

HS1 STATION ACCESS CONDITIONS

(EDITION DATE: May 2016)

CONTENTS

PART 1: ORGANISATION OF THE ACCESS CONDITIONS AND DEFINITIONS ...	1
1. General	1
PART 2: MODIFICATIONS TO THE STATION ACCESS CONDITIONS	28
2. Station Meetings.....	28
3. Administration of Station Meetings	29
4. Receipt and Notification of a Conditions Change Proposal.....	29
5. Open Access Related Changes	32
6. Approval of a Conditions Change Proposal.....	34
7. Notification and Implementation of changes to these Conditions	34
PART 3: CHANGES TO COMMON STATION AMENITIES AND COMMON STATION SERVICES	36
8. Proposal for Change	36
9. Evaluation and response to Major Change Proposals and Development Change Proposals	40
10. Cessation and Modification of Development Change Proposals.....	41
11. Acceptance of a Proposal for Change	42
12. Implementation of a Proposal for Change.....	44
13. Changes imposed by law.....	45
PART 4: WORKS, REPAIRS AND MAINTENANCE	47
14. Existing Works, Third Party Works and Emergencies	47
15. Repairs and Maintenance and other works	47
16. Alternative Arrangements	48
17. Station Facility Owner's obligations	49
18. Equipment	49
19. General Upkeep.....	49
20. Conduits free from obstruction	49
21. Snagging and Inherent Defects	49

PART 5: INSURANCE	51
22. Responsibility for effecting insurance.....	51
23. Destruction or Damage to the Station	51
24. Provision of Documents	52
25. Maintenance of Insurance	53
26. Increase of premium or invalidation of policy	53
27. Rights of Subrogation.....	53
PART 6: EXISTING AGREEMENTS AND THIRD PARTY RIGHTS	54
28. General	54
29. Station Facility Owner's representations, warranties and undertakings.....	54
30. Exercise of discretion/Grant of consent	54
31. Wayleave grants	55
32. Superior Estate Owner consent	55
PART 7: LITIGATION AND DISPUTES	56
33. Notification by Station Facility Owner	56
34. Notification by User	56
35. Authority of Station Facility Owner	56
36. Resolution of disputes and claims.....	57
PART 8: DISCLOSURE OF DOCUMENTS AND INFORMATION	58
37. Request for Documents and Information	58
38. Documents and Information which may be Requested.....	58
39. Exclusions	59
PART 9: RIGHTS GRANTED OVER ADJACENT PROPERTY	60
40. Rights of Way.....	60
41. Emergency Rights	60
42. Entry upon the Adjacent Property	60
43. Exercise and enjoyment of Rights.....	60

44.	Works costs	60
PART 10: STATION FACILITY OWNER'S PROPERTY RIGHTS.....		61
45.	Property Interests.....	61
46.	Exercise of Rights Granted	61
PART 11: PERFORMANCE MONITORING REGIME AND REMEDIES.....		62
SECTION A: PERFORMANCE MONITORING REGIME.....		62
47.	Performance Monitoring	62
48.	Performance Payments.....	65
49.	Payment and Limitation of Liability	66
SECTION B: BENCHMARKING		70
50.	Agreement of Baseline Hours	70
51.	Changes to the Common Station Amenities and Common Station Services.....	70
SECTION C: PERFORMANCE CREDITS AND SELF HELP REMEDIES		72
52.	Performance Credits.....	72
53.	Credit for Station closure	72
54.	Self help remedies	72
55.	Default Responsibility.....	73
SECTION D: INDEMNITIES AND LIMITATION OF LIABILITY.....		75
56.	Indemnities	75
57.	Limitation on claims.....	75
58.	Force Majeure	77
59.	Application of this Part and Mitigation.....	79
PART 12: ENVIRONMENTAL PROTECTION		80
60.	General Environmental Obligations.....	80
61.	Remedial action required as a result of a User's activities.....	83
62.	The Station Facility Owner's remedial action	84
63.	Environmental indemnities	84

64.	Conduct of claims.....	85
65.	Confidentiality.....	85
PART 13: OTHER POSITIVE OBLIGATIONS.....		86
66.	Station Facility Owner's obligations	86
67.	Users' obligations	92
68.	Standard of works.....	93
PART 14: OTHER NEGATIVE OBLIGATIONS		94
69.	Encroachments	94
70.	Signs	94
71.	Excavations/Excluded Equipment.....	94
72.	Use.....	94
73.	Overloading.....	95
74.	Improper use of Station and/or the Adjacent Property.....	95
75.	Works to Station and/or the Adjacent Property	95
76.	Not causing breach	95
77.	Damage caused through Railway Substructure and Railway Superstructure	96
PART 15: ATTRIBUTION OF COSTS		97
78.	Application of this Part	97
79.	Compliance with obligations under Conditions	97
80.	Basis of accounting and payment.....	97
81.	Apportionment of costs	97
82.	Minimisation of costs	97
PART 16: GENERAL.....		99
83.	Confidentiality.....	99
84.	Payments, default interest and VAT	103
85.	Invalidity and waiver.....	104
86.	Passenger Transport Executives.....	104

87.	Assignment and Novation	104
PART 17: ACCESS CHARGING		106
SECTION A: ST PANCRAS INTERNATIONAL STATION		106
88.	Definitions:.....	106
89.	General	111
90.	Notice of Charges.....	111
91.	Determination and Payment of Charges.....	113
92.	Certificate of Residual Variable Charge and Fixed Costs.....	116
93.	Adjustments for excess and short payments	116
94.	Calculation of Interest	117
95.	Inspection of books, records and accounts.....	117
96.	Adjustment following inspection	117
97.	Accounts.....	118
98.	Calculation of number of Vehicles operated.....	119
99.	Calculation of Passenger Operators' Shares of Qualifying Expenditure.....	120
100.	Calculation of Passenger Operators' Shares of Long Term Charge.....	120
101.	Early Termination of a Station Access Agreement.....	122
102.	Contributions from Third Parties	123
103.	Repair and Maintenance of Non-Listed Items	123
104.	Definitions.....	124
105.	Calculation of the Long Term Charge.....	126
SECTION B: OTHER STATIONS		132
88.	Definitions.....	132
89.	General	136
90.	Notice of Charges.....	136
91.	Determination and Payment of Charges.....	138
92.	Certificate of Residual Variable Charge and Fixed Costs.....	141

93.	Adjustments for excess and short payments	141
94.	Calculation of Interest	142
95.	Inspection of books, records and accounts.....	142
96.	Adjustment following inspection	142
97.	Accounts.....	143
98.	Calculation of number of Vehicles operated.....	144
99.	Calculation of Passenger Operators' Shares of Qualifying Expenditure.....	144
100.	Calculation of Passenger Operators' Shares of Long Term Charge	145
101.	Early Termination of a Station Access Agreement	146
102.	Contributions from Third Parties	147
103.	Repair and Maintenance of Non-Listed Items	148
104.	Definitions	148
105.	Calculation of the Long Term Charge.....	151

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 the Channel Tunnel Rail Link Act 1996, the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008, the Railways Acts 1993 and 2005, the Railways Infrastructure (Access and Management) Regulations 2005, the Railway (Licensing of Railway Undertakings) Regulations 2005 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 shall, unless the contrary intention appears, have the same meanings in these Station Access Conditions.
- (F) *Construction of agreements:* Any agreement, instrument, licence, standard (including any Applicable Standard), timetable, code or other document referred to in these Station Access Conditions or entered into, approved, authorised, accepted or issued by a person pursuant to these Station Access Conditions shall be construed, at the particular time, as a reference to that agreement, instrument, licence, standard (including any Applicable Standard), timetable, code or other document, as it may then have been amended, varied, supplemented 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 2006.
- (M) *Use of present tense:* Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.
- (N) *Sub-Contractors:* Where a party has sub-contracted its obligations under any Station Access Agreement or these Station Access Conditions references to that party in any Station Access Agreement or these Station Access Conditions shall include references to any sub-contractor so appointed.
- (O) *Permission to use:* References in these Station Access Conditions to the grant to a User of permission to use the Station shall, except where the context otherwise requires, be construed to mean:
- (1) the grant of permission for the User and its Associates to use the Common Station Amenities and to obtain the benefit of the Station Services or Light Maintenance Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway or in connection with the activities to be undertaken by the User in relation to the testing and acceptance of rolling stock, driver training and staff familiarisation, 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:

- (i) these Station Access Conditions;
- (ii) any Relevant Restriction arising under any Existing Agreement;
- (iii) 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;
- (iv) any Relevant Consents; and
- (v) any Applicable Standards.

(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.

- (S) *Ruling language:* All notices, consents or approvals served under these Station Access Conditions or a Station Access Agreement shall be in the English language.
- (T) *References to time:* References in these Station Access Conditions or a Station Access Agreement to a time or a period of time shall be construed as references to London time.
- (U) *Consultation:* Where in these Station Access Conditions a person is required to consult with other persons on any matter, such consultation may take place at a meeting to which such persons are invited.
- (V) *Currency:* All sums payable under these Station Access Conditions or a Station Access Agreement are expressed in Pounds Sterling.
- (W) *VAT:* All sums payable under these Station Access Conditions or a Station Access Agreement exclude VAT (unless otherwise stated).
- (X) *Indexed:* save as otherwise expressly stated in these Station Access Conditions or a Station Access Agreement, where at any time any sum is stated to be 'Indexed' then at such time, the said sum shall be multiplied by I where I equals:

$$RPI_t \div RPI_0$$

where RPI_t means the RPI published or determined with respect to February in Relevant Year t-1 and RPI_0 means the RPI published or determined with respect to February 2009;

- (Y) *Miscellaneous:* In these Station Access Conditions, unless the context otherwise requires:
 - (1) the singular includes the plural and vice versa; and
 - (2) any one gender includes the other.

