4 Any dispute or claim in respect of a Certificate shall be resolved by expert determination pursuant to the Access Dispute Resolution Rules.

Condition F9 Accounts

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

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

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

- (a) the Common Station Services and the Common Station Amenities; and
- (b) the Exclusive Station Services,

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

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

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

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

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

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

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

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

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

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

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

9.4.3 compare any such expenditure and contributions with that estimate.

Condition F10 Calculation of number of Vehicles operated

10.1 The Station Facility Owner shall:

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

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

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

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

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

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

10.3 For the purposes of Condition F10.1.2, a material change shall be deemed to have occurred if any event or circumstance shall have occurred which materially affects or is likely materially to affect the proportion of Vehicles operated by or on behalf of the Station Facility Owner or any Passenger Operator which stop at the Station.

10.4 Upon entry into a Station Access Agreement with a passenger service operator and pending the first calculation thereafter by the Station Facility Owner pursuant to Condition F10.1, the Station Facility Owner shall, for the purposes of calculating the Total Variable Charge applicable in respect

of such passenger service operator, use such estimate of the number of Vehicles in question as may have been provided to the Station Facility Owner by the relevant passenger service operator for the purposes of this Condition F10. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

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

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

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

Passenger Operator's Proportion of Long Term Charge	Percentage Alteration Required
25% or less	More than 100%
More than 25% but less than 50%	More than 85%
50% or more	More than 70%

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

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

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

where:

EP is the Excess Proportion of the affected operator;

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

LTC notional is the amount of the Passenger Operator's Proportion of the Long Term Charge which, on the assumed basis, would have been payable by the affected operator for the relevant period if the relevant termination had not taken place;

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

Condition F11 The Long Term Charge

11.1 **Effective Date**

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

11.2 **Principal formula**

11.2.1 *Calculation*

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

$$LTC_t = S_t$$

where

LTC_t means the Long Term Charge in relevant year t;

S_t means an amount which is derived from the following formula:

$$S_t = S_{t-1} \left(1 + \frac{RPI_{t-1} - RPI_{t-2}}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} means the RPI published or determined with respect to November in relevant year t-1; and

RPI_{t-2} means the RPI published or determined with respect to November in relevant year t-2,

but so that:

- (i) subject to paragraph (ii) below, in relation to the relevant year commencing on 1 April 2014, S_t shall have the value specified in paragraph 3 of Annex 7 multiplied by the Initial Indexation Factor and in relation to the next following year, S_{t-1} shall have the same value; and
- (ii) in relation to any relevant year (including, where applicable, the relevant year commencing on 1 April 2014) in which the value specified in paragraph 3 of Annex 7 is altered, otherwise than as a result of a review notice given by ORR under Condition F11.3.1.2 in respect of the value to apply from 1 April 2014, S_t shall have the value specified in paragraph 3 of Annex 7 (as so altered) and in relation to the next following relevant year S_{t-1} shall have the same value

11.2.2 *Mid-year calculation*

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

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

where:

- X means the amount to be recovered or reimbursed;
- A means the amount of the alteration to the amount of the Long Term Charge; and
- Pd means the Accounting Periods remaining in the Accounting Year after but not including the Accounting Period in which the alteration to the amount of the Long Term Charge is made.

11.3 *Review of Long Term Charge*

11.3.1 Review Notice

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

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

11.3.1.2 The implementation of an access charges review shall be initiated by ORR giving a review notice. The conclusions of any access charges review initiated pursuant to Condition 1.3.1.1 shall only have effect on _____ and from 1 April 2014 or such later date as may be specified.

11.3.2 Definitions

In this Condition F11.3:

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

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

Condition F12 Review of Access Charge generally

12.1 The Station Facility Owner and all Users shall:

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

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

(c) their allocation; and

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

12.2 If the Station Facility Owner and the Users reach agreement with each other on any such amendments, the Station Facility Owner shall promptly submit to the Office of Rail Regulation for their approval:

12.2.1 the proposed amendments; and

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

12.3 If the Station Facility Owner and the Users fail to reach agreement with each other on such amendments within 90 days of the giving of the notice referred to in Condition F12.1.1, the matters in dispute may be referred by any of them for determination by an arbitrator appointed and acting in accordance with the relevant provisions of the Access Dispute Resolution Rules. Such determination shall:

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

12.3.2 be final and binding on the Station Facility Owner and the Users; and

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

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

PART G THIRD PARTY AGREEMENTS AND THIRD PARTY RIGHTS

Condition G1 General

1.1 The Station Facility Owner shall observe and give effect to all obligations (other than, in the case of Excluded Agreements, for the payment of money) of Network Rail under any Third Party Agreement insofar as the same relate to the Station or to rights granted under Schedule 2 of the Station Lease. This obligation does not extend to the following, to the extent Network Rail is aware of the same and has not notified the Station Facility Owner of its existence:

(a) any Excluded Agreement; and

(b) any Included Agreement in existence before the Conditions Efficacy Date that is either listed or described in paragraph 1 of Annex 4 and relates exclusively to the Station, or referred to in paragraph (e) of the definition of 'Included Agreements'.

1.2 The User's permission to use is granted subject to the Third Party Agreements and no User shall do or permit to be done anything which might reasonably be expected to cause a breach of any Third Party Agreement insofar as it is aware of any such obligations or such obligations are disclosed or referred to in the Station Register and such obligations relate to the Station or to rights referred to in Part J of these Station Access Conditions.

Condition G2 Costs of compliance

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

Condition G3 Representations, warranties and undertakings

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

3.1 that it will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to any Third Party Agreement or these Station Access Conditions; and

3.2 that all:

3.1.1 Excluded Agreements that have been notified by Network Rail pursuant to [Condition G5.6/the Station Lease] to it or to a preceding facility owner of the Station; and

3.1.2 and all Included Agreements of which it is aware

in each case the terms of which result or are likely to result in a Relevant Restriction, are disclosed or referred to in the Station Register in accordance with the provisions of Part I.

Condition G4 Exercise of discretion/Grant of consent

4.1 Where any Included Agreement contains rights and/or obligations:

4.1.1 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

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

then the Station Facility Owner shall have the right to exercise the discretion or be entitled to grant such consent, approval or waiver but prior to doing so, subject to the terms of that Included Agreement, the Station Facility Owner shall consult with and have due regard to any reasonable representations which may be made by any User and shall at all times ensure, so far as reasonably practicable and insofar as it is able so to do, that any disruption to the operation and/or use of the Station is minimised in all respects.

