

HS1 STATION ACCESS CONDITIONS

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PART 1: ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS

1 General

1.1 **General Interpretation:** Unless the context otherwise requires:

- (A) *These Station Access Conditions:* References to these Station Access Conditions mean these Station Access Conditions and the Annexes to them each as modified from time to time.
- (B) *Parts, Conditions, paragraphs and Annexes:* References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of these Station Access Conditions and references to Annexes are to Annexes to these Station Access Conditions.
- (C) *References to statutory provisions:* References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as from time to time amended or modified or any enactment for the time being replacing or amending it.
- (D) *Interpretation Act:* Words and expressions defined in the Interpretation Act 1978 shall have the same meanings in these Station Access Conditions. The words “include” and “including” shall be construed without limitation.
- (E) *Definitions in the Act:* Terms and expressions defined in sections 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meanings in these Station Access Conditions.
- (F) *Construction of agreements:* Reference in any Station Access Agreement or these Station Access Conditions to an agreement or any other document includes that agreement or other document as from time to time supplemented, varied, amended or novated.
- (G) *Notices etc:* Wherever in these Station Access Conditions provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Station Access Agreement and the words “notify”, “consent” or “approve” (and cognate expressions) shall be construed accordingly.
- (H) *References to person:* Any reference to a person shall be construed as including, where appropriate, a reference to a firm, company, corporation, government, state or agency of a state, any association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any of the foregoing.
- (I) *Conflict:* In the event of any conflict (whether as to interpretation or otherwise) between the provisions of these Station Access Conditions and the provisions of a Station Access Agreement, the following order of precedence shall apply:
 - (1) these Station Access Conditions; and
 - (2) the provisions of that Station Access Agreement.
- (J) *Time Limits:* Where in these Station Access Conditions any obligation of a person is required to be performed within a specified time limit, that obligation shall continue after that time limit if that person fails to comply with that obligation

within the time limit.

- (K) *Headings:* The headings and references to headings shall be disregarded in construing these Station Access Conditions.
- (L) *Companies Act definitions:* The words “subsidiary”, “holding company” and “company” shall have the same meanings in these Station Access Conditions as in the Companies Act 1985.
- (M) *Use of present tense:* Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.
- (N) *Sub-Contractors:* Where a party has sub-contracted its obligations under any Station Access Agreement or these Station Access Conditions references to that party in any Station Access Agreement or these Station Access Conditions shall include references to any sub-contractor so appointed.
- (O) *Permission to use:* References in these Station Access Conditions to the grant to a User of permission to use the Station shall, except where the context otherwise requires, be construed to mean:
- (1) the grant of permission for the User and its Associates to use the Common Station Amenities and to obtain the benefit of the Station Services or Light Maintenance Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway, whether or not the Station Facility Owner is to provide those services itself or to secure their provision by another; and
 - (2) to the extent reasonably necessary to give full effect to the permission in Condition 1.1(O)(1) and subject to Condition 1.1(P), permission for the User and its Associates to:
 - (a) enter upon the Common Station Amenities, with or without vehicles;
 - (b) bring things onto the Common Station Amenities and keep them there;
 - (c) use and maintain any things kept, or buildings or other works constructed, on the Common Station Amenities (whether by the User or another);
 - (d) carry out such works as shall have been approved in accordance with these Station Access Conditions;
 - (e) exercise the rights over the Adjacent Property set out in Part 9; and
 - (f) carry out Light Maintenance Services,provided that the permissions in Conditions 1.1(O)(1) and 1.1(O)(2) shall be in common with, but not in priority to, any other User in respect of the Common Station Amenities or Common Station Services and shall be subject, in each case and in all respects, to:
 - (3) these Station Access Conditions;
 - (4) any Relevant Restriction arising under any Existing Agreement; and

- (5) whilst exercising any permissions conferred by Condition 1.1(O)(2) any other restriction on such permissions which may from time to time be reasonably imposed by the Station Facility Owner in accordance with the Station Access Agreement.
- (P) *Permission to use under Condition 1.1(O)(2)*: In relation to the permissions specified in Condition 1.1(O)(2):
- (1) the User shall and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Station Facility Owner (which consent shall not be unreasonably withheld or delayed);
 - (2) the User shall promptly remove any vehicle or other thing so brought onto the Common Station Amenities when reasonably directed to do so by the Station Facility Owner; and
 - (3) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Station Facility Owner shall specify.
- (Q) *Good Faith*: The Station Facility Owner and all Users shall, in exercising their respective rights and complying with their respective obligations under these Station Access Conditions, (including when conducting any discussions or negotiations arising out of the application of these Station Access Conditions or exercising any discretion under them) at all times act in good faith.
- (R) *“an after tax basis”*: References in these Station Access Conditions to an after tax basis shall be construed to mean payments of the monies which are the subject of the indemnity after:
- (1) first, if the cost, loss or other matter in respect of which the monies are to be paid gives rise to any relief from taxation for the beneficiary of the indemnity, by reducing the amount of such payment by the amount of tax saved (or deemed to be saved on the basis of the assumptions set out below) by the beneficiary by virtue of the relief;
 - (2) secondly, if the indemnity is subject to taxation in the hands of the beneficiary, by increasing the amount of the payment after any reduction under Condition 1.1(R)(1) such that the net amount retained by the beneficiary after the deduction of the tax suffered (or deemed to be suffered on the basis of the assumptions set out below) by the beneficiary in respect of such indemnity payment equals the amount of the payment after any reduction under Condition 1.1(R)(1),
- and in applying the above, it shall be assumed that:
- (3) for the purposes of Condition 1.1(R)(1), the amount of tax saved shall be the difference between:
 - (a) the amount of tax which would have been payable by the beneficiary in respect of the accounting period of the beneficiary in which relief arises, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and
 - (b) the amount of tax which would have been payable by the

beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such relief;

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

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

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

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

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

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

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

“**Act**” means the Railways Act 1993 as amended by the Transport Act 2000 and the Railways Act 2005;

“**Adjacent Property**” means all or any part of the land, buildings, structures or other works (including the Network and High Speed 1) not forming part of the Station but adjoining, above, below or near the Station belonging to the Station Facility Owner for the time being and for the purpose of Part 9, includes any other property not belonging to the Station Facility Owner but over which the Station Facility Owner has rights for the time being sufficient to permit the Station Facility Owner to confer the rights referred to in Part 9;

“**Affiliate**” in relation to a company means:

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

“**Alternate**” means an alternate of a User or the Station Facility Owner appointed in accordance with Condition 2.2(C);

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

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

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

“**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 relevant Station Access Agreement;

“**Common Station Amenities**” means:

- (a) in respect of a Passenger Operator, the amenities at the Station specified in paragraphs 1 and 2 of Annex 1; and
- (b) in respect of any User that 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, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Common Station Services” means:

- (a) in respect of a Passenger Operator the services supplied at the Station specified in paragraphs 3 and 4 of Annex 1; and
- (b) in respect of any User that is not a Passenger Operator, the services supplied at the Station specified in paragraph 3 of Annex 1,

in each case at the standard planned to be provided as at the Conditions Efficacy Date in accordance with the applicable specifications set out in Appendix 1 to Annex 1 or determined pursuant to Annex 9, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Common Zone” means that part of the Station identified as such on the Plan;

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

- (a) Her Majesty’s Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power;
- (b) the ORR, except to the extent that it shall properly be entitled to specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as he shall properly be entitled to so specify;
- (c) 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 to change these Station Access Conditions and any material modification to that proposal as referred to in Condition 4.6;

“Conditions Efficacy Date” means the date set out in paragraph 1 of Annex 8;

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

“Consultation Period” means the period for consultation described in Condition 4.4(B);

“Consultee” means any User or the Station Facility Owner as consultee in relation to a Proposal for Change;

“Core Facilities” means the amenities which are specified in paragraph 8 of Annex 1 insofar as they are not leased to an International Passenger Operator;

“Corporate Representative” means any person appointed in accordance with Condition 2.2(E);

“CTRL Standards” means Network Rail (CTRL) Level 1 Standards and associated processes and procedures as applicable to the Station from time to time;

“**Decision Criteria**” consists of the necessity or desirability of the following (none of which necessarily has priority over any other):

- (a) to promote the use of the Station in connection with the carriage of passengers and goods by railway;
 - (b) to promote improvements in the performance of Station Services;
 - (c) to promote efficiency and economy by securing best value;
 - (d) to promote competition in the procurement of Station Services for the benefit of the Users;
 - (e) to promote measures designed to facilitate interchange at the Station by passengers undertaking journeys which involve the services of more than one Passenger Operator;
 - (f) to impose on the Station Facility Owner and the Users the minimum restrictions which are consistent with the other criteria within this definition;
 - (g) to enable the Station Facility Owner and the Users to plan the future of their businesses with a reasonable degree of assurance; and
- to have regard to the effect on the environment of activities connected with the provision of Station Services;

“**Decision Period**” means the period referred to in Condition 9.8(C);

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

“**Default Responsibility**” means the causation of any default as determined in accordance with Condition 56;

“**Development Change Proposal**” means a proposal which, if implemented, would:-

- (a) involve the carrying out of works on or to the Station or any part of it; and
- (b) be likely materially to affect:-
 - (i) the operation of trains to or from the Station;
 - (ii) the ability of a User’s Associates to pass to or from trains operated by or on behalf of that User which stop at the Station; or
 - (iii) the operation of the Station,

but does not include any such proposal (not forming part of a larger scheme):

- (c) the dominant and substantial purpose of which is to improve an existing, or create a new, Common Station Amenity provided or to be provided 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; or
- (d) to satisfy any obligation of the Station Facility Owner under these Station Access Conditions;

“**Direction**” means, in respect of a Station Access Agreement, any direction, requirement,

instruction or rule binding on either or both of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;

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

“Dispute Resolution Procedure” means the procedure and provisions for the resolution of disputes described in the Disputes Resolution Agreement dated 18 February 1999 and made between the Secretary of State for the Environment, Transport and the Regions, London & Continental Railways Limited, Railtrack PLC and Others for the resolution of disputes arising from or concerning the design, construction, financing, operation and maintenance of the new Channel Tunnel Rail Link;

“Domestic Northbound Common Station Amenities” means:

- (a) in respect of a Domestic Northbound Passenger Operator, those Common Station Amenities at St Pancras International station specified in paragraphs 1 and 2 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Northbound Zone; and
- (b) in respect of any Domestic Northbound Non-Passenger Operator, those Common Station Amenities at St Pancras International station specified in paragraph 1 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Northbound Zone,

in each case where possible identified as such on the Plan, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Domestic Northbound Common Station Services” means:

- (a) in respect of a Domestic Northbound Passenger Operator, those Common Station Services specified in paragraphs 3 and 4 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Northbound Zone; and
- (b) in respect of any Domestic Northbound Non-Passenger Operator, those Common Station Services specified in paragraph 3 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Northbound Zone,

in each case at the standard planned to be provided as at the Conditions Efficacy Date in accordance with the applicable specifications, if any, (which may apply to one or more Zones or to the entire Station) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 9, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Domestic Northbound Non-Passenger Operator” means a non-passenger service operator that provides non-passenger railway services to and from the Domestic Northbound Zone pursuant to a Station Access Agreement;

“Domestic Northbound Passenger Operator” means a passenger service operator that provides passenger railway services to and from the Domestic Northbound Zone pursuant to a Station Access Agreement;

“Domestic Northbound Zone” means that part of St Pancras International station identified

as such on the Plan;

“Domestic Passenger Operator” means a Domestic Northbound Passenger Operator (if any) or a Domestic Southbound Passenger Operator;

“Domestic Southbound Common Station Amenities” means:

- (a) in respect of a Domestic Southbound Passenger Operator, those Common Station Amenities specified in paragraphs 1 and 2 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Southbound Zone; and
- (b) in respect of any Domestic Southbound Non-Passenger Operator, those Common Station Amenities specified in paragraph 1 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Southbound,

in each case where possible identified as such on the Plan, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Domestic Southbound Common Station Services” means:

- (a) in respect of a Domestic Southbound Passenger Operator, those Common Station Services specified in paragraphs 3 and 4 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Southbound Zone; and
- (b) in respect of any Domestic Southbound Non-Passenger Operator, those Common Station Services specified in paragraph 3 of Annex 1 that are identified in Annex 1 as being provided within the Domestic Southbound Zone,

in each case at the standard planned to be provided as at the Commencement Date of the first Station Access Agreement to be entered into with a Domestic Southbound Passenger Operator in accordance with the applicable specifications, if any, (which may apply to one or more Zones or to the entire Station) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 9, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“Domestic Southbound Non-Passenger Operator” means a non-passenger service operator that provides non-passenger railway services to and from the Domestic Southbound Zone pursuant to a Station Access Agreement;

“Domestic Southbound Passenger Operator” means a passenger service operator that provides passenger railway services to and from the Domestic Southbound Zone pursuant to a Station Access Agreement;

“Domestic Southbound Zone” means that part of the Station identified as such on the Plan;

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

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

“Emergency” means:

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

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

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

“Environmental Condition” means:

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

which (in either case) in the Station Facility Owner's reasonable opinion could result in the Station Facility Owner incurring any material liability or being subject to the Direction of any Competent Authority or could otherwise materially affect the Station Facility Owner's interest in the Station as an actual or potential railway asset for railway related uses which shall include (but not be limited to) any uses of the Station which are or may be permitted by Condition 72;

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

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

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

“Environmental Liability Commencement Date” means the date referred to in paragraph 2 of Annex 8;

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

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

“Excepted Equipment” means all electronic communications apparatus, within the extended definition of schedule 2 to the Telecommunications Act 1984, absolutely owned by any provider of an electronic communications network or service within the meaning of section 32 of the Communications Act 2003;

“Excluded Equipment” means:

- (a) the items of Equipment (if any) referred to in Appendix 6 to Annex 1;
- (b) electronic communications apparatus within the extended definition in schedule 2 of the Telecommunications Act 1984 other than Excepted Equipment and Retail Telecom Systems as defined in Equipment Inventory paragraph (10); and
- (c) any item of equipment not included in paragraphs (a) or (b) of this definition or otherwise specified in the Equipment Inventory:
 - (i) which is (from time to time) used exclusively for the purposes of Network Rail’s railway undertaking or function or for the purposes of the railway undertaking or function of the facility owner of High Speed 1 (in each case whether by itself or at its direction); and/or
 - (ii) forms part of the railway infrastructure for which Network Rail, the facility owner of High Speed 1 or the Station Facility Owner is responsible;

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

“Existing Agreements” means:

- (a) To the extent, if at all, any of the following affecting the Station:
 - (i) the Supplemental Agreement made 1st April 1994 between (1) British Railways Board and (2) Railtrack and entitled “Agreement for Leases”, Site Demarcations, Connection Agreements and BRT Easements, and the Supplemental Agreement made 1st April 1994 between (1) Railtrack and (2) British Railways Board and entitled “Property Miscellaneous Provisions Agreement” which form part of the Railtrack Transfer Scheme;
 - (ii) the Supplemental Agreement made 1st April 1994 between (1) Railtrack and (2) BR Telecommunications Limited 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;
 - (iii) the Supplemental Agreement made 1st April 1994 between (1) British Railways Board and (2) BR Telecommunications Limited and entitled “Agreement for Lease, Property Licences and Grant of Easements” which forms part of the British Rail Telecommunications Transfer Scheme;
- (b) all wayleaves, easements or licences (or agreements for any of them) relating to the passage of services or Conduits affecting the Station (whether or not so listed in Annex 5) entered into or granted by the Station Facility Owner or its predecessors in title at any time before the Conditions Efficacy Date to:
 - (i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and
 - (ii) any other person;
- (c) agreements or instruments relating to land now owned by third parties, provided that the rights and liabilities arising under such agreements or instruments were

transferred to the Station Facility Owner under the Railtrack Transfer Scheme;

- (d) all agreements and instruments completed or to be completed pursuant to any agreement referred to in Annex 5;
- (e) all rights of third parties arising, acquired or granted at any time before the Conditions Efficacy Date over or in respect of the occupation of (or the entitlement to occupy) any part of the Station;
- (f) all rights of third parties arising under Statute or by operation of law;
- (g) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;
- (h) any Superior Estate Grant; and
- (i) all other agreements entered into after the Conditions Efficacy Date the entering into of which is approved in accordance with Part 3;

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

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

“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” shall include the following events and circumstances:

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

and shall exclude the following events and circumstances:

- (B) any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of Force Majeure 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 Force Majeure.

“Financial Undertaking” means an undertaking:

- (a) to pay the whole of the costs of carrying out a Proposal for Change, together with:
 - (i) any other reasonable costs, direct losses and expenses (including loss of revenue) which are incurred by the Station Facility Owner or the User to

whom it is given to the extent that such costs are directly attributable to, the change in question; and

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

“Full Proposal” means any Development Change Proposal, not being a Material Variation, made subsequent to or instead of an Initial Proposal in respect of that Development Change Proposal, accompanied only by the information set out in Condition 9.7(B)(2), and made prior to the commencement of any works falling within the definition of Development Change Proposal;

“Full Replacement Cost” means the cost of replacing the Station to the standard set out in Condition 23.2(B) and shall include any Value Added Tax and other taxes payable, reasonable provision for costs escalation between the commencement or renewal date of insurance cover and the date of replacement, professional and statutory fees, demolition, site clearance and shoring up;

“High Speed 1” the high speed rail link between St. Pancras International Station and the Channel Tunnel and associated railway infrastructure and works formerly known as the Channel Tunnel Rail Link;

“Initial Proposal” means a Development Change Proposal accompanied only by the information set out in Condition 9.7(B)(1) which may be made at any time prior to a Full Proposal in relation to that Development Change Proposal;

“Insured Risks” means:

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

“International Common Station Amenities” means:

- (a) in respect of an International Passenger Operator, those Common Station Amenities specified in paragraphs 1 and 2 of Annex 1 that are identified in Annex 1 as being provided within the International Zone and those Common Station Amenities specified in Annex 10; and
- (b) in respect of any International Non-Passenger Operator, those Common Station Amenities specified in paragraph 1 of Annex 1 that are identified in Annex 1 as being provided within the International Zone and those Common Station Amenities specified in Annex 10,

in each case where possible identified as such on the Plan, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“International Common Station Services” means:

- (a) in respect of an International Passenger Operator, those Common Station Services specified in paragraphs 3 and 4 of Annex 1 that are identified in Annex 1 as being provided within the International Zone and those Common Station Services specified in Annex 10; and
- (b) in respect of any International Non-Passenger Operator, those Common Station Services specified in paragraph 3 of Annex 1 that are identified in Annex 1 as being provided within the International Zone and those Common Station Services specified in Annex 10,

in each case at the standard planned to be provided as at the Conditions Efficacy Date in accordance with the applicable specifications, if any, (which may apply to one or more Zones or to the entire Station) set out in Appendix 1 to Annex 1 or determined pursuant to Annex 9, as modified by such changes as shall be implemented from time to time in accordance with Part 3;

“International Non-Passenger Operator” means a non-passenger service operator that provides non-passenger railway services to and from the International Zone pursuant to a Station Access Agreement;

“International Passenger Operator” means a passenger service operator that provides passenger railway services to and from the International Zone pursuant to a Station Access Agreement;

“International Zone” means that part of the Station identified as such on the Plan;

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

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

“Light Maintenance Services” means any light maintenance services for trains;

“Maintenance” means the carrying out of the following in each case in accordance with the specifications (if any) determined pursuant to Annex 9:

- (a) in relation to every part of the Station:
 - (i) any treatment, operation or work of a routine and foreseeable nature whether necessary at regular or irregular intervals which is required (whether by any current statutory or other code of practice or otherwise) from time to time to facilitate the efficient and safe operation and/or use in compliance with the requirements of any Statute of the relevant part for any purpose permitted by the Station Access Agreement;
 - (ii) the replacement of such parts of the Station as require, or are designed for,

regular replacement; and

- (iii) any inspection or certification required by a Statute or for the purpose of any treatment, operation or works described in this paragraph (a); and
- (b) in relation to the Equipment, all treatment, operations and works which are recommended in a current manufacturer's operating or maintenance manual (as updated from time to time) at the intervals and in the manner so recommended;

“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 User'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 Development 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 4 or 13; 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 4; 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 to be entered into pursuant to any agreement referred to in paragraph 1 of Annex 8; or
- (c) to relocate or let (whether or not pursuant to Condition 65.1(Q)) any Core Facility or terminate (by way of forfeiture or otherwise), accept a surrender of or vary the terms of any such letting but excluding
 - (i) any termination on the grounds of insolvency of the relevant tenant or non-payment of sums due by that tenant; and
 - (ii) any termination or letting on terms substantially the same as the previous letting, in consequence of a franchise agreement being entered into in consequence of Section 26 of the Act; or
- (d) (except where such may arise pursuant to an Existing 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 Development 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 or deemed accepted pursuant to the provisions of Condition 11.8 or Condition 12), 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 Development 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 Development Change Proposal is a Material Variation;

“**Minimum Sum**” means the excess under the insurance policy maintained by the Station Facility Owner pursuant to Condition 23.1, as notified by the Station Facility Owner from time to time;

“**Minor Works**” means any works required or permitted to be carried out pursuant to a Station Access Agreement other than Existing Works, Third Party Works or works which are subject to a Proposal for Change in accordance with Part 4;

“**Network**” means the rail network of which Network Rail is the facility owner which is situated in England, Wales and Scotland not being High Speed 1;

“**Network Emergency**” means any situation or circumstance which the facility owner of (as appropriate) the Network or High Speed 1 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 High Speed 1 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 High Speed 1 or any part of it;

“**Network Rail**” means Network Rail Infrastructure Limited, a company registered in England under number 2904587;

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

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

“**ORR**” means the Office of Rail Regulation;

“**Passenger Information Systems**” means any equipment, notice-boards, visual display

units or other media used at the Station to communicate train service information or customer service information to persons at the Station;

“**Passenger Operator**” means a passenger service operator with permission to use the Station pursuant to a Station Access Agreement being a Domestic Passenger Operator or an International Passenger Operator;

“**Plan**” means the plans 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 Development 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;

“**Railtrack Transfer Scheme**” means the transfer scheme made under section 85 of the Act by the Board in favour of Network Rail (then known as Railtrack PLC) with an effective date of 1st April 1994 and references to that scheme (where the context requires) include any transfer scheme which affects or is made in addition to that scheme made from time to time under Section 85 of the Act by the Board with an effective date after 01 April 1994;

“**Railway Group Standards**” means:

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

compliance with which will contribute significantly to the safe operation of the rail network and the safe operation and safe interworking of railway assets used or to be held on or in connection with the rail network, in each case as authorised under the Railway Group Standards Code issued by Rail Safety and Standards Board Limited and approved by the ORR;

“**Railway Regulations**” means the Railway Infrastructure (Access and Management) Regulations 2005’

“**Railway Substructure**” means any railway substructure identified in Appendix 7 of Annex 1;

“**Railway Superstructure**” means any railway superstructure identified in Appendix 7 of Annex 1;

“**Relevant Restriction**” means 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) determined pursuant to Annex 9, of:

- (a) any work required to keep the Station in good and substantial repair and condition; and