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;

"**Accounting Year**" has the meaning ascribed to that term in Part 17 of these Station Access Conditions;

"**Act**" means the Railways Act 1993;

"**Adjacent Property**" means all or any part of the land, buildings, structures or other works (including HS1) 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;

"**Affected User**" means a User who is or is likely to be affected adversely or beneficially in any manner (including financially or operationally) by a Conditions Change Proposal or a Proposal for Change;

"**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);

"**Applicable Standards**" means the HS1 Standards and (to the extent applicable with regard to these Station Access Conditions) the Railway Group Standards;

"**Ashford International Station**" means the station of that name located at Romney Marsh Road, Ashford, Kent TN24 0PS as granted to the Station Facility Owner by the Secretary of State pursuant to the Ashford Leases;

"**Ashford Leases**" means:

- (a) the underlease of Ashford International Station granted by the Secretary of State to the Station Facility Owner; and
- (b) the underlease of the island platforms at Ashford International Station granted by the Secretary of State to the Station Facility Owner;

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

"**Authority**" has the meaning ascribed to it in Condition 105.2;

"**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;

"**Channel Tunnel**" means the existing fixed link under the English Channel between the southern portal at the Department of Pas-de-Calais in France and the northern portal in the County of Kent in England together with the terminal areas associated therewith;

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

"**Common Station Amenities**" means:

- (a) in respect of a User that is 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 a Non-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 4;

"**Common Station Services**" means:

- (a) in respect of a User that is a Passenger Operator the services supplied at the Station specified in paragraphs 3 and 4 of Annex 1; and
- (b) in respect of a User that is a Non-Passenger Operator, the services supplied at the Station specified in paragraph 3 of Annex 1,

in each case in accordance with the Applicable Standards and 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 4;

"**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 and the Channel Tunnel safety authority) 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 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;

"**Concession Agreement**" means the agreement made on 14 August 2009 between the Secretary of State and the Station Facility Owner granting the concession for the operation and financing of HS1 and the repair, maintenance and replacement of HS1 (as amended from time to time);

"**Conditions Change Proposal**" means any proposal to change these Station Access Conditions and any material modification to that proposal as referred to in Condition 4.7;

"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 4.3(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);

"CRC Action Plan" is such plan, as may be amended from time to time, to be agreed by the Station Facility Owner and each User to ensure good industry practice by the Station Facility Owner with respect to the Carbon Reduction Commitment and its application to the Station (and in the absence of agreement, as determined pursuant to the Dispute Resolution Procedure) taking due account of the following principles:

- (a) Costs: The User shall be responsible for the costs, expenses and financial liabilities relating to its energy usage, including:
 - (i) costs associated with the purchase of allowances by the Station Facility Owner relating to the User's energy use; and
 - (ii) costs associated with energy efficiency measures (operational and capex), together with a proportion of any other costs, expenses and financial liabilities that in the circumstances are reasonably allocated to the User by the Station Facility Owner on the basis of such principles as may be agreed or determined. The User shall not be responsible for the costs, expenses and financial liabilities relating to energy usage arising from retail activity at the Station;
- (b) Recycling payments: The User and the Station Facility Owner shall work together to determine what proportion of any payments made to the Station Facility Owner under the Carbon Reduction Commitment might sensibly and fairly be returned to the User either for its own benefit, or for reinvestment in additional energy efficiency measures at the Station and what proportion of any penalty the User should bear. Similar measures will be determined for any civil and/or criminal penalties levied on the Station Facility Owner, re-imburement to take account of any fault on the part of either or both of the Station Facility Owner or the User;
- (c) Allowance purchases and price: The Station Facility Owner shall be responsible for purchasing all allowances in respect of energy usage at the Station and for deciding whether to buy at auction or otherwise. Absent wilful misconduct or gross negligence on behalf of the Station Facility Owner, the User may not dispute the purchase price of such allowances;
- (d) Administrative costs: The administrative costs may, for example, include costs associated with:
 - (i) registration with the CRC administrator;

- (ii) forecasting emissions and allowance requirements;
 - (iii) monitoring and reporting emissions;
 - (iv) allowance transactions (e.g. broker fees);
 - (v) communications with the CRC administrator;
 - (vi) the collection and management of CRC costs and the distribution of recycling payments;
- (e) Co-operation and assistance: The User shall be responsible for providing the Station Facility Owner with all reasonable cooperation and assistance requested by the Station Facility Owner in the performance of its obligations under the CRC efficiently, economically and in accordance with good industry practice as a minimum; and
- (f) Information: The User is to be responsible for collecting and providing the Station Facility Owner with full and accurate information relating to the energy usage and efficiency of the User, as the Station Facility Owner may reasonably request in order to perform its obligations under the CRC;

"**CRC**" or "**Carbon Reduction Commitment**" means the carbon reduction commitment introduced or to be introduced pursuant to Part 3 of the Climate Change Act 2008;

"**CTRL Acts**" means the Channel Tunnel Rail Link Act 1996 and the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008;

"**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;
- (h) to have regard to the effect on the environment of activities connected with the provision of Station Services; and
- (i) in respect of St Pancras International Station, to safeguard the historic and architectural importance of the station;

"Decision Period" means the period referred to in Condition 8.7(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 55.1;

"Departures" means departure of Vehicles from the Station;

"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;
 - (iii) the operation of the Station; or
 - (iv) in relation to St Pancras International Station, the building fabric 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;

"Direct Losses" means the aggregate amount of:

- (a) publicity costs;
- (b) other costs and expenses directly related to the organisation and management of the User's response to the implementation of a Development Change Proposal; and
- (c) direct loss of revenue (net of any reduced costs which should reasonably have been saved by the User) as a result of the implementation of the Development Change Proposal,

in each case demonstrated to have been reasonably suffered or incurred by the User as a direct result of the implementation of a Development Change Proposal (and only to the extent that the User has used reasonable endeavours to mitigate such costs, expenses and losses) and excluding any special, indirect and consequential losses of any type;

"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 made between (inter alia) the Secretary of State, London & Continental Railways Limited and the Station Facility Owner for the resolution of disputes, as amended or replaced from time to time;

"Domestic Non-Passenger Operator" means a Domestic Northbound Non-Passenger Operator or a Domestic Southbound Non-Passenger Operator;

"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 a 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 a 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 in accordance with the Applicable Standards and 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 person who provides or procures the provision of non-passenger railway services to and from the Domestic Northbound Zone pursuant to a Station Access Agreement;

"Domestic Northbound Passenger Operator" means a person who provides or procures the provision of 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 a 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 in accordance with the Applicable Standards and 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 person who provides or procures the provision of non-passenger railway services to and from a Domestic Southbound Zone pursuant to a Station Access Agreement;

"Domestic Southbound Passenger Operator" means a person who provides or procures the provision of 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;

"Ebbsfleet International Station" means the station of that name located at International Way, Ebbsfleet Valley, Swanscombe DA10 1EF;

"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 of 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 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 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 liabilities, fees, costs or expenses 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 liabilities, fees, costs or expenses 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;

"Environmental Policy" means a written policy regarding environmental protection and sustainability which complies with all Legal Requirements and Applicable Standards and reflects good industry practice;

"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 HS1 (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 HS1 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 affect 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 entered into prior to [1 April 2012] pursuant to the Heritage Deed;
- (e) all agreements and instruments completed or to be completed pursuant to any agreement referred to in Annex 5;
- (f) 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;
- (g) all rights of third parties arising under Statute or by operation of law;
- (h) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;
- (i) any Superior Estate Grant; and
- (j) all other agreements entered into after the Conditions Efficacy Date the entering into of which is approved in accordance with Part 3;

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

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

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

"FM Affected Party" means, in relation to a Force Majeure Event, the party claiming relief under Condition 58 by virtue of that Force Majeure Event, and "FM Non-affected Party" shall be construed accordingly;

"FM Notice" means a notice given by the FM Affected Party to the other party stating that a Force Majeure Event has occurred;

"FM Report" means a report given or to be given by the FM Affected Party to the other party following the giving of a FM Notice;

"Force Majeure Event" means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a

strike or industrial action in sectors of the economy other than the railway industry;

"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 8.6(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 22.2(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;

"Government's Representative" has the meaning ascribed to it in Condition 104.1;

"Heritage Deed" means the agreement dated 19 March 1997 between the Station Facility Owner, the Historic Buildings and Monuments Commission and the London Borough of Camden;

"HS1" means the rail link between St. Pancras International Station and Cheriton, previously known as the Channel Tunnel Rail Link (and for the purposes of this definition, "rail link" shall have the same meaning as in section 56 of the CTRL Act);

"HS1 Access Dispute Resolution Rules" means the rules of that name which are appended to the HS1 Network Code;

"HS1 Lease" means the lease of HS1 granted by the Secretary of State to the Station Facility Owner;

"HS1 Ltd Permitted Transferee" means:

- (a) if the Concession Agreement is terminated, any undertaking which replaces the Station Facility Owner as the concessionaire of HS1;
- (b) any nominated undertaker of HS1 (other than the Station Facility Owner) under section 34 of the CTRL Act;
- (c) any lender, security or other trustee, bank, trust, fund or other financial institution or entity with whom the Station Facility Owner has at any time entered into any arrangement in connection with the provision of finance to the Station Facility Owner; and
- (d) in relation to Station Facility Owner, any undertaking falling within the definition of "group undertaking" in section 1161 of the Companies Act 2006;

"HS1 Network Code" means the document entitled "HS1 Network Code" dated August 2009, as may be amended from time to time;

"HS1 Standards" means technical standards and operating procedures contributing to safe inter-working railway system operation issued by the Station Facility Owner, which are identified as "CTRL Standards" and compliance with which is mandatory;

"Initial Proposal" means a Development Change Proposal accompanied only by the information set out in Condition 8.6(B)(1) which may be made at any time prior to a Full Proposal in relation to that Development Change Proposal;

"Insured Liability Amount" means an amount calculated in accordance with Condition 57.7;

"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;
- (b) property owner's liability, third party liability, business interruption and such other risks in respect of which a reasonable and prudent station operator would effect and maintain insurance;
- (c) those risks in respect of which the Station Facility Owner is obliged to carry insurance under the Concession Agreement; 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 an 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 an 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 in accordance with the Applicable Standards and 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 person who provides or procures the provision of non-passenger railway services to and from the International Zone pursuant to a Station Access Agreement;

"International Passenger Operator" means a person who provides or procures the provision of 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 treaty, enactment or legislative provision;
- (b) any regulation made by the Council or the Commission of the European Union;
- (c) any common law, or 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,

and which, at the relevant time, are in force in England and are applicable to any of the matters referred to in or connected with these Station Access Conditions and/or the relevant Station Access Agreement;

"Light Maintenance Services" means any light maintenance services for trains;

"Listed Building" means any building as defined under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990;

"London Olympic Games" means the London Olympic games and the London Paralympic games which are scheduled to take place during the following periods:

- (a) in respect of the London Olympic games, the period commencing on [24] July 2012 and ending on [15] August 2012; and
- (b) in respect of the London Paralympic games, the period commencing on [24] August 2012 and ending on [12] September 2012;

"Long Term Charge" has the meaning ascribed to it in Part 17;

"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 3 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 3; 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 66.1(Q)) any Core Facilities 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 10.4 or Condition 11), 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 22.1, 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 3;

"Network Emergency" means any situation or circumstance which the facility owner of (as appropriate) the NR Network or HS1 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 NR Network or HS1 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 NR Network or HS1 or any part of it;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG;

"NR Network" means the rail network of which Network Rail is the facility owner which is situated in England, Wales and Scotland not being HS1;

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

"Non-Passenger Operator" means a Domestic Non-Passenger Operator or an International Non-Passenger Operator;

"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 (or any successor body);

"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 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, the Planning and Compensation Act 1991, the Planning Act 2008 and any other Statute of a similar nature;

"Proposal for Change" means a Material Change Proposal, Major Change Proposal or Development Change Proposal;

"Public Holiday" means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;

"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;

"Railways Regulations" means the Railways 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 Consents" means all consents, approvals, permissions, licences, orders, certificates, registrations, filings, declarations granted, issued and/or undertaken by a Competent Authority in connection with the Station including any planning and/or heritage related consents listed in Annex 12;

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which a FM Affected Party claims relief under Condition 58;

"Relevant Losses" means all damage, losses, claims, proceedings, demands, liabilities,

costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by a party to a Station Access Agreement as a result of any breach by the other party to such Station Access Agreement of any of its obligations under the Station Access Agreement;

"Relevant Obligation" means an obligation under a Station Access Agreement in respect of which a Force Majeure Event has occurred and the FM Affected Party has claimed relief under Condition 58;

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

"Renewal" means the carrying out of such work so as to ensure that the Station is in good and substantial repair and condition at all times, consistent with the reasonable and proper continuing operation of HS1 and taking due account of usage in accordance with best practice but shall not include any Maintenance or Repair;

