

**Notes:**

1. The Change Procedures finally determined by ORR pursuant to their consultation entitled 'Consultation on a revised contractual regime at stations – Proposed changes to the Station Access Conditions and Independent Station Access Conditions' dated March 2011 will be substituted for the current Part B and Part C Change Procedures, along with all relevant definitions and adapted to reflect the fact that there is no direct contractual link between Network Rail and Users, apart from with regard to the two Change Procedures themselves.
2. This draft has been reviewed by ORR and reflects the comments made by them. Although this version has not yet been formally approved by ORR, they have indicated that they would be minded to approve a draft in this form should it form part of an application for approval of a station access agreement.

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NATIONAL STATION ACCESS CONDITIONS  
2011 (FRI LEASES)  
(ENGLAND AND WALES)

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## **PART A ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS**

### Condition A1 General

#### 1.1 General Interpretation

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

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

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

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

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

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

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

- (a) if the change is to any part of a Relevant Agreement other than these Station Access Conditions or the Annexes the change will not result or be likely to result in a Relevant Restriction; or
- (b) the change is one in respect of which the 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:

"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;

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

"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 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 Proposal" means any proposal (other than a notice issued by the Office of Rail Regulation under Condition B6) to change these Station Access Conditions or the Annexes and any material modification to that proposal as referred to in Condition B3.4;

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

"Consultee" means any Relevant Operator or Network Rail as consultee in relation to a Proposal for Change;

"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;

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

"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;

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

"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;

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

"Financial Undertaking" means an undertaking to pay the whole of the costs of carrying out a Proposal for Change, together with:

- (a) any other reasonable costs, direct losses and expenses (including loss of revenue) which are incurred by Network Rail or the Relevant Operator to whom it is given to the extent that such costs are directly attributable to the change in question; and
- (b) such part of any increased net costs of operating the Station as shall be directly attributable to the carrying out of the change in question;

upon terms, and accompanied by such assurances of performance, as shall be reasonably acceptable to the person to whom it is given;

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

"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 Proposal" means any Network Rail Change Proposal, not being a Material Variation, made subsequent to or instead of an Initial Proposal in respect of that Network Rail Change Proposal,

accompanied only by the information set out in Condition Cl.4.2(b), and made prior to the commencement of any works falling within the definition of Network Rail Change Proposal;

"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;

"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 Proposal" means a Network Rail Change Proposal accompanied only by the information set out in Condition Cl.4.2(a) which may be made at any time prior to a Full Proposal in relation to that Network Rail Change Proposal;

"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 21 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;

"Major Change Proposal" means a Material Change Proposal which, if implemented, would be also likely materially to affect:

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

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

(c) the operation of the Station;

whether in its implementation or after its completion;

"Majority Proposal" means a Proposal for Change which is not a Unanimous Proposal;

"Material Change Proposal" means a proposal (other than a Network Rail Change Proposal):

(a) which, if implemented, would be likely:

(i) 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

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

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

(b) to enter into any agreement or other arrangement the purpose or effect of which involves or is likely to involve any of the matters described in (a)(i) to (a)(iii) above, excluding any agreement or arrangement entered into pursuant to the agreements referred to in paragraph 2 of Annex 7; or

(c) to relocate any Core Facility as referred to in paragraph 19 of Annex 7; or

(d) (except where such may arise pursuant to an Third Party Agreement) to enter into an agreement or other arrangement or vary an existing agreement or arrangement so as to result or so as to be likely to result in a Relevant Restriction;

Provided that paragraphs (b) and (d) above shall not include the entry by the Station Facility Owner into an access contract;

"Material Variation" means in respect of any Network Rail Change Proposal which has been approved, any proposal, or series of minor modifications which together would constitute a proposal (other than one which has been accepted pursuant to the provisions of Conditions C3.9 or C4), which if implemented would:-

- (a) have the effect of a Material Change Proposal; and/or
- (b) have an effect on the Station which is materially and adversely different from that detailed in the relevant Network Rail Change Proposal;

"Material Variation Question" means any dispute or question as to whether or not any works proposed as part of, or proposed modification to, a Network Rail Change Proposal is a Material Variation-

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

"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;

"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 Change Proposal" means a proposal which, if implemented, would involve the carrying out of works of construction, reconstruction, development, redevelopment or refurbishment of, on or to the Station or any part of it, and which:

- (a) would be likely materially to affect:
  - (i) the operation of trains to or from the Station;
  - (ii) the ability of a Relevant Operator's Associates to pass to and from trains operated by or on behalf of that operator which stop at the Station; or
  - (iii) the operation of the Station; or
- (b) would not have a material effect on the condition (or working order), standard or quantum of the Common Station Amenities or Common Station Services at the Station;

"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 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;

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

"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 for Change" means a Material Change Proposal, Major Change Proposal or Network Rail Change Proposal;

"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;

"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;

"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;

"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;

"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:-

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

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;

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

"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; and
- (g) 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:

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

"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);

"Unanimous Proposal" means:

- (a) a Proposal for Change affecting any of the Common Station Amenities or Common Station Services listed in Annex 3; or
- (b) a Network Rail Change Proposal;

"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 16 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 AND STATION MEETINGS**

Condition B1      Station Meetings

1.1      Convening of Station Meetings

1.1.1      The Station Facility Owner shall within 14 days following receipt of notice in writing from any User or Network Rail requisitioning a Station Meeting and specifying the business proposed to be carried out at that meeting convene a meeting by giving not less than 14 days, and not more than 28 days, notice to all Users, Network Rail (where appropriate) and the Secretary of State specifying:

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

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

1.1.3      The period of notice for convening a Station Meeting notified in accordance with Conditions B1.1.1 or B1.1.2 may be waived prospectively or retrospectively with the consent in writing of all Relevant Operators and Network Rail (where appropriate).

1.1.4      Those entitled to attend and speak at a Station Meeting are all Relevant Operators, the Secretary of State and their professional advisers and Network Rail and their professional advisers where the business of the meeting concerns a Conditions Change Proposal, a Proposal for Change or otherwise concerns or affects Network Rail's interest in the Station, the Network or the Adjacent Property.