- (b) any work required so that the Station is safe for operation and/or use in compliance with the requirements of any Statute for any purpose permitted by the Station Access Agreement;

but does not include the carrying out of:

- (c) any Maintenance;
- (d) any work to the Station which is the responsibility of any third party now or in the future entitled to occupy any part of the Station under any of the Existing Agreements (except to the extent that the Station Facility Owner has placed an obligation to undertake such works on the third party and such obligation is directly enforceable by the Station Facility Owner); or
- (e) renewal of any item for so long as repair may still reasonably be undertaken and the costs of Maintenance are not in consequence increased above a reasonable level;

“Requisite Majority” means, as at any particular time, Voting Operators whose Vehicle departures from the Station (or a particular Zone, as applicable), expressed as a percentage of Total Departures (or Total Departures departing from a particular Zone, as applicable), as at the relevant date, together are at least equal to the applicable percentage specified in paragraph 4 of Annex 8;

“Retail Price Index” means the All Items Retail Prices Index published by the Office for National Statistics or by any other publisher, as that index or publisher may be renamed from time to time or:

- (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 Secretary of State may, after consultation with the Station Facility Owner and each User, determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as the Secretary of State may, after consultation with the Station Facility Owner and each User, determine to be appropriate in the circumstances;

“Safety Obligations” means all obligations which:

- (a) are concerned with health and safety matters; and
- (b) apply to things done, or to be done by the Station Facility Owner or any User:
 - (i) at, adjacent to, or in connection with, the Station; or
 - (ii) in connection with railway passenger services or services for the carriage of goods by railway which call at the Station;

including any:

- (c) duty of care arising at common law, or other obligation imposed by law;
- (d) obligation to comply with (insofar as applicable) Railway Group Standards, CTRL Standards or any code of practice;

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

Owner and all Passenger Operators;

“**Secretary of State**” means the Secretary of State for Transport;

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

“**SFO Environmental Indemnity**” means the indemnity given by the Station Facility Owner pursuant to Condition 62.2;

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

“**Sponsor**” means a person who makes a Proposal for Change;

“**Standard Interest Rate**” means the base lending rates published from time to time by HSBC Bank plc during any relevant period;

“**Station**” means the Station described in paragraph 6 of Annex 1 and includes:

- (a) the foundations, roof, buildings, structures, fixtures, fittings, the Station Facility Owner’s Conduits, and other works for the time being at the Station, any alteration or additions to the Station;
- (b) anything which is part of the Station pursuant to paragraphs 3.1(A) of Appendix 7 to Annex 1; and
- (c) the Equipment;

but excluding:

- (d) the Excluded Equipment;
- (e) the Excepted Equipment;
- (f) the Railway Substructure;
- (g) the Railway Superstructure; and
- (h) anything which is not part of the Station pursuant to paragraphs 3.1(B) of Appendix 7 to Annex 1;

“**Station Access Agreement**” means any particular access contract, incorporating these Station Access Conditions;

“**Station Meeting**” means a meeting convened in accordance with Condition 2.1(A);

“**Station Register**” means a register maintained in accordance with Part 8;

“**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 the Station Facility Owner 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 Works**” means Discretionary Third Party Works and Non-Discretionary Third Party Works;

“**Total Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of all Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Part 17 and a reference to a person “representing” Total Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

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

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

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

“**Unanimous Proposal**” means:

- (a) a Proposal for Change affecting any of the Common Station Amenities, Common Station Services listed in Annex 3;
- (b) a Development Change Proposal;
- (c) a Proposal for Change which is to relocate any Core Facility listed in Annex 3;

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

“**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;

“**Voting Operator**” means in respect of a Station any Passenger Operator that is liable to pay the Common Charges for that Station in accordance with Part 17;

“**Zone**” means any of the Common Zone, the International Zone, the Domestic Southbound Zone and at St Pancras International station the Domestic Northbound Zone;

“**Zone Specific Authorised Change**” means an approved Proposal for Change commenced pursuant to Condition 9.2; and

“**Zone Specific Conditions Change**” means an approved Conditions Change Proposal commenced pursuant to Condition 4.2.

- 1.3 **Several Liability:** Each User and the Station Facility Owner shall be severally responsible for its own acts, omissions, costs and liabilities and for the acts, omissions, costs and liabilities of its employees, agents and subcontractors and shall not be responsible for the acts, omissions, costs and liabilities of any other person.
- 1.4 **Relevant Special Conditions:** These Station Access Conditions incorporate the provisions (if any) set out in paragraph 5 of Annex 8.

PART 2: MODIFICATIONS TO THE STATION ACCESS CONDITIONS

2 Station Meetings

2.1 Convening of Station Meetings:

- (A) The Station Facility Owner shall:
- (1) within 14 days following receipt of notice in writing from any User requisitioning a Station Meeting and specifying the business proposed to be carried out at that meeting; and
 - (2) (unless it does not wish to and no User has requested the same) in respect of any Conditions Change Proposal, within 5 Business Days following the end of the Consultation Period relating to that proposal,

convene a meeting by giving not less than 14 days, and not more than 28 days, notice to all Users and the Secretary of State specifying:
 - (3) the date, venue and time of that meeting; and
 - (4) the business of the meeting (which shall include any necessary supporting documentation).
- (B) The Station Facility Owner may at any time convene a Station Meeting by giving notice in the manner prescribed in Condition 2.1(A).
- (C) The period of notice for convening a Station Meeting notified in accordance with Conditions 2.1(A) or 2.1(B) may be waived prospectively or retrospectively with the consent in writing of all Users.
- (D) Those entitled to attend and speak at a Station Meeting are the Station Facility Owner, all Users, the Secretary of State and their professional advisers.

2.2 Conduct of Station Meetings:

- (A) Save as otherwise provided in this Condition 2.2, the Station Facility Owner and the Users may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that:
- (1) any resolution in respect of such business, adjournment or regulation shall only be approved if Voting Operators constituting the Requisite Majority shall have voted in favour of that resolution; and
 - (2) the failure of a User timeously to cast its vote in respect of a resolution shall be deemed to be a vote in favour of that resolution.
- (B) 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.
- (C) 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.
- (D) 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.

- (E) The Station Facility Owner and each User may by notice to each other appoint such person as it thinks fit to act as its representative at any Station Meeting. The person so authorised shall be entitled to exercise all the powers of his appointor in accordance with this Part 2.
- (F) A decision in writing signed by or on behalf of a User and received by the Station Facility Owner prior to the end of the Consultation Period shall be valid and effective evidence of that User's acceptance or rejection of a Condition Change Proposal.
- (G) 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 and every User.

3 Administration of Station Meetings

- 3.1 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.
- 3.2 The Station Facility Owner shall provide a list of the names and addresses of all Users promptly to any User who requests it.
- 3.3 The Station Facility Owner shall attend each Station Meeting, take accurate minutes of each meeting and distribute such minutes to each User within the period of fourteen days following that Station Meeting. Such minutes shall be discussed and, if thought fit, approved (with or without modification) at the next Station Meeting.

4 Receipt and Notification of a Conditions Change Proposal

- 4.1 Any User or the Station Facility Owner 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:
 - (A) be in writing;
 - (B) contain reasonable particulars of the change proposed;
 - (C) contain the proposed text of those Conditions affected by the change if the change were approved pursuant to this Part 2; and
 - (D) be supported by an explanation in reasonable detail of the purpose of the proposed change.
- 4.2 Where proposed changes to these Conditions relate to a single Zone, not being the Common Zone and where either:
 - (A) the sponsor of the Conditions Change Proposal in question and the Station Facility Owner agree that the proposed changes to these Conditions would have no adverse impact on or on the costs attributable to any other Zone; or

- (B) where agreement pursuant to Condition 4.2(A) above has not been reached the sponsor of the proposed Conditions Change Proposal has provided the Station Facility Owner with:
- (1) an indemnity to indemnify it and to keep it indemnified in respect of such sums as shall fairly and reasonably compensate it from and against all and any consequences of the Zone Specific Conditions Change once implemented, following approval of the same, having an adverse impact on or on the costs attributable to any other Zone; and
 - (2) an undertaking that, in the event the Zone Specific Conditions Change once implemented, following approval of the same, having an adverse impact on, or on the costs attributable to, any other Zone to forthwith take such steps as may be required to procure a change to these Station Access Conditions to restore them to the form that they would have been in had the changes required to implement the Zone Specific Conditions Change not been made

then, for the purposes of this Part 2, the User consultees of the Conditions Change Proposal shall be only those Users who operate railway services pursuant to a Station Access Agreement to and from the Zone to which the proposal relates and the remainder of this Part 2 shall be interpreted accordingly. In this regard, each User's vote shall be equal to the specific proportion of Qualifying Expenditure attributable to the Zone in question for which it is charged.

- 4.3 Where the sponsor of a Zone Specific Conditions Change was the Station Facility Owner and the change once implemented, following approval of the same, has an adverse impact on, or on the costs attributable to, any other Zone then the Station Facility Owner shall take such steps as may be required to restore these Station Access Conditions to the form that they would have been in had the changes required to implement the Zone Specific Conditions Change not been made.
- 4.4 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:
- (A) give notice of that proposal to each User and the Secretary of State; and
 - (B) 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 4.4(A).
- 4.5 The Station Facility Owner shall, following the end of the Consultation Period:
- (A) be entitled (but not obliged unless requested by a User) to convene a Station Meeting in accordance with Condition 2.1(A)(2); and
 - (B) supply a copy of the Conditions Change Proposal to each person referred to in Condition 4.4(A) at least 5 Business Days before the date of the meeting together with:
 - (1) copies of all representations received pursuant to Condition 4.4(B); and

- (2) 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.

- 4.6 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.
- 4.7 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.

5 Consideration of a Conditions Change Proposal

- 5.1 Without prejudice to Condition 8, a Conditions Change Proposal shall have been approved only if:
 - (A) the Requisite Majority shall have voted in favour of that proposal at the relevant Station Meeting and/or accepted it in writing in accordance with Condition 2.2(F) provided that the failure of a Passenger Operator to cast its vote, attend the Station Meeting or respond to a Conditions Change Proposal at all shall be deemed to be a vote in favour of that proposal; and
 - (B) where the implementation of the Conditions Change Proposal is likely to have a material and adverse effect on the Station Facility Owner's interest in relation to the Station, the Station Facility Owner shall not have notified the Users of its objection to that proposal within the Consultation Period.
- 5.2 The Station Facility Owner shall, as soon as reasonably practicable following a request by any User or the Secretary of State to carry out further consultation in respect of any Conditions Change Proposal, carry out further reasonable consultation.
- 5.3 At the end of the Consultation Period (or after the Station Meeting where one has been convened pursuant to Condition 4.5) the Station Facility Owner shall notify all Users whether or not the Conditions Change Proposal had not been approved.

6 Notification and Implementation of changes to these Conditions

- 6.1 The Station Facility Owner shall notify any change made in accordance with this Part 2 to all Users. Save as otherwise provided in Condition 6.3 and Condition 7, any approved change shall have effect on the expiry of 21 days from the date of that notification.
- 6.2 The Station Facility Owner shall, prior to that notice or Conditions Change Proposal having effect, supply to all Users a revised version of these Station Access Conditions incorporating the change.
- 6.3 If any Conditions Change Proposal will have the effect of:
 - (A) changing the nature, standard, quantum or the terms for the provision of any Common Station Service which is provided by a sub-contractor of the Station Facility Owner or otherwise affecting the provision thereof; or
 - (B) making any service which is not a Common Station Service a Common Station Service at the Station,

then any such Conditions Change Proposal or notice shall not have effect until the date falling 6 months after its approval or such earlier date (being the earliest date on which the Station Facility Owner is in a position to give effect to such Conditions Change Proposal having used all reasonable endeavours to be able to do so as soon as possible) as may be notified by the Station Facility Owner to the Users.

7 Appeal procedure

7.1 If the Requisite Majority shall not have voted in favour of a Conditions Change Proposal or the Station Facility Owner shall have exercised its veto, any User or the Station Facility Owner shall be entitled to refer the matter for determination pursuant to the Dispute Resolution Procedure.

7.2 The reference for determination pursuant to the Dispute Resolution Procedure shall be made not later than 35 days after the exercise of the Station Facility Owner veto or (in the case of the Requisite Majority failing to approve a Conditions Change Proposal) within 10 days of notification issued by the Station Facility Owner pursuant to Condition 5.3.

7.3 In relation to any such determination, in addition to the powers conferred by the Disputes Resolution Procedure the panel or arbitrator shall have the power:

- (A) to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal; and
- (B) to determine whether the Conditions Change Proposal shall have effect having regard to the Decision Criteria and to such other matters or things as may be relevant.

7.4 In this Condition 7:

“the exercise of the Station Facility Owner veto” means the giving by the Station Facility Owner of a notice of objection as provided for in Condition 5.1(B), and cognate terms and expressions shall be construed accordingly.

8 Appeal procedure – Appeal against exercise of Station Facility Owner’s veto

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

8.2 A notice of appeal shall:

- (A) be given to the Secretary of State, the Station Facility Owner and each User not later than 10 days after a determination made pursuant to Condition 7 that the Station Facility Owner was entitled to exercise its veto (unless Condition 8.3(A) applies);
- (B) contain the reasons why the User in question considers that the Station Facility Owner veto should not have effect; and
- (C) request the Secretary of State to determine the matter.

8.3 No notice of appeal may be given unless:

- (A) the User shall be satisfied that the Station Facility Owner is entitled to exercise the Station Facility Owner veto; or
- (B) the entitlement of the Station Facility Owner to exercise its veto shall have been

established pursuant to Condition 7,

and evidence satisfactory to the Secretary of State shall have been provided to him to that effect.

8.4 Without prejudice to Condition 8.5, the Station Facility Owner and the Users shall use their respective reasonable endeavours to procure that the Secretary of State 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 Secretary of State shall, in determining it, have the power:

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

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

8.7 The determination of the Secretary of State shall be final and binding on the Station Facility Owner and every User.

8.8 In this Condition 8:

“the exercise of the Station Facility Owner veto” means the giving by the Station Facility Owner of a notice of objection as provided for in Condition 5.1(B), and cognate terms and expressions shall be construed accordingly; and

“notice of appeal” means a notice given pursuant to Condition 8.2.

PART 3: CHANGES TO COMMON STATION AMENITIES AND COMMON STATION SERVICES

9 Proposal for Change

9.1 No User or the Station Facility Owner shall take any action falling within the definition of a Material Change Proposal or a Major Change Proposal and the Station Facility Owner shall not take any action falling within the definition of Development Change Proposal, save in accordance with this Part 3, except:

- (A) in performance of an obligation imposed on it under these Station Access Conditions which is expressed not to require compliance with this Part 3; or
- (B) where a restriction, suspension or alteration to any permission to use the Station to permit that action may be imposed under Conditions 15 or 16.1 and the relevant Condition is not expressed to require compliance with this Part 3.

9.2 Where:

- (A) a proposed action falls within the definition of a Material Change Proposal or a Major Change Proposal or Development Change Proposal; and
- (B) relates to a single Zone, not being the Common Zone; and
- (C) where either:
 - (1) the sponsor of the Proposal for Change and the Station Facility Owner agree that the proposed action would have no impact on or on the costs attributable to any other Zone (in each case either during the implementation of the proposal in question or after its completion); or
 - (2) where agreement pursuant to 10.2(C)(1) above has not been reached the sponsor of the Proposal for Change has provided the Station Facility Owner with:
 - (a) an indemnity to indemnify it and to keep it indemnified in respect of such sums as shall fairly and reasonably compensate it from and against all and any consequences of the Zone Specific Authorised Change, once implemented, following approval of the same, having an adverse impact on, or on the costs attributable to, any other Zone (either during the implementation of the change or after its completion); and
 - (b) an undertaking that, in the event the Zone Specific Authorised Change once implemented, following approval of the same, having an adverse impact on, or on the costs attributable to, any other Zone (either during the implementation of the change or after its completion), to forthwith take such steps as may be required to remove the Zone Specific Authorised Change and to restore such parts of the Station affected by such change, to the satisfaction of the Station Facility Owner, to such standard and that they were in prior to the implementation of the change

then, for the purposes of this Part 3, the User consultees of the Proposal for Change shall be only those Users who operate railway services pursuant to a Station Access Agreement to and from the Zone to which the proposal relates and the remainder of this Part 3 shall be

interpreted accordingly and each User's vote shall be equal to the specific percentage proportion of Qualifying Expenditure attributable to the Zone in question for which it is charged.

- 9.3 Where the sponsor of a Zone Specific Authorised Change was the Station Facility Owner and the change, once implemented, following approval of the same, having an adverse impact on, or on the costs attributable to, any other Zone (either during the implementation of the change or after its completion) then the Station Facility Owner shall take such steps as may be required to remove the Zone Specific Authorised Change and to restore such parts of the Station affected by the change, to the reasonable satisfaction of the Passenger Operators who are adversely affected by such change, to such standard that they were in prior to the implementation of the change.
- 9.4 Implementation of any proposal by the Station Facility Owner to use the Passenger Information System at the Station otherwise than for provision of a Common Station Service shall be deemed to be
- (A) a Proposal for Change and
 - (B) a Unanimous Proposal.
- 9.5 Any User and the Station Facility Owner shall be entitled at any time to make a Material Change Proposal and a Major Change Proposal. The Station Facility Owner shall, in addition, be entitled at any time to make a Development Change Proposal.
- 9.6 A Proposal for Change made by a User 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.
- 9.7 A Proposal for Change shall be in writing and shall contain:
- (A) 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 9.8 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 Development Change Proposal where such information is not available at the time of any Initial Proposal, the Station Facility Owner shall provide such information as part of a Full Proposal; and
 - (B) in respect of a Development Change Proposal, the indemnities and undertakings described in Condition 13.4 and:
 - (1) where the proposal is an Initial Proposal, all of the information described in Condition 13.2, so far as it has not previously been supplied and identified as such, together with such information described in Condition 11.3 as is available to the Station Facility Owner at the time of making the proposal provided that the Station Facility Owner shall be entitled to make more than one Initial Proposal;
 - (2) where the proposal is a Full Proposal, all such information described in Conditions 11.2 or 11.3 insofar as such information has not already been supplied in any Initial Proposal; and
 - (3) where the proposal is a Material Variation, all such information described

in Condition 11.3 as is relevant to the Material Variation.

- 9.8 The Station Facility Owner shall, on making a Proposal for Change, or on receipt of such a proposal from a User:
- (A) timeously provide a copy of such proposal to each User (other than the Sponsor) together with any information required to be provided by it, or received by it from the person making such a proposal, under Condition 11.4;
 - (B) invite the submission of representations on the proposal from the persons to whom the Proposal for Change has been sent pursuant to Condition 9.8(A) 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 9.8(C)); and
 - (C) give a reasonable period (not being less than 45 days) for each User (other than the Sponsor) and the Station Facility Owner (unless the Sponsor) to submit a Notice of Objection in relation to the proposal to the Station Facility Owner in the case of a User and to the Users 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 Development Change Proposal, such period shall not be longer than 45 days.
- 9.9 Copies of any representations or objections received by the Station Facility Owner from any person listed in Condition 9.8(A) 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.
- 9.10 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 9, 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 Development Change Proposal.
- 9.11 A Development Change Proposal shall only be made by the making of an Initial Proposal, a Full Proposal or a Material Variation.
- 9.12 Acceptance by the Users of an Initial Proposal in accordance with Condition 12 is only acceptance of such details as comprise such proposal and such acceptance is deemed to reserve for subsequent approval by the Users all matters set out in Condition 11.3 not particularised in the Initial Proposal and any Material Variations.
- 9.13 The Station Facility Owner shall not commence or proceed with any works falling within the definition of Development Change Proposal until a Full Proposal has been accepted in accordance with Condition 12.
- 9.14 No User may withdraw any acceptance of any Initial Proposal as provided for in Condition 9.12 save where:
- (A) Condition 11.5 applies; or
 - (B) 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 User pursuant to Condition 12 unless such Material Variation is not accepted or is rejected in accordance with Condition 12.

10 Evaluation and response to Major Change Proposals and Development Change Proposals

- 10.1 Each Consultee shall be entitled to be paid in accordance with Conditions 10.10 and 10.11:
- (A) 75% of all costs reasonably incurred by it in evaluating and responding to any Major Change Proposal; and
 - (B) 100% of all costs reasonably incurred by it in evaluating and responding to any Development Change Proposal.
- 10.2 Each Consultee shall, in respect of any Major Change Proposal or Development 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:
- (A) the date of first notification to it in writing of such proposal; or (if later)
 - (B) 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.
- 10.3 Each Consultee shall, in respect of any such Major Change Proposal or Development Change Proposal, upon request from the Station Facility Owner from time to time, provide the Station Facility Owner with:
- (A) a written estimate of the costs which may be reasonably incurred by it in evaluating and responding to such proposal; and
 - (B) such information as may be reasonably necessary to assess the reasonableness of any such estimate.
- 10.4 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.
- 10.5 Each Consultee shall ensure that any estimates given by it pursuant to Condition 10.3 are, so far as reasonably practicable, accurate on the basis of the information available to it.
- 10.6 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 Development 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.
- 10.7 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.
- 10.8 Any Sponsor other than the Station Facility Owner shall, if such proposal is a Major Change Proposal or Development Change Proposal, use all reasonable endeavours to facilitate consultation by the Station Facility Owner with the persons specified in Condition 9.8(A) to the extent reasonably necessary so as to enable those persons properly to evaluate and respond to that proposal.

- 10.9 The Station Facility Owner shall, at the cost of the Sponsor, exercise its rights under this Condition 10 (including the enforcement of the obligations of a Consultee to the Station Facility Owner under this Condition 10) in accordance with such reasonable requests as may from time to time be made by the Sponsor.
- 10.10 If the Station Facility Owner is the Sponsor, it shall make the payments specified in Condition 10.1.
- 10.11 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 10.1 (and the amount due to the Station Facility Owner) and the Station Facility Owner shall thereupon make the payments specified in Condition 10.1.

11 Development Change Proposal

- 11.1 At least every 6 months, the Station Facility Owner shall convene a Station Meeting (by giving notice in accordance with Condition 2.1(A)) to discuss any possible Development Change Proposal.
- 11.2 The Station Facility Owner shall supply with the notice of any Station Meeting convened pursuant to Condition 2.1 (A) the following information (so far as it is available) in respect of any such Development Change Proposal:
- (A) a broad strategic plan for any such proposal;
 - (B) the likely form and scale of the proposed development;
 - (C) the area of the Station affected; and
 - (D) the timetables and policy for implementing the proposal.
- 11.3 A Development 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 9.7(B):
- (A) details as to those parts of the Station which will be affected during and after implementation of the proposal;
 - (B) the nature and detailed specification of the development to which the proposal relates, including the design, type, size and location of any proposed:
 - (1) alternative Station facilities (both whilst any works are being carried out and after the works have been completed);
 - (2) (if requested by any User) alternative accommodation and facilities in place of those normally occupied by that User; and
 - (3) changes to any Common Station Amenities;
 - (C) the estimated timetable for the commencement, conduct and completion of the development to which the proposal relates and each material part of it;
 - (D) proposals for obtaining any relevant planning consents;
 - (E) proposed working arrangements (including those in relation to safety);
 - (F) proposed alternative arrangements in respect of access to and from the highway

whilst the works are being carried out (if appropriate);

- (G) proposed alternative arrangements during the carrying out of proposed works to enable each User'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;
- (H) any proposed information display systems which will be available while the works are being carried out;
- (I) proposed insurance arrangements; and
- (J) confirmation from the Station Facility Owner that any work plan entered into with any third party relating to the works comprised in any Development Change Proposal will where relevant contain provisions which require such third party to notify the Station Facility Owner of any Material Variation.