"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;

"Required Consents" means any consents, approvals, permissions, licences, orders, certificates, registrations or filings required by a Competent Authority and/or any Legal Requirement in connection with the Station including any planning and/or heritage related consents listed in Annex 12;

"Requisite Majority" means in relation to a Station, at any particular time, Voting Operators whose departures from the Station (or a particular Zone, as applicable) in respect of such Financial Year, expressed as a percentage of Total Departures (or total departures departing from a particular Zone, as applicable) in respect of such Financial Year, together are at least equal to the applicable percentage specified in paragraph 4 of Annex 8;

"Requisite Majority of Affected Users" means, in relation to a Station in respect of any Accounting Year, Affected Users who are Voting Operators whose departures from the Station (or a particular Zone, as applicable), expressed as a percentage of the total

departures of all Affected Users who are Voting Operators (or total departures of all Affected Users who are Voting Operators departing from a particular Zone, as applicable), in respect of such Accounting Year, together are at least equal to the applicable percentage specified in paragraph 4 of Annex 8;

"Retail Price Index" means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting the Station Facility Owner in no better nor worse position than it would have been had the index not ceased to be published);

"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 the Applicable Standards or any other 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 Documentation" shall have the meaning given to it in Condition 60.1(A)(2);

"SFO Environmental Indemnity" means the indemnity given by the Station Facility Owner pursuant to Condition 63.2;

"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;

"Specified Information" means any information statement, proposal, draft, instrument or document;

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

"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 Facility Operator" means a person contracted by the Station Facility Owner to operate and maintain the Station;

"Station Meeting" means a meeting convened in accordance with Condition 2.1(A), Condition 4.10(A) or Condition 8.16;

"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;

"St Pancras International Station" means the station of that name located at Pancras Road, London NW1 2QP in the London Borough of Camden;

"Stratford International Station" means the station of that name located at International Way, Olympic Park, London E20 1YY in the London Borough of Newham;

"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 from time to time granting any estate right or interest of any nature:

- (a) under which the Station Facility Owner for the time being holds the Station; and/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); and/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 granting the 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 Facilities listed in Annex 3;

"Uninsured Liability Amount" means an amount calculated in accordance with Condition 57.8;

"User" means a Passenger Operator or a Non-Passenger Operator;

"User Environmental Documentation" shall have the meaning given to it in Condition 60.1(B)(4);

"User Permitted Transferee" means in relation to the User, any undertaking falling within the definition of "group undertaking" in section 1161 of the Companies Act 2006;

"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 used by the User for the purpose of providing the non-passenger services and passenger services, excluding locomotives and empty vehicles

making Ancillary Movements (as defined in the HS1 Network Code) for that User;

"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 excluding any Passenger Operator having only diversionary rights at the Station;

"Zone" means in relation to a Station any of the Common Zone, the International Zone, the Domestic Southbound Zone (other than at Ashford International Station) and at St Pancras International Station the Domestic Northbound Zone;

"Zone Specific Authorised Change" means an approved Proposal for Change commenced pursuant to Condition 8.2; and

"Zone Specific Conditions Change" means an approved Conditions Change Proposal commenced pursuant to Condition 4.9.

- 1.3 **Severall Liability:** Save as expressly provided, 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.
- 1.5 **Standards of Documentation:** Where in these Station Access Conditions any person is required to prepare or produce any Specified Information, that obligation is an obligation to ensure that the Specified Information:
 - (A) is in terms which are, to the greatest extent reasonably practicable, precise, clear and unambiguous; and
 - (B) contains the information specified for its contents by the provision of these Station Access Conditions which requires its preparation, production or publication, and this Condition 1.5 is without prejudice to any further or other requirements specified in these Station Access Conditions and/or the Station Access Agreement in relation to the Specified Information.
- 1.6 **Limitation on Liability:** If the Station Facility Owner or a User fails to perform an obligation under the Station Access Conditions or a Station Access Agreement, the provisions of these Station Access Conditions limiting the liability of such User or Station Facility Owner under that contract shall have effect in relation to such failure.
- 1.7 **Contracts (Rights of Third Parties) Act 1999**
 - (A) *Application to Third Parties:* Except as provided in this Condition 1.7, no person who is not a User or the Station Facility Owner shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these Station Access Conditions.
 - (B) *Application to the Authority:* The Authority shall be entitled to enforce directly any rights given to it in Condition 105 of these Station Access Conditions under the Contracts (Rights of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award.
 - (C) *Application to the Government's Representative:* The Government's Representative

shall be entitled to enforce directly any rights given to it in Condition 105 of these Station Access Conditions under the Contracts (Rights of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award.

- (D) *Amendment:* The parties to a Station Access Agreement may by agreement pursuant to clause 7.3 of the Station Access Agreement rescind or vary any term of the Station Access Agreement or these Station Access Conditions without the consent of the Authority or the Government's Representative.

1.8 **Olympic Games:** The Station Facility Owner and each User:

- (A) acknowledge that the London Olympic Games will take place during 2012. So far as reasonably practicable, any modifications to these Station Access Conditions or changes to the Common Station Amenities and Common Station Services with regard to the London Olympic Games shall be subject to Part 2 and/or 3 (as applicable) of these Station Access Conditions. If and to the extent that it is not reasonably practicable to secure such modifications or changes pursuant to Part 2 and/or 3 (as applicable) of these Station Access Conditions, the Station Facility Owner and the relevant User shall negotiate in good faith to agree them, taking into account such wider arrangements as may be established to provide funding and/or recompense in connection with the arrangements; and
- (B) agree to comply with any agreement which they enter into between themselves in connection with the London Olympic Games. If the parties are unable to reach an agreement on any point with regard to the London Olympic Games, the matter shall be submitted to the Disputes Resolution Procedure the outcome of which shall be binding on the parties.

PART 2: MODIFICATIONS TO THE STATION ACCESS CONDITIONS

2. Station Meetings

2.1 Convening of Station Meetings:

- (A) The Station Facility Owner shall, within 14 days following receipt of a notice in writing from any User requisitioning a Station Meeting and specifying the business proposed to be carried out at that meeting, convene a meeting by giving not less than 14 days, and not more than 28 days, notice to all Users specifying:
 - (a) the date, venue and time of that meeting; and
 - (b) 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 the Station Facility Owner and all Users.
- (D) Those entitled to attend and speak at a Station Meeting convened in accordance with this Condition 2.1 are:
 - (1) the Station Facility Owner and its professional advisers; and
 - (2) all Users and each of their professional advisers.
- (E) Conditions Change Proposals and Proposals for Change shall not be approved at a Station Meeting convened in accordance with this Condition 2.1.

2.2 Conduct of Station Meetings:

- (A) Save as otherwise provided in this Condition 2.2, the Station Facility Owner and the Users of the Station may meet together for the despatch of business and may 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 and the Station Facility Owner shall have voted in favour of that resolution; and
 - (2) the failure of a User or the Station Facility Owner 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 start of the meeting, those present at the 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 or any professional adviser of any person entitled to attend a Station Meeting) 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, subject to Condition 2.2(C), 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) 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 which would be 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,

and the Station Facility Owner shall notify each Affected User and send a copy of the proposal to each Affected User as soon as reasonably practicable and in any event not later than 10 Business Days following receipt by the Station Facility Owner.

- 4.2 If the Station Facility Owner is the Sponsor, the Station Facility Owner shall, at the time of making the Conditions Change Proposal, invite each Affected User to submit to the Station Facility Owner written representations in respect of that Conditions Change 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 4.1.
- 4.3 If a User is the Sponsor, 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 Sponsor of the proposal:

- (A) give notice of that proposal to each Affected User (other than the Sponsor); 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 4.3(A).
- 4.4 If there is any uncertainty as to whether a User would constitute an Affected User in relation to a Conditions Change Proposal, the Station Facility Owner shall treat that User as an Affected User.
- 4.5 The person making a Conditions Change Proposal shall promptly comply with all reasonable written requests of the Station Facility Owner for reasonable further clarification of the proposal.
- 4.6 A modification to a Conditions Change Proposal may be proposed by the Station Facility Owner or an Affected User at any time during the period for consultation described in Condition 4.2 or Condition 4.3 relating to that proposal and shall be copied to all other persons entitled to make such a modification to a Conditions Change Proposal. The Station Facility Owner and the Sponsor of the Conditions Change Proposal (where the Sponsor is not the Station Facility Owner) shall consider any modifications which are proposed to a Conditions Change Proposal.
- 4.7 Where:
- (A) the Sponsor agrees to a modification proposed to a Conditions Change Proposal pursuant to Condition 4.6; and
 - (B) the Station Facility Owner or the Sponsor (where the Sponsor is not the Station Facility Owner) consider that the modification proposed to a Conditions Change Proposal is a material modification,
- the Station Facility Owner shall treat the proposal as a new Conditions Change Proposal.
- 4.8 Where the Sponsor does not agree to a modification proposed to a Conditions Change Proposal pursuant to Condition 4.6, it shall be entitled to:
- (A) continue consulting upon the Conditions Change Proposal in an unmodified form; or
 - (B) withdraw the Conditions Change Proposal.
- 4.9 Where proposed changes to these Station Access Conditions relate to a single Zone, not being the Common Zone and where either:
- (A) the Sponsor (where the Sponsor is not the Station Facility Owner) and the Station Facility Owner agree that the proposed changes to these Station Access Conditions would have no adverse impact on the costs attributable to any other Zone; or
 - (B) the Sponsor has provided the Station Facility Owner (where the Sponsor is not the Station Facility Owner) and Users with:
 - (1) an indemnity to indemnify them and to keep them indemnified in respect of such sums as shall fairly and reasonably compensate them 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 Affected Users in relation to 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 Affected User's vote shall be equal to the specific proportion of Qualifying Expenditure attributable to the Zone in question for which such Affected User is charged.

4.10 The Station Facility Owner shall, following the end of the period for consultation described in Condition 4.2 or Condition 4.3

- (A) be entitled (but not obliged, unless requested by an Affected User) to convene a Station Meeting and, if requested by an Affected User, the Station Facility Owner shall, 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 Affected Users specifying:
 - (1) the date, venue and time of that meeting; and
 - (2) the business of the meeting (which shall include any necessary supporting documentation).
- (B) The period of notice for convening a Station Meeting notified in accordance with Condition 4.10(A) may be waived prospectively or retrospectively with the consent in writing of the Station Facility Owner and all Affected Users.
- (C) Those entitled to attend and speak at a Station Meeting convened in accordance with Condition 4.10(A) are:
 - (1) the Station Facility Owner and its professional advisers; and
 - (2) all Affected Users and each of their professional advisers.
- (D) Condition 2.2 shall apply equally in respect of a Station Meeting convened in accordance with Condition 4.10(A) save that any reference to the Users or to Voting Operators shall be deemed to be a reference to the Affected Users.
- (E) A decision in writing signed by or on behalf of the Station Facility Owner or an Affected User and received by the Station Facility Owner prior to the end of the Consultation Period shall be valid and effective evidence of the Station Facility Owner's or that Affected User's (as the case may be) acceptance or rejection of a Condition Change Proposal.