1.2      Conduct of Station Meetings

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

- (a)      any resolution in respect of such business, adjournment or regulation shall only be approved if Relevant Operators constituting the Requisite Majority shall have voted in favour of that resolution; and
- (b)      the failure of a Relevant Operator or Network Rail (where appropriate) to cast its vote by the expiry of the period provided for votes to be cast in respect of a resolution shall be deemed to be a vote in favour of that resolution.

1.2.2      The Station Facility Owner's Corporate Representative shall be the chairman of the Station Meeting. If such representative is not present within 30 minutes of the time appointed for the meeting, those present at a Station Meeting shall elect the chairman of that meeting. The chairman shall have no casting vote.

1.2.3 Any person entitled to attend a Station Meeting (other than an Alternate or Corporate Representative) may appoint any other person who is willing to act to be an alternate and may remove that person from office.

1.2.4 An Alternate shall be entitled to receive notice of all Station Meetings which his appointor is entitled to attend, to attend and vote at any such meeting at which the person appointing him is not personally present, and generally to perform all the functions of his appointor in his absence. An Alternate shall cease to be an Alternate if his appointor ceases to be a person entitled to attend a Station Meeting.

1.2.5 The Station Facility Owner and each User and Network Rail (where appropriate) may by notice to each other appoint such person as it thinks fit to act as its representative at any Station Meeting. The person so authorised shall be entitled to exercise all the powers of his appointor in accordance with this Part B.

1.2.6 A unanimous decision in writing, executed by or on behalf of every Relevant Operator, shall be as valid and effective as if it had been passed at a duly convened Station Meeting and may consist of several documents each signed by one or more persons.

1.2.7 Any appointment or removal of a Corporate Representative or an Alternate shall be by notice signed by the person making or revoking the appointment and given to the Station Facility Owner, every User and Network Rail.

Condition B2        Administration of Station Meetings

2.1 The Station Facility Owner shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Station Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings.

2.2 The Station Facility Owner shall provide a list of the names and addresses of all Users promptly to any User who requests it.

2.3 The Station Facility Owner shall attend each Station Meeting, take accurate minutes of each meeting and distribute such minutes to each User and Network Rail (where appropriate) within the period of 14 days following that Station Meeting. Such minutes shall be discussed and, if thought fit, approved (with or without modification) at the next Station Meeting.

Condition B3        Receipt and Notification of a Conditions Change Proposal

3.1 Any Relevant Operator or Network Rail shall be entitled to make a Conditions Change Proposal. Any such proposal shall be sent to the Station Facility Owner (unless made by the Station Facility Owner) and shall:

3.1.1 be in writing;

3.1.2 contain reasonable particulars of the change proposed;

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

3.1.4 be supported by an explanation in reasonable detail of the purpose of the proposed change.

3.2 The Station Facility Owner shall, within 5 Business Days following receipt of a Conditions Change Proposal or, if later, within 5 Business Days following receipt of any clarification that the Station Facility Owner may reasonably request from the person making that proposal, and immediately upon the making of a proposal by the Station Facility Owner:

3.2.1 give notice of that proposal to each User, Network Rail, the Rail Safety and Standards Board Limited and the Secretary of State; and

3.2.2 invite the submission to the Station Facility Owner of written representations in respect of that proposal within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition B3.2.1.

3.3 The Station Facility Owner shall, following the end of the Consultation Period:

3.3.1 convene a Station Meeting; and

3.3.2 supply a copy of the Conditions Change Proposal to each person referred to in Condition B3.2.1 at least 5 Business Days before the date of the meeting together with:

(a) copies of all representations received pursuant to Condition B3.2.2; and

(b) if the person making the proposal consents, any modification to that proposal,

provided that no such meeting shall be convened or documents supplied, if the person making the proposal materially modifies it.

3.4 If at any time a Conditions Change Proposal is materially modified, the Station Facility Owner shall treat the modified proposal as a new Conditions Change Proposal.

3.5 The person making a Conditions Change Proposal shall promptly comply with all reasonable written requests of the Station Facility Owner for reasonable further clarification of the proposal.

#### Condition B4 Consideration of a Conditions Change Proposal at a Station Meeting

4.1 Without prejudice to Condition B8, a Conditions Change Proposal shall have been approved only if:

4.1.1 the Requisite Majority shall have voted in favour of that proposal at the relevant Station Meeting or that proposal is approved in accordance with Condition B1.2.6 provided that the failure of a Relevant Operator to cast its vote shall be deemed to be a vote in favour of that proposal; and

4.1.2 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 Station, Network Rail shall not have notified the Station Facility Owner of its objection to that proposal within the Consultation Period; and

4.1.3 the Station Facility Owner has not within the Consultation Period:

(a) objected to the Conditions Change Proposal on the grounds that implementation of the Conditions Change Proposal would require an amendment to be made to these Station Access Conditions the result of which would be to place the Station Facility Owner in breach of, or unable to comply with, its obligations in the Adopted Station Lease and that Network Rail is unwilling to amend the Adopted Station Lease in such a way as would provide that the Station Facility Owner would not be in breach of, or unable to comply with, its obligations in the Adopted Station Lease following implementation of the Conditions Change Proposal and cannot be forced to do so; and

(ii) demonstrated the grounds for the objection.

4.2 The Station Facility Owner shall, as soon as reasonably practicable following a request by any User, Network Rail or the Secretary of State to carry out further consultation in respect of any Conditions Change Proposal, carry out further reasonable consultation.

Condition B5 Approval or rejection of Conditions Change Proposal by the Office of Rail Regulation

5.1 Decision to Approve

5.1.1 The Station Facility Owner shall, as soon as reasonably practicable following the approval of a Conditions Change Proposal, submit the proposal to the Office of Rail Regulation, together with a written memorandum:

(a) explaining the reasons for the proposed change;

(b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B3.2.2 or Condition B4.2 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.

5.1.2 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 Office of Rail Regulation.

5.1.3 No Conditions Change Proposal shall have effect unless the Office of Rail Regulation give notice to the Station Facility Owner in writing that they approve the proposal pursuant to section 22 of the Act.