4.2 Where any Excluded Agreement contains rights and/or obligations:

4.2.1 whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by Network Rail; and

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

then where consulted by Network Rail, the Station Facility Owner shall consult with and have due regard to any reasonable representations which may be made by any User, which reasonable representations it shall convey to Network Rail along with its own.

4.3 The Station Facility Owner shall take all reasonable steps to exercise its rights under an Included Agreement where the exercise of the same would protect the permission to use of any User and the Station Facility Owner's interest in the Station or otherwise benefit the Station, its use, occupation or repair, including (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 Included Agreement.

4.4 Where any works are proposed to be carried out under the terms of any Included Agreement and those works would result in a Relevant Restriction, where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall consult with and have due regard to any reasonable 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.

Condition G5 Network Rail's obligations

5.1 Network Rail shall comply with the obligations binding on Network Rail in the Excluded Agreements, but insofar only as the Station Facility Owner is not required to comply with such obligations under the Station Access Conditions or the Station Lease and non-compliance by Network Rail would or could have a material adverse effect on any Relevant Operator or its business.

5.2 Where any Excluded Agreement contains rights and/or obligations:

5.3.1 whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by Network Rail; and

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

then Network Rail shall have the right to exercise the discretion or be entitled to grant such consent, approval or waiver but prior to doing so, subject to the terms of that Excluded Agreement, Network Rail shall consult with and have due regard to any reasonable representations which may be made by the Station Facility Owner, on its own behalf or on behalf of a 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.

5.4 Network Rail shall not enter into any new agreement or other arrangement which results or is likely to result in a Relevant Restriction, or an additional obligation being placed on the Station Facility Owner by operation of Condition G1.1, except such as may arise pursuant to any Excluded Agreement in place at the Conditions Efficacy Date or a new Excluded Agreement entered into pursuant to these Station Access Conditions.

5.5 Where requested by the Station Facility Owner, Network Rail shall take all reasonable steps to exercise its rights under an Excluded Agreement where the exercise of the same would protect the Station Facility Owner's interest in the Station and the permission to use of any User or otherwise benefit the Station, its use, occupation or repair, including (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 Excluded Agreement, which it shall pay to the Station Facility Owner. The Station Facility Owner shall be responsible for Network Rail's reasonable costs incurred in connection with complying with its obligations under this Condition G5.5.

G6 Supplemental Agreements

6.1 In this Condition G6:

6.1.1 "Relevant Arrangement" means:

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

in any such case contemplated by a Supplemental Agreement;

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

- (a) an Agreement dated 1 April 1994 and made between the British Railways Board (1) and Railtrack PLC (2) and entitled "Agreement for Leases, Site Demarcations, Connection Agreements and BRT Easements" which forms part of the Railtrack Transfer Scheme;

- (b) an Agreement dated 1 April 1994 and made between Railtrack PLC (1) and the British Railways Board (2) and entitled "Supplemental Agreement for Leases (Real Property)" which forms part of the Railtrack Transfer Scheme;
- (c) an Agreement dated 1 April 1994 and made between Railtrack PLC (1) and the British Railways Board (2) and entitled "Property Miscellaneous Provisions Agreement" which forms part of the Railtrack Transfer Scheme;
- (d) an Agreement dated 1 April 1994 and made between Railtrack PLC (1) and BR Telecommunications Limited (2) and entitled "Framework Agreement relating to Grant of Easement and Property Leases" which forms part of the Railtrack Transfer Scheme and the British Rail Telecommunications Transfer Scheme;
- (e) an Agreement dated 1 April 1994 and made between the British Railways Board (1) and BR Telecommunications Limited (2) and entitled "Agreement for Leases, Property Licences and Grant of Easements" which forms part of the British Rail Telecommunications Transfer Scheme;
- (f) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement to provide access to and accommodation at the Board's Properties for the storage and sorting of mail and for use of employees of The Post Office";
- (g) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement for Carriage of Letter Mail";
- (h) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Interim Agreement - Agreement for the Carriage of Letter Mail";
- (i) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Property Agreement - Agreement for The Post Office's use of the Board's Properties";
- (j) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Ten Year Agreement - Agreement for the Carriage of Letter Mail".

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

6.2.1 stating that intention;

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

6.2.3 referring to this Condition G6.

6.3 Subject to Conditions G6.4 and G6.5, a relevant action for the purpose of this Condition G6 is an action taken whether or not pursuant to or in accordance with an obligation in a Supplemental Agreement:

6.3.1 to implement or amend a Supplemental Agreement; or

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

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

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

6.4 Where on the Conditions Efficacy Date a person used or occupied a Station for the purposes of its undertaking in a way that was and has continued to be continuous and apparent and, as against the Station Facility Owner or its predecessors in title, lawful, the granting to that person (or to a person who has succeeded to the relevant part of that person's undertaking) of a legal right to do so is not a relevant action for the purpose of this Condition G6 and Part C does not apply to it.

6.5 The granting to Rail Express Systems Limited (or to a person who has succeeded to the relevant part of its undertaking) of a lease of a unit of accommodation at the Station occupied (or to be occupied) by HM Post Office pursuant to the agreements referred to in Condition G6.1.2(f) - (j) inclusive is not a relevant action for the purpose of this Condition G6 and Part C does not apply to it.

6.6 Network Rail and/or the Station Facility Owner may take the relevant action specified in the notice given under Condition G6.2 unless it is not fair and reasonable that the Relevant Restriction in question should be created having regard to:

6.6.1 the reason for the Relevant Restriction;

6.6.2 its likely duration and extent;

6.6.3 the interests of Network Rail (including any contractual obligations entered into prior to the Conditions Efficacy Date to take the relevant action), the Station Facility Owner and all Users;

6.6.4 the interests of passengers using the Station;

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

6.6.6 the interests of the British Railways Board in disposing of those parts of its undertaking in respect of which it was lawfully exercising rights to use or occupy the Station on the Conditions Efficacy Date;

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

6.6.8 the other matters as respects which duties are imposed on the Office of Rail Regulation by section 4 of the Act

and the objecting party has commenced proceedings under Condition G6.7 within the 30 day period mentioned therein.

6.7 Any dispute as to whether, having due regard to the factors specified in Condition G6.6, it is fair and reasonable that the Relevant Restriction in question should be created shall be determined by arbitration by a single arbitrator who (failing agreement between the parties) shall be nominated upon the application of any of the parties by the President for the time being or other appropriate officer of the Royal Institution of Chartered Surveyors and the provisions of the Arbitration Acts 1996 shall apply to such determination and the proceedings hereunder shall be commenced within 30 days of receiving a notice under Condition G6.2 by the party objecting to the relevant action serving notice upon the party which served the notice under Condition G6.2 stating the reason why it considers that it is not fair and reasonable that the Relevant Restriction in question should be created.