4.11 The Station Facility Owner shall, following the end of the Consultation Period, supply a copy of the Conditions Change Proposal to each Affected User together with:

- (A) copies of all representations received by the Station Facility Owner pursuant to Condition 4.2 or Condition 4.3(B); and

- (B) if the Station Facility Owner and the Sponsor of the Conditions Change Proposal (if it is not the Station Facility Owner) consents, any modification to that proposal,

provided that the documentation to be provided pursuant to Condition 4.11(B) shall be provided no later than 20 Business Days following the end of the Consultation Period or, if earlier, at least 5 Business Days before the date of the meeting (if any) convened pursuant to Condition 4.10(A) and provided further that if the Sponsor of the Conditions Change Proposal materially modifies it, Condition 4.6 shall apply.

5. Open Access Related Changes

5.1 If:

- (A) a User or a potential user requests access to any part of the Station (including any amenities and/or facilities at the Station) or the provision of any services at the Station (the "Request");
- (B) either the Station Facility Owner would be in breach of the Railways Regulations or any Legal Requirement or there is a significant risk that the Station Facility Owner would be in breach of the Railways Regulations or any Legal Requirement if it failed to provide such access or services; and
- (C) in order to accommodate the Request so that the Station Facility Owner would not be in breach of the Railways Regulations or any Legal Requirement, or that there is no significant risk that the Station Facility Owner would be in breach of the Railways Regulations or any Legal Requirement (as appropriate), it is necessary to implement a Proposal for Change or a Conditions Change Proposal or to change or implement any other arrangement between the Station Facility Owner and one or more Users (such change to or implementation of any other arrangement between the Station Facility Owner and one or more Users being the "Other Arrangements"),

the Station Facility Owner and the Users shall comply with the provisions of Conditions 5.2 to 5.8.

- 5.2 Any dispute regarding the application of Condition 5.1 shall be resolved in accordance with Chapter I of the HS1 Access Dispute Resolution Rules and the parties hereby agree that the determining expert for the purposes of Chapter I of the HS1 Access Dispute Resolution Rules will be a legal expert.
- 5.3 The Station Facility Owner shall provide each User who has a legitimate interest in the Request (each an "Interested Party" and together the "Interested Parties") with full written details of the Request and shall consult with each Interested Party in relation thereto. Each Interested Party shall consider the Request and how to accommodate the Request.
- 5.4 The Station Facility Owner and the Interested Parties shall seek to agree the form of a Proposal for Change, a Conditions Change Proposal and/or any Other Arrangements which:
 - (A) are in a manner which causes a minimum of disruption and inconvenience to the Interested Parties;
 - (B) ensures that the Station Facility Owner would not be in breach of the Railways Regulations or any Legal Requirement by accommodating the Request in the manner contemplated by the Proposal for Change, Conditions Change Proposal and/or Other Arrangements, as appropriate; and

- (C) ensures that the Interested Parties receive their direct costs arising from any Proposal for Change, in accordance with Condition 5.5(B).
- 5.5 The costs and losses arising from the Proposal for Change, Conditions Change Proposal and/or Other Arrangements shall be borne as follows:
- (A) any capital expenditure shall be payable by the Station Facility Owner and shall not be recoverable as Qualifying Expenditure or Long Term Charge;
 - (B) the direct costs of the Interested Parties which arise from the Proposal for Change shall be paid by the Station Facility Owner and shall not be recoverable as Qualifying Expenditure or Long Term Charge;
 - (C) following implementation, any costs referable to operations and maintenance will be recoverable by the Station Facility Owner as Qualifying Expenditure;
 - (D) following implementation, any costs referable to Renewals will be recoverable by the Station Facility Owner as Long Term Charge; and
 - (E) any costs and losses referable to retail activity will not be recoverable by the Station Facility Owner from Users as Qualifying Expenditure or Long Term Charge and shall be recovered by the Station Facility Owner from the retail operators at the Station.
- 5.6 If agreement has not been reached on the matters referred to in Condition 5.4 within 40 Business Days following the provision of the Request pursuant to Condition 5.3 then the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.7 The Station Facility Owner and the Users shall implement the agreed or determined Proposal for Change, Conditions Change Proposal and/or Other Arrangements, as appropriate, promptly following the agreement or determination of the same.
- 5.8 Following the agreement or determination of the matters referred to in Condition 5.4, the Station Facility Owner and the Interested Parties shall perform such further acts and execute such documents as may be required or reasonably requested by each other in order to implement the Proposal for Change, Conditions Change Proposal and/or Other Arrangements.
- 5.9 Conditions 5.10 to 5.12 shall have no effect from the date when the Commitments of 17 June 2010 given by the Station Facility Owner in Case M.5655 (the "Commitments") cease to have effect.
- 5.10 If a User or potential user requests access to the Common Station Amenities or the provision of the Common Station Services set out in paragraph 55(iii) of the Commitments, the Station Facility Owner and such User or potential user shall follow the procedures for requesting and/or providing, on fair and non-discriminatory terms, such access under the Commitments.
- 5.11 If:
- (A) a User or a potential user requests access to the Common Station Amenities or the provision of Common Station Services set out in paragraph 55(iii) of the Commitments in or adjacent to the International Common Zone (as referred to in paragraph 55(iii) of the Commitments (the "Requested Amenities or Services")); and

- (B) there is no or insufficient space or capacity at the time of the request for the provision of the Requested Amenities or Services,

the User shall, on the Station Facility Owner's request, relinquish the space which it occupies or the services it is entitled to receive to enable the Requested Amenities or Services to be provided to such User or potential user.

- 5.12 In making any request pursuant to Condition 5.11, the Station Facility Owner shall act reasonably with a view to minimising the detrimental effect on all Users (other than the User or potential user which has made the request referred to in Condition 5.11 (if appropriate)) and shall give due consideration to utilising space occupied for retail or other non-rail purposes as a possible means of satisfying the request for the Regulated Amenities or Services.
- 5.13 Conditions 15.3 and 15.4 shall apply to any changes made to the Station in accordance with this Condition 5.

6. Approval of a Conditions Change Proposal

- 6.1 A Conditions Change Proposal shall have been approved only if the Requisite Majority and the Station Facility Owner shall have voted in favour of that proposal at the relevant Station Meeting or accepted it in writing in accordance with Condition 4.10(E) provided that the failure of an Affected User or the Station Facility Owner to cast its vote at the Station Meeting at all shall be deemed to be a vote in favour of that proposal.
- 6.2 The Station Facility Owner shall, as soon as reasonably practicable following a request by any Affected User to carry out further consultation in respect of any Conditions Change Proposal, carry out further reasonable consultation.
- 6.3 At the end of the Consultation Period (or after the Station Meeting where one has been convened pursuant to Condition 4.10(A)) the Station Facility Owner shall notify all Affected Users whether or not the Conditions Change Proposal has been approved.

7. Notification and Implementation of changes to these Conditions

- 7.1 The Station Facility Owner shall notify any change made to these Station Access Conditions in accordance with this Part 2 to all Users. Save as otherwise provided in Condition 7.3 any approved change shall have effect on the expiry of 21 days from the date of that notification.
- 7.2 The Station Facility Owner shall, prior to such notice or Conditions Change Proposal having effect, supply to all Users a revised version of these Station Access Conditions incorporating the change.
- 7.3 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.

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

8. Proposal for Change

8.1 No User or the Station Facility Owner shall take any action falling within the definition of a Proposal for Change, 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;
- (B) where a restriction, suspension or alteration to any permission to use the Station to permit that action may be imposed under Conditions 14 or 15.1 and the relevant Condition is not expressed to require compliance with this Part 3; or
- (C) in accordance with Condition 5.

8.2 Where:

- (A) a proposed action falls within the definition of a Proposal for Change; and
- (B) the proposed action only relates to a single Zone at a Station, not being the Common Zone; and
- (C) either:
 - (1) the Sponsor (where the Sponsor is not the Station Facility Owner) and the Station Facility Owner agree or the Station Facility Owner (where the Sponsor is the Station Facility Owner) reasonably believes that the proposed action would have no impact 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) the Sponsor has provided the Station Facility Owner (where the Sponsor is not the Station Facility Owner) and Users with:
 - (a) an indemnity to indemnify them and to keep them indemnified in respect of such sums as shall fairly and reasonably compensate them 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 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 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 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.

- 8.3 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.
- 8.4 Any User and the Station Facility Owner shall be entitled at any time to make a Proposal for Change. Without prejudice to Condition 8.1, a User shall be entitled at any time to seek the views of the Station Facility Owner in relation to any aspect of a Proposal for Change being contemplated by that User including in relation to the extent of any planning, heritage and/or environmental issues arising from or contemplated by the Proposal for Change. The Station Facility Owner shall be entitled to the reimbursement by the User of all of its reasonable costs incurred by it in assessing and responding to any such requests by the User.
- 8.5 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.
- 8.6 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 8.7 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 its customers, its business and on the building fabric of the Station, provided (where applicable) that in respect of a Development Change Proposal where such information is not available at the time of any Initial Proposal, the Sponsor shall provide such information as part of a Full Proposal; and
 - (B) in respect of a Development Change Proposal:
 - (1) where the proposal is an Initial Proposal, all of the following information:
 - (a) a description of the proposed development and a broad strategic plan for the proposed development;
 - (b) the likely form and scale of the proposed development;
 - (c) the area of the Station affected;
 - (d) the timetables and policy for implementing the proposal; and
 - (e) an impact assessment of the proposed development on the significance of the Station as a historic building,
- together with such of the following information as is available at the time of making the proposal:

- (f) a detailed plan of the proposed works on or to the Station;
- (g) details as to those parts of the Station which will be affected during and after implementation of the proposal;
- (h) the nature and detailed specification of the development to which the proposal relates, including the design, type, size and location of any proposed:
 - (i) alternative Station facilities (both whilst any works are being carried out and after the works have been completed); and
 - (ii) changes to any Common Station Amenities;
- (i) proposed alternative arrangements in respect of access to and from the highway whilst the works are being carried out (if appropriate);
- (j) 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;
- (k) the estimated timetable for the commencement, conduct and completion of the development to which the proposal relates and each material part of it;
- (l) a statement as to how the proposed development would comply with the Environmental Policy of the Station Facility Owner;
- (m) a method statement of construction and scale drawings of the proposed development;
- (n) proposed working arrangements (including those in relation to safety);
- (o) any proposed information display systems which will be available while the works are being carried out;
- (p) proposed insurance arrangements;
- (q) confirmation 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;
- (r) if the Sponsor of a Development Change Proposal is a User, all relevant information in order for the Station Facility Owner to obtain the Required Consents;
- (s) a statement as to how the proposed development would comply with the existing relevant policies of the Affected Users; and
- (t) the anticipated financial effect of the proposal on the Sponsor,

the Station Facility Owner (where it is not the Sponsor) and all other Users;

- (2) where the proposal is a Full Proposal, all such information described in Condition 8.6(B)(1) 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 8.6(B)(1) as is relevant to the Material Variation.

8.7 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 8.6;
- (B) invite the submission of representations on the proposal from the persons to whom the Proposal for Change has been sent pursuant to Condition 8.7(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 8.7(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 it is 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.

8.8 Each Consultee shall, in respect of any Proposal for Change, provide (subject to Condition 9.1, at no cost to the Station Facility Owner), its written and reasoned response and/or a Notice of Objection within the time period specified in Condition 8.7(B) and/or Condition 8.7(C) (as applicable).