11.4 A Development Change Proposal shall be accompanied by the following:

- (A) the offer of an indemnity in favour of each User 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
- (B) the offer of an undertaking in favour of each User to whom the Station Facility Owner 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 and such alternative accommodation.

11.5 A Development Change Proposal shall cease to have effect in each of the following circumstances:

- (A) in the case of a Full Proposal not preceded by any Initial Proposal if the works in the relevant Development Change Proposal have not commenced within three years (or such other period as the relevant approved Development Change Proposal shall specify) of the date upon which the Development Change Proposal was approved pursuant to this Part 3:
- (B)
 - (1) where the Station Facility Owner makes any Initial Proposal in respect of any Development Change Proposal if the Full Proposal is not submitted to the Users for approval within three years from the date upon which the first Initial Proposal for that Development Change Proposal is approved pursuant to Part 3; and
 - (2) where the works of any such approved Development Change Proposal have not commenced within two years (or such other period as the approved Development Change Proposal shall specify) of the date upon which the Full Proposal is approved as a Development Change Proposal pursuant to Part 3; and
- (C) 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 Material Variation is approved as a Development Change Proposal pursuant to Part 3.

- 11.6 Each or any of the Users and the Station Facility Owner may by notice to each of the others of them request that any Material Variation Question which may arise at any time in connection with any particular Development Change Proposal be referred for determination pursuant to the Disputes Resolution Procedure.
- 11.7 All costs incurred by the panel and/or arbitrator appointed pursuant to the Dispute Resolution Procedure and all reasonable costs of the parties to the dispute shall be borne by whichever of the Users and the Station Facility Owner as shall be determined and in the absence of such determination the costs incurred by the panel and/or arbitrator appointed pursuant to the Dispute Resolution Procedure 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.
- 11.8 The Station Facility Owner shall be entitled to propose modifications to a Development Change Proposal and shall in that regard supply all such information described in Condition 11.3 as is relevant to those modifications and the Users 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 so supplied are not a Material Variation to that Development Change Proposal if:
- (A) the Station Facility Owner has stated when supplying that information that in its opinion such modifications are not such a Material Variation; and
 - (B) none of the Users notifies the Station Facility Owner within fourteen days of the supply of that information that it disputes that opinion.

12 Acceptance of a Proposal for Change

- 12.1 Subject to the remaining provisions of this Condition 12, a Proposal for Change shall be deemed to have been accepted at the expiry of a Decision Period if:
- (A) in the case of a Unanimous Proposal no Voting Operator shall have given a Notice of Objection to the Station Facility Owner;
 - (B) in the case of a Majority Proposal, the Requisite Majority shall have failed to give Notices of Objection to the Station Facility Owner ; and
 - (C) in the case of either a Unanimous Proposal or a Majority Proposal:
 - (1) the Station Facility Owner shall have failed to give a Notice of Objection to the Users; or
 - (2) the Station Facility Owner having given such a notice, the Proposal for Change would not have a material and adverse effect on the Station Facility Owner's interest in the Station,

provided that in the case of a Proposal for Change which is a proposal to terminate the letting of any Core Facility on grounds of a breach of covenant by the lessee in accordance with the terms of the relevant lease, a Notice of Objection given by the User which is the lessee of the Core Facility shall be disregarded.

- 12.2 Notwithstanding the failure of a Proposal for Change to be accepted pursuant to Condition 12.1 and subject to Condition 12.4, it shall be deemed to have been accepted if the Station Facility Owner, any User or number of Users shall individually or collectively provide Financial Undertakings to the remaining Users or the Station Facility Owner (as appropriate).

- 12.3 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, in the case of a Major Change Proposal or a Development Change Proposal all other persons referred to in Condition 9.8) of the acceptance or rejection of the relevant Proposal for Change and of any notice given under Condition 12.4 and received within that period.
- 12.4 A Proposal for Change shall not be accepted or rejected if:
- (A) a User or the Station Facility Owner shall have:
 - (1) given notice (to the Station Facility Owner in the case of a User and to the Users in the case of the Station Facility Owner) within 30 days after the end of the Decision Period of its intention to commence proceedings of the kind referred to in Condition 12.4(B); and
 - (2) commenced such proceedings not later than 30 days after the giving of such notice; and
 - (B) the objector shall establish in final proceedings in accordance with Condition 37 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:
 - (1) its interests under or in respect of the Station Access Agreement or in relation to the Station would be, or are likely to be, unfairly prejudiced; and
 - (2) any such prejudice which it would or would be likely to sustain outweighs, or is likely to outweigh, any such prejudice which any other User or the Station Facility Owner shall have established that, whether alone or together with any other User or the Station Facility Owner, it would or would be likely to sustain in respect of its interests under or in respect of the relevant Station Access Agreement or in relation to the Station if the Proposal for Change were carried out, or not carried out (as the case may be) in accordance with its terms.
- 12.5 In determining whether the interests of any User or the Station Facility Owner shall be, or shall be likely to be, prejudiced for the purposes of Condition 12.4, the following shall be taken into account:
- (A) (to the extent applicable) the Decision Criteria;
 - (B) the expectations which:
 - (1) the User in question has in respect of its interests in relation to the Station; and
 - (2) the Station Facility Owner has in respect of its interests in relation to the Station;
 - (C) 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;
 - (D) the interests of other users of the Station; and
 - (E) where the Station Facility Owner has served a Notice of Objection in accordance with Condition 9.8(C), 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 Development Change Proposal:

- (F) 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;
- (G) the likely property market conditions relating to the proposed development and railway operational needs of the Station Facility Owner and each User relating to the demand for new or improved station facilities and their effect on the viability of the proposal;
- (H) the benefits or disbenefits which have accrued or are likely to accrue to the Station Facility Owner and each User in consequence of the proposal other than any loss of development profit which the Station Facility Owner 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 after assessing the benefits and disbenefits that will accrue to the Station Facility Owner and the User taking into account the relative importance of the benefit or disbenefit to the Station Facility Owner's or the User's respective railway businesses, provided that there shall not for these purposes be taken into account:
 - (1) any Passenger Operator's franchise term (as defined in section 23(3) of the Act) (if applicable); nor
 - (2) the existence or terms of any contract, other than a Station Access Agreement, entered into by the Station Facility Owner after the Conditions Efficacy Date except to the extent that the tribunal shall be satisfied that they ought properly be taken into account; and
- (I) where that Development Change Proposal is itself a Material Variation to a Development Change Proposal which has already been agreed, the fact of that agreement and the extent of the Material Variation.

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

12.7 Notwithstanding the other provisions of this Condition 12, a Proposal for Change shall be deemed to have been accepted if every User and the Station Facility Owner (other than the Sponsor) shall consent in writing to that Proposal for Change.

12.8 Where a Proposal for Change is deemed to be accepted pursuant to Condition 12.7:

- (A) 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
- (B) Condition 12.4 shall not apply in respect of that Proposal for Change.

13 Implementation of a Proposal for Change

13.1 The Station Facility Owner shall not be obliged to implement an approved Development Change Proposal, but if it does so it shall carry out the change proposed in accordance with the approved Development Change Proposal. The Station Facility Owner shall give notice to the Users as soon as it becomes aware that there is no reasonable prospect of the Development Change Proposal being implemented.

- 13.2 Subject to Condition 13.5, 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 3.
- 13.3 Subject to Condition 13.4 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 User and the Station Facility Owner in accordance with the provisions of that Proposal for Change.
- 13.4 The costs of implementing a Development Change Proposal shall be borne by the Station Facility Owner.
- 13.5 If any Proposal for Change will have the effect of:
- (A) changing the nature, standard, quantum or the terms for the provision of any Common Station Service which is provided by a sub-contractor of the Station Facility Owner or otherwise affecting the provision thereof; or
 - (B) making any service which is not a Common Station Service a Common Station Service at the Station,

then any such Proposal for Change shall not be required to be implemented until the date falling 6 months after it would otherwise have been required to be implemented or such earlier date (being the earliest date on which the Station Facility Owner is in a position to give effect to such Proposal for Change having used all reasonable endeavours to be able to do so as soon as possible) as may be notified by the Station Facility Owner to the Users.

14 Changes imposed by law

- 14.1 Where the Station Facility Owner is required (other than at its own request or instigation) to implement a change which would otherwise be the subject of a Proposal for Change, as a result of any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition 37, the Station Facility Owner shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions 9.8(A) and 9.8(B) in respect of that change.

PART 4: WORKS, REPAIRS AND MAINTENANCE

15 Existing Works, Third Party Works and Emergencies

- 15.1 Subject to Condition 17, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary:
- (A) to permit the carrying out of Existing Works or Non-Discretionary Third Party Works, provided that in the case of Existing Works the Station Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with any requirements specified in Annex 4;
 - (B) to safeguard the safety or security of persons or property in an Emergency at or affecting the Station; or
 - (C) in a Network Emergency.

16 Repairs and Maintenance and other works

- 16.1 Subject to Conditions 16.3 and 17.1, the Station Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Station if and to the extent that it is reasonably necessary to:
- (A) permit Repair, Maintenance, Discretionary Third Party Works or Minor Works to be made or carried out at or in relation to the Station;
 - (B) permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part 12 subject to compliance with the provisions of Part 3 insofar as such action involves a Proposal for Change (save where otherwise provided for in Part 12);
 - (C) permit any works conducted in accordance with an obligation under Part 5, to be made or carried out, subject to compliance with the provisions of Part 3 where such works are undertaken to remedy Substantial Damage;
 - (D) permit any works 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 14; and
 - (E) permit any works carried out in accordance with the provisions of Condition 52.3.
- 16.2 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in accordance with Condition 16.1 when reasonably requested to do so by any User in order to enable such User either to comply with its obligations under Part 12 or to exercise its rights under Condition 52.3.
- 16.3 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station in accordance with Condition 16.1 (otherwise than in a trivial respect) and a User shall, if it requests the Station Facility Owner to impose such a restriction, suspension or alteration (otherwise than in a trivial respect) pursuant to Condition 16.2:
- (A) provide at least 10 Business Days notice in writing to each User (and the Station Facility Owner where a User so requests) of:
 - (1) the date and time proposed for the restriction, suspension or alteration; and
 - (2) a reasonable programme of works for the carrying out of the works in

question; and

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

16.4 The Station Facility Owner shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Conditions 15 and 16.

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

- (A) where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts 3 and 4 as if the exercise of the discretion in question were a Proposal for Change; and

- (B) where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition 17.

17 Alternative Arrangements

17.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Conditions 15 or 16, it shall, to the extent reasonably practicable, make timeous and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Station provided for in the Station Access Agreement, for:

- (A) suitable alternative arrangements in respect of access to and egress from the highway;
- (B) each User's Associates to pass to and from trains operated by or on behalf of that User which stop at the Station and for any Passenger Operator's passengers to buy tickets for railway passenger services; and
- (C) the provision of up-to-date train running information and toilet amenities,

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

17.2 Each User shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition 17.1 as a result of a request by it pursuant to Condition 16.2.

18 Station Facility Owners obligations

18.1 The Station Facility Owner shall ensure that:

- (A) Maintenance and/or Repair (as the case may be) is carried out to all Equipment and all parts of the Station and that renewal shall be undertaken where it is reasonably necessary and the most economic method of repair; and

- (B) any Element of the Station or item of Equipment shall insofar and to the extent that it is as at the Conditions Efficacy Date in a state of actual disrepair (or, as the case may be, not in working order) be brought into a proper state of repair (or, as the

case may be, working order) as soon as reasonably.

18.2 The Station Facility Owner's obligations in Condition 18.1 shall extend to adequately painting and decorating (which shall include the application of preservative treatments where appropriate) the interior and exterior of any buildings forming part of the Station.

18.3 The Station Facility Owner shall not be in breach of its obligations under Conditions 18.1 and 18.2 if the Station or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Conditions 18.1 and 18.2, the Station Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.

19 Equipment

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

20 General Upkeep

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

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

(B) clean all windows and glass comprised in the Station.

21 Conduits free from obstruction

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

22 Snagging and Inherent Defects

22.1 In this Condition 22 the following expressions shall have the following meanings:

“Building Contract” means the contract(s) entered into by or on behalf of the Station Facility Owner relating to the construction and fit-out of the Station or any part of it and any related agreements or instruments;

“Relevant Defect” means any defect in any works undertaken pursuant to a Building Contract that a contractor can be required to remedy pursuant to that Building Contract and for which the Station Facility Owner would otherwise be responsible for remedying pursuant to these Station Access Conditions; and

“Snagging Item” means any matters subject to which any certificate of practical completion has been issued pursuant to a Building Contract.

22.2 Any works undertaken pursuant to the Building Contract shall amount to Existing Works in relation to which the Station Facility Owner does not have an absolute discretion and shall be deemed to be carried out on behalf of the Station Facility Owner.

22.3 The Station Facility Owner shall procure that Snagging Items are completed in accordance with the applicable Building Contract.

22.4 The Station Facility Owner shall use all reasonable endeavours to enforce the Building Contract(s) to require the contractor(s) to carry out appropriate remedial works in respect of any Relevant Defect in accordance with the Building Contract.

PART 5: INSURANCE

23 Responsibility for effecting insurance

- 23.1 The Station Facility Owner shall insure and keep insured the Station against:
- (A) property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent station operator would effect and maintain insurance (other than the Insured Risks); and
 - (B) the Insured Risks with reputable insurers upon reasonable commercial terms provided that the terms of such insurance shall not unreasonably restrict any User's use of the Station.
- 23.2 The Station Facility Owner shall, in respect of any insurance effected pursuant to Condition 23.1(B), use all reasonable endeavours to procure that:
- (A) such insurance is effected for the Full Replacement Cost (less such excess as shall constitute the Minimum Sum) provided that such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one station at which the Station Facility Owner is the facility owner (being referred to in this Part 5 collectively as the "Affected Major Stations" and separately as an "Affected Major Station") such excess shall apply only once in respect of that occurrence to the Affected Major Stations as a whole; and
 - (B) such insurance is effected so that in the event of Substantial Damage to the Station, it shall be replaced with a modern equivalent building of a size and specification to meet modern requirements (unless exact replacement of the Station is required by any public body pursuant to listed building or other legislation or by a Superior Estate Owner).
- 23.3 Each User shall, if it is not a public service operator, effect and maintain appropriate insurance with reputable insurers against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.
- 23.4 Each User shall, in respect of any insurance policy to which Condition 23.3 applies, provide that Station Facility Owner with suitable evidence, promptly upon receipt of a request from the Station Facility Owner for such evidence, that such insurance policy is in full force and effect, that all premiums have been paid up to date and that no circumstances exist which might lead to that policy being avoided.

24 Destruction or Damage to the Station

- 24.1 If the Station is destroyed or damaged by an Insured Risk then:
- (A) an amount up to the Minimum Sum; and
 - (B) all monies payable under insurance policies effected by the Station Facility Owner pursuant to Condition 23.1(B),
- shall be applied by the Station Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Station, subject to:
- (C) agreement pursuant to Condition 24.2; and
 - (D) the Station Facility Owner obtaining all necessary permissions and approvals which the Station Facility Owner shall use all reasonable endeavours to obtain as soon as

reasonably practicable,

provided that if any occurrence of an Insured Risk shall affect the Station and one or more Affected Major Stations then any monies applied by the Station Facility Owner pursuant to Condition 24.1(A) shall be required to be applied to the Station only in the same proportion as the amount of insured damage suffered at the Station from the occurrence of the Insured Risks bears to the total amount of insured damage so suffered at all Affected Major Stations.

24.2 As soon as practicable following any destruction of or damage referred to in Condition 24.1, the Station Facility Owner shall consult with the Users and shall use all reasonable endeavours to agree:

(A) the necessary reinstatement works, which in the case of Substantial Damage (and save where required by reason of the listed building or similar status of the Station or by a Superior Estate Owner) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed; and

(B) the programme for the carrying out of such reinstatement works,

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

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

24.4 If the monies recovered under any insurance policy maintained by the Station Facility Owner pursuant to Condition 23.1 are not sufficient to meet the cost to the Station Facility Owner of fulfilling its obligations under Condition 24.2, the Station Facility Owner shall bear the shortfall.

25 Provision of Documents

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

(A) a copy of each insurance policy under, or in respect of which, the User has an interest and which relates to the Station or any risk of, or in any way associated with, the operation of the Station;

(B) reasonable details of any amount payable by any User in respect of any such insurance policy; and

(C) reasonable details of any claim which shall be made under any such insurance policy if the making of that claim affects or could reasonably be expected to affect any User.

26 Maintenance of Insurance

26.1 In respect of each insurance policy to which Condition 25 applies, the Station Facility Owner shall procure that:

(A) if and to the extent that any User has an insurable interest capable of being covered by such policy and to the extent that any User reasonably so requests, any User is named as a co-insured under such policy on such terms as shall be reasonable;

- (B) the policy is maintained and all claims are duly filed, and all proper steps to collect proceeds are duly taken in respect of such policy; and
- (C) if such insurance policy is not required under a station licence held by the Station Facility Owner or the Station Facility Owner does not hold a station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to any User by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given.

27 Increase of premium or invalidation of policy

27.1 A User shall not, and shall procure that its Associates (other than passengers) do not, bring onto or do or omit to do at the Station anything which it is aware, or it ought reasonably to be aware, would:

- (A) invalidate any insurance of the Station or any Adjacent Property; or
- (B) increase the premium payable for that insurance; or
- (C) render wholly or partly irrecoverable the monies which otherwise would have been payable under that insurance,

subject to the User receiving notice of any material provision of the insurance of the Adjacent Property which does not apply to insurance of the Station and the Station Facility Owner shall procure that any tenant or any person deriving title under or authorised by the Station Facility Owner to enter the Station shall comply with this Condition 27.1.

27.2 The User responsible for any act or omission contemplated by Condition 27.1 shall pay to the Station Facility Owner on demand the amount of:

- (A) any increase in premium referred to in Condition 27.1(B); and
- (B) any irrecoverable insurance monies referred to in Condition 27.1(C),

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

28 Rights of Subrogation

28.1 The Station Facility Owner shall use all reasonable endeavours to procure that any insurance policy to which Condition 25 applies shall include a waiver of the relevant insurer's right of subrogation against each User.

PART 6: EXISTING AGREEMENTS AND THIRD PARTY RIGHTS

29 General

- 29.1 No User shall do or permit to be done anything which might reasonably be expected to cause a breach of any Existing Agreement in so far as it is aware of any such obligations or such obligations are disclosed in the Station Register and such obligations relate to the Station. For the avoidance of doubt merely listing an Existing Agreement in Annex 5 does not amount to disclosure for these purposes.
- 29.2 The Station Facility Owner shall (on an after tax basis) indemnify each User, and keep it indemnified, against all costs and expenses reasonably and properly incurred by it in and as a consequence of its complying with its obligations under Condition 29.1 in relation to any Existing Agreement.

30 Station Facility Owner's representations, warranties and undertakings

- 30.1 The Station Facility Owner represents, warrants and undertakes to each User that as at the date first mentioned in Condition 39.1 all Existing Agreements the terms of which result or are likely to result in a Relevant Restriction will have been disclosed in the Station Register in accordance with the provisions of Part 8.
- 30.2 The Station Facility Owner shall comply with the obligations binding on the Station Facility Owner and contained in the Existing Agreements insofar as non-compliance by the Station Facility Owner would or could have a material adverse effect on any User or its business.
- 30.3 The Station Facility Owner represents, warrants and undertakes to each User that it has not entered into and will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to:
- (A) any Existing Agreement; or
 - (B) these Station Access Conditions.

31 Exercise of discretion/Grant of consent

- 31.1 Where any Existing Agreement contains rights and/or obligations:
- (A) whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by the Station Facility Owner; and
 - (B) the rights in respect of which may be exercised so as to protect the permission to use of any User,
- the Station Facility Owner, shall when exercising such discretion or granting such consent, approval or waiver, subject to the terms of that Existing Agreement, consult with and have due regard to any representations which may be made by any User and shall at all times ensure, so far as reasonably practicable, that any disruption to the operation and/or use of the Station is minimised in all respects.
- 31.2 Where any works are proposed to be carried out under the terms of any Existing Agreement:
- (A) where the Station Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts 3 and 4 as if the exercise of the discretion in question were a Proposal for Change; and

(B) where it has no such absolute discretion in relation to the carrying out of such works, so far as reasonably practicable, it shall comply with Condition 17.1.

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

32 Wayleave grants

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

32.2 The Station Facility Owner may retain the benefit of grants pursuant to Condition 32.1 including rents or other payments arising under them except for any compensation for damage suffered by each User which shall be paid to the User in question promptly upon receipt.

32.3 No grant shall be made pursuant to Condition 32.1 until each User has been consulted and the Station Facility Owner shall have had due regard to that User's interests in the Station including the operational integrity of the Station and that User's existing and future plans for its use and enjoyment of the Station.

32.4 Any grant of rights of way made pursuant to Condition 32.1 shall require the grantee to comply with the Station Facility Owner's reasonable requirements in relation to safety or security and to give due consideration to its and any User's representations regarding the effect of the exercise of the rights in question on its and the User's operations. Any grant of a right of entry to carry out works made pursuant to Condition 32.1 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Station no less beneficial than the provisions of Conditions 16.3(B) and 67.

33 Superior Estate Owner consent

33.1 Where, under these Station Access Conditions, the consent of the Station Facility Owner is required, and such consent may be given by the Station Facility Owner only with the permission of a Superior Estate Owner arising under a Superior Estate Grant in existence on the Conditions Efficacy Date, or any replacement for such Superior Estate Grant, it is a condition precedent to the grant of that consent that such permission is first obtained, provided that the Station Facility Owner shall use all reasonable endeavours to obtain such permission.

PART 7: LITIGATION AND DISPUTES

34 Notification by Station Facility Owner

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

- (A) any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which is likely to exceed £5,000;
- (B) any claim, litigation, lien, demand or judgment relating to the Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are likely to exceed £5,000; and
- (C) any other dispute relating to:
 - (1) the Station; or
 - (2) any rights granted to that User under its Station Access Agreement;which it (acting reasonably) believes may have a materially adverse effect on the User's business at the Station.

35 Notification by User

35.1 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.

35.2 Notwithstanding Conditions 34 and 36, a User shall have the right to participate in any prosecution, defence or settlement conducted in accordance with such Conditions at its sole cost and expense, provided that such participation shall neither prejudice its conduct by the Station Facility Owner nor reduce the User's share of the cost of such action.