6.8 If any party to the dispute shall be dissatisfied with the determination of the Arbitrator acting on a reference of the kind referred to in Condition G6.7, it may refer the matter to the Office of Rail Regulation for final determination. No such reference to the Office of Rail Regulation may be made later than 14 days after the date of the Arbitrator's award.

6.9 Where any party to the dispute has made a reference to the Office of Rail Regulation under Condition G6.8 the Office of Rail Regulation shall:

6.9.1 be entitled to decline to act on the reference if, having consulted the parties concerned, they determine that the reference should not proceed on the grounds that:

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

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

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

6.10 If and to the extent that Network Rail and/or the Station Facility Owner (as the case may be) comply with their obligations in this Condition G6 in respect of a relevant action, Part C does not apply to that relevant action.

PART H LITIGATION AND DISPUTES

Condition H1 Notification by Station Facility Owner

The Station Facility Owner shall promptly notify each User of:

- 1.1 any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which is likely to exceed the amount specified in paragraph 6 of Annex 7 ; and
- 1.2 any claim, litigation, lien, demand or judgment relating to the Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are likely to exceed the amount specified in paragraph 7 of Annex 7.

Condition H2 Notification by User

- 2.1 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.
- 2.2 Notwithstanding Conditions H1 and H3, each User shall have the right to participate in any prosecution, defence or settlement conducted in accordance with Condition H3 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.
- 2.3 Each User shall promptly notify the Station Facility Owner of any material dispute relating to Network Rail's interest in the Station, the Network, any Adjacent Property or any right granted to the User under these Station Access Conditions immediately the User is aware of the dispute.

Condition H3 Authority of Station Facility Owner

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

- 3.1 the dispute is likely materially to affect the Station Facility Owner's ability to operate the Station; or
- 3.2 the Station Facility Owner proposes to account for the costs or amount of such a dispute as part of the Qualifying Expenditure or other consideration payable under the 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 8 of Annex 7.

Condition H4 Resolution of disputes and claims

Save as otherwise provided in these Station Access Conditions, any dispute or claim arising out of or in connection with these Station Access Conditions or a Relevant Agreement shall be resolved by an appropriate dispute resolution forum appointed pursuant to the Access Dispute Resolution Rules.

PART I STATION REGISTER

Condition I1 Maintenance of the Register

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

1.1.1 such register; and

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

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

Condition I2 Content of the Register

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

2.1.1 in relation to Third Party Agreements of which it is aware the following insofar as they are likely to result in or effect a Relevant Restriction:

(a) a copy or a true and fair description of the material terms of every Third Party Agreement from time to time;

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

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

2.1.2 in relation to any Proposal for Change described in Part C, the provisions of:

(a) such proposal;

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

(c) the result of any decisions made by those entitled to vote in respect of, or consent to, such proposal; and

(d) the result of any decisions made by the Office of Rail Regulation in respect of such proposal;

2.1.3 every Direction of any Competent Authority (other than a Statute) which relates to

the Station or to the operation of the Station and which either:

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

provided that such Direction is not applicable to stations generally;

2.1.4 in relation to any Vehicle count referred to in Condition F10 and undertaken within the previous two years, details of:

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

2.1.5 a complete copy of the Station Lease in place on the Conditions Efficacy Date and of any amendments made to it from time to time;

2.1.6 a copy of the Station Facility Owner's safety authorisation documentation in relation to the Station and any modification of it, any notices given under or in respect thereof 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;

2.1.7 a copy of the qualification criteria and requirements and the procedure for their establishment referred to in Condition N1.5.2 (d); and

2.1.8 details of the restrictions affecting the rights granted in Part J, insofar as the Station Facility Owner is aware of the same.

Condition I3 Exclusions from the Register

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

Condition I4 Public interest

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

Condition I5 Inspection and copies

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

- 5.2 Any of User and any person nominated by the Office of Rail Regulation for the purposes of Condition I5.1 may, on the payment of such reasonable fee as the Station Facility Owner may from time to time specify with the approval of the Office of Rail Regulation, require the Station Facility Owner to supply it with a copy of, or extract from, any part of the Station Register, being a copy or extract which is certified by the Station Facility Owner to be a true copy or extract.

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

PART J RIGHTS GRANTED OVER ADJACENT PROPERTY

Condition J1 User's Rights

Each User shall have the right to exercise the following rights over the Adjacent Property, to the extent these are available to the Station Facility Owner from time to time pursuant to the Station Lease and subject to such restrictions as may be applicable to them from time to time insofar as the User is aware of such restrictions or such restrictions are disclosed or referred to on the Station Register:

1.1 *Rights of way*

1.1.1 Subject to Condition J2, each User shall have the right of way over the Adjacent Property to and from the Station for all purposes in connection with their use and enjoyment of the Station. Any such right shall be over such of the roadways, vehicular access areas or footpaths or other pedestrian areas or facilities (other than Barrow Crossings) which, at the relevant time, provide access to the Station.

1.1.2 Without prejudice to Condition J1.1.1, where the Plan shows land coloured brown each User shall have the right to pass to and from the Station over that land for all purposes in connection with their use and enjoyment of the Station. Any such right shall be with or without vehicles when the land coloured brown is unhatched on the Plan, and pedestrian only where that land is hatched brown on the Plan.

1.1.3 If the rights in Conditions J1.1.1 or J1.1.2 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.

1.2 *Barrow Crossings*

1.2.1 Subject to Conditions J1.2.2 and J2, each User shall have the right to use any Barrow Crossing. If such right is exercised, the User shall procure that:

- (a) the operation of trains on the Network is not delayed or disrupted; and
- (b) signs are exhibited prohibiting access for the public (save where Condition J1.2.2 permits public use of a Barrow Crossing.)

1.2.2 No User shall permit the public (other than persons who are accompanied by another person holding a personal track safety certificate) to use a Barrow Crossing.

1.3 *Emergency rights*

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

1.4 *Entry upon the Adjacent Property*

Subject to Condition J2, each User shall have the right to enter upon such parts of the Adjacent Property as do not constitute the Network with or without vehicles, plant and machinery in an Emergency, for the purpose of doing anything that may be required to preserve or to protect life or property.