8.9 Any Sponsor other than the Station Facility Owner shall use all reasonable endeavours to facilitate consultation by the Station Facility Owner with the persons specified in Condition 8.7(A) to the extent reasonably necessary so as to enable those persons properly to evaluate and respond to that proposal.

8.10 The Station Facility Owner shall, at the cost of the Sponsor, exercise its rights under this Condition 8 (including the enforcement of the obligations of a Consultee to the Station Facility Owner under this Condition 8) in accordance with such reasonable requests as may from time to time be made by the Sponsor.

8.11 Copies of any representations and/or Notices of Objection received by the Station Facility Owner from any person listed in Condition 8.7(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.

8.12 Following the receipt of any representations and/or Notices of Objection, the Station Facility Owner shall consult with the Sponsor (unless the Sponsor is the Station Facility Owner) in relation to that proposal and the Sponsor shall be entitled to amend the proposal and resubmit it to the Station Facility Owner (where the Sponsor is not the Station Facility Owner) and the Affected Users within the time period specified by Station Facility Owner in accordance with the procedures laid down in this Condition 8, 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.

- 8.13 Acceptance of an Initial Proposal in accordance with Condition 11 is only acceptance of such details as comprise such proposal and such acceptance is deemed to reserve for subsequent approval all of the matters set out in Condition 8.6(B) not particularised in the Initial Proposal and any Material Variations.
- 8.14 No Sponsor of a Development Change Proposal shall commence or proceed with any works falling within the definition of a Development Change Proposal until a Full Proposal has been accepted in accordance with Condition 11.
- 8.15 No User may withdraw any acceptance of any Initial Proposal as provided for in Condition 8.13 save where:
- (A) Condition 10.1 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 11 unless such Material Variation is not accepted or is rejected in accordance with Condition 11.
- 8.16 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.

9. Evaluation and response to Major Change Proposals and Development Change Proposals

- 9.1 Each Consultee shall be entitled to be paid in accordance with Conditions 9.7 and 9.8:
- (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.
- 9.2 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.
- 9.3 It shall be a condition of every Proposal for Change (other than a Material Change Proposal) 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.
- 9.4 Each Consultee shall ensure that any estimates given by it pursuant to Condition 9.2 are, so far as reasonably practicable, accurate on the basis of the information available to it.
- 9.5 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.

- 9.6 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.
- 9.7 If the Station Facility Owner is the Sponsor, it shall make the payments specified in Condition 9.1.
- 9.8 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 9.1 (and the amount due to the Station Facility Owner) and the Station Facility Owner shall thereupon make the payments specified in Condition 9.1.

10. Cessation and Modification of Development Change Proposals

- 10.1 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) where any Initial Proposal has been made in respect of any Development Change Proposal and the Full Proposal is not submitted by the Sponsor of such Initial Proposal 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;
 - (C) where a Full Proposal is preceded by an Initial Proposal and 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
 - (D) 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.
- 10.2 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 Dispute Resolution Procedure.
- 10.3 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 in the proportion as shall be determined pursuant to the Dispute Resolution Procedure 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.

- 10.4 The Sponsor of a Development Change Proposal shall be entitled to propose modifications to a Development Change Proposal and shall in that regard supply all such information described in Condition 8.6(B) as is relevant to those modifications and the Consultees and/or the Station Facility Owner (as the case may be) 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 none of the Consultees notifies the Station Facility Owner or the Station Facility Owner does not notify the Consultees within fourteen days of the supply of that information that it disputes that opinion.

11. Acceptance of a Proposal for Change

- 11.1 Subject to the remaining provisions of this Condition 11, 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 Affected User shall have given a Notice of Objection to the Station Facility Owner or in the case of a Majority Proposal, the Requisite Majority of Affected Users shall have failed to give Notices of Objection to the Station Facility Owner; and
- (B) 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 or there is no significant risk that it would have a material adverse effect on the Station or the financial position of the Station Facility Owner as infrastructure manager,

provided that in the case of a Proposal for Change which is a proposal to terminate the letting of any Core Facilities on grounds of a breach of covenant by the lessee in accordance with the terms of the relevant lease or pursuant to Condition 5, a Notice of Objection given by the User which is the lessee of the Core Facilities shall be disregarded.

- 11.2 Any User entitled to give a Notice of Objection in respect of a Development Change Proposal shall not give a Notice of Objection in respect of such Development Change Proposal (or be deemed to have given a Notice of Objection in respect of such Development Change Proposal) if:

- (A) each Affected User has been offered an indemnity by the Sponsor in respect of the costs, expenses, losses and fees suffered or incurred by such Affected User during the period up to the completion of the implementation of the Development Change Proposal; and
- (B) each Affected User has been offered an indemnity by the Sponsor to pay to each of them a sum equivalent to the Direct Losses in respect of the costs, expenses and losses suffered or incurred by such Affected User during the period following the completion of the implementation of the Development Change Proposal, provided that such indemnity be limited to the Direct Losses that such Affected User will incur up to and including the first anniversary of the completion of the Development Change Proposal,

provided that a User shall be entitled to give a Notice of Objection in respect of a Development Change Proposal if there is a significant risk that such Development Change

Proposal would have a material adverse effect (other than in relation to any costs or financial losses) on the User's business as a train operator.

- 11.3 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 8.7) of the acceptance or rejection of the relevant Proposal for Change and of any notice given under Condition 11.4 and received within that period.
- 11.4 A Proposal for Change (other than a Development Change Proposal) shall not be rejected or deemed to have been accepted if:
- (A) an Affected User or the Station Facility Owner shall have:
 - (1) given notice (to the Station Facility Owner in the case of an Affected User and to the Affected 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 11.4(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 initiated in accordance with Condition 36 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 Affected User or the Station Facility Owner shall have established that, whether alone or together with any other Affected User or the Station Facility Owner, 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.
- 11.5 Condition 11.4 shall only apply where an Affected User or the Station Facility Owner:
- (A) has not given a Notice of Objection pursuant to Condition 8.7(C) and the Proposal for Change (other than a Development Change Proposal) has otherwise been rejected by the Affected Users; and
 - (B) has given a Notice of Objection pursuant to Condition 8.7 (C) and the Proposal for Change (other than a Development Change Proposal) has otherwise been accepted by a Requisite Majority of Affected Users and the Station Facility Owner.
- 11.6 In determining whether the interests of any Affected User or the Station Facility Owner shall be, or shall be likely to be, prejudiced for the purposes of Condition 11.4, the following shall be taken into account:
- (A) (to the extent applicable) the Decision Criteria;
 - (B) the expectations which:

- (1) the Affected 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 (other than a Development Change Proposal) 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 8.7(C), the extent to which its interests would be materially and adversely affected if the Proposal for Change (other than a Development Change Proposal) were implemented.
- 11.7 A Proposal for Change (other than a Development Change Proposal) shall be accepted or rejected in accordance with the outcome of such final proceedings.
- 11.8 Notwithstanding the other provisions of this Condition 11, 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.
- 11.9 Where a Proposal for Change is deemed to be accepted pursuant to Condition 11.8 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.

12. Implementation of a Proposal for Change

12.1 Development Change Proposal

- (A) The Sponsor 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.
- (B) Following the approval of the Development Change Proposal, the Sponsor shall make necessary applications to the Competent Authorities to obtain the Required Consents and follow the processes set out in the Legal Requirements and the Heritage Deed for obtaining the Required Consents. If the Sponsor is a User, such User shall make the necessary applications for the Required Consents in the name of the Station Facility Owner as required under the provisions of the CTRL Act 1996 and the Heritage Deed. Prior to making any such applications, the User shall send to the Station Facility Owner draft applications for the Required Consents and the Station Facility Owner shall be entitled to comment on such applications within a reasonable period, which shall be binding on the User. No User shall make any application for the Required Consents without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed).
- (C) The User shall send a copy to the Station Facility Owner of all correspondences with the Competent Authorities with regard to the Required Consents. The User shall keep the Station Facility Owner informed of all discussions with the Competent Authorities with regard to the Required Consents and the Station

Facility Owner shall be entitled to attend such discussions with the Competent Authorities.

- (D) Following the receipt of the Required Consents, the Sponsor shall be entitled to implement the Development Change Proposal in accordance with the terms and conditions imposed on such Sponsor in the approved Development Change Proposal and the Required Consents. Such Sponsor shall comply with all conditions of the Required Consents, including associated undertakings and assurances and the applicable provisions of the CTRL Acts. 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 Required Consents have been obtained.

12.2 Proposals for Change other than Development Change Proposal

- (A) Subject to Condition 12.2(B), the Station Facility Owner shall carry out the changes proposed in accordance with any Proposal for Change other than a Development Change Proposal which shall have been approved pursuant to this Part 3.
- (B) If such Proposal for Change will have the effect of:
 - (1) 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
 - (2) 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.

13. **Changes imposed by law**

13.1 Where the Station Facility Owner is required as a result of any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition 36 to implement a change which would otherwise be the subject of a Proposal for Change, the Station Facility Owner and the Users shall comply with Conditions 8, 10, 11.1, 11.3, 11.8, 11.9 and 12 save that a User shall only be entitled to serve a Notice of Objection in respect of the proposal if:

- (A) the method by which the Station Facility Owner proposes to implement such change is not the minimum required to comply with the Change of Law, Direction of any Competent Authority or any body appointed in accordance with Condition 36; or
- (B) where a Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition 36 relates to the provision of retail facilities at a Station, some or all of the costs, losses, expenses and fees of implementing the Proposal for Change or arising from the Proposal for Change ought reasonably to be borne by the provider of such retail facilities.

- 13.2 Without prejudice to Condition 66, the Station Facility Owner shall implement any change which is the subject of Condition 13.1 using the most economically advantageous method available.
- 13.3 The costs and losses arising from any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition 36 shall be borne as follows:
- (A) any capital expenditure shall be payable by the Station Facility Owner and shall not be recoverable as Qualifying Expenditure or Long Term Charge;
 - (B) following implementation of any works required pursuant to this Condition 13, any costs referable to operations and maintenance will be recoverable by the Station Facility Owner as Qualifying Expenditure (save for such costs which ought reasonably to be borne by the providers of retail facilities);
 - (C) following implementation of any works required pursuant to this Condition 13, any costs referable to Renewals will be recoverable by the Station Facility Owner as Long Term Charge; and
 - (D) any other costs and losses, howsoever arising, shall be borne by the person who incurs such costs and losses.

PART 4: WORKS, REPAIRS AND MAINTENANCE

14. Existing Works, Third Party Works and Emergencies

- 14.1 Subject to Condition 16, 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.

15. Repairs and Maintenance and other works

- 15.1 Subject to Conditions 15.3 and 16.1, 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, Renewal, 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 carried out in accordance with the provisions of Condition 5;
 - (E) permit any works carried out 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 13;
 - (F) permit any works carried out in accordance with the provisions of Condition 54.1; and
 - (G) permit any works and/or alteration to be carried out in accordance with any Proposal for Change which has been approved in accordance with Part 3.
- 15.2 The Station Facility Owner shall restrict, suspend or alter any permission to use the Station in accordance with Condition 15.1 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 54.1.
- 15.3 The Station Facility Owner shall, if it intends to restrict, suspend or alter permission to use the Station in accordance with Condition 15.1 (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 15.2:

- (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.

15.4 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 14 and 15.

15.5 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 16.