36 Authority of Station Facility Owner

36.1 The Station Facility Owner:

- (A) shall have the authority; and
- (B) shall, so far as is reasonably practicable and prudent in respect of any third party act of a kind referred to in Condition 52.5, use its reasonable endeavours,

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

- (C) the dispute is likely materially to affect the Station Facility Owner's ability to operate the Station; or
- (D) the Station Facility Owner proposes to account for the costs or amount of such a dispute as part of the Qualifying Expenditure 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 £20,000.

37 Resolution of disputes and claims

- 37.1 Any dispute or claim arising out of or in connection with these Station Access Conditions or a Station Access Agreement shall be resolved pursuant to the Disputes Resolution Procedure.

- 37.2 The Station Facility Owner shall ensure that all Users are required to accede to the Disputes Resolution Agreement as a condition of a User having access to the Station pursuant to the terms of a Station Access Agreement (save where the Secretary of State does not require the same or the Station Facility Owner cannot require the same as a matter of law).

PART 8: STATION REGISTER

38 Creation and Maintenance of the Register

38.1 The Station Facility Owner shall, in such form as it may reasonably determine, create and thereafter maintain at the premises referred to in paragraph 9 of Annex 1 a register for the purposes of this Part 8 and shall, upon ceasing to be the facility owner of the Station, deliver to the person succeeding it as facility owner:

- (A) such register; and
- (B) a copy of each set of financial accounts and supporting information referred to in Condition 98.1.

39 Content of the Register

39.1 As soon as reasonably practicable after the Conditions Efficacy Date but in any event within six months of it, the Station Facility Owner shall cause to be entered in the Station Register:

- (A) so far and as soon as reasonably practicable, but in any event not later than the date first mentioned in this Condition 39.1, in relation to Existing Agreements of which it is aware, the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) a copy or a true and fair description of the material terms of every Existing Agreement;
 - (2) a copy or a true and fair description of the material terms of every amendment (however described) of any such Existing Agreement; and
 - (3) a copy or a true and fair description of the material terms of every consent, approval, waiver or other discretion which shall have been given, made or exercised under or in respect of any such Existing Agreement;
- (B) in relation to Existing Works, all material information in relation to the following insofar as they are likely to result in or effect a Relevant Restriction:
 - (1) all Existing Works;
 - (2) every amendment (however described) to any such Existing Works; and
 - (3) every consent, approval, waiver or other discretion which shall have been given, made or exercised in respect of any such Existing Works;
- (C) in relation to any Conditions Change Proposal described in Part 2 or Proposal for Change described in Part 3, the provisions of:
 - (1) such proposal;
 - (2) any representations and/or objections made in respect of such proposal; and
 - (3) the result of any decisions made by those entitled to vote in respect of, or consent to, such proposal; and
- (E) every Direction of any Competent Authority (other than a Statute) which relates to the Station or to the operation of the Station and which either:

- (1) is likely to result in or affect a Relevant Restriction; or
 - (2) is likely materially to increase the amount of the Qualifying Expenditure, provided that such Direction is not applicable to stations generally;
- (F) in relation to the most recent Vehicle count referred to in Condition 99, details of:
- (1) the date of each such count;
 - (2) the person or persons responsible for such count;
 - (3) a summary of the results of such count; and
 - (4) any challenges and objections made by any Passenger Operator in relation to the results of any such count;
- (G) a copy of the qualification criteria and requirements and the procedure for their establishment referred to in Conditions 65.1(E)(2) and 65.1(E)(3).

40 Exclusions from the Register

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

41 Public Interest

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

42 Inspection and Copies

- 42.1 The contents of the Station Register shall be available at the place where it is required to be maintained for inspection by any User and the Secretary of State during normal business hours, without payment of any fee.
- 42.2 Any User may, on the payment of such reasonable fee as the Station Facility Owner may from time to time specify with the approval of the Secretary of State, 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.
- 42.3 If requested to do so by 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 9: RIGHTS GRANTED OVER ADJACENT PROPERTY

43 Rights of Way

- 43.1 Subject to Condition 47.1, each User shall have the right of way over the Adjacent Property to and from the Station for all purposes in connection with the User's permission to use the Station. Any such right shall be over such of the roadways, vehicular access areas or footpaths or other pedestrian areas or facilities (other than Barrow Crossings) which, at the relevant time, provide access to the Station.
- 43.2 Without prejudice to Condition 43.1, where the Plan shows land marked with black stipple each User shall have the right to pass to and from the Station over that land for all purposes in connection with the User's permission to use the Station.
- 43.3 If the rights in Conditions 43.1 or 43.2 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.

44 Barrow Crossings

- 44.1 Subject to Conditions 44.2 and 47.1, each User shall have the right to use any Barrow Crossing. If such right is exercised, the User shall procure that the operation of trains on the Network or High Speed 1 is not delayed or disrupted.
- 44.2 A User shall not permit the public (other than persons who are accompanied by another person holding a personal track safety certificate) to use a Barrow Crossing.

45 Emergency Rights

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

46 Entry upon the Adjacent Property

- 46.1 Subject to Condition 47.1, each User shall have the right at any reasonable time upon reasonable notice to the Station Facility Owner, or in an Emergency at any time, to enter upon the Adjacent Property with or without vehicles, plant and machinery for the purpose of doing anything that may be required to preserve or to protect life or property.

47 Exercise and enjoyment of Rights

- 47.1 The exercise of rights pursuant to Conditions 43, 44, 45 and 46 shall be:
- (A) subject to due consideration in the circumstances being given to the Station Facility Owner's representations in respect of the effect on its operations; and
 - (B) in common with the Station Facility Owner and any other person to whom rights are granted over the Adjacent Property or who is authorised to use that property.
- 47.2 The Station Facility Owner shall use all reasonable endeavours to ensure that no person shall, save pursuant to an Existing Agreement or the operation of these Station Access Conditions, obstruct a right of way over, the Adjacent Property so as materially to prejudice any User's permission to use the Station.

48 **Works costs**

- 48.1 Each User shall pay to the Station Facility Owner any reasonable costs and expenses properly incurred by the Station Facility Owner and which arise directly out of the exercise by that User of any rights granted to it under this Part 9.

PART 10: STATION FACILITY OWNER'S PROPERTY RIGHTS

49 Property Interests

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

50 Exercise of Rights Granted

50.1 The Station Facility Owner shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Station Access Agreement

(A) overload Conduits on, or obstruct a right of way over the Station, so as materially to prejudice any User's permission to use the Station; or

(B) place any sales barrow or exhibition stand on the Station so as to obstruct:

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

(2) the visibility of any Passenger Information Systems.

50.2 Where an Existing Agreement contains a legally binding obligation on the part of the Station Facility Owner to regrant existing rights or privileges over the Station, the Station Facility Owner may regrant such rights or privileges to the person for the time being entitled to enforce such obligation.

PART 11: PERFORMANCE MONITORING REGIME AND REMEDIES

51 Performance Monitoring Regime

- 51.1 The Station Facility Owner and each Passenger Operator shall procure that with effect from 01 April 2011, Performance Audits are carried out in accordance with this Condition 51 and that in respect of the Accounting Year commencing on 01 April 2011 the following are determined in accordance with Condition 51.6:
- (A) the Audit Representatives;
 - (B) the Initial Performance Audit Form; and
 - (C) the Initial Baseline Mark for each Audit Question.
- 51.2 A Performance Audit shall be carried out on each Audit Date and the Station Facility Owner and the Audit Representatives shall on each Audit Date, subject to Condition 51.6(E), jointly complete a Performance Audit Form in respect of that Performance Audit by
- (A) allocating the appropriate Audit Mark to each Audit Question;
 - (B) stating the relevant Audit Score; and
 - (C) signing the Performance Audit Form.
- 51.3 Where an Audit Score represents an Increase, the Station Facility Owner shall be entitled to receive from each Passenger Operator a Performance Bonus, which shall be paid in accordance with Condition 92.6.
- 51.4 Where an Audit Score represents a Decrease, each Passenger Operator shall be entitled to receive from the Station Facility Owner a Performance Rebate, which shall be made in accordance with Condition 52.1.
- 51.5 The Station Facility Owner shall within 7 days of the completion of a Performance Audit Form pursuant to Condition 52.1:
- (A) notify each Passenger Operator of:
 - (1) the relevant Audit Score stated in that Performance Audit Form; and
 - (2) any entitlement to a Performance Bonus or Performance Rebate arising pursuant to Condition 51.3 or Condition 51.4; and
 - (B) provide to each Passenger Operator a copy of that Performance Audit Form.
- 51.6 The identity of the Audit Representatives, the terms of the Performance Audit Form and, where necessary, the Baseline Mark and Baseline Position shall be determined in accordance with the following provisions:
- (A) The person or persons who are to act on behalf of the Passenger Operators for the purposes of this Condition 51 shall be that person or those persons (but not more than three) each being an employee of a Passenger Operator whose names are jointly notified to the Station Facility Owner by the Passenger Operators from time to time Provided that if no such notification is made by 01 April 2011 the Station Facility Owner shall nominate as the first two persons who are so to act an employee of suitable experience or seniority of each of the three Passenger

Operators which bear the greatest and the second greatest proportion of Qualifying Expenditure.

- (B) The Station Facility Owner and the Audit Representatives shall negotiate with each other with a view to agreeing by 01 April 2011 a form which:-
- (1) as may be necessary to reflect the Common Station Amenities and Common Station Services which are provided at the Station; and
 - (2) as are necessary to state the Points Available for each Audit Question and the Total Points Available,

and if that agreement is not reached by 01 April 2011, the matters in dispute shall be referred by the Station Facility Owner for determination in accordance with the Dispute Resolution Procedure. Such determination shall be final and binding on the Station Facility Owner and the Passenger Operators and establish the relevant form that is required.

- (C) (1) The Station Facility Owner and the Audit Representatives shall on 01 April 2011 or as soon as reasonably practicable thereafter:-
- (a) conduct a review of the Audit Station Amenities and Audit Station Services and use their reasonable endeavours to agree whether each Audit Question is or is not satisfied on the date of that review; and
 - (b) if the Station Facility Owner and the Audit Representatives jointly agree that an Audit Question is:
 - (i) satisfied, allot the Points Available to that Audit Question; or
 - (ii) not satisfied, allot no points to that Audit Question

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

- (2) If the Station Facility Owner and the Audit Representatives do not jointly agree as is referred to in Condition 51.6(C)(1) above then the number of points to be allocated to that Audit Question shall be referred by the Station Facility Owner for determination pursuant to the Dispute Resolution Procedure. Such determination shall be final and binding on the Station Facility Owner and the Passenger Operators and establish the number of points to be allocated to that Audit Question.
- (3) If any Audit Station Amenity or Audit Station Service to which an Audit Question relates is at the date of the review referred to in Condition 51.6(C)(1) adversely affected by any works permitted pursuant to Part 3 or Part 4, the number of points to be allocated to that Audit Question shall be nil and the Total Points Available shall be reduced by the number of Points Available for that Audit Question for the purposes of calculating the Initial Baseline Position.

- (D) If in accordance with the terms of these Station Access Conditions:
- (1) any amenity or service becomes or ceases to be a Common Station Amenity or Common Station Service; or
 - (2) there is a change to the terms upon which any Audit Station Amenity or Audit Station Service is provided to Passenger Operators; or
 - (3) any Audit Station Amenity or Audit Station Service to which an Audit Question relates which was previously adversely affected by any works permitted pursuant to Part 3 or Part 4 ceases to be adversely affected in such way,

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

- (a) the Performance Audit Form;
- (b) the Baseline Marks; or
- (c) the Baseline Position,

as may be necessary to reflect those matters and if that agreement is not reached within such 30 days, the matters in dispute shall be referred by the Station Facility Owner for determination pursuant to the Dispute Resolution Procedure. Such determination shall be final and binding on the Station Facility Owner and the Passenger Operators and establish the relevant modifications.

- (E) If to complete a Performance Audit Form in respect of a Performance Audit reference would need to be made to or reliance placed upon any matter which is required to be determined in accordance with this Condition 51.6 and that the matter has not been so determined then the relevant Performance Audit Form shall not be required to be completed unless and until that matter is so determined.

51.7 In this Condition 51, unless the context otherwise requires:-

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

“**Audit Mark**” means in respect of any Audit Question:

- (a) if (save where paragraph (c) below applies) the Station Facility Owner and the Audit Representatives jointly agree that the Audit Question is:
 - (i) satisfied, the Points Available; or
 - (ii) not satisfied, nil

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

- (b) if the Station Facility Owner and the Audit Representatives do not jointly agree as

is referred to in paragraph (a) above the same Audit Mark as was allocated in the previous Performance Audit or where the Performance Audit is the first in any Accounting Year the relevant Baseline Mark;

- (c) if at the Audit Date any Audit Station Amenity or Audit Station Service to which an Audit Question relates is adversely affected by any works permitted pursuant to Part 3 or 4, no Audit Mark shall be allocated for such Audit question and the Total Points Available for that Performance Audit shall be reduced by the Points Available for that Audit Question;

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

“Audit Representatives” means the person or persons from time to time determined pursuant to Condition 51.6(A) as being those who are to act on behalf of the Passenger Operators for the purposes of this Condition 51;

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

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

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

“Baseline Mark” means in relation to an Audit Question:

- (a) which arises in respect of any Performance Audit carried out in the Accounting Year commencing 01 April 2011, the Initial Baseline Mark for the relevant Audit Question; or
- (b) which arises in respect of any Performance Audit carried out in any subsequent Accounting Year, the average of those Audit Marks allocated to the relevant Audit Question pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Mark for that Accounting Year; or
- (c) where Condition 51.6(D) has applied the number of points determined in relation to the relevant Audit Question pursuant to that Condition;

“Baseline Position” means in relation to a Performance Audit:

- (a) carried out in the Accounting Year commencing 01 April 2011, the Initial Baseline Position;
- (b) carried out in any subsequent Accounting Year, the average of the Audit Scores allocated pursuant to the Performance Audits conducted during the previous Accounting Year which were above the Baseline Position for that Accounting Year; or
- (c) where Condition 51.6(D) has applied the number of points determined pursuant to that Condition

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

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

“**Increase**” means that the relevant Audit Score exceeds:

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

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

“**Initial Baseline Mark**” means that number of points which is determined pursuant to Condition 51.6(C) in relation to the relevant Audit Question;

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

“**Initial Performance Audit Form**” means the form set out in Annex 13 subject to such modifications as may be determined, pursuant to Condition 51.6(B);

“**Performance Audit**” means:-

- (a) a review of the Audit Station Amenities and the Audit Station Services for the purpose of agreeing whether each Audit Question is, or is not, satisfied on the relevant Audit Date; and
- (b) subject to Condition 51.6, an allocation of the appropriate Audit Mark to each Audit Question and calculation of the relevant Audit Score, in each case jointly by the Station Facility Owner and the Audit Representatives;

“**Performance Audit Form**” means the Initial Performance Audit Form subject to such modifications as may from time to time be determined pursuant to Condition 51.6(D);

“**Performance Bonus**” means an amount calculated in accordance with the following formula:

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

where:

RVC = the Residual Variable Charge payable by the Passenger Operator for the relevant Accounting Year as most recently estimated by the Station Facility Owner pursuant to Condition 92.6(A);

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

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

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

than or equal to 70% of the Total Points Available and the Increase is of at least 5 percentage points, 0.5; or

- (c) where the relevant Audit Score is greater than 70% of the Total Points Available and the Increase is of at least 2 percentage points, 1;

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

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

RVC = the Residual Variable Charge payable by the Passenger Operator for the relevant Accounting Year as most recently estimated by the Station Facility Owner pursuant to Condition 92.6(A);

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

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

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

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

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

- 51.8 Nothing done, nor any right or obligation arising, pursuant to or in connection with this Condition 51 shall constitute, or be deemed, an acceptance or evidence of a breach by the Station Facility Owner of its obligations under any Station Access Agreement or by a Passenger Operator under its obligations under any sub-contract with the Station Facility Owner for the provision of any Common Station Service.

52 Abatement and self help remedies

- 52.1 The User’s Access Charge payable for an Accounting Period shall be abated by the amounts specified in, or determined in accordance with the provisions of:

(A) Annex 6 or Annex 7 (as applicable) if, otherwise than in circumstances expressly provided for under these Station Access Conditions, any of the Common Station Services or Common Station Amenities referred to in Annex 6 are not provided to a User that has a right to receive or use them after expiration of the relevant grace period referred to in Annex 6, or the Station is not open for the periods specified in Annex 7; and

(B) Condition 51 where the User is entitled to receive a Performance Rebate from the Station Facility Owner pursuant to Condition 51.

- 52.2 Any amount abated pursuant to Condition 52.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be deducted by the party in question from the Access Charge for the relevant Accounting Period. If and to the extent that the Access

Charge for such period has already been paid, the amount to be abated shall be paid by the party required to grant such abatement to the party entitled to benefit from it, within ten Business Days of the first mentioned party being notified of the relevant cause of abatement.

- 52.3 If the Station Facility Owner fails to carry out any work in accordance with Condition 18 and such failure would have a material adverse affect on the lawful business of a User carried on at the Station then that User, having consulted with each other User, may give the Station Facility Owner written notice of its intention to carry out such work unless, within a reasonable period after receipt of such notice, the Station Facility Owner remedies such breach.
- 52.4 If, after expiry of such reasonable period as is referred to in Condition 52.3, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition 52.3 or where more than one the User referred to in Condition 52.5 may carry out the work in accordance with the relevant provisions of these Station Access Conditions and the Station Facility Owner shall on demand pay to the User the costs and expenses properly and reasonably incurred in carrying out such work.
- 52.5 Where more than one User has given notice under Condition 52.3 then unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Qualifying Expenditure shall be the User referred to in Condition 52.4, provided always that where the User is carrying out any works in accordance with Condition 52.4, the Station Facility Owner shall not take any steps to remedy the relevant breach.
- 52.6 If the Station Facility Owner fails to secure the provision of any of the Common Station Services in accordance with its obligations under these Station Access Conditions any User shall, subject to Condition 52.7, be entitled to procure that such services are carried out in accordance with the relevant provisions of these Station Access Conditions during the period of any such failure. That User shall be entitled to deduct the reasonable cost of carrying out such services from the User's Access Charge payable by it to the Station Facility Owner for the relevant Accounting Period. If and to the extent that the User's Access Charge for that Accounting Period has already been paid, or abated, or falls short of the cost so incurred by the User in question, such cost shall be paid to the User by the Station Facility Owner within ten Business Days of the Station Facility Owner being notified of the amount of the relevant cost.
- 52.7 A User shall be entitled to the remedies referred to in Condition 52.6 only if:
- (A) each other User has agreed that the User may exercise those remedies or the User bears the greatest proportion of Qualifying Expenditure;
 - (B) the Station Facility Owner has been notified in writing of the breach and has been given a reasonable period in which to remedy or procure the remedy of that breach; and
 - (C) the breach remains unremedied by the Station Facility Owner at the end of that period.
- 52.8 If none of the Station Facility Owner, any User, or any of the employees, subcontractors or agents of them has any Default Responsibility in whole or in part for any failure of the kind referred to in Condition 52.1 whether as a consequence of Force Majeure or otherwise, there shall be no abatement of the Access Charge and no person shall be entitled to withhold any part of that charge (save to the extent provided for in Condition 85.2), nor seek payment of an amount in respect of it.

- 52.9 Where for the purposes of Condition 52.1 any amount is to be specified in or determined in accordance with the provisions of Annex 6 by reference to any period of time after which any of the Common Station Services or the Common Station Amenities is unavailable or not provided in accordance with the Station Access Conditions then any such period of time shall only commence upon the Station Facility Owner being notified, or becoming aware, of such unavailability or failure and such notification need not be in writing.

53 User's liabilities

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

- (A) the Station Facility Owner failing to secure the opening of the Station in accordance with Condition 65.1(A);
- (B) the Station Facility Owner failing to provide or procure the provision of the Common Station Services or the Common Station Amenities identified in Annex 6; or
- (C) a Performance Rebate being receivable from the Station Facility Owner pursuant to Condition 51;

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

- (D) Condition 52.1; or
- (E) the provisions (if any) contained in any relevant Station Access Agreement by which Condition 52.1 is varied or disapplied as a result of such breach by the User,

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

54 Indemnities

- 54.1 Subject to Condition 55, 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.

- 54.2 Subject to Condition 55, each User shall (on an after tax basis) indemnify the Station Facility Owner and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the User of any of its obligations under that User's Station Access Agreement.

55 Limitation on claims

55.1 Save as otherwise expressly provided in any Station Access Agreement (including these Station Access Conditions), no party to a Station Access Agreement shall be liable in respect of any breach of a Station Access Agreement:

- (A) unless notice of it is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant or could, with reasonable diligence, have become so known;
- (B) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed £1,000; and
- (C) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds £5,000,

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 55.1(B) and 55.1(C) shall not apply in respect of any obligation to pay any liquidated sum.

55.2 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.

55.3 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 Dispute Resolution Procedure, to the extent applicable, shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

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

56 Default Responsibility

56.1 The Station Facility Owner shall, so far as it is aware of any of the following matters, determine and record the persons who and events which, to the best of its judgement, have caused:-

- (A) any of the Common Station Amenities or Common Station Services identified in Annex 6 not to be provided after the relevant grace period specified in Annex 6, or the Station not to open for the periods specified in Annex 7; and
- (B) a Performance Rebate to be receivable from the Station Facility Owner pursuant to Condition 51

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.

- 56.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition 56.1, have due regard to all information available to it which is relevant in the circumstances.
- 56.3 As soon as reasonably practicable following the occurrence of a matter listed in Condition 56.1, the Station Facility Owner shall notify each User of the degree of causation, if any, of that occurrence attributed by the Station Facility Owner to itself or to the User which shall unless disputed by the User, within 5 Business Days of receipt of that notice be deemed to have been agreed by the User.

57 Force Majeure

- 57.1 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.
- 57.2 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.
- 57.3 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.
- 57.4 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.

58 Application of this Part and Mitigation

- 58.1 The provisions of this Part 11 shall apply in respect of any Station Access Agreement save to the extent varied or disapplied in such Station Access Agreement.

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

PART 12: ENVIRONMENTAL PROTECTION

59 General environmental obligations

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

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

- (A) increase the risk of the Station Facility Owner being liable under the SFO Environmental Indemnity or increase the extent of such liability;
- (B) prejudice the defence of any claim brought against the Station Facility Owner by a Competent Authority or any other person; or
- (C) increase the cost of remedying any Environmental Condition,

provided that a User may in any event take such action either if required to do so by any Competent Authority or in order to comply with Environmental Law.

59.3 No User shall be liable for any Environmental Damage to the extent that it existed as at the Environmental Liability Commencement Date.

59.4 The rights and obligations of each User in respect of the Station under this Part 12 shall apply equally to any part of the Adjacent Property which is subject to an Environmental Condition resulting from the activities of the User at the Station.

60 Remedial action required as a result of a User's activities

60.1 Where:

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

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

60.2 Any User responsible for the Environmental Condition shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition and shall provide the Station Facility Owner with the opportunity to supervise such action (the reasonable costs of such supervision to be borne by the User). The User shall complete such action within a reasonable time and to the reasonable satisfaction of the Station Facility Owner.