Condition J2 Exercise and enjoyment of rights

The exercise of rights pursuant to Condition J1 shall be:

- 2.1 subject to the User having given reasonable notice to the Station Facility Owner of the intended exercise of such right;
- 2.2 subject to due consideration being given to Network Rail's representations in respect of the effect on its operations; and
- 2.3 in common with the Station Facility Owner, Network Rail , other users and any other person to whom rights are granted over the Adjacent Property or who is authorised to use that property.

Condition J3 Works costs

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

Condition J4 Property interests

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.

PART K RIGHTS RESERVED BY NETWORK RAIL

Condition K1 Works costs

The Station Facility Owner shall reclaim from Network Rail, under the Station Lease, any reasonable costs and expenses properly incurred by a User which arise directly out of the exercise by Network Rail of any rights reserved to it under the Station Lease and, upon receipt of the same from Network Rail, shall pay such sums received to the User.

PART L REMEDIES

Condition L1 Application of this Part

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

Condition L2 Abatement

2.1 If, otherwise than in circumstances expressly provided for under these Station Access Conditions, any of the Common Station Amenities or Common Station Services identified in Annex 5 are not provided to a User which has a right to use such amenities or services for the relevant period specified in Annex 5, or the Station is not open for the periods specified in Annex 6:

2.1.1 the User's Daily General Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 5 or Annex 6 (as applicable); and

2.1.2 the Daily Long Term Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 5 or Annex 6 (as applicable).

2.2 Any amount abated pursuant to Condition L2.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be deducted by the party in question from the Daily Charge for the relevant Accounting Period. If and to the extent that the Daily Charge for such period has already been paid, the amount to be abated shall be paid by the Station Facility Owner to the User entitled to benefit from it, within 10 Business Days of the Station Facility Owner being notified of the relevant cause of abatement.

2.3 Where for the purposes of Condition L2.1 any amount is to be specified in or determined in accordance with the provisions of Annex 5 by reference to any period of time during which any service or amenity is unavailable or not provided in accordance with these Station Access Conditions then any such period of time shall only commence upon the Station Facility Owner being notified, or becoming aware, of such unavailability or failure (and such notification need not be in writing).

2.4 If none of the Station Facility Owner, any User, or any of the respective employees, subcontractors or agents of any of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition L2.1 whether as a consequence of Force Majeure (as defined in Condition L8) or otherwise, there shall be no abatement or indemnity of the Daily Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition Q2.2), nor seek payment of an amount in respect of it.

Condition L3 Self-help

3.1 If the Station Facility Owner fails to carry out any work in accordance with its obligations in Condition D4 to D7 and such failure would have a material adverse effect on the lawful business of a User carried on at the Station, then that User, having consulted with each other User, may give the Station Facility Owner written notice of its intention to carry out such work unless, within a reasonable period after receipt of such notice by the relevant person the Station Facility Owner remedies such breach.

3.2 If, after expiry of such reasonable period as is referred to in Condition L3.1, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition L3.1 or, where more than one, the User referred to in Condition L3.3, may carry out the work in accordance with the relevant provisions of these Station Access Conditions and, in respect of a breach of Conditions D4 to D7, subject to compliance with Condition N2.12. The Station Facility Owner shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.

3.3 Where more than one User has given notice under Condition L3.2 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 L3.2 provided always that where the User is carrying out any works in accordance with Condition L3.2 then the Station Facility Owner shall not take any steps to remedy the relevant breach.

3.4 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 L3.5, be entitled to procure that such services are carried out in accordance with the relevant provisions of these Station Access Conditions and (where applicable) the requirements of Network Rail during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the sums payable by it to the Station Facility Owner under the Station Access Agreement for the relevant Accounting Period. If and to the extent that the sums payable under the Station Access Agreement for the relevant Accounting Period have already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within 10 Business Days of the Station Facility Owner being notified of the amount of the relevant cost.

3.5 A User shall be entitled to the remedies referred to in Condition L3.4 only if:

3.5.1 each other User (if any) has agreed that the User may exercise those remedies or the User bears the greatest proportion of Qualifying Expenditure;

3.5.2 the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and

3.7.3 the breach remains unremedied by the Station Facility Owner at the end of that period.

Condition L4 User's liabilities

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

4.1 the Station Facility Owner failing to secure the opening of the Station in accordance with Condition N1.1; or

4.2 the Station Facility Owner failing to provide or procure the provision of the Common

Station Services or the Common Station Amenities identified in Annex 5,

the User shall pay:

4.3 the Station Facility Owner an amount equal to Z% of the lesser of:

4.3.1 the aggregate of:

- (a) the amount by which any charges are required to be abated pursuant to Condition L2.1.1 and /or L2.1.2; and
- (b) the proportion of the SFO's Daily Share and /or the SFO's Daily Long Term Charge specified in or determined in accordance with the provisions of Annex 5 or 7 (as applicable); and

4.3.2 the aggregate of:

- (a) the amount by which any charges required to be abated pursuant to Condition L2.1.1 and /or L2.1.2; and /or
- (b) the proportion of the SFO's Daily Share and /or the SFO's Daily Long Term Charge specified in or determined in accordance with the provisions of Annex 5 or 7 (as applicable),

in each case as calculated in accordance with any terms of the Station Access Agreement between the User and the Station Facility Owner that vary the amount that would otherwise have been calculated pursuant to Condition L4.3.1

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

Condition L5 Indemnities

5.1 Subject to Condition L6, 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.

5.2 Subject to Condition L6, each User shall (on an after tax basis) indemnify the Station Facility Owner and keep them 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 the Station Facility Owner as a result of any breach by the User of any of its obligations under a Station

Access Agreement to which the Station Facility Owner is party with the User.

5.3 Subject to Condition L6.2, 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 the Station Facility Owner as a result of any claim made against it by Network Rail insofar as the same arises as a result of any breach by the User of any of its obligations under these Station Access Conditions. Condition L6 (except for Condition L6.2) does not apply to this Condition L5.3.

Condition L6 Limitation on claims

6.1 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:

6.1.1 unless notice of it is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant or could, with reasonable diligence, have become so known;

6.1.2 arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed :

(a) in the case of a claim against a passenger service operator, the amount specified in paragraph 9 of Annex 7; and

(b) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 10 of Annex 7;

6.1.3 unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:

(a) in the case of a claim against a passenger service operator, the amount specified in paragraph 11 of Annex 7; and

(b) in the case of a claim against a User other than a passenger service operator, the amount specified in paragraph 12 of Annex 7,

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 L6.1.2 and L6.1.3 shall not apply in respect of any obligation to pay any liquidated sum.