5.1.4 If the Office of Rail Regulation give their approval of the Conditions Change Proposal, the Station Facility Owner shall notify all those entitled to attend a Station Meeting within the period of 14 days following receipt by the Station Facility Owner of the Office of Rail Regulation's notice of approval.

5.2 Decision to reject

The Station Facility Owner shall, following the rejection of a Conditions Change Proposal, notify:

5.2.1 the person making that proposal of that decision as soon as reasonably practicable; and

5.2.2 all other Relevant Operators and Network Rail of that decision within 14 days of the decision.

Condition B6 Modification by the Office of Rail Regulation

6.1 These Station Access Conditions shall have effect with the modifications specified in any notice given by the Office of Rail Regulation for the purposes of this Condition B6, provided that the Office of Rail Regulation 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 Office of Rail Regulation 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 they are 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 they are 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 Office of Rail Regulation, 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 their consideration of the matters referred to in Condition B6.2, the Office of Rail Regulation shall have consulted all Relevant Operators, Network Rail, the Secretary of State and the Rail Safety and Standards Board Limited, together with any other persons whom the Office of Rail Regulation shall consider ought properly to be consulted, in relation to the modification which they propose to make;

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

6.3.3 the Office of Rail Regulation 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 their decision on the modification to be made;

6.3.4 the Office of Rail Regulation shall have notified each person consulted pursuant to Condition B6.3.1 as to their 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 their reasons for those conclusions; and

6.3.5 in effecting the notifications required by Condition B6.3.4, the Office of Rail Regulation 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 Office of Rail Regulation 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.

Condition B7      Notification of Conditions Change Proposal

7.1      The Station Facility Owner shall notify any change made in accordance with this Part B other than Condition B6 to all Users and Network Rail as well as to the Rail Safety and Standards Board Limited, the Office of Rail Regulation 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.

7.2      The Station Facility Owner shall, as soon as reasonably practicable following issue of a notice under Condition B6.1 or following approval of a Conditions Change Proposal by the Office of Rail Regulation and in any event prior to that notice or Conditions Change Proposal having effect, supply to all Users, Network Rail, the Office of Rail Regulation and the Secretary of State a revised version of these Station Access Conditions incorporating the change.

Condition B8      Appeal procedure: Network Rail veto

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

8.2      A notice of appeal shall:

8.2.1    be given to the Office of Rail Regulation, Network Rail, the Station Facility Owner and each other User not later than 35 days after the exercise of the Network Rail veto;

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

8.2.3    request the Office of Rail Regulation to determine the matter.

8.3      No notice of appeal may be given unless:

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

8.3.2    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 Office of Rail Regulation shall have been provided to him to that effect.

8.4      Without prejudice to Condition B8.5, Network Rail and the Relevant Operators shall use their respective reasonable endeavours to procure that the Office of Rail Regulation is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.

8.5      In relation to any such appeal, the Office of Rail Regulation shall, in determining it, have the power:

8.5.1 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;

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

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

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

8.6 Where any party shall have given a notice of appeal, the Office of Rail Regulation shall:

8.6.1 be entitled to decline to determine the appeal if, having consulted the parties concerned, they 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 him is frivolous or vexatious; or
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; and

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

8.7 The determination of the Office of Rail Regulation shall be final and binding on Network Rail, the Station Facility Owner and every User.

8.8 In this Condition B8:

"the exercise of the Network Rail veto" means the giving by Network Rail of a notice of objection as provided for in Condition B4.1.2, and cognate terms and expressions shall be construed accordingly; and

"notice of appeal" means a notice given pursuant to Condition B8.2.

**PART C      CHANGES TO COMMON STATION AMENITIES AND COMMON STATION SERVICES AND TO THE STATION ACCESS CONDITIONS**

Condition C1      Proposal for Change

1.1      No Relevant Operator or Network Rail shall take any action falling within the definition of a Material Change Proposal or a Major Change Proposal and Network Rail shall not take any action falling within the definition of Network Rail Change Proposal, save in accordance with this Part C, except:

1.1.1    in performance of an obligation imposed on it under these Station Access Conditions which is expressed not to require compliance with this Part C;

1.1.2    where a restriction, suspension or alteration to any permission to use the Station to permit that action may be imposed under Condition D1 and the relevant Condition is not expressed to require compliance with this Part C; or

1.1.3    where Part G provides that this Part C does not apply.

1.2      Any Relevant Operator shall be entitled at any time to make a Proposal for Change. Network Rail shall be entitled to make a Network Rail Change Proposal and any other Proposal for Change which in the case of any other Proposal for Change:

1.2.1    is for the purpose of satisfying any obligation of Network Rail under the Station Lease or Condition C9; or

1.2.2    which falls within paragraph (d) of the definition of Material Change Proposal

but may not otherwise make a Proposal for Change.

1.3      A Proposal for Change made by a User or Network Rail shall be sent to the Station Facility Owner, together with sufficient copies of such proposal to enable the Station Facility Owner to distribute a copy to each person entitled to receive one.

1.4      A Proposal for Change shall be in writing and shall contain:

1.4.1    in respect of any Proposal for Change, such information in relation to the proposal as shall be reasonably necessary to enable each of the persons to whom it is required to be sent in accordance with Condition C.1.5 to evaluate the effect which the change in question or the process of its implementation, if made in accordance with the terms of the Proposal for Change, will have or is likely to have on their customers and their businesses (where applicable) Provided that in respect of a Network Rail Change Proposal where such information is not available at the time of any Initial Proposal, Network Rail shall provide such information as part of a Full Proposal; and

1.4.2    in respect of a Network Rail Change Proposal, the indemnities and undertakings described in Condition C3.4 and

(a) where the proposal is an Initial Proposal, all of the information described in Condition C3.2, so far as it has not previously been supplied and identified as such, together with such information described in Condition C3.3 as is available to Network Rail at the time of making the proposal provided that Network Rail shall be entitled to make more than one Initial Proposal;

(b) where the proposal is a Full Proposal, all such information described in Conditions C3.2 and C3.3 insofar as such information has not already been supplied in any Initial Proposal;

(c) where the proposal is a Material Variation, all such information described in Condition C3.3 as is relevant to the Material Variation..