60.3 Any action taken by a User pursuant to Condition 60.2 shall be at its own cost.

- 60.4 Where a User fails to take or complete any action required by Condition 60.2 within a reasonable time and to the reasonable satisfaction of the Station Facility Owner, the Station Facility Owner shall be entitled to take or complete such action.
- 60.5 Within 21 days of receiving notification of any act or potential claim, judgment, order, notice, direction or injunction which could give rise to the Station Facility Owner being liable under the SFO Environmental Indemnity, the User shall provide the Station Facility Owner with written details thereof. Such details shall include copies of all relevant data, reports, advice, opinions, statements, correspondence and any other relevant document.
- 60.6 Where the Station Facility Owner receives notification from a User pursuant to Condition 60.5, the Station Facility Owner shall have a right to:
- (A) defend, contest, comply with or settle any claim, judgment, order, notice, direction or injunction; and/or
 - (B) take any action or carry out any works to prevent, mitigate or remedy the condition of the Station pursuant to Condition 61 which could give rise to an obligation of the Station Facility Owner to indemnify the User under the SFO's Environmental Indemnity.

61 The Station Facility Owner's remedial action

- 61.1 If in the Station Facility Owner's reasonable opinion, urgent action is necessary in order to prevent, mitigate or remedy an Environmental Condition or to comply with a Direction of a Competent Authority the Station Facility Owner may take (without the need to comply with Part 3) reasonable steps to prevent, mitigate or remedy that Environmental Condition or to comply with that Direction.
- 61.2 Subject to Condition 61.1, the Station Facility Owner may, if action is in its reasonable opinion necessary in order to prevent, mitigate or remedy an Environmental Condition at the Station for which a User is not responsible, take such action upon at least six months notice to the Users.
- 61.3 Where any action is taken pursuant to Conditions 61.1 or 61.2 to prevent, remedy or mitigate an Environmental Condition which is not the result of the activities of any User or its Associates or of the condition of the Station prior to the Environmental Liability Commencement Date, the cost of such action shall be borne between the Station Facility Owner and the Users on a fair and equitable basis.

62 Environmental indemnities

- 62.1 Each User shall indemnify the Station Facility Owner and keep it indemnified from and against all reasonable and proper expenses, costs and liabilities reasonably and properly incurred by the Station Facility Owner as a result of any Environmental Condition at the Station or the Adjacent Property which exists as a result of activities by that User or its employees, agents, contractors, subtenants or licensees since the Environmental Liability Commencement Date, or the proper undertaking by the Station Facility Owner in accordance with this Part 12 of any steps to prevent, mitigate or remedy such an Environmental Condition.
- 62.2 The Station Facility Owner shall indemnify each User and keep it indemnified from and against all Environmental Liability incurred by each User to the extent that such liability is due to the condition of the Station prior to the Environmental Liability Commencement Date, provided that the Station Facility Owner shall not be liable under this Condition 62.2

for any Environmental Liability which results from the User's failure to comply with the obligations contained in this Part 12.

62.3 If any payment is made by:

- (A) the Station Facility Owner to a User under Conditions 61.3 or 62.2; or
- (B) a User to the Station Facility Owner under Condition 62.1,

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

- (C) the amount recovered from the third party; and
- (D) the amount paid by the payer pursuant to that Condition.

63 Conduct of claims

63.1 A User shall on a timely basis keep the Station Facility Owner informed of the conduct and progress of all claims of the kind referred to in Condition 60.5. The User shall provide promptly to the Station Facility Owner copies of all relevant data, reports, records, pleadings, statements, correspondence, advice and opinions concerning any claim, judgment, order, notice, direction or injunction or the circumstances, events, conditions or activities which could give rise to any liability of the Station Facility Owner to indemnify the User under the SFO's Environmental Indemnity.

63.2 The User shall not settle any claim of the kind referred to in Condition 60.5 without the Station Facility Owner's written consent (such consent not to be unreasonably withheld or delayed).

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

64 Confidentiality

64.1 Where a person who is to provide information or documents under this Part 12 to another person is under a duty of confidentiality in relation to that information or documents, he shall use all reasonable endeavours to obtain permission to disclose such information or documents and unless and until any such permission is obtained he shall not be required to provide such information or documents under this Part 12.

PART 13: OTHER POSITIVE OBLIGATIONS

65 Station Facility Owner's obligations

- 65.1 The Station Facility Owner shall (or shall procure that another person on its behalf shall):
- (A) ensure that the Station is open for use by all Users and their Associates at such times and to such extent as are specified in paragraph 5 of Annex 1, subject to any restrictions or limitations which may apply or be imposed pursuant to these Station Access Conditions;
 - (B) use all reasonable endeavours to ensure that the Common Station Services are provided to a standard and in a quantum which is at least as good as their standard and quantum planned to be provided as at the Conditions Efficacy Date (or in the case of Common Station Services provided within the Domestic Southbound Zone at as at the Commencement Date of the first Station Access Agreement with a Domestic Southbound Passenger Operator) or, if any permitted changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;
 - (C) save as otherwise provided for or permitted by these Station Access Conditions:
 - (1) not change materially the Common Station Services (whether in whole or in part) from the condition (or working order), standard or quantum referred to in Condition 65.1(B) without such change having been approved in accordance with the Station Access Conditions;
 - (2) not change materially the Common Station Amenities (whether in whole or in part) without such change having been approved in accordance with the Station Access Conditions;
 - (D) notwithstanding its obligations under any station licence, comply with any reasonable request of any User which is necessary to enable that User to:
 - (1) deal with an Emergency;
 - (2) comply with its Safety Obligations;
 - (3) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act; and
 - (4) maintain security in relation to persons and property at the Station;
 - (E) use all reasonable endeavours to minimise the costs of the operation of the Station:
 - (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 User in order to provide the Common Station Services and the Common Station Amenities; and
 - (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 £100,000 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 9; 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 65.1(E)(2) 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 fourteen 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 39.1;
- (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

Provided that the provision otherwise than by the Station Facility Owner or its agents of any Common Station Services or Common Station Amenity or any part of them or of any goods or services in connection with the same pursuant to agreements or arrangements entered into prior to the Conditions Efficacy Date shall not be subject to this Condition 65.1(E)(2) provided that the term of any such agreement or arrangement is not varied or renewed except with the prior approval of the Requisite Majority; and

- (3) if:

- (a) any work or service the cost or expense of which would be or is Qualifying Expenditure is provided by the Station Facility Owner (but not any sub-contractor) and the costs and expenses estimated to be incurred by it in an Accounting Year in providing that work or service exceed £100,000; and
- (b) the Requisite Majority so requests (but not more than once in respect of that work or service in any 12 month period and not during any relevant period referred to in Condition 65.1(E)(4) in respect of that work or service);

then the Station Facility Owner shall within three months of such request seek competitive tenders in respect of the provision of that work or service 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 work or service in accordance with any specifications established pursuant to these Station Access Conditions or if none have been so established then a specification determined in accordance with the procedure set out in Annex 9; and
 - (ii) for the provision of such work or service for such reasonable period as the Station Facility Owner may reasonably determine, after consultation with 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 65.1(E)(3) satisfies any objective qualification criteria or requirements in respect of persons to whom it proposes to issue invitations to submit tenders, issue such invitations to any person or persons (but

not more than two) which the Users nominate and who are reputable and appropriately experienced providers of services of the same or similar nature to those in question. 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 shall be entered in the Station Register pursuant to Condition 39.1;

- (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;
- (h) consult with each User (other than a User which submits a bid) upon each bid, rebid and amendments to bid; and
- (i) give notice to each User of the name and address of the tenderer who at the conclusion of negotiations has submitted the lowest bid to provide such work or service in accordance with Condition 65.1(E)(3)(c) and of the amount of that bid;

and the Station Facility Owner shall then promptly either:

- (j) award the relevant contract; or
 - (k) notify the Users that the Station Facility Owner will during the period referred to in Condition 65.1(E)(3)(c)(ii) provide such work or service at a cost equal to the lowest bid; and
- (4) if the Station Facility Owner shall notify the Users pursuant to Condition 65.1(E)(3)(k), then it shall provide the relevant work or service during the relevant period at a cost equal to the bid which represented best value for money and that cost shall, subject always to Condition 82.1, be Qualifying Expenditure;
- (F) 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;
 - (G) without prejudice to Condition 85.3, promptly pay to the relevant authority or person all rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Station and a fair proportion of all such sums which are not separately assessed or payable, but excluding:
 - (1) tax assessable on the Station Facility Owner in respect of payments under any Station Access Agreement;

- (2) tax assessable on the Station Facility Owner in respect of consideration paid to the Station Facility Owner in connection with any dealing with its interest in the Station; or
 - (3) interest or penalties payable by the Station Facility Owner in consequence of its delay or default;
- (H) promptly pay to the relevant person for all Services consumed on the Station or a fair proportion of the cost to the Station Facility Owner in respect of the supply of such services to the Station, the Adjacent Property and any other premises;
 - (I) observe and perform all present and future regulations and requirements of any utility supplying Services to the Station, insofar as such regulations and requirements relate to the Station or its use;
 - (J) take all reasonable steps to prevent, and not to allow, any encroachment on the Station or the acquisition of any right or easement against the Station (save for the rights granted in accordance with these Station Access Conditions);
 - (K) maintain at the Station a notice under section 55 British Transport Commission Act 1949;
 - (L) 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;
 - (M) be responsible for obtaining and/or maintaining any necessary fire certificate for the Station;
 - (N) keep the Railway Substructure and the Railway Superstructure in a safe condition to the extent that it is not the responsibility of any third party;
 - (O) convene a Station Meeting (by giving notice in accordance with Condition 2.1(A)) for at least once every three 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 98.3) 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 three 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;
 - (P) collect and dispose of Track Litter to the extent required to ensure compliance with the Environmental Protection Act 1990 (or which would be so required if the track or land on which such Track Litter is present were relevant land of a principal litter authority as defined by the said Act); and
 - (Q) if a lease of any Core Facility is to be terminated or expires in accordance with the terms of such lease (but not if such a lease is terminated and relet, on terms substantially the same as those that applied to the previous letting, in consequence of a franchise agreement being entered into pursuant to section 26 of the Act), offer to let such Core Facility subject to the provisions of Part 3 and on terms substantially the same as those that applied to the previous letting save as to the term of that letting;

- (1) where such Core Facility is not a ticket office, to the Passenger Operators (other than the Passenger Operator to whom the previous letting had been granted) any such offer being made first to whichever of those Passenger Operators shall bear the greatest proportion of Qualifying Expenditure and, if not accepted within 7 days by that Passenger Operator, being so made to each of the other of those Passenger Operators in turn in descending order of the proportion of Qualifying Expenditure borne by them, provided that if any such offer is not accepted by any of those Passenger Operators the Station Facility Owner shall offer to so let such Core Facility to such person (if any) as the Secretary of State shall nominate within 14 days of being requested to do so by the Station Facility Owner; and
- (2) where such Core Facility is a ticket office for the retailing of tickets for travel in the United Kingdom, to such person as notified by the Secretary of State to the Station Facility Owner as being the lead retailer from time to time having the obligation to operate one or more ticket offices at the Station.

66 Users' obligations

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

- (A) comply with any reasonable request of the Station Facility Owner which is necessary to enable the Station Facility Owner (as the case may be) to:
 - (1) deal with an Emergency or a Network Emergency;
 - (2) comply with its Safety Obligations;
 - (3) maintain security in relation to persons and property at the Station; and
 - (4) comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the Act;
- (B) take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition 66 insofar as they are applicable to them;
- (C) provide to the Station Facility Owner, for display at the Station, such information relating to changes in any railway passenger services provided by any User (including changes of a temporary nature) which shall be necessary or expedient in order to inform passengers of such changes in a timely manner;
- (D) timeously provide to the Station Facility Owner any notices which:
 - (1) are required to be displayed at the Station;
 - (2) contain or specify obligations binding on the User; and
 - (3) are required to be provided by the User,

by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- (E) procure that the Station Facility Owner is provided with a copy of the User's passenger licence (if any) and the safety case referred to in such licence (to the

extent that it shall not already have been provided to the Station Facility Owner) and any modification of it and any notices given under or in respect of it (including any notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the Act) which in any case affect, or are likely to affect, the rights or obligations of the Station Facility Owner under or in respect of the Station Access Agreement;

- (F) without prejudice to the provisions of Condition 1.1(P), timeously notify the Station Facility Owner if the User or any of its Associates wishes to:
 - (1) carry out any material maintenance of, or work to, any thing kept on the Common Station Amenities;
 - (2) bring things onto the Common Station Amenities which may affect the proper operation of the Common Station Amenities; or
 - (3) enter upon the Common Station Amenities with vehicles (not being small operational non-road vehicles);
- (G) use all reasonable endeavours to liaise and co-operate with other Users and the Station Facility Owner in relation to the exercise of their permission to use Common Station Amenities and Common Station Services in order to secure the efficient and economic use of the Station for the benefit of Users and their Associates;
- (H) perform and observe (or reimburse the Station Facility Owner for the whole or a due proportion, as the case may require, of the costs incurred by the Station Facility Owner in doing so) all present and future regulations and requirements of any utility supplying Services to the Station;
- (I) perform and observe the covenants, obligations and conditions for the time being contained in every Superior Estate Grant in existence on the Conditions Efficacy Date, or any replacement for such Superior Estate Grant, so far as they affect the Station and bind the Station Facility Owner except:
 - (1) the covenants for payment of rent and any other money payable by the Station Facility Owner to the Superior Estate Owner under any Superior Estate Grant; and
 - (2) any obligations assumed by the Station Facility Owner under these Station Access Conditions; and
- (J) comply with any reasonable requests of the Station Facility Owner to minimise so far as practicable:
 - (1) emissions from any diesel trains operated by or on behalf of the User from the Station;
 - (2) the costs of cleaning the Common Station Amenities and any track adjacent to platforms within the Station.

67 Standard of works

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

- (A) works referred to in Part 4 and any other works to any part of the Station permitted by these Station Access Conditions which are carried out by it or on its behalf are

conducted in a proper and workmanlike manner in accordance with Safety Obligations and methods and practices customarily used in good and prudent building practice (including, where and to the extent applicable, Railway Group Standards and CTRL Standards);

- (B) such works are conducted with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced building contractors engaged in a similar activity under similar circumstances and conditions; and
- (C) any physical damage to the Station or the Adjacent Property arising as a result of such works is made good as soon as reasonably practicable.

PART 14: OTHER NEGATIVE OBLIGATIONS

68 Planning

- 68.1 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).
- 68.2 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.

69 Encroachments

- 69.1 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.
- 69.2 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.

70 Signs

- 70.1 No User shall display at the Station any sign, light or other illumination or obstruction which will cause, or is likely in the Station Facility Owner's reasonable opinion to cause, confusion or interference with the proper operation of the Network or High Speed 1.

71 Excavations/Excluded Equipment

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

72 Use

- 72.1 No User shall use the Station otherwise than for any of the purposes contemplated by Condition 1.1(O).
- 72.2 No User shall do or, to the extent reasonably within its control, permit to be done on the Station anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to any other User or to the Station Facility Owner or its tenants or the occupiers of any neighbouring property or the public, provided that:
- (A) without prejudice to Condition 59.2, the proper use of the Station for any of the purposes referred to in Condition 72.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition 72.2; and
 - (B) nothing in Condition 72.2(A) shall operate to sanction anything which shall constitute a nuisance actionable by any third party.

- 72.3 Neither the Station Facility Owner nor any User shall bring or, to the extent reasonably within its control, permit to be brought onto the Station anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.
- 72.4 Without prejudice to Condition 59.2 nothing in Conditions 72.2, 72.3 or 72.5 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:
- (A) the purposes permitted by Condition 72.1; or
 - (B) the proper performance by the Station Facility Owner of its obligations under a Station Access Agreement or an Existing Agreement; or
 - (C) (to the extent bringing the same onto the Station is permitted by these Station Access Conditions) the proper performance by the User of its obligations under a Station Access Agreement .
- 72.5 Neither the Station Facility Owner nor any User shall permit smoking within such parts of the Station to which the Smoke-free (Premises and Enforcement) Regulations 2006 apply or naked light within any part of the Station where the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 apply and no dispensation exists.

73 Overloading

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

74 Improper use of Station

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

75 Works to Station

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

76 Not causing breach

- 76.1 Neither the Station Facility Owner nor a User shall do or omit to do, or permit any Associate (other than passengers) or agent of such person to do or omit to do, anything which may result in a breach of any obligation in these Station Access Conditions by any of the Users or the Station Facility Owners to any other of them.
- 76.2 No User shall do anything in breach of, the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence on the Conditions Efficacy Date, or any replacement for such Superior Estate Grant , so far as they affect the Station and bind the Station Facility Owner.

77 Damage caused through Railway Substructure and Railway Superstructure

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

PART 15: ATTRIBUTION OF COSTS

78 Application of this Part

78.1 The provisions of this Part 15 shall not affect the proportions in which Qualifying Expenditure or the Long Term Charge is borne by Passenger Operators.

79 Compliance with obligations under Conditions

79.1 If the Station Facility Owner or any User shall reasonably incur any costs in complying with their respective obligations under Conditions 31.3, 65.1(I), 65.1(J) and 65.1(O), the liability for the payment of those costs as between the Station Facility Owner and each User shall be determined on a fair and equitable basis, having regard to the following criteria:

- (A) if the costs arise from a Proposal for Change that has been accepted in accordance with Part 3 (other than a Proposal for Change made pursuant to Condition 14.1) the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- (B) if the costs arise from the grant, after the Conditions Efficacy Date, of any lease or underlease for residential purposes, then the costs shall be wholly those of the Station Facility Owner; and
- (C) if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Station or Equipment (other than Excluded Equipment), then such costs shall be Qualifying Expenditure to the same extent that the costs of Maintenance and/or Repair thereof would be Qualifying Expenditure.

80 Compliance with changes imposed by law

80.1 Subject to Condition 80.2, if any User shall reasonably incur any costs in complying with, or in consequence of, any Change of Law or any Direction of any Competent Authority (other than any body appointed in accordance with Condition 37), or in complying with Condition 14.1, the liability for the payment of those costs as between any of the Station Facility Owner and the Users shall be determined on a fair and equitable basis having regard to the Decision Criteria and the following matters:

- (A) the expectations which:
 - (1) the User in question could reasonably have had when it entered into the Station Access Agreement; and
 - (2) the Station Facility Owner reasonably has in respect of its interests in relation to the Station;
- (B) the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by the Station Facility Owner and each User upon such change being carried out;
- (C) the benefits or disadvantages which have accrued and are likely to accrue to the Station Facility Owner and each User in consequence of the change;
- (D) the scale of disruption to the Station Facility Owner's and each User's business which is likely to occur in consequence of the change; and
- (E) any User's franchise term (as defined in section 23(3) of the Act) (if applicable),

provided that there shall not for these purposes be taken into account the existence or terms of any contract entered into by the Station Facility Owner after the Conditions Efficacy Date except ;

(F) any Superior Estate Grant; and

(G) any other contract, to the extent that it is determined pursuant to the Dispute Resolution Procedure that it ought properly to be taken into account.

80.2 In relation to the Station Facility Owner, Condition 80.1 shall apply to the costs incurred by the Station Facility Owner in the stated circumstances in its capacity as the operator of the Station and not as the owner or tenant of the Station responsible for its structural integrity and maintenance. Condition 106 applies in the case of relevant changes of law (as defined in that Condition) affecting the Station Facility Owner in the latter capacity.

81 Basis of accounting and payment

81.1 Without prejudice to the obligations of any person under a licence for the operation of the Station or the operation of trains on the Network and/or on High Speed 1 or under the Railway Regulations, any costs incurred by the Station Facility Owner or any User which are required under these Station Access Conditions to be reimbursed by, or accounted to, any other of them shall be accounted for in accordance with generally accepted accounting principles applicable in the United Kingdom.

81.2 The Station Facility Owner and each User shall promptly make such payments as are necessary to discharge their respective liabilities for the payment of the costs to which Conditions 79 and 80 relate.

82 Apportionment of costs

82.1 Any costs incurred both in relation to:

(A) Qualifying Expenditure; and

(B) any other matter or thing,

shall be attributed as between them on a fair and equitable basis, taking into account generally accepted accounting principles applicable in the United Kingdom.

83 Minimisation of costs

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

83.2 The Station Facility Owner shall take such steps as may be available to it to minimise the amount of rates that will be attributable to the Station, including, if so requested by the Requisite Majority of the Common Zone, appealing against any determination that is made.

PART 16: GENERAL

84 Confidentiality

- 84.1 Except as permitted by Condition 84.2, all data and information acquired or received by any party under or pursuant to a Station Access Agreement shall be held confidential during the continuance of such agreement and for a period of six years, and shall not be divulged in any way to any third party without the prior written approval of the other party.
- 84.2 Any party to the Station Access Agreement shall be entitled in good faith to divulge any data or information to which Condition 84.1 applies without the approval of the other party to the following third parties and, where relevant, in the following circumstances:
- (A) to the Secretary of State;
 - (B) to the ORR;
 - (C) to the Health and Safety Executive;
 - (D) to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;
 - (E) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under the Station Access Agreement or to enforce its rights under such Agreement, upon obtaining an undertaking of strict confidentiality from such person (other than such an officer or employee of the party in question);
 - (F) 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 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;
 - (G) to any lender, security trustee, bank or other financial institution from whom such party or any person referred to in Conditions 84.2(E) to 84.2(G) and 84.2(N) is seeking or obtaining finance, upon obtaining an undertaking of strict confidentiality from such entity or advisers;
 - (H) 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;
 - (I) to the extent required by the Act, the Channel Tunnel Rail Link Act 1996 or the Railway Regulations 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;
 - (J) to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;
 - (K) pursuant to the order of any court or tribunal of competent jurisdiction;
 - (L) to London Underground Limited to the extent that:
 - (1) such information is in respect of the interaction between the operations of

the Station Facility Owner and the Users and the operation of railway passenger services by London Underground Limited; and

- (2) it is necessary to divulge such information for the safety and efficiency of any such operations or services; or
- (M) to a passenger transport executive or its successor to the extent that the party disclosing the same is legally obliged to do so.
- (N) to any lender, security trustee, bank, financial institution or person from whom such party is seeking or obtaining or has obtained finance (“Direct Finance”) or in whose favour such party is creating or has created security in connection with such Direct Finance and/or a lender, security trustee, bank, financial institution or person from whom a provider of Direct Finance to such party is seeking or obtaining or has obtained finance for the purpose of financing any Direct Finance to such party (“Indirect Finance”) or in whose favour a provider of Direct Finance is creating or has created security in connection with such Indirect Finance or to any lender, security trustee, bank, financial institution or person from whom a permitted assignee of such party is seeking or obtaining or has obtained finance or in whose favour such assignee is creating or has created security, in any such case, solely to finance the acquisition of rights and benefits assigned to such assignee under a Station Access Agreement (“Assignment Finance”) including:
- (1) any person with whom such party or any provider of Direct Finance or Indirect Finance or such assignee aforesaid is proposing to enter into, or has entered into, any kind of assignment, transfer, participation or other similar agreement in relation to such Direct Finance, Indirect Finance or (as the case may be) Assignment Finance;
- (2) any person or persons who may for the time being be appointed to act as an agent, arranger or manager in connection with the seeking, obtaining or maintenance of any Direct Finance, Indirect Finance or (as the case may be) Assignment Finance; and
- (3) any advisers to any such entity or the persons referred to in (1) or (2) above.

in each case upon obtaining an undertaking of strict confidentiality from the entity, person or adviser in question otherwise than in the case of an assignment or transfer by way of sale or security of or over all or any part of the rights or benefits under a Station Access Agreement in relation to which moneys are raised by means of an issue of bonds, notes or debentures (by way of public offering) in respect of which repayments of principal and payments of interest thereon are secured by such rights or benefits so assigned or transferred unless any disclosure pursuant to this Condition 84.2(N) in such case shall prejudice the commercial interests of any User or as the case may be the Station Facility Owner (or any of their respective Affiliates) in any material respect in which case disclosure to that extent shall require the approval of the party affected (or where any Affiliate of a party (“relevant party”) is affected, the approval of the relevant party).