6.2 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.

6.3 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.

6.4 Save as expressly provided in any Station Access Agreement (including these Station Access Conditions) no person shall be entitled to recover damages, abate its Access Charge, or otherwise obtain reimbursement or restitution in respect of any claim under a Station Access Agreement if and to the extent that the loss in respect of which it is seeking to recover such damages, abatement, reimbursement or restitution has been recovered under any other agreement or by operation of law.

Condition L7 Default responsibility

7.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused any of the Common Station Amenities or Common Station Services identified in Annex 5 not to be provided for the relevant period specified in Annex 5, or the Station not to open for the periods specified in Annex 6, 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.

7.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition L7.1, have due regard to all information available to it which is relevant in the circumstances.

7.3 Where Network Rail has caused any of the Common Station Amenities or Common Station Services identified in Annex 5 not to be provided for the relevant period specified in Annex 5, or the Station not to open for the periods specified in Annex 6 then the Station Facility Owner shall be deemed to be responsible for the non-provision or closure.

7.4 As soon as reasonably practicable following the occurrence of a matter listed in Condition L7.1, 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 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.

Condition L8 Force Majeure

8.1 "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 L8.1 shall include subject to Condition L8.1.2 the following events and circumstances:

8.1.1 war damage, enemy action, terrorism, the act of any government or government

instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by Her Majesty's Government (or any department, minister, official or nominee of it) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God, strike or any industrial action by employees of any person other than the party claiming the benefit of this Condition L8 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:

8.1.2 any act of the Office of Rail Regulation, any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of this Condition L8 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 L8.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

Condition L9 Mitigation

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 M ENVIRONMENTAL PROTECTION

Condition M1 General environmental obligations

1.1 The Station Facility Owner shall promptly notify each User and Network Rail and each User shall promptly notify the Station Facility Owner (and in such case where such notification is given orally shall promptly confirm such notification in writing) of any Environmental Damage or any circumstance of which that person is aware and which it is reasonably foreseeable is likely to give rise to, or which has given rise to, an Environmental Condition. The Station Facility Owner and each User shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

1.2 No User shall take action which it knows, or ought reasonably to know, could:

1.2.1 cause or exacerbate an Environmental Condition;

1.2.2 increase the risk of the Station Facility Owner being liable under these Station Access Conditions or increase the extent of such liability;

1.2.3 prejudice the defence of any claim brought against the Station Facility Owner by a Competent Authority or any other person; or

1.2.4 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.

1.3 In respect of any Environmental Condition at the Station, each User shall:

1.3.1 be liable for that resulting from the activities of that User; and

1.3.2 not be liable to the extent that it existed as at the date upon which that User was first granted permission to use the Station.

1.4 The Station Facility Owner shall be liable for any Environmental Condition at the Station, except to the extent that any User is liable for this pursuant to Condition M1.3.

1.5 With regard to an Environmental Condition on any Adjacent Property, a Relevant Operator shall be liable only for that resulting from the activities of that operator.

Condition M2 Remedial action required as a result of Relevant Operators' activities

2.1 Where:

2.1.1 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

2.1.2 Network Rail or 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 Relevant Operator or its Associates at the Station,

the Station Facility Owner shall inform the User of this and of the need to take action.

2.2 Where the Station Facility Owner is responsible for the Environmental Condition it shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition, (without the need to comply with the provisions of Part C where urgent action is required).

2.3 Any User responsible for the Environmental Condition shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition. The User 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) and shall complete such action within a reasonable time and to the reasonable satisfaction of the Station Facility Owner.

2.4 Any action taken by a Relevant Operator pursuant to Conditions M2.2 and M2.3 shall be at its own cost.

2.5 Where a User fails to take or complete any action required by Condition M2.3 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 at the cost of the User.

Condition M3 Remedial action required due to pre-existing Environmental Condition

3.1 Where the Station Facility Owner becomes aware that an Environmental Condition exists at the Station and the Station Facility Owner reasonably considers as an experienced operator of stations:

3.1.1 that the condition could give rise to liability for the Station Facility Owner; and/or

3.1.2 that the condition could give rise to liability for Network Rail; and/or

3.1.3 that immediate action is necessary in order to mitigate the extent of such liability,

the Station Facility Owner shall take such action (without the need to comply with the provisions of Part C where urgent action is necessary).

3.2 Within 21 days of receiving notification of any act or potential claim, judgment, order, notice, direction or injunction which could give rise to liability for the Station Facility Owner, 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.

3.3 Where the Station Facility Owner receives notification from a User pursuant to Condition M3.2, the Station Facility Owner shall provide a copy of the same to Network Rail and shall have a right to:

3.3.1 defend, contest, comply with or settle any claim, judgment, order, notice, direction or injunction; and/or

3.3.2 take any action or carry out any works to prevent, mitigate or remedy the condition of the Station (without the need to comply with the provisions of Part C where urgent action is necessary).

Condition M4 Network Rail remedial action

4.1 If:

4.1.1 in Network Rail's reasonable opinion, urgent action is necessary in order to prevent, mitigate or remedy an Environmental Condition or to comply with a Direction of a Competent Authority; and

4.1.2 if the Station Facility Owner is unable or unwilling to take the necessary urgent action (after having been given an appropriate opportunity to do so)

Network Rail may take (without the need to comply with the provisions of Part C) reasonable steps to prevent, mitigate or remedy that Environmental Condition or to comply with that Direction. Network Rail shall inform the Station Facility Owner as soon as is reasonably practicable of any steps which it proposes to take pursuant to this Condition M4.1.

4.2 Where any action is taken pursuant to Conditions M4.1 to prevent, remedy or mitigate an Environmental Condition, the reasonable cost of such action shall be borne by the Station Facility Owner.

Condition M5 Environmental indemnities

5.1 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 attributable to the Station Facility Owner pursuant to Condition M1.4 or M1.5, provided that the Station Facility Owner shall not be liable under this Condition M5.1 for any Environmental Liability which results from the User's failure to comply with the obligations contained in this Part M.

5.2 Each User shall indemnify the Station Facility Owner from and against all Environmental Liability incurred by each User to the extent that such liability is attributable to that User pursuant to Condition M1.3 or M1.5, provided that the User shall not be liable under this Condition M5.1 for any Environmental Liability which results from the Station Facility Owner's failure to comply with the obligations contained in this Part M.