1.5 The Station Facility Owner shall, on making a Proposal for Change, or on receipt of such a proposal from a User or Network Rail:

1.5.1 timeously provide a copy of such proposal to:

(a) each User and Network Rail (other than the Sponsor); and

(b) in respect of a Major Change Proposal or a Network Rail Change Proposal, the following persons:

(i) the Secretary of State; and

(ii) the Rail Safety and Standards Board Limited,

together with any information required to be provided by it, or received by it from the person making such a proposal, under Condition C1.4;

1.5.2 invite the submission of representations on the proposal from the persons to whom the Proposal for Change has been sent pursuant to Condition C1.5.1 and give such persons a reasonable time (not being less than 30 days) to make representations in respect of the proposal (which time shall not be longer than the period for Users to object to the proposal specified in Condition C1.5.3); and

1.5.3 give a reasonable period (not being less than 45 days) for each User (other than the Sponsor) and Network Rail to submit a Notice of Objection in relation to the proposal to the Station Facility Owner in the case of a User or Network Rail and to the Users and Network Rail in the case of the Station Facility Owner, provided that in respect of a Proposal for Change which is not a Major Change Proposal or a Network Rail Change Proposal, such period shall not be longer than 45 days.

1.6 Copies of any representations or objections received by the Station Facility Owner from any person listed in Condition C1.5.1 shall be provided to the person making the relevant Proposal for Change and every other User within 5 Business Days of their receipt by the Station Facility Owner.

1.7 The Station Facility Owner shall consult with the person making the Proposal for Change in relation to that proposal and that person shall be entitled to amend the proposal and resubmit it to the

Station Facility Owner in accordance with the procedures laid down in this Condition C1, provided that the Decision Period in respect of any such resubmitted proposal shall be no longer than 15 days in respect of a Proposal for Change which is not a Major Change Proposal or a Network Rail Change Proposal.

1.8 A Network Rail Change Proposal shall only be made by the making of an Initial Proposal, a Full Proposal or a Material Variation.

1.9 Acceptance by the Relevant Operators of an Initial Proposal in accordance with Condition C4 is only acceptance of such details as comprise such proposal and such acceptance is deemed to reserve for subsequent approval by the Relevant Operators all matters set out in Condition C3.3 not particularised in the Initial Proposal and any Material Variations.

1.10 Network Rail shall not commence or proceed with any works falling within the definition of Network Rail Change Proposal until a Full Proposal has been accepted in accordance with Condition C4.

1.11 No Relevant Operator may withdraw any acceptance of any Initial Proposal as provided for in Condition C1.9 save where:-

1.11.1 Condition C3.6 applies; or

1.11.2 details supplied as part of any subsequent Initial Proposal or Full Proposal give rise to a Material Variation of any Initial Proposal previously accepted by any Relevant Operator pursuant to Condition C4 unless such Material Variation is not accepted or is rejected in accordance with C4.

Condition C2        Evaluation and response to Major Change Proposals and Network Rail Change Proposals

2.1 Each Consultee shall be entitled to be paid in accordance with Conditions C2.10 and C2.11:

2.1.1 75% of all costs reasonably incurred by it in evaluating and responding to any Major Change Proposal; and

2.1.2 100% of all costs reasonably incurred by it in evaluating and responding to any Network Rail Change Proposal.

2.2 Each Consultee shall, in respect of any Major Change Proposal or Network Rail Change Proposal, if requested to do so in writing by the Station Facility Owner, provide (at no cost to the Station Facility Owner), a preliminary written response to it (which, unless the Consultee indicates otherwise, shall be binding on it). Such response shall be provided as soon as practicable, and in any event within the period of 28 days commencing on:

2.2.1 the date of first notification to it in writing of such proposal; or (if later)

2.2.2 the date of the request for a preliminary response,

and any such preliminary response in which the Consultee dissents from the Proposal for Change shall include the reasons for such dissent.

2.3 Each Consultee shall, in respect of any such Major Change Proposal or Network Rail Change Proposal, upon request from the Station Facility Owner from time to time, provide the Station Facility Owner with:

2.3.1 a written estimate of the costs which may be reasonably incurred by it in evaluating and responding to such proposal; and

2.3.2 such information as may be reasonably necessary to assess the reasonableness of any such estimate.

2.4 It shall be a condition of every Proposal for Change that its Sponsor shall, if requested by any Consultee, provide to that Consultee reasonable assurances of payment in respect of any material work to be carried out for the purposes of its evaluation and response, before commencing such work.

2.5 Each Consultee shall ensure that any estimates given by it pursuant to Condition C2.3 are, so far as reasonably practicable, accurate on the basis of the information available to it.

2.6 A Consultee shall incur no further costs (except any costs which cannot reasonably be avoided) in evaluating and responding to a Major Change Proposal or Network Rail Change Proposal with which the Sponsor of a Proposal for Change does not wish to proceed, upon receipt of notice in writing to that effect.

2.7 Each Consultee shall use its reasonable endeavours to minimise its costs of evaluating and responding to any such proposal, and shall, where it reasonably considers it appropriate, liaise with other Consultees in order to achieve that minimisation.

2.8 Any Sponsor other than the Station Facility Owner shall, if such proposal is a Major Change Proposal or Network Rail Change Proposal, use all reasonable endeavours to facilitate consultation by the Station Facility Owner with the persons specified in Condition C1.5.1 to the extent reasonably necessary so as to enable those persons properly to evaluate and respond to that proposal.

2.9 The Station Facility Owner shall, at the cost of the Sponsor, exercise its rights under this Condition C2 (including the enforcement of the obligations of a Consultee to the Station Facility Owner under this Condition C2) in accordance with such reasonable requests as may from time to time be made by the Sponsor.