16. Alternative Arrangements

16.1 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Conditions 14 or 15, 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.

16.2 Each User shall promptly reimburse the Station Facility Owner for any costs incurred by it in accordance with Condition 16.1 as a result of a request by it pursuant to Condition 15.2.

17. Station Facility Owner's obligations

17.1 The Station Facility Owner shall ensure that:

- (A) (1) Maintenance and/or Repair (as the case may be) is carried out to all Equipment and all parts of the Station and that such Maintenance and/or Repair is carried out in the most economic manner; and
- (2) Renewal of the Equipment and parts of the Station shall be undertaken where it is reasonably necessary having due regard to the obligations of the Station Facility Owner under the Concession Agreement, the HS1 Lease, the Ashford Leases, the Heritage Deed and/or any Legal Requirement and that such renewals are carried out in the most economic manner; 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 possible.

17.2 The Station Facility Owner's obligations in Condition 17.1 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.

17.3 The Station Facility Owner shall not be in breach of its obligations under Conditions 17.1 and 17.2 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 17.1 and 17.2, 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.

18. Equipment

18.1 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.

19. General Upkeep

19.1 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.

20. Conduits free from obstruction

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

21. Snagging and Inherent Defects

21.1 In this Condition 21 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.

21.2 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.

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

21.4 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

22. Responsibility for effecting insurance

- 22.1 The Station Facility Owner shall insure and keep insured the Station against 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.
- 22.2 The Station Facility Owner shall, in respect of any insurance effected pursuant to Condition 22.1 in respect of damage to the Stations, 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 such 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).
- 22.3 The Station Facility Owner shall ensure that it holds and maintains the types and levels of insurance required pursuant to the terms of the Concession Agreement.
- 22.4 Each User shall 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.
- 22.5 Each User shall, in respect of any insurance policy to which Condition 22.4 applies, provide the 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.

23. Destruction or Damage to the Station

- 23.1 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 22.1 in respect of damage to the Stations,
- 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 23.2; 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 such 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 23.1(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.

23.2 As soon as practicable following any destruction or damage referred to in Condition 23.1, 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. If the Station Facility Owner and the Users are unable to agree any of the matters referred to in Conditions 23.2(A) and/or 23.2(B) within 30 days of the destruction or damage referred to in Condition 23.1, the matter shall be referred to the Dispute Resolution Procedure for resolution on the basis of what a reasonable Station Facility Owner and reasonable Users of a station of the same type and character as the Station would be likely to agree.

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

23.4 If the monies recovered under any insurance policy maintained by the Station Facility Owner pursuant to Condition 22.1 are not sufficient to meet the cost to the Station Facility Owner of fulfilling its obligations under Condition 23.2, the Station Facility Owner shall bear the shortfall.

24. Provision of Documents

24.1 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.

25. Maintenance of Insurance

25.1 In respect of each insurance policy to which Condition 24 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.

26. Increase of premium or invalidation of policy

26.1 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 use reasonable endeavours to 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 26.1.

26.2 The User responsible for any act or omission contemplated by Condition 26.1 shall pay to the Station Facility Owner on demand the amount of:

- (A) any increase in premium referred to in Condition 26.1(B); and
- (B) any irrecoverable insurance monies referred to in Condition 26.1(C),

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

27. Rights of Subrogation

27.1 The Station Facility Owner shall use all reasonable endeavours to procure that any insurance policy to which Condition 24 applies shall include a waiver of the relevant insurer's right of subrogation against each User.

PART 6: EXISTING AGREEMENTS AND THIRD PARTY RIGHTS

28. General

28.1 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 would have been aware of such obligations if it had exercised its rights under Part 8 of these Station Access Conditions and in each case 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. Station Facility Owner's representations, warranties and undertakings

29.1 The Station Facility Owner represents, warrants and undertakes to each User that the terms of all Existing Agreements which result or are likely to result in a Relevant Restriction are available upon request by such Users in accordance with the provisions of Part 8. 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.

29.2 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.

30. Exercise of discretion/Grant of consent

30.1 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.

30.2 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 16.1.

30.3 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.

31. Wayleave grants

31.1 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.

31.2 The Station Facility Owner may retain the benefit of grants pursuant to Condition 31.1 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.

31.3 No grant shall be made pursuant to Condition 31.1 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.

31.4 Any grant of rights of way made pursuant to Condition 31.1 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 31.1 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Station no less beneficial than the provisions of Conditions 15.3(B) and 68.

32. Superior Estate Owner consent

32.1 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, 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

33. Notification by Station Facility Owner

33.1 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 (Indexed);
- (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 (Indexed); 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.

34. Notification by User

34.1 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.

34.2 Notwithstanding Conditions 33 and 35, 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.

35. Authority of Station Facility Owner

35.1 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 54.3, 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 Users 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 (Indexed).

36. Resolution of disputes and claims

- 36.1 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 Dispute Resolution Procedure.
- 36.2 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 Station Facility Owner cannot require the same as a matter of law).

PART 8: DISCLOSURE OF DOCUMENTS AND INFORMATION

37. Request for Documents and Information

- 37.1 The Station Facility Owner shall, in a form as it may reasonably determine, create and maintain a register listing all of the documents referred to in Condition 38.
- 37.2 Subject to Condition 39, the Station Facility Owner shall, in such form and manner as it may reasonably determine, make available for inspection by any User, at no cost to the User, a full copy of the documents listed in the register maintained pursuant to Condition 37.1.
- 37.3 A User may at any time, by written notice to the Station Facility Owner, request a copy of any of the documents and/or information referred to in Condition 38. Any notice given by a User pursuant to this Condition 37.3 shall describe in reasonable detail the documents and/or information requested.
- 37.4 Subject to the payment of the Station Facility Owner's reasonable costs and expenses of providing such documents and/or information and Condition 39, as soon as reasonably practicable following receipt of a written notice from a User pursuant to Condition 37.3, the Station Facility Owner shall provide to such User a copy of the documents and/or information requested in such notice. Where, pursuant to Condition 39, the Station Facility Owner redacts or otherwise excludes any information or documents which have been requested by a User, it shall notify such User in writing as to the grounds for making such redaction and/or exclusions.

38. Documents and Information which may be Requested

- 38.1 The following documents and information may be requested by a User pursuant to Condition 37:
- (A) in relation to Existing Agreements of which the Station Facility Owner 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;
- (D) 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;
- (E) in relation to the most recent Vehicle count referred to in Condition 98, 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; and
- (F) a copy of any qualification criteria and requirements and the procedure for their establishment which are published pursuant to Conditions 66.1(E)(2) and 66.1(E)(3).

39. Exclusions

- 39.1 In providing access to or a copy of any document and/or information to a User pursuant to Conditions 37.2 and 37.4, the Station Facility Owner shall be entitled to:
- (A) redact or otherwise exclude, so far as 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;
 - (B) redact or otherwise exclude any and all information which, in the reasonable opinion of the Station Facility Owner, is commercially sensitive or subject to a duty of confidentiality; and
 - (C) redact or otherwise exclude such documents and/or information in relation to which the Station Facility Owner has received a notice from a Competent Authority that it would be against the public interest or the commercial interests of any person if such documents and/or information were disclosed.

PART 9: RIGHTS GRANTED OVER ADJACENT PROPERTY

40. Rights of Way

- 40.1 Subject to Condition 43.1, 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 which, at the relevant time, provide access to the Station.
- 40.2 Without prejudice to Condition 40.1, 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.
- 40.3 If the rights in Conditions 40.1 or 40.2 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.

41. Emergency Rights

- 41.1 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.

42. Entry upon the Adjacent Property

- 42.1 Subject to Condition 43.1, 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.

43. Exercise and enjoyment of Rights

- 43.1 The exercise of rights pursuant to Conditions 40, 41 and 42 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.
- 43.2 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.

44. Works costs

- 44.1 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

45. Property Interests

45.1 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.

46. Exercise of Rights Granted

46.1 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.

46.2 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
SECTION A: PERFORMANCE MONITORING REGIME

47. Performance Monitoring

47.1 In Sections A to C of this Part 11 of these Station Access Conditions, unless the context otherwise requires:

"Accounting Period"	has the meaning ascribed to that term in Condition 88;
"Baseline Hours"	means, in respect of each Measured Service in each Zone, the baseline number of hours for performance of that Measured Service in an Accounting Period, as determined pursuant to Condition 47.5 and Section B of this Part 11 and set out in Annex 13;
"Measured Services"	means those Common Station Services and Common Station Amenities set out in Annex 13;
"Measured Stations"	means St Pancras International Station, Stratford International Station and Ebbsfleet International Station;
"Operative Hours"	means 0430 until the 0000 immediately following, on each day that the Station is open to the public;
"Passenger Operator's Performance Proportion"	means an amount calculated in accordance with Condition 49.9;
"Performance Bands"	means, in respect of each Measured Service, the performance bands set out in Annex 13 for that particular Measured Service;
"Performance Credit"	means an amount (if any) withheld by the Station Facility Operator from a subcontractor in an Accounting Period pursuant to the terms of the subcontract as a result of poor performance by such subcontractor in that Accounting Period;
"Performance Event"	has the meaning set out in the column of the same name in the table set out in Annex 13;
"Performance Measurements"	means a review of each of the Measured Services in accordance with Condition 47.5;
"Performance Payment"	means an amount calculated in accordance with Condition 48 and set out in the notice issued by the Station Facility Owner pursuant to Condition 47.6;
"Planned Maintenance"	means planned Maintenance, Repair (such Repair to be completed, where reasonably possible, outside of Operative Hours) and Renewal of the Measured Service which, in the case of such Maintenance, Repair and Renewal that is to take place during Operative Hours, has been notified by the Station Facility Owner to each relevant Passenger Operator: (i) in the case of Maintenance and Renewal of the Measured

- Service, in advance of the commencement of each Accounting Year; and (ii) in the case of Repair of the Measured Service, as soon as is reasonably practicable following the Station Facility Owner becoming aware of the need for such Repair;
- "Relevant Station Proportion"** means an amount calculated in accordance with Condition 49.10;
- "Relevant Station"** has the meaning ascribed to that term in Condition 49.9;
- "Total International Departures"** has the meaning ascribed to that term in Condition 88;
- "Total Northbound Domestic Departures"** has the meaning ascribed to that term in Condition 88; and
- "Total Southbound Domestic Departures"** has the meaning ascribed to that term in Condition 88.
- 47.2 The provisions of this Section A of Part 11 of these Station Access Conditions shall apply to the Measured Services at the Measured Stations during the Operative Hours.
- 47.3 The Station Facility Owner shall procure that with effect from 01 April 2012, Performance Measurements are carried out in accordance with Condition 47.5.
- 47.4 Without prejudice to Condition 47.7:
- (A) in respect of each and every Performance Event arising in relation to a Measured Service, a Passenger Operator shall claim under this Section A of Part 11 prior to seeking any other remedy under the Station Access Agreement to which it may otherwise be entitled; and
- (B) unless otherwise agreed by the Station Facility Owner and each relevant Passenger Operator, a Passenger Operator may only pursue any other remedy under the Station Access Agreement to which it may be entitled in respect of a Performance Event where the Station Facility Owner's liability to the Passenger Operator in respect of that Financial Year has reached the limit of liability described in Condition 49.8, save that a Passenger Operator shall be entitled to exercise its rights under Condition 54 with the consent of the Station Facility Owner.
- 47.5 Performance Measurements shall be carried out by the Station Facility Owner following the end of each Accounting Period as follows:
- (A) the Station Facility Owner shall calculate the Baseline Hours for each Measured Service in each Zone for the immediately preceding Accounting Period. Where such Accounting Period is 28 days and the Station was open to the public on each day of the Accounting Period, the figures in Annex 13 shall apply. Such figures shall be adjusted on a pro-rata basis by the Station Facility Owner where the Accounting Period was for a period other than 28 days and/or the Station was not open to the public on each day of such Accounting Period;
- (B) the Station Facility Owner shall calculate the total number of hours (or parts thereof) during that Accounting Period where each Measured Service in each Zone was affected by a Performance Event; and