5.3 If any payment is made under Condition M5.1 or M5.2 and the payee subsequently recovers or procures the recovery from a third party of any amount by way of damages or compensation in respect of any liabilities of the kind referred to in that Condition, the payee shall repay to the payer an amount equal to the lesser of:

5.3.3 the amount recovered from the third party; and

5.3.4 the amount paid by the payer pursuant to that Condition.

Condition M6 Conduct of claims

6.1 Whether or not the Station Facility Owner elects to act under Condition M3.3, the 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 M3.3. 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 this Part M.

6.2 The User shall not settle any claim of the kind referred to in Condition M3.3 without the Station Facility Owner's written consent (such consent not to be unreasonably withheld or delayed).

6.3 Where any Environmental Damage arising at the Station 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.

Condition M7 Confidentiality

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

PART N OTHER POSITIVE OBLIGATIONS

Condition N1 Station Facility Owner's obligations

The Station Facility Owner agrees with each User that it shall (or shall procure that another person on its behalf shall):

1.1 ensure that the Station is open for use by all Users and their Associates at such times and to such extent as are specified in paragraph 5 of Annex 1, subject to any restrictions or limitations which may apply or be imposed pursuant to these Station Access Conditions;

1.2 use all reasonable endeavours to ensure that the Common Station Services are provided to a standard and in a quantum which is at least as good as their standard and quantum as at the Relevant Date or, if any permitted changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;

1.3 save as otherwise provided for or permitted by these Station Access Conditions:

1.3.1 not change materially the Common Station Services (whether in whole or in part) from the condition (or working order), standard or quantum referred to in Condition N1.2 without such change having been approved in accordance with these Station Access Conditions;

1.3.2 not change materially the Common Station Amenities (whether in whole or in part) without such change having been approved in accordance with these Station Access Conditions;

1.4 notwithstanding its obligations under its station licence, comply with any reasonable request of any User which is necessary to enable that User to:

1.4.1 deal with an Emergency;

1.4.2 comply with its Safety Obligations;

1.4.3 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; and

1.4.4 maintain security in relation to persons and property at the Station;

1.5 use all reasonable endeavours to minimise the costs of the operation of the Station:

1.5.1 by paying the best effective price reasonably obtainable for or in respect of any goods or services having regard to the efficient and economic operation of the Station for the benefit of each Relevant Operator in order to provide the Common Station Services and the Common Station Amenities; and

1.5.2 if:

(a) the Station Facility Owner intends to procure that any person other than the Station Facility Owner or its agents shall provide the Common Station Services or the Common Station Amenities, or any part of them, or that any such person shall provide to the Station Facility Owner or any person acting on his behalf any goods or services in connection with the provision of the Common Station Services or the Common Station Amenities; and

(b) the amount which shall be payable for them shall reasonably be expected to be greater than the amount specified in paragraph 13 of Annex 7 in any period of 52 weeks,

then the Station Facility Owner shall, unless the Requisite Majority shall otherwise consent, obtain competitive tenders in respect of the provision of the relevant Common Station Services, Common Station Amenities or such goods or services by such other person, and in seeking such competitive tenders shall:

(c) issue invitations to submit tenders on terms that any bids must be:

(i) for the provision of such Common Station Services, Common Station Amenities or such goods or services by such other person in accordance with any specifications in respect thereof as may have been established in accordance with these Station Access Conditions or, if none has been so established, then a specification determined in accordance with the procedure set out in Annex 8; and

(ii) for such reasonable period as the Station Facility Owner may reasonably determine, after consultation with each of the Users and after having due regard to any representation made by any of them;

(d) (without limitation to the invitations to submit a tender which the Station Facility Owner may otherwise issue) where a User or any person nominated by a User pursuant to this Condition N1.5.2(d) satisfies any objective qualification criteria or requirements in respect of persons to whom it proposes to issue invitations to submit tenders issue an invitation to submit a tender to each User and, if any User shall within 14 days of the issue of that invitation to it notify the Station Facility Owner that it does not propose to submit a tender but nominates another person which is a reputable and appropriately experienced provider of goods or services of the same or similar nature to those in question, to any person so nominated. The qualification criteria and requirements shall be generally established by the Station Facility Owner in accordance with procedures which are fair and designed to exclude persons who may reasonably be regarded as unsuitable to provide goods and services. Such qualification criteria and requirements (and the procedures for their establishment) shall be entered in the Station Register pursuant to Condition I2;

- (e) exercise reasonable skill and care, and act in good faith;
- (f) as soon as the Station Facility Owner shall be aware, or ought with the exercise of reasonable diligence to have become aware, of its having any interest (whether direct or indirect) in the relevant proposed contract or any of the tenderers or any supplier or sub-contractor of a tenderer, give notice of that interest to each User;
- (g) give notice to each User (other than a User which submits a bid) of every bid received, and any rebids, amendments to bids and subsequent negotiations, and the name and address of the person to whom the Station Facility Owner proposes to award the relevant contract, together with a statement of the Station Facility Owner's reasons for the selection; and
- (h) have due regard before entering into the contract in question to any representations or objections made by any User (other than a User which submits a bid) within 5 Business Days after the giving of such notice, and promptly thereafter enter into the contract in question;

1.6 save as otherwise specifically provided in these Station Access Conditions, provide or procure the provision of the Common Station Services and the Common Station Amenities;

1.7 without prejudice to Condition Q2.3, promptly pay to the relevant authority or person (or reimburse Network Rail for) all rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Station, including any assessed against Network Rail and a fair proportion (to be determined by Network Rail's Surveyor, acting reasonably) of all such sums which are not separately assessed or payable;

1.8 promptly pay to the relevant person (or reimburse Network Rail) for all Services consumed on the Station or a fair proportion (to be determined by Network Rail's Surveyor, acting reasonably) of the cost to Network Rail in respect of the supply of such services to the Station and any other premises;

1.9 observe and perform (or reimburse Network Rail for the whole or a due proportion, as the case may require, of the costs incurred by Network Rail in doing so) all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Station or its use;

1.10 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;

1.11 be responsible for obtaining and/or maintaining any necessary fire certificate for the Station;

1.12 convene a Station Meeting (by giving notice in accordance with Condition B1.1) at least once every 3 months (and so that any such Station Meeting shall be held so far as

practicable on a date no less than 7 and no more than 14 days after the provision of a comparison pursuant to Condition F9.3) for the purpose of consulting with Users upon the efficient and economic provision of the Common Station Amenities and Common Station Services provided that the Station Facility Owner need not convene a separate Station Meeting for that purpose where a Station Meeting is held during any relevant 3 month period pursuant to any other provisions of these Station Access Conditions and such consultation is dealt with as part of the business of that Station Meeting;