2.10 If the Station Facility Owner is the Sponsor, it shall make the payments specified in Condition C2.1.

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

Condition C3      Network Rail Change Proposal

3.1      Upon receipt of a request in writing from Network Rail (which Network Rail shall give at least every 6 months), the Station Facility Owner shall convene a Station Meeting (by giving notice in accordance with Condition B1.1.1) to discuss any possible Network Rail Change Proposal.

3.2      Network Rail shall supply the Station Facility Owner with the following information (so far as it is available) in respect of any such Network Rail Change Proposal at least 35 days before the date of any such Station Meeting:

- 3.2.1    a broad strategic plan for any such proposal;
- 3.2.2    the likely form and scale of the proposed development;
- 3.2.3    the area of the Station affected; and
- 3.2.4    the timetables and policy for implementing the proposal,

and the Station Facility Owner shall supply such information to the Users with the notice of the Station Meeting convened in accordance with Condition C3.1.

3.3      A Network Rail Change Proposal shall incorporate a detailed plan of the proposed works on or to the Station, and shall include such of the following information as is required by Condition C1.4.2:

- 3.3.1    details as to those parts of the Station which will be affected during and after implementation of the proposal;
- 3.3.2    the nature and detailed specification of the development to which the proposal relates, including the design, type, size and location of any proposed:
  - (a)      alternative Station Facilities (both whilst any works are being carried out and after the works have been completed);
  - (b)      (if requested by any Relevant Operator) alternative accommodation and facilities in place of those normally occupied by that Relevant Operator and any affected third party; and
  - (c)      changes to any Common Station Amenities;
- 3.3.3    the estimated timetable for the commencement, conduct and completion of the development to which the proposal relates and each material part of it;
- 3.3.4    proposals for obtaining any relevant planning consents;
- 3.3.5    proposed working arrangements (including those in relation to safety);
- 3.3.6    proposed alternative arrangements in respect of access to and from the highway whilst the works are being carried out (if appropriate);

3.3.7 proposed alternative arrangements during the carrying out of proposed works to enable each Relevant Operator's Associates to pass to and from trains operated by or on behalf of that operator which stop at the Station, and for any Passenger Operators' passengers to buy tickets for railway passenger services at the Station;

3.3.8 any proposed information display systems which will be available while the works are being carried out;

3.3.9 proposed insurance arrangements;

3.3.10 any proposal to exercise any right under Condition C10 and the date upon which Network Rail proposes to exercise such right; and

3.3.11 confirmation from Network Rail that any work plan entered into with any third party relating to the works comprised in any Network Rail Change Proposal will where relevant contain provisions which require such third party to notify Network Rail of any Material Variation.

3.4 A Network Rail Change Proposal shall be accompanied by the following:

3.4.1 the offer of an indemnity in favour of each Relevant Operator to pay to it such sum as shall fairly and reasonably compensate that person for any material adverse effect of the proposal on its existing and future business; and

3.4.2 the offer of an undertaking in favour of each Relevant Operator and each affected third party to whom Network Rail has agreed to make available alternative accommodation or facilities to enter into, prior to the commencement of any works pursuant to the proposal, such ancillary deeds and agreements as may reasonably be required by that person, in relation to his permission to use the Station (in the case of a User), in relation to its operation of the Station (in the case of the Station Facility Owner) and in relation to such alternative accommodation (in the case of such a third party).

3.5 Network Rail shall not in respect of any Network Rail Change Proposal notify or consult any user (other than a User) of the Station before consulting the Station Facility Owner.

3.6 A Network Rail Change Proposal shall cease to have effect in each of the following circumstances:-

3.6.1 in the case of a Full Proposal not preceded by any Initial Proposal, if the works in the relevant Network Rail Change Proposal have not commenced within three years (or such other period as the relevant approved Network Rail Change Proposal shall specify) of the date upon which the last of the approvals to the Network Rail Change Proposal made requisite by this Part C was obtained;

3.6.2 (a) where Network Rail makes any Initial Proposal in respect of any Network Rail Change Proposal if the Full Proposal is not submitted to the Relevant Operators for approval within three years from the date upon which the last of the approvals to the Network Rail Change Proposal made requisite by this Part C was obtained; and

(b) where the works of any such approved Network Rail Change Proposal have not commenced within two years (or such other period as the approved Network Rail Change Proposal shall specify) of the date upon which the last of the approvals to the Network Rail Change Proposal made requisite by this Part C was obtained; and

3.6.3 in the case of a Material Variation if the works described in the Material Variation have not commenced within three years (or such other period as the Material Variation shall specify) of the date upon which the last of the approvals to the Network Rail Change Proposal made requisite by this Part C was obtained.

3.7 Each or any of the Relevant Operators and Network Rail may by notice to each of the others of them request that an expert shall be appointed by agreement between them for the purpose of determining any Material Variation Question which may arise at any time in connection with any particular Network Rail Change Proposal and in default of such agreement within fourteen days of such notice the Disputes Secretary appointed under the Railway Industry Dispute Resolution Rules shall appoint that expert on the request of any of the Relevant Operators or Network Rail.

3.8 Each of the Relevant Operators and Network Rail may refer the Material Variation Question to the expert appointed pursuant to Condition C3.7 and:

3.8.1 each or any of the Relevant Operators and Network Rail (other than the person who referred the Material Variation Question to the expert) who wish to be a party to the dispute shall then submit their written submissions to the expert within fourteen days of receipt of written notification of his appointment;

3.8.2 the expert shall then consider all submissions received by him, determine the Material Variation Question and notify Network Rail and each Relevant Operator of his decision in writing within fourteen days;

3.8.3 the expert shall act as an expert and not as an arbitrator and the decision of the expert shall in the absence of manifest error be final and binding for the purposes of these Station Access Conditions;

3.8.4 all costs incurred by the expert and all reasonable costs of the parties to the dispute shall be borne by whichever of the Relevant Operators and Network Rail as the expert determines; and

3.8.5 in the absence of such determination the costs incurred by the expert and all reasonable costs of the successful party to the dispute shall be borne equally by all other parties to the dispute, each such other party bearing their own costs.