- (C) the Station Facility Owner shall calculate the total number of hours (or parts thereof) in that Accounting Period where each Measured Service in each Zone was affected by a Performance Event arising from Planned Maintenance or a Force Majeure Event.
- 47.6 The Station Facility Owner shall within 10 Business Days of the end of an Accounting Period serve a notice on each Passenger Operator, such notice to contain details of:
- (A) the Baseline Hours for each Measured Service in each Zone for that Accounting Period;
 - (B) the total number of hours (or parts thereof) in that Accounting Period where each Measured Service in each Zone was affected by a Performance Event;
 - (C) the Performance Event or Performance Events which affected the provision of each of the Measured Services in each Zone during that Accounting Period;
 - (D) any Performance Event or Performance Events arising from Planned Maintenance and/or Force Majeure Events during that Accounting Period; and
 - (E) the Performance Payment to which each Passenger Operator is entitled.
- 47.7 If a Passenger Operator disputes any of the matters or details outlined in the notice issued by the Station Facility Owner pursuant to Condition 47.6, within 10 Business Days of receipt of such notice the Passenger Operator shall give a notice to the Station Facility Owner stating that matters or details are in dispute and setting out its reasons for the dispute and:
- (A) within 10 Business Days of receipt by the Station Facility Owner of the notice from the Passenger Operator, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
 - (B) if, for any reason, within 5 Business Days of the meeting referred to in paragraph 47.7(A), the parties are still unable to agree any disputed aspects, each party shall within a further 5 Business Days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the other party;
 - (C) within 20 Business Days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
 - (D) if resolution of any dispute is not achieved before the expiry of 10 Business Days following the meeting held in accordance with Condition 47.7(C), either party may require that the matter be resolved in accordance with the Disputes Resolution Procedure.
- 47.8 Notwithstanding Condition 85.2, each Passenger Operator waives its right to refer such dispute to the disputes process set out in Conditions 47.7(A) to (D) if it does not give a notice to the Station Facility Owner stating that matters or details are in dispute and setting out its reasons for the dispute in accordance with Condition 47.7 within 10 Business Days of receipt of the notice from the Station Facility Owner pursuant to Condition 47.6.

48. Performance Payments

48.1 The Performance Payment for a particular Accounting Period shall be calculated in accordance with the following formula:

$$PP_{AP} = \Sigma MSZ_{AP}$$

where:

PP_{AP} means the Performance Payment for that Accounting Period;

Σ means the summation across each Measured Service in each Zone; and

MSZ_{AP} means the performance payment in relation to a particular Measured Service in a particular Zone for that Accounting Period which shall be determined by reference to the Performance Bands for that Measured Service in accordance with Condition 48.4.

48.2 In calculating MSZ_{AP} for the purpose of Condition 48.1, the Performance Band into which performance of the Measured Service for the Accounting Period shall fall shall be calculated in accordance with Conditions 48.3 and 48.4.

48.3 (A) The value of PER_{AP} for the purposes of Annex 13 shall be calculated in accordance with the following formula:

$$PER_{AP} = \frac{OPBH_{AP}}{BL_{AP}} \times 100$$

where:

PER_{AP} means the value used to determine the Performance Band into which performance of the Measured Service in a particular Zone for that Accounting Period falls;

BL_{AP} means the Baseline Hours in that Accounting Period in respect of the Measured Service in the particular Zone; and

$OPBH_{AP}$ means the number of Operative Hours below the Baseline Hours in that Accounting Period in respect of which a Measured Service in a particular Zone was affected by a Performance Event, calculated as follows:

$$OPBH_{AP} = (PE_{AP} - PFM_{AP} - PPM_{AP}) - (HT_{AP} - BL_{AP})$$

where:

PE_{AP} means the total number of Operative Hours in that Accounting Period in respect of which a Measured Service in a particular Zone was subject to a Performance Event;

PFM_{AP} means the total number of Operative Hours in that Accounting Period in respect of which a Measured Service in a particular Zone was subject to a Performance Event resulting from a Force Majeure Event;

PPM_{AP} means the total number of Operative Hours in that Accounting Period in respect of which a Measured Service in a particular Zone was subject to a Performance Event caused by Planned Maintenance; and

HT_{AP} means the maximum number of Operative Hours availability for each Measured Service in that Accounting Period as set out in Annex 13.

(B) Where the value of OPBH_{AP} calculated according to Condition 48.3(A) is negative, the value of OPBH_{AP} shall be deemed to be 0.

48.4 The value of MSZ_{AP} shall, in respect of each Measured Service, be calculated by the Station Facility Owner as follows:

(A) the Station Facility Owner shall refer to the "Payments per 28 Day Period (£ per Relevant TOC)" section of the table set out in Annex 13;

(B) using the value of PER_{AP} calculated pursuant to Condition 48.3, the Station Facility Owner shall determine into which Performance Band the value of PER_{AP} falls;

(C) the Station Facility Owner shall refer to the row of the table set out in Annex 13 which is relevant to the Measured Service in question and determine the Performance Payment payable in respect of that Measured Service.

49. Payment and Limitation of Liability

49.1 Subject to Conditions 49.2 to 49.7, each Passenger Operator shall be entitled to claim Performance Payments (or part thereof) from the Station Facility Owner.

49.2 In order to claim the Performance Payments (or part thereof) for an Accounting Period, the Passenger Operator shall, within 10 Business Days of the date of the notice provided by the Station Facility Owner pursuant to Condition 47.6, notify the Station Facility Owner of:

(A) the Performance Payments specified in the notice provided pursuant to Condition 47.6 which Passenger Operator intends to claim for that Accounting Period; and

(B) the Performance Events to which such Performance Payments relate,

and the Passenger Operator shall submit an invoice to the Station Facility Owner in respect of the Performance Payments it intends to claim in respect of that Accounting Period.

49.3 Subject to Conditions 49.4 and 49.5, where the Passenger Operator:

(A) fails to notify the Station Facility Owner of the Performance Payments it intends to claim in respect of an Accounting Period and submit an invoice in respect of the same; or

(B) elects not to claim all or part of a Performance Payment to which it is entitled pursuant to this Section A of Part 11,

within the period provided in Condition 49.2, the Passenger Operator shall irrevocably waive its entitlement to claim all or part of such Performance Payment.

49.4 Where, pursuant to Condition 47.7, a Passenger Operator has disputed the contents of the notice provided by the Station Facility Owner under Condition 47.6, the Passenger

Operator shall, within 5 Business Days of final determination of the dispute, notify the Station Facility Owner whether or not it elects to claim all or part of any Performance Payment which it has been determined that it is entitled to. If the Passenger Operator elects to claim all or part of such Performance Payment it shall also submit an invoice in relation to such sums which it has elected to claim.

- 49.5 If the Passenger Operator fails to notify the Station Facility Owner of its election and/or to submit an invoice pursuant to Condition 49.4, it shall irrevocably waive its entitlement to claim all or part of such Performance Payment. Such failure shall not affect the Passenger Operator's right to claim Performance Payments in respect of any Performance Event occurring in any successive Accounting Period.
- 49.6 A Passenger Operator shall only be entitled to claim Performance Payments in relation to a Zone of the Station which it occupies, whether by itself or in common with any one or more other Passenger Operators and, in the case of a Passenger Operator having only diversionary rights at a Relevant Station, shall only be entitled to claim Performance Payments where a Measured Service has been affected by a Performance Event at a time where such diversionary rights are being exercised.
- 49.7 Subject to Condition 55.3, where a Passenger Operator is responsible for a Performance Event:
- (A) such Passenger Operator shall not be entitled to claim Performance Payments in relation to such Performance Event unless the Station Facility Owner has unreasonably delayed remedying such Performance Event and in such case the Passenger Operator shall be entitled to claim Performance Payments only to the extent that the Station Facility Owner has unreasonably delayed remedying such Performance Event;
 - (B) without prejudice to any other remedy which the Station Facility Owner may have under these Station Access Conditions, such Passenger Operator shall pay to the Station Facility Owner an amount equivalent to the Performance Payments payable by the Station Facility Owner to other Passenger Operators in respect of such Performance Event but not to the extent that the Station Facility Owner is responsible for an increased level of Performance Payment arising due to its unreasonable delay in remedying the Performance Event; and
 - (C) such Passenger Operator shall be entitled to dispute, pursuant to Condition 36, any amounts which it is obliged to pay the Station Facility Owner in accordance with Condition 49.7(B) only on the basis that the Station Facility Owner has incorrectly calculated the Performance Payments which the Station Facility Owner is liable to pay to other Passenger Operators.
- 49.8 Subject to Condition 49.12, the aggregate liability of the Station Facility Owner, its officers, employees and agents arising out of or in connection with this Section A of Part 11 in respect of each Financial Year shall be limited to the Passenger Operator's Performance Proportion for that Financial Year in respect of any and all liability arising out of or in connection with this Section A of Part 11 in relation to a Passenger Operator's Station Access Agreement in respect of the Relevant Station.
- 49.9 The Passenger Operator's Performance Proportion in respect of a Financial Year shall be calculated as follows:

$$\text{POPP} = \text{RSP} \times \frac{\text{PORS}_{\text{VD}}}{\text{RS}_{\text{VD}}}$$

where:

POPP means the Passenger Operator's Performance Proportion;

RSP means, in respect of a Relevant Station, the Relevant Station Proportion calculated in accordance with Condition 49.10;

PORS_{VD} means either:

- (i) the number of Departures by a Passenger Operator from any particular Measured Station (the "**Relevant Station**") during the Sample Period, as most recently calculated in accordance with Condition 98; or
- (ii) in respect any Passenger Operator having only diversionary rights at a Relevant Station, the number of Departures normalised to the Sample Period, as calculated by the Station Facility Owner in respect of the diversionary services operated by such Passenger Operator. Such number of Departures shall be based upon the notification of Departures most recently provided by the relevant Passenger Operator operating such diversionary services into the Relevant Station in accordance with its station access agreement; and

RS_{VD} means the aggregate of all values of PORS_{VD} in respect of a Relevant Station.

49.10 In respect of the Relevant Station, the Relevant Station Proportion in respect of a Financial Year shall be calculated as follows:

$$\text{RSP} = \text{£250,000 (Indexed)} \times \frac{\text{QX}_{\text{RS}}}{\text{QX}_{\text{MS}}}$$

where:

RSP means the Relevant Station Proportion;

QX_{RS} means the aggregate Qualifying Expenditure in the previous Financial Year attributable to the Relevant Station; and

QX_{MS} means the aggregate Qualifying Expenditure in the previous Financial Year in respect of each of the Measured Stations.