1.13 observe and comply with its obligations under its Station Lease insofar as failure to perform such obligations would, or would be likely to, operate to the detriment of a User;

1.14 not (and shall use all reasonable endeavours to procure that no person shall) save pursuant to an Third Party Agreement or the operation of a Station Access Agreement place any sales barrows or exhibition stand on the Station so as to obstruct:

1.14.1 access or egress to or from the highway or trains operated by any User or its Associates or any ticket office at the Station; or

1.14.2 the visibility of any Passenger Information System;

1.15 enforce Network Rail's obligations in the Station Lease insofar as these may benefit the Station, its use or occupation, or the interest of any User in the Station;

1.16 not agree to amend the Station Lease from the form in place on the Conditions Efficacy Date where the amendment would prejudice the permission to use of any User, or the interest of any User in the Station, or would serve to increase the restrictions placed on a User by these Station Access Conditions, except and to the extent the amendment is required to give effect to a Conditions Change Proposal that has been approved pursuant to Part B or a Proposal for Change that has been approved pursuant to Part C; and

1.17 except as otherwise permitted by a Relevant Agreement, not take or omit to take (nor, to the extent reasonably within its reasonable control, permit to be taken or omitted) any action which would involve improper use of the Common Station Amenities, increase the risk of loss or damage to those amenities or otherwise adversely affect Common Station Services.

Condition N2 Users' obligations

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

2.1 comply with any reasonable request of the Station Facility Owner or Network Rail which is necessary to enable the Station Facility Owner or Network Rail to:

2.1.1 deal with an Emergency or a Network Rail Emergency;

2.1.2 comply with its respective Safety Obligations;

2.1.3 maintain the security in relation to persons and property at the Station or to maintain the security in relation to persons and property on the Adjacent Property; and

- 2.1.4 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;
- 2.2 take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition N2 insofar as they are applicable to them;
- 2.3 provide to the Station Facility Owner, for display at the Station, such information relating to changes in any railway passenger services provided by any User (including changes of a temporary nature) which shall be necessary or expedient in order to inform passengers of such changes in a timely manner;
- 2.4 provide to the Station Facility Owner in a timely manner any notices which:
- 2.4.1 are required to be displayed at the Station;
 - 2.4.2 contain or specify obligations binding on the User; and
 - 2.4.3 are required to be provided by the User,
- by law or by or in accordance with the rules of a Office of Rail Regulation authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- 2.5 without prejudice to the provisions of Condition A1.1.15, notify the Station Facility Owner in a timely manner if the User or any of its Associates wishes to:
- 2.5.1 carry out any material maintenance of, or work to, any thing kept on the Common Station Amenities;
 - 2.5.2 bring things onto the Common Station Amenities which may affect the proper operation of the Common Station Amenities; or
 - 2.5.3 enter upon the Common Station Amenities with vehicles;
- 2.6 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;
- 2.7 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 insofar as such regulations and requirements relate to the Station or its use;
- 2.8 perform and observe the covenants, obligations and conditions for the time being contained in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Station and bind Network Rail, except:

2.8.1 the covenants for payment of rent and (to the extent that the Station Facility Owner is not required to pay them under the Station Lease) any other money payable by Network Rail to the Superior Estate Owner under any Superior Estate Grant; and

2.8.2 any obligations assumed by the Station Facility Owner under these Station Access Conditions;

2.9 supply to the Station Facility Owner a copy of any notice, order, direction, licence, consent or planning permission (or proposal for any of these) relating to the Station or its use or occupation as soon as reasonably practicable after receipt of it by the User (having regard to requirements or stated time limits of the notice or other document) and if so required by the Station Facility Owner to consult with it as regards the possibility of making, or joining the Station Facility Owner and/or Network Rail in making, such objections or representations against or in respect of any such matters as may be agreed;

2.10 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;

2.11 not do or omit to do any act or thing which would result in the Station Facility Owner being in breach of the Adopted Station Lease; and

2.12 in undertaking any works at the Station permitted by these Station Access Conditions the User shall comply with:

2.12.1 the requirements of the Station Facility Owner, insofar as these are imposed to:

- (a) protect the safe and efficient operation of the Station; or
- (b) ensure compliance with the tenant's obligations under the Adopted Station Lease; and

2.12.2 where the works in question require entry upon any part of the Network, or require the imposition by Network Rail of measures to ensure the safe and efficient operation of the railway or the Excluded Equipment, then the User shall comply with any requirements of Network Rail that are applicable to such works.

PART O OTHER NEGATIVE OBLIGATIONS

Condition O1 Planning

1.1 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). If reasonably required by the Station Facility Owner, or if required by Network Rail, any such permitted application shall be made jointly with the Station Facility Owner and/or Network Rail.

1.2 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.

Condition O2 Encroachments

2.1 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.

2.2 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 him not to obstruct the access or light or air to any such windows or openings.

Condition O3 Signs

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

Condition O4 Excavations/Excluded Equipment and Excepted Equipment

4.1 No 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 the Network, the Excluded Equipment or any Adjacent Property.

4.2 No User shall interfere with or endanger the Network, the Excluded Equipment or the Excepted Equipment.

Condition O5 Use

5.1 A User shall use the Station only for any of the purposes contemplated by Condition A1.1.15.

5.2 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 Network Rail, any other Relevant Operator or to the Station Facility Owner's or Network Rail's tenants or occupiers, the occupiers of any neighbouring property or the public, provided that:

5.2.1 without prejudice to Condition M1.2, the proper use of the Station for any of the purposes set out in Condition O5.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition O5.2; and

5.2.2 nothing in Condition O5.2.1 shall operate to sanction anything which shall constitute a nuisance actionable by any third party.

5.3 No 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, including propane gas or acetylene.

5.4 Without prejudice to Condition M1.2 nothing in Conditions O5.2, O5.3 and O5.5 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 O5.1.

5.5 No User shall permit smoking or naked lights within the Station where the Fire Precautions (Sub-surface Railway Stations) Regulations 2009 apply and no dispensation exists.

Condition O6 Overloading

No 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.

Condition O7 Improper use of Station

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.

Condition O8 Works to Station

No User shall:

8.1 make any alterations or additions to the Station:

8.1.1 that might affect the safety, stability or structural integrity of the Network or any Excluded Equipment or endanger the safety and/or operation of the Network or the Adjacent Property; and

8.1.2 without the prior written consent of the Station Facility Owner or otherwise than in accordance with the terms of Condition L3 or an approved Proposal for Change;

8.2 cut into or injure the brickwork, foundations or any other part of the Station or any other part of the Railway Substructure or Railway Superstructure, or install against or within the Station or the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace; or

8.3 carry out any paint spraying (other than water paint spraying) in the Station without any requisite licence from the local or other appropriate authority and without compliance with any requirements of such authority (including construction of any necessary booth unless formally exempted by the authority).