3.9 Network Rail shall be entitled to propose modifications to a Network Rail Change Proposal and shall in that regard supply all such information described in Condition C3.3 as is relevant to those modifications and the Relevant Operators shall be deemed to have accepted for the purposes of these Station Access Conditions that any such modifications which are referred to in any information supplied are not a Material Variation to that Network Rail Change Proposal if:-

3.9.1 Network Rail has stated when supplying that information that in its opinion such works or modifications are not such a Material Variation; and

3.9.2 none of the Relevant Operators notifies Network Rail within fourteen days of the supply of that information that it disputes that opinion.

Condition C4      Acceptance of a Proposal for Change

4.1 Without prejudice to Condition C5 and subject to the remaining provisions of this Condition C4, a Proposal for Change shall be deemed to have been accepted at the expiry of a Decision Period if:

4.1.1 in the case of a Unanimous Proposal:

(a) that proposal is a Network Rail Change Proposal within the meaning of paragraph (b) of the definition of that term and neither the Station Facility Owner nor any User with proprietary interest in the relevant part of the Station shall have given a Notice of Objection; or

(b) that proposal is a Network Rail Change Proposal within the meaning of paragraph (a) of the definition of that term or any other Unanimous Proposal and no Relevant Operator shall have given a Notice of Objection;

4.1.2 in the case of a Majority Proposal, the Requisite Majority shall have failed to give Notices of Objection; and

4.1.3 in the case of either a Unanimous Proposal or a Majority Proposal:

(a) Network Rail shall have failed to give a Notice of Objection to the Relevant Operators; or

(b) Network Rail having given such a notice, the change in question would not have a material and adverse effect on Network Rail's interest in the Station; or

(c) where the Station Facility Owner has demonstrated:

(i) that implementation of the Proposal for Change would require an amendment to be made to these Station Access Conditions the result of which would be to place the Station Facility Owner in breach of, or unable to comply with, its obligations in the Adopted Station Lease; and

(ii) that Network Rail is unwilling to amend the Adopted Station Lease in such a way as would provide that the Station Facility Owner would not be in breach of, or unable to comply with, its obligations in the Adopted Station Lease following implementation of the Proposal for Change and cannot be forced to do so.

then the Proposal for Change shall not have been accepted.

4.1.4 in the case of any Proposal for Change which includes a proposal to amend or delete any Protected Provision, both Network Rail and the Station Facility Owner shall have failed to give a Notice of Objection.

4.2 Notwithstanding the failure of a Proposal for Change to be accepted pursuant to Condition C4.1 and subject to Condition C4.4, it shall be deemed to have been accepted at the expiry of a Decision Period if Network Rail, any Relevant Operator or any number of Relevant Operators shall within the Decision Period individually or collectively provide Financial Undertakings to the remaining Relevant Operators or Network Rail (as appropriate).

4.3 The Station Facility Owner shall, as soon as reasonably practicable after the expiry of 8 Business Days from the end of the Decision Period, notify each User and Network Rail (and, in the case of a Major Change Proposal or a Network Rail Change Proposal, all other persons referred to in Condition C1.5.1) of the acceptance or rejection of the relevant Proposal for Change and of any notice given under Condition C4.4 and received within that period.

4.4 This Condition 4.4 shall not apply where the Station Facility Owner has demonstrated that Condition 4.1.3(c) applies. Subject to that, a Proposal for Change shall not be accepted or rejected if:

4.4.1 a Relevant Operator or Network Rail shall have:

(a) given notice to all other Relevant Operators and Network Rail if the notice is given by a Relevant Operator and all Relevant Operators if the notice is given by Network Rail within 30 days after the end of the Decision Period of its intention to commence proceedings of the kind referred to in Condition C4.4.2; and

(b) commenced such proceedings not later than 30 days after the giving of such notice; and

4.4.2 the objector shall establish in final proceedings in accordance with Condition H5 that if the Proposal for Change in question is carried out, or not carried out, as the case may be, in accordance with its terms:

(a) its interests under or in respect of the Relevant Agreement in the case of a Relevant Operator, or in relation to the Station in respect of Network Rail would be, or are likely to be, unfairly prejudiced; and

(b) any such prejudice which it would or would be likely to sustain outweighs, or is likely to outweigh, any prejudice which any other Relevant Operator or Network Rail shall have established that, whether alone or together with any other Relevant Operator or Network Rail, it would or would be likely to sustain in respect of its interests under or in respect of a Relevant Agreement in the case of a User or in relation to the Station in respect of Network Rail if the Proposal for Change were carried out, or not carried out (as the case may be), in accordance with its terms.

4.5 In determining whether the interests of any Relevant Operator or Network Rail shall be, or shall be likely to be, prejudiced for the purposes of Condition C4.4, the primary considerations shall be the matters in respect of which duties are imposed on the Office of Rail Regulation by section 4 of the Act and subject to this there shall also be taken into account:

4.5.1 the expectations which Network Rail and the Relevant Operator in question have in respect of their respective interests in the Station; and

4.5.2 the expenses which will be, or are likely to be, incurred or saved if the Proposal for Change is or is not carried out in accordance with its terms;

4.5.3 the interests of other users of the Station; and

4.5.4 where Network Rail has served a Notice of Objection in accordance with Condition C1.5.3, the extent to which its interests would be materially and adversely affected if the Proposal for Change were implemented,

and, in addition, in the case of a Network Rail Change Proposal:

4.5.5 the planning policies and restraints under the Planning Acts which influence the design of the proposed development, including any new station facilities and their effect on the viability of the proposal;

4.5.6 the likely property market conditions relating to the proposed development and railway operational needs of Network Rail and each Relevant Operator relating to the demand for new or improved station facilities and their effect on the viability of the proposal; and

4.5.7 the benefits or disbenefits which have accrued or are likely to accrue to Network Rail and each Relevant Operator in consequence of the proposal (other than any loss of development profit which Network Rail shall sustain or be likely to sustain) except and to the extent that the tribunal shall be satisfied that any such loss of development profit ought properly to be taken into account in accordance with the following criteria:-

(a matters in respect of which duties are imposed on the Office of Rail Regulation by Section 4 of the Act and such other matters as may be prescribed by the Office of Rail Regulation from time to time for this purpose;

(b The benefits and disbenefits that will accrue to Network Rail and the Relevant Operator taking into account the relative importance of the benefit or disbenefit to Network Rail's or the Relevant Operator's respective railway businesses.

provided that there shall not for the purpose of this Condition C4.5 be taken into account:

(i) the Station Facility Owner's or any Passenger Operator's franchise term (as defined in section 23(3) of the Act) (if applicable); nor

(ii) the existence or terms of any contract, other than a Relevant Agreement entered into by Network Rail after 1 April 1994, except to the extent that the tribunal shall be satisfied that they ought properly be taken into account; and

(iii) where that Network Rail Change Proposal is itself a Material Variation to a Network Rail Change Proposal which has already been agreed, the fact of that agreement and the extent of the Material Variation.