85 Payments, default interest and VAT

- 85.1 Default interest: If any party to a Station Access Agreement defaults in the payment, when due, of any sum payable under such agreement (howsoever determined), the liability of such party shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (both before and after judgment) at the

Default Interest Rate. All such interest shall be calculated on the actual number of days elapsed and a 365-day year.

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

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

85.3 VAT:

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

86 Invalidity and waiver

86.1 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.

- 86.2 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.
- 86.3 Time limits: Where in the Station Access Agreement any obligation of a party is required to be performed within a specified time limit, that obligation shall be deemed to continue after that time limit if the party fails to comply with the obligation within the time limit.

87 Passenger Transport Executives

- 87.1 If:
- (A) a passenger transport executive or any successor enters into an agreement pursuant to section 20 of the Transport Act 1968 or a franchise agreement with, or in relation to the railway passenger services of, a Passenger Operator; and
 - (B) a notice is at any time given or issued by any party to a Station Access Agreement to which that Passenger Operator is a party in the exercise of any right to terminate that Station Access Agreement,

then the party giving or issuing that notice shall promptly after it has done so send a copy of it to the relevant passenger transport executive or its successor.

88 Creation of Security

- 88.1 In Condition 88:
- (A) “a relevant disposal” means the disposal or the creation of any estate, interest, right or title in or to the Station which, whether or not with the passage of time or the giving of notice, may result in another person becoming the facility owner in respect of the Station but does not include the creation of Security over the Station; and
 - (B) “Security” means any mortgage, pledge, lien (other than a lien arising by operation of law), hypothecation, security interest or other charge or encumbrance.
- 88.2 Subject as hereafter provided the Station Facility Owner shall not make any relevant disposal otherwise than to a person holding a station licence in respect of the Station who prior to the making of the relevant disposal have novated the access agreements of all Users on terms approved by the Secretary of State to such person in accordance with the provisions of such Station Access Agreements providing for such novation, or
- 88.3 The Station Facility Owner shall not create or permit to subsist Security over the Station otherwise than (i) on terms to which the Secretary of State has consented or (ii) upon the direction of the Secretary of State.
- 88.4 A relevant disposal made in breach of Condition 88.2 and Security created or permitted to subsist in breach of Condition 88.3 shall be void and of no effect and shall not be binding upon or confer rights exercisable against any User.
- 88.5 Save and to the extent otherwise agreed pursuant to a User’s Station Access Agreement and without prejudice to the provisions of any novation carried out in accordance with the

provisions of any Station Access Agreement providing for such novation or the terms of any other release or waiver approved or required by the Secretary of State, neither the disposal nor the creation of any estate, interest, right or title in or to the Station shall release the Station Facility Owner from any accrued but unperformed obligation, the consequences of any breach of a Station Access Agreement or the Station Access Conditions or any liability in respect of any act or omission under or in relation to a Station Access Agreement or the Station Access Conditions arising prior to another person becoming the facility owner in respect of the Station.

- 88.6 The Station Facility Owner shall take such steps and provide such assistance to any User as shall enable the User to enter a note of the restrictions set out in the Conditions 88.1 to 88.4 or any of them of this Condition 88 against the Station Facility Owner's title to the Station.

PART 17: ACCESS CHARGING

SECTION A: ST PANCRAS INTERNATIONAL STATION

This Section A of Part 17 applies to St Pancras International station only. Only Users with a Station Access Agreement in respect of St Pancras International station are permitted to sponsor a Conditions Change Proposal to change this Section A of Part 17 and only Voting Operators with a Station Access Agreement in respect of St Pancras International station are permitted to vote in connection with a Conditions Change Proposal to change this Section A of Part 17.

89 **Definitions:**

89.1 In this Part 17, unless the context otherwise requires:

“**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;

“**Certificate**” means a certificate issued by or on behalf of Station Facility Owner pursuant to Condition 93.1(B);

“**change date**” means the date upon which the Passenger Operator’s Proportion changes in the Accounting Year pursuant to Part 17;

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

- (a) the Residual Variable Charge;
- (b) the Fixed Charges;
- (c) (for each Domestic Northbound Passenger Operator) the Domestic Northbound Passenger Operator’s Proportion of the Domestic Northbound Zone LTC and that operator’s Passenger Operator’s Proportion of Common Zone LTC in each case as determined pursuant to Conditions 101.1 and 101.2;
- (d) (for each International Passenger Operator) the International Passenger Operator’s Proportion of the International Zone LTC and that operator’s Passenger Operator’s Proportion of Common Zone LTC in each case as determined pursuant to Conditions 101.1 and 101.3; and
- (e) (for each Domestic Southbound Passenger Operator) the Domestic Southbound Passenger Operator’s Proportion of the Domestic Southbound Zone LTC and that operator’s Passenger Operator’s Proportion of Common Zone LTC in each case as determined pursuant to Conditions 101.1 and 101.4;

“**Common Zone LTC**” means 41.70% of Long Term Charge;

“**Common Zone QX**” means that part of Qualifying Expenditure attributable to the provision of the Common Station Amenities and Common Station Services within the Common Zone or otherwise attributable to the Common Zone;

“**Domestic Northbound Zone LTC**” means 8.34% of Long Term Charge;

“**Domestic Northbound Passenger Operator’s Proportion**” means, save as provided in Conditions 101.1 and 101.2, as at any time, the proportion which the number of that Passenger Operator’s Departures bears to the number of Total Domestic Northbound Departures, as calculated pursuant to Condition 99;

“**Domestic Northbound Zone QX**” means that part of Qualifying Expenditure attributable to the provision of the Domestic Northbound Common Station Amenities and Domestic Northbound Common Station Services or otherwise attributable to the Domestic Northbound Zone;

“**Domestic Southbound Zone LTC**” means 6.43% of Long Term Charge;

“**Domestic Southbound Passenger Operator’s Proportion**” means, save as provided in Conditions 101.1 and 101.4, as at any time, the proportion which the number of that Passenger Operator’s Departures bears to the number of Total Domestic Southbound Departures, as calculated pursuant to Condition 99;

“**Domestic Southbound Zone QX**” means that part of Qualifying Expenditure attributable to the provision of the Domestic Southbound Common Station Amenities and Domestic Southbound Common Station Services or otherwise attributable to the Domestic Southbound Zone;

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

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

“**Fixed Charge Amenity or Service**” means a Common Station Amenity or Common Station Service in respect of which in any relevant Accounting Year a Fixed Charge (other than one determined pursuant to Condition 92.3(C)) was paid by the relevant Passenger Operator;

“**Fixed Charges**” means the fixed charges, if any, provided for in respect of the relevant Accounting Year in

- (i) 91.5(B)(1);
- (ii) Condition 92.2(A)(1);
- (iii) Condition 92.3(B); and
- (iv) Condition 92.3(C);

“**Fixed Costs**” means all costs, expenses and liabilities payable or incurred by the Station Facility Owner in providing or procuring the provision of the relevant amenity or service for the Accounting Year in question;

“**International Zone LTC**” means 43.53% of the Long Term Charge;

“**International Passenger Operator’s Proportion**” means, save as provided in Conditions 101.1 and 101.3, as at any time, the proportion which the number of that Passenger Operator’s Departures bears to the number of Total International Departures, as calculated pursuant to Condition 99;

“**International Zone QX**” means that part of Qualifying Expenditure attributable to the

provision of the International Common Station Amenities and International Common Station Services or otherwise attributable to the International Zone;

“**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;

“**Long Term Charge**” means the charge specified in paragraph 3 of Annex 8 subject to variation in accordance with Condition ;

“**Long Term Charge Commencement Date**” means the Conditions Efficacy Date;

“**Net Fixed Charge**” means in respect of any particular Fixed Charge the balance after deducting the Risk Premium from it;

“**Passenger Operator’s Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of a 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 101;

“**Passenger Operator’s Proportion**” means, save as provided in Condition 101, 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 99 for the purposes of the Station Access Agreement;

“**Performance Bonus**” has the meaning attributed to it in Condition 51;

“**Performance Rebate**” has the meaning attributed to it in Condition 51;

“**Quoted Fixed Charges**” means the fixed charges, if any, proposed to a Passenger Operator by the Station Facility Owner in respect of the relevant Accounting Year pursuant to Condition 91.2(B) or Condition 91.4(A);

“**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 92.1 or 92.3(D);

“**Risk Premium**” means in respect of any particular Fixed Charge (other than one determined pursuant to Condition 92.3(C)), the amount referred to in (as the case may be)

- (i) Condition 91.5(B)(2), where that Fixed Charge is provided for pursuant to Condition 91.5 (B)(1);
- (ii) Condition 92.2(A)(2) where that Fixed Charge is provided for pursuant to Condition 92.2 (A)(1); or
- (iii) Condition 92.3(B) where that Fixed Charge is provided for pursuant to that Condition,

which is part of the Fixed Charge and reflects the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges (and references to Risk Premium in respect of any Quoted Fixed Charges shall be construed accordingly);

“**Total International Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of all International Passenger Operators which have departed from

the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 99 and a reference to a person “representing” Total International Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

“**Total Northbound Domestic Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of all Domestic Northbound Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 99 and a reference to a person “representing” Total Northbound Domestic Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

“**Total Southbound Domestic Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of all Domestic Southbound Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 99 and a reference to a person “representing” Total Southbound Domestic 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:

(a) each Domestic Northbound Passenger Operator:

the Passenger Operator’s Proportion of Common Zone QX and the Domestic Northbound Passenger Operator’s Proportion of Domestic Northbound Zone QX, provided that if that operator’s Passenger Operator’s Proportion changes during an Accounting Year, an amount equal to the aggregate of that Passenger Operator’s percentage share of Qualifying Expenditure attributable to each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC = A/365 \times POP \times QE$$

where:

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

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

POP is the Passenger Operator’s Proportion of the Common Zone QX and the Domestic Northbound Passenger Operator’s Proportion of the Domestic Northbound Zone QX, expressed as a percentage share of Qualifying Expenditure, during the relevant period in question

QE is the Qualifying Expenditure for the Accounting Year in question

(b) each International Passenger Operator:

the Passenger Operator’s Proportion of the Common Zone QX and the International Passenger Operator’s Proportion of International Zone QX, provided that if that operator’s Passenger Operator’s Proportion changes during an Accounting Year, an

amount equal to the aggregate of that Passenger Operator's percentage share of the Qualifying Expenditure attributable to each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC = A/365 \times POP \times QE$$

where:

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

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

POP is the Passenger Operator's Proportion of the Common Zone QX and the International Passenger Operator's Proportion of the International Zone QX, expressed as a percentage share of Qualifying Expenditure, during the relevant period in question

QE is the Qualifying Expenditure for the Accounting Year in question

(c) each Domestic Southbound Passenger Operator:

the Passenger Operator's Proportion of the Common Zone QX and the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone QX, provided that if that operator's Passenger Operator's Proportion changes during an Accounting Year, an amount equal to the aggregate of that Passenger Operator's percentage share of the Qualifying Expenditure attributable to each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC = A/365 \times POP \times QE$$

where:

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

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

POP is the Passenger Operator's Proportion of the Common Zone QX and the Domestic Southbound Passenger Operator's Proportion of the Domestic Southbound Zone QX, expressed as a percentage share of Qualifying Expenditure, during the relevant period in question

QE 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

90 General

90.1 The provisions of this Part 17 of the Station Access Conditions shall apply in respect of any Passenger Operator save to the extent varied or disappplied in a Station Access Agreement with that Passenger Operator (where this would not have a detrimental impact on any other Passenger Operator) under these Station Access Conditions.

90.2 Where the First Year will commence on a date not being 1 April in any year, then Conditions 91 to 98 (inclusive) shall be deemed not to refer to nor to apply in respect of:

- (1) the First Year;
- (2) any Accounting Period or Accounting Half-Year falling within the First Year; or
- (3) the Accounting Year which is the First Year.

91 Notice of Charges

91.1 Not later than 90 days prior to the commencement of each Accounting Year other than the First Year, each Passenger Operator shall notify the Station Facility Owner of those Common Station Amenities and those Common Station Services for which it wishes to pay fixed charges.

91.2 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:

- (A) its best estimate of the Total Variable Charge for that Accounting Year; and
- (B) the amount of such fixed charges as the Station Facility Owner is willing to accept for that Accounting Year for:
 - (1) those Common Station Amenities and Common Station Services referred to in any notice pursuant to Condition 91.1; and
 - (2) any other Common Station Amenities or Common Station Services.

91.3 The notice referred to in Condition 91.2 shall include a detailed breakdown of:

- (A) total Qualifying Expenditure, Common Zone QX, Domestic Northbound Zone QX, Domestic Southbound Zone QX and International Zone QX together with full details of the methodology used to attribute each individual element of Qualifying Expenditure between the Zones. In this regard, individual Qualifying Expenditure costs shall be allocated between the Zones by such allocation methods as may be fair and equitable including by reference to relative size of each Zone and level of services provided within each Zone; and
- (B) both the estimated Total Variable Charge and of the Quoted Fixed Charges, together with comparative figures (if available) 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:
 - (i) in relation to the Total Variable Charge, include a detailed breakdown of the estimated Qualifying Expenditure;

- (ii) in relation to the Quoted 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 Quoted Fixed Charges and the amount of the Quoted Fixed Charges which represents the Risk Premium; and
- (C) include details of the specifications and other assumptions applied in the calculation of the Total Variable Charge and any Quoted Fixed Charges.

91.4 The Station Facility Owner shall:

- (A) if any Passenger Operator notifies the Station Facility Owner within 15 days of receipt of the notice referred to in Condition 91.2 that it wishes to pay fixed charges for any Common Station Amenities or Common Station Services not referred to in that notice for the relevant Accounting Year:
 - (1) notify such Passenger Operator within 15 days of the amount of such fixed charges as the Station Facility Owner is willing to accept for the relevant Accounting Year in respect of such Common Station Amenities or Common Station Services; and
 - (2) in any notice issued by it pursuant to this Condition 91.4(A):-
 - (a) include a breakdown of such further Quoted Fixed Charges in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed;
 - (b) indicate the method of the calculation of such further Quoted Fixed Charges and the costs of the amenities and services in question;
 - (c) identify the amount of such further Quoted Fixed Charges which represents the Risk Premium; and
 - (d) include details of the specifications and other assumptions applied in calculating such further Quoted Fixed Charges
- (B) provide each Passenger Operator with such further information and/or clarification relating to the amounts notified to the Passenger Operator pursuant to Condition 91.2 or Condition 91.4(A) as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.

91.5 The Station Facility Owner and a Passenger Operator may agree that a Fixed Charge shall apply for more than one Accounting Year and where that is so agreed:

- (A) Conditions 91.1, 91.2 and 91.4 shall not apply to the Common Station Amenities or Common Station Services to which that Fixed Charge relates where the Accounting Year for which charges are to be notified pursuant to those Conditions is one during which it has been agreed that that Fixed Charge shall apply; and
- (B) the Station Facility Owner shall where Condition 91.5(A) applies include with any notice referred to in Condition 91.3 confirmation of:-
 - (1) the amount of that Fixed Charge for the Accounting Year for which charges are so notified; and
 - (2) the amount of the Risk Premium in respect of that Fixed Charge.

92 Determination and Payment of Charges

92.1 Each Passenger Operator shall notify the Station Facility Owner by the later of 15 days prior to the commencement of each Accounting Year and 15 days after receipt of the notification pursuant to Condition 91.4(A)(1).

(A) whether it elects to pay fixed charges for any Common Station Amenities or Common Station Services in respect of which Quoted Fixed Charges have been notified to it and, if so, for which of them; and

(B) in each case where it makes such election, whether

(1) it will pay the amount of the relevant Quoted Fixed Charge; or

(2) it wishes to contest the amount of the Quoted Fixed Charge.

Provided that to the extent that a Passenger Operator fails within the relevant period to make any such election, the Passenger Operator shall be deemed to have elected to pay the Total Variable Charge.

92.2 If a Passenger Operator has notified the Station Facility Owner pursuant to:

(A) Condition 92.1(B)(1) that it will pay the amount of the relevant Quoted Fixed Charge for the relevant Accounting Year then:

(1) the amount of the Fixed Charge for the relevant amenities or services shall be that amount; and

(2) the Risk Premium in respect of that Fixed Charge shall be that identified in the notice of the relevant Quoted Fixed Charge pursuant to Condition 92.2 or 91.4(A); or

(B) Condition 92.1(B)(2) that it wishes to contest the amount of any Quoted Fixed Charge, the amount of:

(1) the Fixed Charge for the relevant amenities or services; and

(2) (save where the amount of that Fixed Charge is determined pursuant to Condition 92.3(C)) the Risk Premium in respect of that Fixed Charge,

shall be determined in accordance with Condition 92.3.

92.3 Where Condition 92.2(B) applies:

(A) the Station Facility Owner and the Passenger Operator shall negotiate with each other with a view to reaching agreement as soon as reasonably practicable and no later than the commencement of the relevant Accounting Year on the amount of the Fixed Charge, and of the Risk Premium in respect of that Fixed Charge, for the relevant amenities or services;

(B) if the Station Facility Owner and the Passenger Operator reach agreement with each other on the amount of the relevant Fixed Charge and Risk Premium, then the amounts so agreed shall for the relevant Accounting Year be the Fixed Charge for the relevant Common Station Amenities or Common Station Services and the Risk Premium in respect thereof;

(C) if the Station Facility Owner and the Passenger Operator fail to reach agreement

with each other on the amount of the Fixed Charge by the commencement of the relevant Accounting Year, the dispute as to that amount may be referred at any time up to 15 days after the commencement of that Accounting Year by the Passenger Operator for determination pursuant to the Dispute Resolution Procedure and the amount of the Fixed Charges so determined shall be the Fixed Charge for the relevant Common Station Amenities or Common Station Services for that Accounting Year; and

- (D) to the extent that the Passenger Operator fails within the relevant time period in Condition 92.3(C) to refer the dispute for determination, the Passenger Operator shall be deemed to have agreed to pay the Total Variable Charge or, as the case may be, the Residual Variable Charge for the relevant amenities or services for the relevant Accounting Year.

92.4 Any determination pursuant to Condition 92.3(C) shall:

- (A) establish the amount of the Fixed Charges for the relevant Common Station Amenities or Common Station Services at the amount which shall be considered to be fair and reasonable and include appropriate payments:
 - (1) in respect of the overheads of the Station Facility Owner and by way of management fee for providing or procuring the provision of the relevant amenities or services; and
 - (2) to reflect the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges;
- (B) be made having regard to
 - (1) the terms and conditions of the Station Access Agreement of the Passenger Operator, and in particular:
 - (a) the basis upon which the Residual Variable Charge is calculated and determined;
 - (b) any charges paid by the Passenger Operator for the relevant amenities or services during the preceding Accounting Year; and
 - (c) any specification for the relevant amenities or services or other standard to which they are required to be supplied or provided to the Passenger Operator;
 - (2) the costs which:
 - (a) the Station Facility Owner has incurred or will incur in providing or procuring the provisions of the relevant amenities or services;
 - (b) the Passenger Operator, the Station Facility Owner or Network Rail may incur in providing or procuring the provision of similar or reasonably comparable amenities or services to any person at any station other than the Station in respect of which it is facility owner; and
 - (c) (to the extent such information is reasonably available) it is reasonably likely would be incurred by the Passenger Operator in obtaining the provision of similar or reasonably comparable

services or amenities from providers thereof otherwise than at a railway facility; and

- (3) any contract in existence at the commencement of the relevant Accounting Year pursuant to which the Station Facility Owner procures the provision of the relevant amenities or services and the benefits and disbenefits for the Station Facility Owner if any such contract had to be terminated or amended as a result of the provision of those amenities or services to the Passenger Operator at a fixed charge; and

(C) be final and binding on the Station Facility Owner and the Users; and

the costs and expenses of the determination shall be borne equally by the Station Facility Owner and the Passenger Operator, unless it shall have been determined otherwise.

92.5 If Fixed Charges apply in respect of any Common Station Amenities or Common Station Services for any Accounting Year the Passenger Operator shall

- (A) 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 those Fixed Charges apply; and
- (B) pay for all other Common Station Amenities and Common Station Services by way of the Residual Variable Charge.

92.6 Except as otherwise provided in the Station Access Agreement or in these Station Access Conditions, each User shall pay:

- (A) 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 notify to the Passenger Operator in respect of each Accounting Year in accordance with this Part 17) by four-weekly instalments in arrears, which shall so far as practicable be in an equal amount for each instalment; and
- (B) any Performance Bonus which the Station Facility Owner is entitled to receive from it pursuant to Condition 51.

Such payment shall be made not later than the later of twenty-eight days after :

- (i) the end of the four-week period in question; or
- (ii) the date of receipt of an invoice for such payment.

92.7 If a Passenger Operator shall refer a dispute as to the amount of any Fixed Charges for any amenities or services for determination pursuant to the Dispute Resolution Procedure pursuant to Condition 92.3(C):

- (A) Conditions 92.5 and 92.6 shall, in respect of the period from the commencement of the Accounting Year in respect of which those Fixed Charges are to be paid down to the end of the four week period following next after the determination required by Condition 92.4 has been made, apply as if the Fixed Charges for the relevant amenities or services are the Quoted Fixed Charges for those amenities or services; and

- (B) forthwith following determination of that dispute:
 - (1) the Station Facility Owner shall repay to the Passenger Operator an amount equal to the amount (if any) by which the amount so paid in respect of the relevant amenities or services exceeds the Fixed Charges for them for that period as so determined; or
 - (2) the Passenger Operator shall pay to the Station Facility Owner an amount equal to the amount (if any) by which the amount so paid in respect of the relevant amenities or services is less than the Fixed Charges for them for that period as so determined;

together with interest on such amount at the Standard Interest Rate, calculated pursuant to Condition 95.

93 Certificate of Residual Variable Charge and Fixed Costs

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

- (A) 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
- (B) provide to each Passenger Operator a certificate of the Residual Variable Charge so calculated.