Condition O9 Not causing breach

No User shall:

9.1 not do or omit to do, or (insofar as it is able so to do) permit any Associate or agent of such Associate to do or omit to do, anything which may result in a breach of any obligation in these Station Access Conditions by any Relevant Operator.

9.2 do anything in breach of, the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Station and bind Network Rail.

Condition O10 Damage caused by percolation of water and other substances

No User shall make any claim whatsoever on Network Rail or 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, Network Rail or the Station Facility Owner or their respective 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 Station or through or from any structure above or beneath the Station (including the Railway Substructure or Railway Superstructure).

PART P ATTRIBUTION OF COSTS

Condition P1 Application of this Part

The provisions of this Part P shall not affect the proportions in which Qualifying Expenditure or Long Term Charge is borne by Passenger Operators and the Station Facility Owner.

Condition P2 Compliance with obligations under Conditions

If the Station Facility Owner shall reasonably incur any costs in complying with their obligations under Conditions G4.3 or N1.9 the liability for the payment of those costs as between each Relevant Operator shall be determined on a fair and equitable basis, having regard to the following criteria:

- 2.1 if the costs arise from a Proposal for Change that has been accepted in accordance with Part C (other than a Proposal for Change made pursuant to Condition C9 the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- 2.2 if the costs arise from the grant of any underlease for residential purposes (except a grant by way of the compulsory renewal of a residential underletting which subsisted on 1 April 1994), then the costs shall be wholly those of the Station Facility Owner; and
- 2.3 if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Station or Equipment (other than Excluded Equipment), then such costs shall be attributed to the Station Facility Owner.

Condition P3 Compliance with changes imposed by law

If any Relevant Operator shall reasonably incur any costs in complying with, or in consequence of, any Change of Law or any Direction of any Competent Authority (other than any body appointed in accordance with Condition H4), or in complying with Condition C9, the liability for the payment of those costs as between any of the Relevant Operators shall be determined on a fair and equitable basis, having regard primarily to the matters as respects which duties are imposed on the Office of Rail Regulation by section 4 of the Act and subject to those matters:

- 3.1 the expectations which the Relevant Operator in question could reasonably have had when he entered into the Station Access Agreement; and
- 3.2 the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by each Relevant Operator upon such change being carried out;
- 3.3 the benefits or disadvantages which have accrued and are likely to accrue to each Relevant Operator in consequence of the change;
- 3.4 the scale of disruption to each Relevant Operator's business which is likely to occur in consequence of the change; and
- 3.5 any Relevant Operator's franchise term (as defined in section 23(3) of the Act) (if applicable),

provided that there shall not for these purposes be taken into account the existence or terms of any contract entered into by Network Rail after 1 April 1994 except to the extent that the tribunal shall be satisfied that they ought properly to be taken into account.

Condition P4 Basis of accounting and payment

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

4.2 Each Relevant Operator shall promptly make such payments as are necessary to discharge their respective liabilities for the payment of the costs to which Conditions P2 and P3 relate.

Condition P5 Apportionment of costs

Any costs incurred both in relation to:

5.1 Qualifying Expenditure; and

5.2 any other matter or thing,

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

Condition P6 Minimisation of costs

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

PART Q GENERAL

Condition Q1 Confidentiality

1.1 Except as permitted by Condition Q1.2 or Condition Q1.3, all data and information acquired or received by any party under or pursuant to the Station Access Agreement shall be held confidential during the continuance of such agreement and six years thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.

1.2 Any party to the Relevant Agreement shall be entitled in good faith to divulge any data or information to which Condition Q1.1 applies without the approval of the other party to the following third parties and, where relevant, in the following circumstances:

1.2.1 to the Office of Rail Regulation;

1.2.2 to the Secretary of State;

1.2.3 to the Rail Safety and Standards Board Limited;

1.2.4 to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;

1.2.5 to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under the Relevant Agreement or to enforce its rights under such Agreement, upon obtaining an undertaking of strict confidentiality from such person (other than such an officer or employee of the party in question);

1.2.6 to any person who has entered into bona fide discussions with the Station Facility Owner in relation to the entry by that person into a Station Access Agreement, in respect of information:

(a) contained on the Station Register; or

(b) in any set of financial accounts (and supporting information) in respect of the Common Station Amenities and Common Station Services,

upon obtaining an undertaking of strict confidentiality from such person;

1.2.7 to any lender, security trustee, bank or other financial institution from whom such party or any person referred to in Conditions Q1.2.4 to Q1.2.6 is seeking or obtaining finance, upon obtaining an undertaking of strict confidentiality from such entity or advisers;

1.2.8 to any professional advisers or consultants of such party or any of the foregoing persons and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

1.2.9 to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or

regulatory body or any written request of any taxation authority;

1.2.10 to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;

1.2.11 pursuant to the order of any court or tribunal of competent jurisdiction (including a forum appointed pursuant to the Access Dispute Resolution Rules);

1.2.12 to Network Rail to the extent that this is required pursuant to the Station Lease;

1.2.13 to London Underground Limited to the extent that:-

(a) such information is in respect of the interaction between the operations of the Station Facility Owner and the Users and the operation of railway passenger services by London Underground Limited; and

(b) it is necessary to divulge such information for the safety and efficiency of any of such operations or services; or

1.2.15 to the relevant passenger transport executive or its successor to the extent that the party disclosing the same is legally obliged to do so.

Condition Q2 Payments, default interest and VAT

2.1 Default interest If any party to the 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.

2.2 Payments gross All sums due under the Station Access Agreement shall be paid:

2.2.1 without deduction or withholding in respect of duties, taxes, taxation or charges otherwise of a taxation nature, unless the deduction or withholding is required by law, in which event the payer shall:

(a) ensure that the deduction or withholding does not exceed the minimum amount legally required;

(b) account to the relevant taxation or other authorities within the period for payment permitted by the applicable law for the full amount of the deduction or withholding; and

(c) furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

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

2.3 VAT Where:

2.3.1 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;

2.3.2 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; and

2.3.3 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 Customs & Excise practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

Condition Q3 Invalidity and waiver

3.1 Invalidity If any provision in 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.

3.2 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.