4.6 A Proposal for Change shall be accepted or rejected in accordance with the outcome of such final proceedings.

4.7 Notwithstanding the other provisions of this Condition C4, a Proposal for Change shall be deemed to have been accepted if every Relevant Operator and Network Rail (other than the Sponsor) shall consent in writing to that Proposal for Change.

4.8 Where a Proposal for Change is deemed to be accepted pursuant to Condition C4.7:-

4.8.1 the Decision Period in relation to that Proposal for Change shall be deemed to have ended on the date on which such consent in writing shall have been given; and

4.8.2 Condition C4.4 shall not apply in respect of that Proposal for Change.

Condition C5 Submission of a Proposal for Change to the Office of Rail Regulation

5.1 On acceptance of a Proposal for Change in accordance with Condition C4 the Station Facility Owner shall submit any proposed consequential amendments to the Station Access Agreement to the Office of Rail Regulation for their approval, provided that no such approval shall be sought (unless the Proposal for Change shall in the case of Conditions C5.1.3 or C5.1.4 otherwise specify) if and to the extent that (or, if applicable, for so long as):

5.1.1 the change in question shall fall wholly within a relevant general approval given by the Office of Rail Regulation pursuant to sections 22(2) or 22(3) of the Act;

5.1.2 a notice has been served and proceedings commenced in accordance with Condition C4.4 and the result of final proceedings of the kind referred to in Condition C4.4.2 is pending;

5.1.3 the Proposal for Change requires the implementation and completion of any procedure pursuant to Part F or G of the Network Code, and the result of that procedure is pending; or

5.1.4 any other consents or approvals are required by any Statute to or from any third party to enable the implementation of that proposal, and have not yet been obtained.

5.2 The Station Facility Owner shall submit details of a Proposal for Change accepted in accordance with Condition C4 but withheld in accordance with Condition C5 to the Office of Rail Regulation for approval on satisfaction of the relevant conditions in Conditions C5.1.2, C5.1.3 and C5.1.4.

Condition C6 Approval by the Office of Rail Regulation

No Proposal for Change whose implementation would:

- 6.1 require consequential amendments to the Station Access Agreement; or
- 6.2 materially diminish for a period in excess of 28 days the number of passengers or trains that are able to use the Station,

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

Condition C7      Notification of Office of Rail Regulation's decision

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

Condition C8      Implementation of a Proposal for Change

8.1 Network Rail shall not be obliged to implement an approved Network Rail Change Proposal, but if it does so it shall carry out the change proposed in accordance with the approved Network Rail Change Proposal. Network Rail shall give notice to the Relevant Operators as soon as it becomes aware that there is no reasonable prospect of the Network Rail Change Proposal being implemented.

8.2 Subject to Condition C5, the Station Facility Owner shall carry out the changes proposed in accordance with any other Proposal for Change which shall have been approved pursuant to this Part C.

8.3 Subject to Condition C8.4 and insofar as such costs are not the subject of any Financial Undertakings, the cost of implementing a Proposal for Change shall be apportioned between each Relevant Operator and Network Rail in accordance with the provisions of that Proposal for Change.

8.4 The costs of implementing a Network Rail Change Proposal shall be borne by Network Rail.

Condition C9      Changes imposed by law

9.1 Where the Station Facility Owner or Network Rail is required (other than at its own request or instigation) to implement a change which would otherwise be the subject of a Proposal for Change, as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail Regulation or any person or body appointed in accordance with Condition H5, the Station Facility Owner or Network Rail (as the case may be) shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions C1.5.1 and C1.5.2 in respect of that change.

9.2 The provisions of Condition P3 shall have effect in relation to any costs of complying with or in consequence of any change referred to in Condition C9.1.

Condition C10      Notice to determine

10.1 If a Network Rail Change Proposal is accepted in accordance with Condition C4 and, where relevant, approved by the Office of Rail Regulation pursuant to Condition C6, 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 Network Rail Change Proposal (if any). If no date is specified in the Network Rail 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.

10.2 The date of expiration of any notice served by Network Rail pursuant to Condition C10.1 shall, if any conditions in the Network Rail Change Proposal remain to be satisfied by Network Rail at the expiration date, be postponed to a date 21 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.

10.3 Network Rail may at any time, for the purpose only of section 41 of the Act, at its own cost make and take all such applications and steps as Network Rail thinks fit, in the name of the Station Facility Owner, to achieve any purpose contemplated by this Part C and/or by anything done pursuant to this Condition C10 but only to the extent that this is necessary for Network Rail to establish a locus standi.