93.2 The certificate shall contain information in an amount of detail which is at least equal to that required by Condition 91.3 in relation to the charges and costs to which it relates.

94 Adjustments for excess and short payments

94.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 92.6 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 93.1, the Station Facility Owner shall repay to the Passenger Operator an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in Condition 94.1(A) above at the Standard Interest Rate, calculated pursuant to Condition 95.

94.2 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 92.6 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 93.1, the Passenger Operator shall pay to the Station Facility Owner an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in Condition 94.2(A) above at the Standard Interest Rate, calculated pursuant to Condition 95.

95 Calculation of Interest

- 95.1 Interest payable pursuant to Conditions 92 and 94 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.

96 Inspection of books, records and accounts

- 96.1 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 or records of staff duties and time spend on such duties (provided that this need only be provided in a form which does not reveal the salaries and any benefits paid to individual staff members in contravention of the Data Protection Act 1998, or similar or replacing legislation), 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.

97 Adjustment following inspection

- 97.1 If, upon or following any inspection in accordance with Condition 96 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 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.
- 97.2 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 eighteen 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:
- (A) 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
 - (B) 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.
- 97.3 If the shortfall referred to in Condition 97.1 represents:
- (A) 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;
 - (B) 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.

98 **Accounts**

98.1 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railway Regulations, the Station Facility Owner shall:

- (A) keep accounts in respect of the Station which relate solely to the operation of the Station;
- (B) 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:
 - (1) the Common Station Services and the Common Station Amenities;
 - (2) the Exclusive Station Services; and
 - (3) each Zone,

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

98.2 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railway Regulations, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition 98.1 shall at all times:

- (A) 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 and any Fixed Charge is made; and
- (B) 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 98.1 above.

98.3 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 91.2 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.

98.4 Any comparison provided pursuant to Condition 98.3 shall, unless the Requisite Majority otherwise consent:

- (A) explain and identify any exceptional items and any variance of more than plus or minus 3 per cent between:
 - (1) the estimates of the Total Variable Charge referred to in Condition 99.3; and
 - (2) 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 98.1(B);

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

- (B) identify any such category or item of expenditure (and any contribution of any person towards any such expenditure) which was estimated pursuant to

Condition 91.2 and which has been actually incurred; and

(C) compare any such expenditure and contributions with that estimate.

99 Calculation of number of Vehicles operated

99.1 The Station Facility Owner shall:

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

(B) after each material change of the kind referred to in Condition 99.3,

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

(i) the Station Facility Owner has grounds for a reasonable belief that a recalculation in accordance with this Condition 99.1 would give rise to a materially different number in any case; or

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

99.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 99.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

99.3 For the purposes of Condition 99.1(B), a material change shall be deemed to have occurred if any event or circumstance (including entry by the Station Facility Owner into a new access agreement permitting a passenger service operator to use the Station, or amendment or termination of any existing access agreement permitting such use) shall have occurred which materially affects or is likely materially to affect the number of Vehicles operated by or on behalf of any Passenger Operator which stops at the Station.

99.4 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 99.1, 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 99. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

100 Calculation of Passenger Operators' Shares of Qualifying Expenditure

100.1 Each Passenger Operator's Proportion of Common Zone QX and (as applicable) the Domestic Northbound Passenger Operator's Proportion of Domestic Northbound Zone QX, the International Passenger Operator's Proportion of International Zone QX and the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone QX shall be equal, as at the Commencement Date, to the percentages specified for this purpose

in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 each time a recalculation is undertaken pursuant to Condition 99.

101 Calculation of Passenger Operators' Shares of Long Term Charge

101.1 Common Zone LTC

Each Passenger Operator's Proportion of Common Zone LTC 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 99 only when:

- (A) there is a change in the number or identity of Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the Passenger Operator's Proportion of Common Zone LTC of any Passenger Operator by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.5 from its Passenger Operator's Proportion of Common Zone LTC that applied immediately prior to the recalculation in question.

101.2 Domestic Northbound Zone LTC

The Domestic Northbound Passenger Operator's Proportion of Domestic Northbound Zone LTC 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 99 only when:

- (A) there is a change in the number or identity of Domestic Northbound Passenger Operators who are Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the Domestic Northbound Passenger Operator's Proportion of Domestic Northbound Zone LTC by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.5 from its Domestic Northbound Passenger Operator's Proportion of Domestic Northbound Zone LTC that applied immediately prior to the recalculation in question.

101.3 International Zone LTC

The International Passenger Operator's Proportion of International Zone LTC shall be equal, as at the Commencement Date, to the percentages specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 only when:

- (A) there is a change in the number or identity of International Passenger Operators who are Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the International Passenger Operator's Proportion of International Zone LTC by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.5 from its International Passenger Operator's Proportion of International Zone LTC that applied immediately prior to the recalculation in question.

101.4 Domestic Southbound Zone LTC

The Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone

LTC shall be equal, as at the Commencement Date, to the percentages specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 only when:

- (A) there is a change in the number or identity of Domestic Southbound Passenger Operators who are Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.5 from its Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC that applied immediately prior to the recalculation in question.

101.5 The percentage referred to in Conditions 101.1, 101.2, 101.3 and 101.4 is to be determined by reference to (as applicable) the Passenger Operator's Proportion, the Domestic Northbound Passenger Operator's Proportion, the International Passenger Operator's Proportion and the Domestic Southbound Passenger Operator's Proportion as specified in the table below:

Passenger Operator's percentage share of (as applicable) Common Zone LTC, Domestic Northbound Zone LTC, International Zone LTC or Domestic Southbound Zone LTC immediately prior to the recalculation in question	Alteration to existing percentage share required to trigger a recalculation
25% or less	more than 100%
more than 25% but less than 50%	more than 85%
50% or more	more than 70%

102 Early Termination of a Station Access Agreement

102.1 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.

102.2 In Condition 101.1, the "Excess Proportion", in relation to each Passenger Operator, shall be calculated as follows:

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

where:

EP is the Excess Proportion of the affected operator;

LTC_{actual} is in the case of each affected operator the share of Long Term Charge which is payable by that affected operator for the relevant period following the relevant termination;

LTC_{notional} is in the case of each affected operator the share of Long Term Charge which, on the assumed basis, would have been payable by that affected operator for the relevant period if the relevant

	termination had not taken place;
RVC _{actual}	is the amount of the Residual Variable Charge which is payable by the affected operator for the applicable period following the relevant termination;
RVC _{notional}	is the amount of the Residual Variable Charge which, on the assumed basis, would have been payable by the affected operator for the applicable period if the relevant termination had not taken place;
“ affected operator ”	means the Passenger Operator in question;
“ applicable period ”	means the period beginning on the date of the relevant termination and ending on the earlier of: <ul style="list-style-type: none"> (a) the last day of the Accounting Year in which the relevant termination occurred; and (b) the next following date in respect of which the Station Facility Owner shall carry out a calculation pursuant to Condition 99.1;
“ assumed basis ”	means the assumption that: <ul style="list-style-type: none"> (a) the relevant termination did not occur; and (b) the Passenger Operator’s Departures of the outgoing operator in the relevant period or the applicable period (as the case may be) were the same as they were immediately prior to the relevant termination;
“ outgoing operator ”	means the Passenger Operator whose Station Access Agreement has been the subject of a relevant termination;
“ relevant period ”	means the period beginning on the date of the relevant termination and ending on the date upon which the Station Access Agreement in question was expressed to expire by reason of the passage of time; and
“ relevant termination ”	means the termination by mutual agreement of the Station Access Agreement of a User other than the affected operator.

103 Contributions from Third Parties

103.1 The Station Facility Owner shall take all reasonable steps to obtain appropriate contributions, by way of service charge, in respect of the use of any Common Station Amenity or Common Station Service, from any person having rights of occupation of any part of the Station under a lease or licence, where the relevant leased or licensed premises enjoy the benefit of or are recipients of such Common Station Amenity or Common Station Service, such steps to include to the extent reasonable:

- (A) where the relevant lease or licence contains provisions for payment of such a service charge, the prompt and efficient calculation, invoicing and collection (including the taking of all appropriate debt recovery procedures and steps) of the same;

- (B) where the relevant lease or licence contains provisions for the negotiation of such a service charge, the due, prompt and proper exercise of all rights available to the Station Facility Owner under such provisions;
- (C) where the relevant lease or licence does not contain any provision for such a service charge, upon the renewal of such lease or licence, the inclusion (subject to any statutory rights exercised by the relevant tenant or licensee) in such renewed lease or licence, of provision for such a service charge; and
- (D) subject to the provisions of Condition 103(C) on the granting of any new lease or licence, the inclusion in such new lease or licence of provision for such a service charge.

103.2 The Station Facility Owner shall ensure that contributions towards the use of any Common Station Amenity or Common Station Service within a particular Zone received are credited against the proportion of Qualifying Expenditure attributable to that Zone.

104 [NOT USED]

105 Repair and Maintenance of Non-Listed Items

105.1 Subject to Condition 105.2, in respect of any Element of the Station not listed in the Elements Inventory or of any piece of Equipment not listed in the Equipment Inventory the cost of:

- (A) Repair of shall be deemed to be chargeable to Long Term Charge; and
- (B) Maintenance shall be deemed to be chargeable to Qualifying Expenditure.

105.2 In the event that the Station Facility Owner or any User is of the opinion that the allocation made pursuant to Condition 105.1 is inappropriate having regard to the allocation of costs attributable to similar types or categories of Elements or pieces of Equipment as provided by Appendices 4 and 5 of Annex 1, then they shall be entitled to sponsor a Conditions Change Proposal proposing an alternative allocation.

106 The Long Term Charge

106.1 Effective date

This Condition 106 shall have effect from the Long Term Charge Commencement Date.

106.2 Principal formula

106.2.1 *Calculation*

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

$$LTC_t = S_t + L_t$$

where:

LTC_t means the Long Term Charge in relevant year t ;

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

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

L_t means an amount (whether of a positive or negative value) allowed in respect of the financial consequences to the Station Facility Owner in relevant year t following a relevant change of law, calculated in accordance with Condition 106.3;

but so that in relation to the relevant year commencing on the Long Term Charge Commencement Date, S_t shall have the value specified in paragraph 3 of Annex 8 and in relation to the next following relevant year S_{t-1} shall have the same value.

106.2.2 *Obligation to provide specification of calculation*

The Station Facility Owner shall provide to each User such specification of the calculation of the amount specified in paragraph 3 of Annex 8 in a form and amount of detail as may be reasonably required to enable the User to verify the calculation.

106.3 Relevant changes of law

106.3.1 *General*

The following sub-paragraphs of this Condition 106.3 shall apply for the purpose of determining the value (if any) of the term L_t in Condition 106.2.

106.3.2 *Relevant amounts*

106.3.2.1 *Inclusion in formula*

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

106.3.2.2 *Meaning of relevant amount*

The relevant amount is such reasonable amount:

- (a) which the Station Facility Owner, as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, may incur in (or save by reason of) complying, during relevant year t, with requirements resulting directly and necessarily from the relevant change of law in question; and
- (b) which it is fair and reasonable be borne by the Users having regard to the matters referred to in Condition 80 and the Decision Criteria.

106.3.3 *Notification of change of law involving material amounts*

106.3.3.1 As soon as reasonably practicable after becoming aware of any relevant change of law which will or may reasonably be expected to involve the expenditure or saving by the Station Facility Owner of a material amount,

the Station Facility Owner shall:

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

106.3.4 *Value of relevant amount*

The amount referred to in Condition 106.3.2 for inclusion in the term L_t shall (save in the circumstances referred to in the remaining paragraphs of this Condition 106) be such amount as may be agreed between the Station Facility Owner and the Users or as may be determined in accordance with the Dispute Resolution Procedure.

106.4 Modification of Long Term Charge

106.4.1 *Modification notice*

This Condition 106 shall have effect with the modifications specified in a notice given by the Secretary of State for the purposes of this Condition 106.4.1, provided:

- (a) the Secretary of State shall be satisfied as to the need for the modifications as provided in Condition 106.4.2;
- (b) he shall have complied with the requirements of Condition 106.4.3; and
- (c) the modifications shall have effect from the date specified in the modification notice.

106.4.2 *Conditions applying to right to issue modification notice*

The Secretary of State shall not be entitled to issue a notice under Condition 106.4.1 unless he is satisfied that:

- (a) any of the assumptions about the costs or revenues of the Station Facility Owner underlying the setting of any component of the Long Term Charge; or
- (b) any assumption as to the recoverability of or amount of any item of cost incurred by the Station Facility Owner which is not recoverable under the Long Term Charge

is materially inaccurate or has changed in such a way as would, in the opinion of the Secretary of State:

- (c) have led him to arrive at materially different conclusions as to the appropriate level of the Long Term Charge; and
- (d) if the Secretary of State were not to make modifications of the kind contemplated by this Condition 106.4, have a material and adverse effect on the interests of the Station Facility Owner to an extent that it would be likely that the Station Facility Owner would find it unduly difficult to finance its activities.

106.4.3 Consultation

The Secretary of State shall, in determining the modifications contemplated by this Condition 106.4, consult such persons and to such extent as he shall consider appropriate.

106.5 Definitions

In this Condition 106, unless the context otherwise requires:

- “material amount”** means an amount which the Station Facility Owner may incur in, or save by reason of, complying with a relevant change of law which is likely to result in an increase (or decrease) in the annual Long Term Charge under a Station Access Agreement of an amount equivalent to or exceeding:
- (a) 0.5 *per cent* of the Long Term Charge in the relevant year^t in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying; or
 - (b) 0.5 *per cent* of the product of (i) the annual Long Term Charge in the relevant year^t in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying and (ii) the number of remaining whole relevant years up to and including the relevant year ending on date of termination of that Station Access Agreement;
- “relevant amount”** bears the meaning given to it in Condition 106.3.2.2;
- “relevant change of law”** means a Change of Law or the Direction of a Competent Authority; and
- “relevant year”** means a Financial Year commencing on 01 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.

SECTION B: OTHER STATIONS

This Section B of Part 17 applies to Ebbsfleet International Station, Stratford International Station and Ashford International Station only.

Only Users with a Station Access Agreement in respect of Ebbsfleet International Station are permitted to sponsor a Conditions Change Proposal to change this Section B of Part 17 in respect of Ebbsfleet International Station and only Voting Operators with a Station Access Agreement in respect of Ebbsfleet International Station are permitted to vote in connection with a Conditions Change Proposal to change this Section B of Part 17 in respect of Ebbsfleet International Station.

Only Users with a Station Access Agreement in respect of Stratford International Station are permitted to sponsor a Conditions Change Proposal to change this Section B of Part 17 in respect of Stratford International Station and only Voting Operators with a Station Access Agreement in respect of Stratford International Station are permitted to vote in connection with a Conditions Change Proposal to change this Section B of Part 17 in respect of Stratford International Station.

Only Users with a Station Access Agreement in respect of Ashford International Station are permitted to sponsor a Conditions Change Proposal to change this Section B of Part 17 in respect of Ashford International Station and only Voting Operators with a Station Access Agreement in respect of Ashford International Station are permitted to vote in connection with a Conditions Change Proposal to change this Section B of Part 17 in respect of Ashford International Station.

89. **Definitions:**

89.1 In this Part 17, unless the context otherwise requires:

“**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;

“**Certificate**” means a certificate issued by or on behalf of Station Facility Owner pursuant to Condition 93.1(B);

“**change date**” means the date upon which the Passenger Operator’s Proportion changes in the Accounting Year pursuant to Part 17;

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

- (a) the Residual Variable Charge;
- (b) the Fixed Charges;
- (c) (for each International Passenger Operator) the International Passenger Operator’s Proportion of the International Zone LTC and that operator’s Passenger Operator’s Proportion of Common Zone LTC in each case as determined pursuant to Conditions 101.1 and 101.2; and
- (d) (for each Domestic Southbound Passenger Operator) the Domestic Southbound Passenger Operator’s Proportion of the Domestic Southbound Zone LTC and that operator’s Passenger Operator’s Proportion of Common Zone LTC in each case as

determined pursuant to Conditions 101.1 and 101.3;

“**Common Zone LTC**” has the meaning ascribed to it in Annex 11;

“**Common Zone QX**” means:

- (a) (when the Station is used by one or more Domestic Southbound Passenger Operators and one or more International Passenger Operators) that part of Qualifying Expenditure attributable to the provision of the Common Station Amenities and Common Station Services within the Common Zone or otherwise attributable to the Common Zone; or
- (b) (when the Station is used by one or more Domestic Southbound Passenger Operators, but not any International Passenger Operator), a sum of:
 - (i) that part of Qualifying Expenditure attributable to the provision of the Common Station Amenities and Common Station Services within the Common Zone or otherwise attributable to the Common Zone; and
 - (ii) International Zone QX; or
- (c) (when the Station is used by one or more International Passenger Operators, but not any Domestic Southbound Passenger Operator), a sum of:
 - (i) that part of Qualifying Expenditure attributable to the provision of the Common Station Amenities and Common Station Services within the Common Zone or otherwise attributable to the Common Zone; and
 - (ii) Domestic Southbound Zone QX;

“**Domestic Southbound Zone LTC**” has the meaning ascribed to it in Annex 11;

“**Domestic Southbound Passenger Operator’s Proportion**” means, save as provided in Conditions 101.1 and 101.3, as at any time, the proportion which the number of that Passenger Operator’s Departures bears to the number of Total Domestic Southbound Departures, as calculated pursuant to Condition 99;

“**Domestic Southbound Zone QX**” means that part of Qualifying Expenditure attributable to the provision of the Domestic Southbound Common Station Amenities and Domestic Southbound Common Station Services or otherwise attributable to the Domestic Southbound Zone;

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

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

“**Fixed Charge Amenity or Service**” means a Common Station Amenity or Common Station Service in respect of which in any relevant Accounting Year a Fixed Charge (other than one determined pursuant to Condition 92.3(C)) was paid by the relevant Passenger Operator;

“**Fixed Charges**” means the fixed charges, if any, provided for in respect of the relevant Accounting Year in

- (i) 91.5(B)(1);

- (ii) Condition 92.2(A)(1);
- (iii) Condition 92.3(B); and
- (iv) Condition 92.3(C);

“**Fixed Costs**” means all costs, expenses and liabilities payable or incurred by the Station Facility Owner in providing or procuring the provision of the relevant amenity or service for the Accounting Year in question;

“**International Passenger Operator’s Proportion**” means, save as provided in Conditions 101.1 and 101.2, as at any time, the proportion which the number of that Passenger Operator’s Departures bears to the number of Total International Departures, as calculated pursuant to Condition 99;

“**International Zone LTC**” has the meaning ascribed to it in Annex 11;

“**International Zone QX**” means that part of Qualifying Expenditure attributable to the provision of the International Common Station Amenities and International Common Station Services or otherwise attributable to the International Zone;

“**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;

“**Long Term Charge**” means the charge specified in paragraph 3 of Annex 8 subject to variation in accordance with Condition 106.2;

“**Long Term Charge Commencement Date**” means the Conditions Efficacy Date;

“**Net Fixed Charge**” means in respect of any particular Fixed Charge the balance after deducting the Risk Premium from it;

“**Passenger Operator’s Departures**” means, as at any particular time the number of Vehicles operated by or on behalf of a 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 101;

“**Passenger Operator’s Proportion**” means, save as provided in Condition 101, 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 99 for the purposes of the Station Access Agreement;

“**Performance Bonus**” has the meaning attributed to it in Condition 51;

“**Performance Rebate**” has the meaning attributed to it in Condition 51;

“**Quoted Fixed Charges**” means the fixed charges, if any, proposed to a Passenger Operator by the Station Facility Owner in respect of the relevant Accounting Year pursuant to Condition 91.2(B) or Condition 91.4(A);

“**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 92.1 or 92.3(D);

“**Risk Premium**” means in respect of any particular Fixed Charge (other than one

determined pursuant to Condition 92.3(C)), the amount referred to in (as the case may be)

- (i) Condition 91.5(B)(2), where that Fixed Charge is provided for pursuant to Condition 91.5(B)(1);
- (ii) Condition 92.2(A)(2) where that Fixed Charge is provided for pursuant to Condition 92.2(A)(1); or
- (iii) Condition 92.3(B) where that Fixed Charge is provided for pursuant to that Condition,

which is part of the Fixed Charge and reflects the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges (and references to Risk Premium in respect of any Quoted Fixed Charges shall be construed accordingly);

“Total International Departures” means, as at any particular time the number of Vehicles operated by or on behalf of all International Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 99 and a reference to a person “representing” Total International Departures means the departures in question are made by Vehicles operated by or on behalf of the person concerned;

“Total Southbound Domestic Departures” means, as at any particular time the number of Vehicles operated by or on behalf of all Domestic Southbound Passenger Operators which have departed from the Station during a period which is of the same duration and comprising the same days of the week (including public holidays, where applicable) as the Sample Period, as most recently calculated or estimated (as the case may be) pursuant to Condition 99 and a reference to a person “representing” Total Southbound Domestic 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:

- (a) each International Passenger Operator:

the Passenger Operator’s Proportion of the Common Zone QX and the International Passenger Operator’s Proportion of International Zone QX, provided that if that operator’s Passenger Operator’s Proportion changes during an Accounting Year, an amount equal to the aggregate of that Passenger Operator’s percentage share of the Qualifying Expenditure attributable to each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC = A/365 \times POP \times QE$$

where:

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

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

POP is the Passenger Operator’s Proportion of the Common Zone QX and the International Passenger Operator’s Proportion of the International Zone QX, expressed as a percentage share of Qualifying Expenditure, during the relevant period in question

QE is the Qualifying Expenditure for the Accounting Year in question

(b) each Domestic Southbound Passenger Operator:

the Passenger Operator's Proportion of the Common Zone QX and the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone QX, provided that if that operator's Passenger Operator's Proportion changes during an Accounting Year, an amount equal to the aggregate of that Passenger Operator's percentage share of the Qualifying Expenditure attributable to each of the relevant periods in the Accounting Year in question, calculated as follows:

$$VC = A/365 \times POP \times QE$$

where:

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

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

POP is the Passenger Operator's Proportion of the Common Zone QX and the Domestic Southbound Passenger Operator's Proportion of the Domestic Southbound Zone QX, expressed as a percentage share of Qualifying Expenditure, during the relevant period in question

QE 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

90. **General**

- 90.1 The provisions of this Part 17 of the Station Access Conditions shall apply in respect of any Passenger Operator save to the extent varied or disapplied in a Station Access Agreement with that Passenger Operator (where this would not have a detrimental impact on any other Passenger Operator) under these Station Access Conditions.
- 90.2 Where the First Year will commence on a date not being 1 April in any year, then Conditions 91 to 98 (inclusive) shall be deemed not to refer to nor to apply to or in respect of:
- (1) the First Year;
 - (2) any Accounting Period or Accounting Half-Year falling within the First Year; or
 - (3) the Accounting Year which is the First Year.