## **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.

<b>Passenger Operator's Proportion of Long Term Charge</b>	<b>Percentage Alteration Required</b>
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:

$$EP = \frac{(LTC_{actual} - LTC_{notional})}{LTC_{notional}} + \frac{(RVC_{actual} - RVC_{notional})}{RVC_{notional}}$$

where:

EP is the Excess Proportion of the affected operator;

LTC<sub>actual</sub> 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<sub>notional</sub> 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"> <li>(a) the last day of the Accounting Year in which the relevant termination occurred; and</li> <li>(b) the next following date in respect of which the Station Facility Owner shall carry out a calculation pursuant to Condition F10.1;</li> </ul>
"assumed basis"	means the assumption that: <ul style="list-style-type: none"> <li>(a) the relevant termination did not occur; and</li> <li>(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;</li> </ul>
"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      *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 <sub>t</sub>	means the Long Term Charge in relevant year t;
S <sub>t</sub>	means $S_{t-1} \cdot [1 + \frac{RPI_{t-1}}{100}]$ ;
RPI <sub>t-1</sub>	means the percentage change (whether of a positive or negative value) in the Retail Prices Index published or determined with respect to November in relevant year t-1 and the index published or determined with respect to November in relevant year t-2;
"relevant year"	means a Financial Year commencing on 1 April and ending on the following 31 March; "relevant year t" means the relevant year for the purposes of which any calculation falls to be made; "relevant year t-1 " means the relevant year preceding relevant year t; and similar expressions shall be construed accordingly; and
"Retail Prices Index"	means the general index of retail prices published by the Central Statistical Office each month in respect of all items or: <ul style="list-style-type: none"> <li>(a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the Office of Rail Regulation may, after consultation with the Secretary of State and each Relevant Operator, determine to be appropriate in the circumstances; or</li> <li>(b) if there is a material change in the basis of the index, such other index as the Office of Rail Regulation may, after consultation with the Secretary of State and each Relevant Operator, determine to be appropriate in the circumstances.</li> </ul>

but so that (without prejudice to the calculation of any Long Term Charge relating to a previous year) in relation to the relevant year commencing from a year in which the value specified in paragraph 3 of Annex 7 is altered, S<sub>t</sub> shall have the value specified in paragraph 3 of Annex 7 and in relation to the next following relevant year S<sub>t-1</sub> shall have the same value.

## 11.2 *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.

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 and subject to Condition L7.5, 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 SFO's 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);

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

2.1.3     the Daily Long Term Charge shall be abated by the amounts specified in, or determined in accordance with the provisions of, Annex 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.

### 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.

3.6 If none of the Station Facility Owner, any User, or any of the respective employees, subcontractors or agents of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition L2.1 whether as a consequence of Force Majeure (as defined in Condition L9) or otherwise, there shall be no abatement of the Daily Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition Q2.2), nor seek payment of an amount in respect of it.

3.7 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).

#### Condition L4 Station Facility Owner's liabilities

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

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

4.2 failing to provide or procure the provision of the Common Station Services or the

Common Station Amenities identified in Annex 5,

(subject to Condition L7.5), the Station Facility Owner shall be responsible for an amount equal to Y% of the amount by which any charges are required to be abated pursuant to Condition L2 (or any provisions contained in any Station Access Agreement by which Condition L2 is varied or disapplied), where Y% equals the Station Facility Owner's Default Responsibility in relation to the failure in question.

Condition L5      User's liabilities

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

- 5.1      the Station Facility Owner failing to secure the opening of the Station in accordance with Condition N1.1; or
- 5.2      the Station Facility Owner failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 5,

the User shall pay:

- 5.3      the Station Facility Owner an amount equal to Z% of the lesser of:
  - 5.3.1    the aggregate of:
    - (a)      the amount by which any charges are required to be abated pursuant to Condition L2.1.2; and
    - (b)      the proportion of the SFO's Daily Share specified in or determined in accordance with the provisions of Annex 5 or 7 (as applicable); and
  - 5.3.2    the amount by which any charges are required to be abated pursuant to any provisions contained in the relevant Station Access Agreement by which Condition L2.1.2 or the SFO's Daily Share is varied or disapplied,

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

Condition L6      Indemnities

6.1      Subject to Condition L7, 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.

6.2 Subject to Condition L7, 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.

6.3 Subject to Condition L7.2, 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 L7 (except for Condition L7.2) does not apply to this Condition L6.3.

Condition L7      Limitation on claims

7.1 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:

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

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

(a) in the case of a claim against a passenger service operator, the amount specified in paragraph 10 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 11 of Annex 7;

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

(a) in the case of a claim against a passenger service operator, the amount specified in paragraph 13 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 14 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 L7.1.2 and L7.1.3 shall not apply in respect of any obligation to pay any liquidated sum.

7.2 Save as otherwise expressly provided in any 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.

7.3 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.

7.4 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.

7.5 Where by operation of Condition L8.3, the Station Facility Owner is deemed to be responsible for any of the Common Station Amenities or Common Station Services identified in Annex 5 not being provided for the relevant period specified in Annex 5, or the Station not being open for the periods specified in Annex 6, then in Condition L4, 'Y%' shall, to the extent that Network Rail is responsible for the non-provision or closure, be adjusted by a factor which equates to the amount actually recovered by the Station Facility Owner from Network Rail under the Station Lease in respect of that User's entitlement, after using its reasonable endeavours to recover the full amount due to the User.

Condition L8      Default responsibility

8.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused any of the Common Station Amenities or Common Station Services identified in Annex 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.

8.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition L8.1, have due regard to all information available to it which is relevant in the circumstances.

8.3 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.

8.4 As soon as reasonably practicable following the occurrence of a matter listed in Condition L8.1, 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 L9            Force Majeure

9.1 "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstance or any combination of events or circumstances beyond the reasonable control of any party to a 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 L9.1 shall include subject to Condition L9.1.2 the following events and circumstances:

9.1.1 war damage, enemy action, terrorism, the act of any government or government instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by Her Majesty's Government (or any department, minister, official or nominee of it) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God, strike or any industrial action by employees of any person other than the party claiming the benefit of this Condition L9 or of its Affiliates, or the provision by the Station Facility Owner of such assistance as may be reasonable to co-operate in alleviating the effects of an incident adversely affecting the safety or security of persons or property;

and shall exclude the following events and circumstances:

9.1.2 any act of the 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 L9 or of its Affiliates, or any accumulation (other than one of exceptional severity or of an exceptional nature) of ice, rain, water, snow or leaves on or affecting railway assets or any breach of a contractual obligation owed to the party claiming the benefit of this Condition L9.

9.2 No party to a 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.

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

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

9.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume

performance of all its obligations under the Station Access Agreement.

Condition L10                      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 15 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.