91. **Notice of Charges**

- 91.1 Not later than 90 days prior to the commencement of each Accounting Year other than the First Year, each Passenger Operator shall notify the Station Facility Owner of those Common Station Amenities and those Common Station Services for which it wishes to pay fixed charges.
- 91.2 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:
- (A) its best estimate of the Total Variable Charge for that Accounting Year; and
 - (B) the amount of such fixed charges as the Station Facility Owner is willing to accept for that Accounting Year for:
 - (1) those Common Station Amenities and Common Station Services referred to in any notice pursuant to Condition 91.1; and
 - (2) any other Common Station Amenities or Common Station Services.
- 91.3 The notice referred to in Condition 91.2 shall include a detailed breakdown of:
- (A) total Qualifying Expenditure, Common Zone QX, Domestic Southbound Zone QX and International Zone QX together with full details of the methodology used to attribute each individual element of Qualifying Expenditure between the Zones. In this regard, individual Qualifying Expenditure costs shall be allocated between the Zones by such allocation methods as may be fair and equitable including by reference to relative size of each Zone and level of services provided within each Zone; and
 - (B) both the estimated Total Variable Charge and of the Quoted Fixed Charges, together with comparative figures (if available) 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:
 - (i) in relation to the Total Variable Charge, include a detailed breakdown of

the estimated Qualifying Expenditure;

- (ii) in relation to the Quoted 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 Quoted Fixed Charges and the amount of the Quoted Fixed Charges which represents the Risk Premium; and
- (C) include details of the specifications and other assumptions applied in the calculation of the Total Variable Charge and any Quoted Fixed Charges.

91.4 The Station Facility Owner shall:

- (A) if any Passenger Operator notifies the Station Facility Owner within 15 days of receipt of the notice referred to in Condition 91.2 that it wishes to pay fixed charges for any Common Station Amenities or Common Station Services not referred to in that notice for the relevant Accounting Year:
 - (1) notify such Passenger Operator within 15 days of the amount of such fixed charges as the Station Facility Owner is willing to accept for the relevant Accounting Year in respect of such Common Station Amenities or Common Station Services; and
 - (2) in any notice issued by it pursuant to this Condition 91.4(A):-
 - (a) include a breakdown of such further Quoted Fixed Charges in sufficient detail to enable the Passenger Operator to make a proper assessment of the charges proposed;
 - (b) indicate the method of the calculation of such further Quoted Fixed Charges and the costs of the amenities and services in question;
 - (c) identify the amount of such further Quoted Fixed Charges which represents the Risk Premium; and
 - (d) include details of the specifications and other assumptions applied in calculating such further Quoted Fixed Charges
- (B) provide each Passenger Operator with such further information and/or clarification relating to the amounts notified to the Passenger Operator pursuant to Condition 91.2 or Condition 91.4(A) as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.

91.5 The Station Facility Owner and a Passenger Operator may agree that a Fixed Charge shall apply for more than one Accounting Year and where that is so agreed:

- (A) Conditions 91.1, 91.2 and 91.4 shall not apply to the Common Station Amenities or Common Station Services to which that Fixed Charge relates where the Accounting Year for which charges are to be notified pursuant to those Conditions is one during which it has been agreed that that Fixed Charge shall apply; and
- (B) the Station Facility Owner shall where Condition 91.5(A) applies include with any notice referred to in Condition 91.3 confirmation of:-
 - (1) the amount of that Fixed Charge for the Accounting Year for which charges are so notified; and

- (2) the amount of the Risk Premium in respect of that Fixed Charge.

92. **Determination and Payment of Charges**

92.1 Each Passenger Operator shall notify the Station Facility Owner by the later of 15 days prior to the commencement of each Accounting Year and 15 days after receipt of the notification pursuant to Condition 91.4(A)(1).

(A) whether it elects to pay fixed charges for any Common Station Amenities or Common Station Services in respect of which Quoted Fixed Charges have been notified to it and, if so, for which of them; and

(B) in each case where it makes such election, whether

(1) it will pay the amount of the relevant Quoted Fixed Charge; or

(2) it wishes to contest the amount of the Quoted Fixed Charge.

Provided that to the extent that a Passenger Operator fails within the relevant period to make any such election, the Passenger Operator shall be deemed to have elected to pay the Total Variable Charge.

92.2 If a Passenger Operator has notified the Station Facility Owner pursuant to:

(A) Condition 92.1(B)(1) that it will pay the amount of the relevant Quoted Fixed Charge for the relevant Accounting Year then:

(1) the amount of the Fixed Charge for the relevant amenities or services shall be that amount; and

(2) the Risk Premium in respect of that Fixed Charge shall be that identified in the notice of the relevant Quoted Fixed Charge pursuant to Condition 92.2 or 91.4(A); or

(B) Condition 92.1(B)(2) that it wishes to contest the amount of any Quoted Fixed Charge, the amount of:

(1) the Fixed Charge for the relevant amenities or services; and

(2) (save where the amount of that Fixed Charge is determined pursuant to Condition 92.3(C)) the Risk Premium in respect of that Fixed Charge,

shall be determined in accordance with Condition 92.3.

92.3 Where Condition 92.2(B) applies:

(A) the Station Facility Owner and the Passenger Operator shall negotiate with each other with a view to reaching agreement as soon as reasonably practicable and no later than the commencement of the relevant Accounting Year on the amount of the Fixed Charge, and of the Risk Premium in respect of that Fixed Charge, for the relevant amenities or services;

(B) if the Station Facility Owner and the Passenger Operator reach agreement with each other on the amount of the relevant Fixed Charge and Risk Premium, then the amounts so agreed shall for the relevant Accounting Year be the Fixed Charge for the relevant Common Station Amenities or Common Station Services and the Risk Premium in respect thereof;

- (C) if the Station Facility Owner and the Passenger Operator fail to reach agreement with each other on the amount of the Fixed Charge by the commencement of the relevant Accounting Year, the dispute as to that amount may be referred at any time up to 15 days after the commencement of that Accounting Year by the Passenger Operator for determination pursuant to the Dispute Resolution Procedure and the amount of the Fixed Charges so determined shall be the Fixed Charge for the relevant Common Station Amenities or Common Station Services for that Accounting Year; and
- (D) to the extent that the Passenger Operator fails within the relevant time period in Condition 92.3(C) to refer the dispute for determination, the Passenger Operator shall be deemed to have agreed to pay the Total Variable Charge or, as the case may be, the Residual Variable Charge for the relevant amenities or services for the relevant Accounting Year.

92.4 Any determination pursuant to Condition 92.3(C) shall:

- (A) establish the amount of the Fixed Charges for the relevant Common Station Amenities or Common Station Services at the amount which shall be considered to be fair and reasonable and include appropriate payments:
 - (1) in respect of the overheads of the Station Facility Owner and by way of management fee for providing or procuring the provision of the relevant amenities or services; and
 - (2) to reflect the risks which will be borne by the Station Facility Owner in providing or procuring the provision of the relevant amenities or services on fixed charges;
- (B) be made having regard to
 - (1) the terms and conditions of the Station Access Agreement of the Passenger Operator, and in particular:
 - (a) the basis upon which the Residual Variable Charge is calculated and determined;
 - (b) any charges paid by the Passenger Operator for the relevant amenities or services during the preceding Accounting Year; and
 - (c) any specification for the relevant amenities or services or other standard to which they are required to be supplied or provided to the Passenger Operator;
 - (2) the costs which:
 - (a) the Station Facility Owner has incurred or will incur in providing or procuring the provisions of the relevant amenities or services;
 - (b) the Passenger Operator, the Station Facility Owner or Network Rail may incur in providing or procuring the provision of similar or reasonably comparable amenities or services to any person at any station other than the Station in respect of which it is facility owner; and
 - (c) (to the extent such information is reasonably available) it is reasonably likely would be incurred by the Passenger Operator in

obtaining the provision of similar or reasonably comparable services or amenities from providers thereof otherwise than at a railway facility; and

- (3) any contract in existence at the commencement of the relevant Accounting Year pursuant to which the Station Facility Owner procures the provision of the relevant amenities or services and the benefits and disbenefits for the Station Facility Owner if any such contract had to be terminated or amended as a result of the provision of those amenities or services to the Passenger Operator at a fixed charge; and

- (C) be final and binding on the Station Facility Owner and the Users; and

the costs and expenses of the determination shall be borne equally by the Station Facility Owner and the Passenger Operator, unless it shall have been determined otherwise.

92.5 If Fixed Charges apply in respect of any Common Station Amenities or Common Station Services for any Accounting Year the Passenger Operator shall

- (A) 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 those Fixed Charges apply; and
- (B) pay for all other Common Station Amenities and Common Station Services by way of the Residual Variable Charge.

92.6 Except as otherwise provided in the Station Access Agreement or in these Station Access Conditions, each User shall pay:

- (A) 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 notify to the Passenger Operator in respect of each Accounting Year in accordance with this Part 17) by four-weekly instalments in arrears, which shall so far as practicable be in an equal amount for each instalment; and
- (B) any Performance Bonus which the Station Facility Owner is entitled to receive from it pursuant to Condition 51.

Such payment shall be made not later than the later of twenty-eight days after:

- (i) the end of the four-week period in question; or
- (ii) the date of receipt of an invoice for such payment.

92.7 If a Passenger Operator shall refer a dispute as to the amount of any Fixed Charges for any amenities or services for determination pursuant to the Dispute Resolution Procedure pursuant to Condition 92.3(C):

- (A) Conditions 92.5 and 92.6 shall, in respect of the period from the commencement of the Accounting Year in respect of which those Fixed Charges are to be paid down to the end of the four week period following next after the determination required by Condition 92.4 has been made, apply as if the Fixed Charges for the relevant amenities or services are the Quoted Fixed Charges for those amenities or services; and
- (B) forthwith following determination of that dispute:

- (1) the Station Facility Owner shall repay to the Passenger Operator an amount equal to the amount (if any) by which the amount so paid in respect of the relevant amenities or services exceeds the Fixed Charges for them for that period as so determined; or
- (2) the Passenger Operator shall pay to the Station Facility Owner an amount equal to the amount (if any) by which the amount so paid in respect of the relevant amenities or services is less than the Fixed Charges for them for that period as so determined;

together with interest on such amount at the Standard Interest Rate, calculated pursuant to Condition 95.

93. **Certificate of Residual Variable Charge and Fixed Costs**

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

- (A) 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
- (B) provide to each Passenger Operator a certificate of the Residual Variable Charge so calculated.

93.2 The certificate shall contain information in an amount of detail which is at least equal to that required by Condition 91.3 in relation to the charges and costs to which it relates.

94. **Adjustments for excess and short payments**

94.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 92.6 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 93.1, the Station Facility Owner shall repay to the Passenger Operator an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in Condition 94.1(A) above at the Standard Interest Rate, calculated pursuant to Condition 95.

94.2 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 92.6 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 93.1, the Passenger Operator shall pay to the Station Facility Owner an amount equal to:

- (A) the difference between the amount so paid and the Residual Variable Charge so certified; and
- (B) interest on the amount referred to in Condition 94.2(A) above at the Standard Interest Rate, calculated pursuant to Condition 95.

95. **Calculation of Interest**

95.1 Interest payable pursuant to Conditions 92 and 94 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.

96. **Inspection of books, records and accounts**

96.1 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 or records of staff duties and time spend on such duties (provided that this need only be provided in a form which does not reveal the salaries and any benefits paid to individual staff members in contravention of the Data Protection Act 1998, or similar or replacing legislation), 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.

97. **Adjustment following inspection**

97.1 If, upon or following any inspection in accordance with Condition 96 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 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.

97.2 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 eighteen 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:

(A) 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

(B) 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.

97.3 If the shortfall referred to in Condition 97.1 represents:

(A) 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;

(B) 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.

98. **Accounts**

98.1 Without prejudice to any obligation of the Station Facility Owner under any station licence

and the Railway Regulations, the Station Facility Owner shall:

- (A) keep accounts in respect of the Station which relate solely to the operation of the Station;
- (B) 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:
 - (1) the Common Station Services and the Common Station Amenities;
 - (2) the Exclusive Station Services; and
 - (3) each Zone,

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

98.2 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railway Regulations, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition 98.1 shall at all times:

- (A) 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 and any Fixed Charge is made; and
- (B) 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 98.1 above.

98.3 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 91.2 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.

98.4 Any comparison provided pursuant to Condition 98.3 shall, unless the Requisite Majority otherwise consent:

- (A) explain and identify any exceptional items and any variance of more than plus or minus 3 per cent between:
 - (1) the estimates of the Total Variable Charge referred to in Condition 98.3; and
 - (2) 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 98.1(B);

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

- (B) identify any such category or item of expenditure (and any contribution of any person towards any such expenditure) which was estimated pursuant to Condition 91.2 and which has been actually incurred; and
- (C) compare any such expenditure and contributions with that estimate.

99. **Calculation of number of Vehicles operated**

99.1 The Station Facility Owner shall:

- (A) as soon as reasonably practicable after a Station Access Agreement with a Passenger Operator comes fully into effect and otherwise at regular intervals of not more than 12 months; and
- (B) after each material change of the kind referred to in Condition 99.3,

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

- (i) the Station Facility Owner has grounds for a reasonable belief that a recalculation in accordance with this Condition 99.1 would give rise to a materially different number in any case; or
- (ii) any Passenger Operator shall request that such number be so recalculated.

99.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 99.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

99.3 For the purposes of Condition 99.1(B), a material change shall be deemed to have occurred if any event or circumstance (including entry by the Station Facility Owner into a new access agreement permitting a passenger service operator to use the Station, or amendment or termination of any existing access agreement permitting such use) shall have occurred which materially affects or is likely materially to affect the number of Vehicles operated by or on behalf of any Passenger Operator which stops at the Station.

99.4 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 99.1, 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 99. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

100. **Calculation of Passenger Operators' Shares of Qualifying Expenditure**

100.1 Each Passenger Operator's Proportion of Common Zone QX and (as applicable) the International Passenger Operator's Proportion of International Zone QX and the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone QX shall be equal, as at the Commencement Date, to the percentages specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 each time a recalculation is undertaken pursuant to Condition 99.

101. **Calculation of Passenger Operators' Shares of Long Term Charge**

101.1 **Common Zone LTC**

Each Passenger Operator's Proportion of Common Zone LTC 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 99 only when:

- (A) there is a change in the number or identity of Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the Passenger Operator's Proportion of Common Zone LTC of any Passenger Operator by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.4 from its Passenger Operator's Proportion of Common Zone LTC that applied immediately prior to the recalculation in question.

101.2 **International Zone LTC**

The International Passenger Operator's Proportion of International Zone LTC shall be equal, as at the Commencement Date, to the percentages specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 only when:

- (A) there is a change in the number or identity of International Passenger Operators who are Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the International Passenger Operator's Proportion of International Zone LTC by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.4 from its International Passenger Operator's Proportion of International Zone LTC that applied immediately prior to the recalculation in question.

101.3 **Domestic Southbound Zone LTC**

The Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC shall be equal, as at the Commencement Date, to the percentages specified for this purpose in the Station Access Agreement, and shall thereafter be recalculated in accordance with Condition 99 only when:

- (A) there is a change in the number or identity of Domestic Southbound Passenger Operators who are Voting Operators; or
- (B) it shall be likely that such a recalculation would alter the Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC by a percentage which is greater (plus or minus) than the applicable percentage specified in column 2 of the table contained in Condition 101.5 from its Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC that applied immediately prior to the recalculation in question.

101.4 The percentage referred to in Conditions 101.1, 101.2 and 101.3 is to be determined by reference to (as applicable) the Passenger Operator's Proportion, the International Passenger Operator's Proportion and the Domestic Southbound Passenger Operator's Proportion as specified in the table below:

Passenger Operator’s percentage share of (as applicable) Common Zone LTC, International Zone LTC or Domestic Southbound Zone LTC immediately prior to the recalculation in question

Alteration to existing percentage share required to trigger a recalculation

25% or less	more than 100%
more than 25% but less than 50%	more than 85%
50% or more	more than 70%

102. Early Termination of a Station Access Agreement

102.1 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.

102.2 In Condition 101, the “Excess Proportion”, in relation to each Passenger Operator, shall be calculated as follows:

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

where:

EP is the Excess Proportion of the affected operator;

LTC_{actual} is in the case of each affected operator the share of Long Term Charge which is payable by that affected operator for the relevant period following the relevant termination;

LTC_{notional} is in the case of each affected operator the share of Long Term Charge which, on the assumed basis, would have been payable by that 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:

- (a) the last day of the Accounting Year in which the relevant termination occurred; and
- (b) the next following date in respect of which the Station Facility Owner shall carry out a calculation pursuant to Condition 99.1;

- “assumed basis”** means the assumption that:
- (a) the relevant termination did not occur; and
 - (b) the Passenger Operator’s Departures of the outgoing operator in the relevant period or the applicable period (as the case may be) were the same as they were immediately prior to the relevant termination;
- “outgoing operator”** means the Passenger Operator whose Station Access Agreement has been the subject of a relevant termination;
- “relevant period”** means the period beginning on the date of the relevant termination and ending on the date upon which the Station Access Agreement in question was expressed to expire by reason of the passage of time; and
- “relevant termination”** means the termination by mutual agreement of the Station Access Agreement of a User other than the affected operator.

103. **Contributions from Third Parties**

103.1 The Station Facility Owner shall take all reasonable steps to obtain appropriate contributions, by way of service charge, in respect of the use of any Common Station Amenity or Common Station Service, from any person having rights of occupation of any part of the Station under a lease or licence, where the relevant leased or licensed premises enjoy the benefit of or are recipients of such Common Station Amenity or Common Station Service, such steps to include to the extent reasonable:

- (A) where the relevant lease or licence contains provisions for payment of such a service charge, the prompt and efficient calculation, invoicing and collection (including the taking of all appropriate debt recovery procedures and steps) of the same;
- (B) where the relevant lease or licence contains provisions for the negotiation of such a service charge, the due, prompt and proper exercise of all rights available to the Station Facility Owner under such provisions;
- (C) where the relevant lease or licence does not contain any provision for such a service charge, upon the renewal of such lease or licence, the inclusion (subject to any statutory rights exercised by the relevant tenant or licensee) in such renewed lease or licence, of provision for such a service charge; and
- (D) subject to the provisions of Condition 103.1(C) on the granting of any new lease or licence, the inclusion in such new lease or licence of provision for such a service charge.

103.2 The Station Facility Owner shall ensure that contributions towards the use of any Common Station Amenity or Common Station Service within a particular Zone received are credited against the proportion of Qualifying Expenditure attributable to that Zone.

104. **[NOT USED]**

105. **Repair and Maintenance of Non-Listed Items**

105.1 Subject to Condition 105.2, in respect of any Element of the Station not listed in the Elements Inventory or of any piece of Equipment not listed in the Equipment Inventory the

cost of:

- (A) Repair of shall be deemed to be chargeable to Long Term Charge; and
- (B) Maintenance shall be deemed to be chargeable to Qualifying Expenditure.

105.2 In the event that the Station Facility Owner or any User is of the opinion that the allocation made pursuant to Condition 105.1 is inappropriate having regard to the allocation of costs attributable to similar types or categories of Elements or pieces of Equipment as provided by Appendices 4 and 5 of Annex 1, then they shall be entitled to sponsor a Conditions Change Proposal proposing an alternative allocation.

106. **The Long Term Charge**

106.1 Effective date

This Condition 106 shall have effect from the Long Term Charge Commencement Date.

106.2 Principal formula

106.2.1 *Calculation*

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

$$LTC_t = S_t + L_t$$

where:

LTC_t means the Long Term Charge in relevant year t ;

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

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

L_t means an amount (whether of a positive or negative value) allowed in respect of the financial consequences to the Station Facility Owner in relevant year t following a relevant change of law, calculated in accordance with Condition 106.3;

but so that in relation to the relevant year commencing on the Long Term Charge Commencement Date, S_t shall have the value specified in paragraph 3 of Annex 8 and in relation to the next following relevant year S_{t-1} shall have the same value.

106.2.2 *Obligation to provide specification of calculation*

The Station Facility Owner shall provide to each User such specification of the calculation of the amount specified in paragraph 3 of Annex 8 in a form and amount of detail as may be reasonably required to enable the User to verify the calculation.

106.3 Relevant changes of law

106.3.1 *General*

The following sub-paragraphs of this Condition 106.3 shall apply for the purpose of determining the value (if any) of the term L_t in Condition 106.2.

106.3.2 *Relevant amounts*

106.3.2.1 *Inclusion in formula*

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

106.3.2.2 *Meaning of relevant amount*

The relevant amount is such reasonable amount:

- (a) which the Station Facility Owner, as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy, may incur in (or save by reason of) complying, during relevant year t , with requirements resulting directly and necessarily from the relevant change of law in question; and
- (b) which it is fair and reasonable be borne by the Users having regard to the matters referred to in Condition 80 and the Decision Criteria.

106.3.3 *Notification of change of law involving material amounts*

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

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

106.3.4 *Value of relevant amount*

The amount referred to in Condition 106.3.2 for inclusion in the term L_t shall (save in the circumstances referred to in the remaining paragraphs of this Condition 106) be such amount as may be agreed between the Station Facility Owner and the Users or as may be determined in accordance with the Dispute Resolution Procedure.

106.4 Modification of Long Term Charge

106.4.1 *Modification notice*

This Condition 106 shall have effect with the modifications specified in a notice given by the Secretary of State for the purposes of this Condition 106.4.1, provided:

- (a) the Secretary of State shall be satisfied as to the need for the modifications as provided in Condition 106.4.2;
- (b) he shall have complied with the requirements of Condition 106.4.3; and
- (c) the modifications shall have effect from the date specified in the modification notice.

106.4.2 *Conditions applying to right to issue modification notice*

The Secretary of State shall not be entitled to issue a notice under Condition 106.4.1 unless he is satisfied that:

- (a) any of the assumptions about the costs or revenues of the Station Facility Owner underlying the setting of any component of the Long Term Charge; or
- (b) any assumption as to the recoverability of or amount of any item of cost incurred by the Station Facility Owner which is not recoverable under the Long Term Charge

is materially inaccurate or has changed in such a way as would, in the opinion of the Secretary of State:

- (c) have led him to arrive at materially different conclusions as to the appropriate level of the Long Term Charge; and
- (d) if the Secretary of State were not to make modifications of the kind contemplated by this Condition 106.4, have a material and adverse effect on the interests of the Station Facility Owner to an extent that it would be likely that the Station Facility Owner would find it unduly difficult to finance its activities.

106.4.3 *Consultation*

The Secretary of State shall, in determining the modifications contemplated by this Condition 106.4, consult such persons and to such extent as he shall consider appropriate.

106.5 Definitions

In this Condition 106, unless the context otherwise requires:

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

- (a) 0.5 *per cent* of the Long Term Charge in the relevant year^t in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying; or
- (b) 0.5 *per cent* of the product of (i) the annual Long Term Charge in the relevant year^t in which the Station Facility Owner first becomes liable to make any payment or perform any other obligation in so complying and (ii) the

number of remaining whole relevant years up to and including the relevant year ending on date of termination of that Station Access Agreement;

“relevant amount” bears the meaning given to it in Condition 106.3.2.2;

“relevant change of law” means a Change of Law or the Direction of a Competent Authority; and

“relevant year” means a Financial Year commencing on 01 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.