49.11 The Station Facility Owner shall deduct such sums as are properly specified in the invoice provided by the Passenger Operator pursuant to Conditions 49.2 and/or 49.4 from the Access Charge payable in respect of the Accounting Period following receipt of the invoice.

49.12 Nothing in this Section A of Part 11 of these Station Access Conditions shall be construed as excluding or limiting the liability of the Station Facility Owner or any of its respective

officers, employees and agents for fraud or for death or personal injury resulting from the negligence of the Station Facility Owner.

SECTION B: BENCHMARKING

50. Agreement of Baseline Hours

- 50.1 The Station Facility Owner and each Passenger Operator shall procure that in respect of the Financial Year commencing on 01 April 2012, the Baseline Hours in respect of each Measured Service at each Measured Station are determined in accordance with the remaining provisions of this Condition 50.
- 50.2 The Baseline Hours shall reflect the standard of the provision of the Measured Services at each Measured Station during the Financial Year commencing on 01 April 2010 and shall, as a minimum, take into account the average number of hours which a Measured Service is affected by a Performance Event or Performance Events during the five Accounting Periods commencing on 18 September 2010.
- 50.3 Where a Measured Service is not affected by a Performance Event or Performance Events in the five Accounting Periods commencing on 18 September 2010, the Baseline Hours shall be the maximum number of hours for that Measured Service in an Accounting Period (as set out in Annex 13) less the number of hours stated in the relevant subcontract within which the relevant subcontractor must attend a failure of a Measured Service on any one occasion.
- 50.4 On or before 14 February 2011, the Station Facility Owner shall propose the Baseline Hours for each Measured Service at each Measured Station on the basis set out in Conditions 50.2 and 50.3. The Station Facility Owner shall submit its proposals for the approval of each Passenger Operator (such approval not to be unreasonably withheld or delayed) and shall support such proposals with evidence of how the Baseline Hours have been calculated. A Passenger Operator may only withhold its approval on the ground that the Station Facility Owner's proposals do not correctly reflect the standard of the provision of the Measured Services at each Measured Station during the Financial Year commencing on 01 April 2010.
- 50.5 Unless a Passenger Operator has indicated that it intends to withhold its approval of the proposed Baseline Hours by 01 March 2011, the Baseline Hours proposed by the Station Facility Owner's pursuant to Condition 50.4 shall be deemed to have been accepted by all Passenger Operators and Annex 13 shall be updated accordingly.
- 50.6 If a Passenger Operator has indicated that it intends to withhold its approval of the proposed Baseline Hours, a dispute shall be deemed to arise and the Station Facility Owner shall be entitled to refer such dispute to the Dispute Resolution Procedure and Annex 13 shall be updated to reflect the final determination of such dispute.

51. Changes to the Common Station Amenities and Common Station Services

- 51.1 If the Station Facility Owner and each relevant Passenger Operator agree that:
- (A) any amenity or service shall cease to be or shall become a Measured Service; or
 - (B) there is a change to the terms upon which any Measured Service is provided to the Passenger Operators; or
 - (C) any Measured Service which was previously 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 Passenger Operators shall at the request of any of them negotiate with each other with a view to agreeing within 30 days of such request any modification to the Baseline Hours 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 shall establish the relevant modifications.

SECTION C: PERFORMANCE CREDITS AND SELF HELP REMEDIES

52. Performance Credits

- 52.1 Qualifying Expenditure in an Accounting Period shall be credited with an amount equivalent to the Performance Credits (if any) in respect of that Accounting Period and the User's Access Charge payable for an Accounting Period shall be adjusted accordingly.
- 52.2 The Station Facility Owner shall provide details of the amount in respect of the Performance Credits (if any) which has been credited to Qualifying Expenditure in respect of an Accounting Period on the invoice submitted to the User in accordance with Condition 91.6.

53. Credit for Station closure

- 53.1 The User's Access Charge payable for an Accounting Period shall be reduced by the amounts determined in accordance with the provisions of Annex 7 (as applicable) if, other than in circumstances expressly provided for under these Station Access Conditions, the Station is not open for the periods specified in paragraph 5 of Annex 1.
- 53.2 Where applicable, an amount equivalent to that credited to a User pursuant to Condition 53.1 shall, once the Station Facility Owner has determined the relevant Default Responsibility, be added to the Access Charge of the User to whom Default Responsibility is attributed pursuant to Condition 55 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 added shall be added to the Access Charge for that User in the next Accounting Period.
- 53.3 The User whose Access Charge is increased in accordance with Condition 53.2 shall be entitled to dispute the amount added to the Access Charge pursuant to Condition 36 only on the basis that the Station Facility Owner has incorrectly calculated the amount to be credited to other Users and/or added to the Access Charge in accordance with Condition 53.2.
- 53.4 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 53.1 whether as a consequence of Force Majeure or otherwise, the User's Access Charge shall be reduced in accordance with Condition 53.1.

54. Self help remedies

- 54.1 Subject to Conditions 54.6 and 58, if the Station Facility Owner fails to carry out any work in a particular Zone or Zones in accordance with Condition 17 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.
- 54.2 If, after expiry of such reasonable period as is referred to in Condition 54.1, the Station Facility Owner has failed to carry out such work, the User giving the notice pursuant to Condition 54.1 or where more than one the User referred to in Condition 54.3 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.

- 54.3 Where more than one User has given notice under Condition 54.1 then unless otherwise agreed between each of such Users, the User bearing the greatest proportion of Qualifying Expenditure in the particular Zone or Zones shall be the User referred to in Condition 54.2, provided always that where the User is carrying out any works in accordance with Condition 54.2, the Station Facility Owner shall not take any steps to remedy the relevant breach.
- 54.4 Subject to Conditions 54.6 and 58, if the Station Facility Owner fails to secure the provision of any of the Common Station Amenities or Common Station Services in accordance with its obligations under these Station Access Conditions any User shall, subject to Condition 54.5, 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 10 Business Days of the Station Facility Owner being notified of the amount of the relevant cost.
- 54.5 A User shall be entitled to the remedies referred to in Condition 54.4 only if:
- (A) each other User in the affected Zone or Zones has agreed that the User may exercise those remedies or the User of the affected Zone or Zones 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.
- 54.6 A User shall not be entitled to exercise any rights under this Condition 54 if such User is responsible for the Station Facility Owner failing to:
- (A) carry out any work in accordance with Condition 17; and/or
 - (B) secure the provision of any of the Common Station Services in accordance with its obligations under these Station Access Conditions,

unless and until such time as such User has removed any circumstance contemplated by this Condition for which it is responsible and the Station Facility Owner has been given a reasonable period to fulfil the obligations which are the subject matter of this Condition.

55. Default Responsibility

- 55.1 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) a Performance Event;
 - (B) the Station not to open for the periods specified in paragraph 5 of Annex 1; and

(C) a Performance Payment to be payable by the Station Facility Owner pursuant to Condition 47.8,

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.

55.2 The Station Facility Owner shall, when determining the persons or events causing the matters listed in Condition 55.1, have due regard to all information available to it which is relevant in the circumstances.

55.3 Subject to Condition 47.6, as soon as reasonably practicable following the occurrence of a matter listed in Condition 55.1 and in any event not later than 10 Business Days following the occurrence of such matter, 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 10 Business Days of receipt of that notice, be deemed to have been agreed by the User.

SECTION D: INDEMNITIES AND LIMITATION OF LIABILITY

56. Indemnities

- 56.1 Subject to Condition 57, the Station Facility Owner shall (on an after tax basis) indemnify each User, and keep each of them respectively indemnified, against the Relevant Losses.
- 56.2 Subject to Condition 57, each User shall (on an after tax basis) indemnify the Station Facility Owner and keep it indemnified, against the Relevant Losses.

57. Limitation on claims

- 57.1 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 (Indexed) unless the aggregate amount of all such claims in any Accounting Year exceeds £5,000 (Indexed) in which case the liability of the respondent to the claimant shall be limited to the amount of the excess over £5,000 (Indexed),

provided that Condition 57.1(B) shall not apply in respect of an obligation to pay any sum under Section A of this Part 11, Conditions 52, 53 and 54 or Part 17.

- 57.2 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 actual or expected loss of revenue, any loss of profit, any loss of business and any special, indirect or consequential loss of any type (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.
- 57.3 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.
- 57.4 Save as expressly provided in any Station Access Agreement or in these Station Access Conditions no person shall be entitled to recover damages 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.
- 57.5 Subject to Condition 57.10, the aggregate liability of the Station Facility Owner, its officers, employees and agents (whether arising pursuant to a claim for contribution or under statute, tort, contract or otherwise) to a User arising out of any one or more acts, omissions, events or circumstances relating to or in connection with any one or more Station Access Agreements to which that User is or may become a party from time to time shall not exceed:

(A) the Uninsured Liability Amount per Financial Year in respect of uninsured losses;
and

(B) the Insured Liability Amount per Financial Year in respect of insured losses,

provided that this Condition 57.5 shall not apply in respect of:

- (i) an obligation to pay any sum of money under Condition 5;
- (ii) an indemnity given in respect of a Proposal for Change;
- (iii) an obligation to pay any sum of money under Condition 13.3;
- (iv) an obligation to pay any sum under Section A of this Part 11;
- (v) an obligation to pay any amount equivalent to the Performance Credits;
- (vi) an obligation to give a credit for closure of the Station under Condition 53.1;
- (vii) an obligation to pay any sum of money under Condition 54; and
- (viii) an obligation to pay any sum of money under Part 17 of these Station Access Conditions.

57.6 Subject to Condition 57.10, the aggregate liability of a User, its officers, employees and agents (whether arising pursuant to a claim for contribution or under statute, tort, contract or otherwise) to the Station Facility Owner arising out of any one or more acts, omissions, events or circumstances relating to or in connection with any one or more Station Access Agreements to which the Station Facility Owner and that User are or may become party from time to time shall not exceed:

(A) the Uninsured Liability Amount per Financial Year in respect of uninsured losses;
and

(B) the Insured Liability Amount per Financial Year in respect of insured losses,

provided that this Condition 57.6 shall not apply in respect of:

- (i) an obligation to pay any sum of money under Condition 5;
- (ii) an indemnity given in respect of a Proposal for Change;
- (iii) an obligation to pay any sum of money under Condition 13.3;
- (iv) an obligation to pay any sum under Section A of this Part 11;
- (v) an obligation to pay any amount equivalent to the Performance Credits;
- (vi) an obligation to pay an amount equivalent to that credited to a User in respect of a closure of the Station under Condition 53.2; and
- (vii) an obligation to pay any sum of money under Part 17 of these Station Access Conditions.

57.7 The Insured Liability Amount shall be calculated as follows:

$$IL_{FY} = \text{£}50,000,000 \text{ (Indexed)} \times \frac{UT_{QX}}{TS_{QX}}$$

where:

IL_{FY} means the Insured Liability Amount in respect of a particular Financial Year;

UT_{QX} means the aggregate Qualifying Expenditure attributable to St Pancras International Station, Stratford International Station, Ebbsfleet International Station and Ashford International Station set out in the best estimate notified to the User pursuant to Condition 90.2(A) as being payable by a particular User in a particular Financial Year on the basis that such User pays the Total Variable Charge; and

TS_{QX} means the aggregate Qualifying Expenditure attributable to St Pancras International Station, Stratford International Station, Ebbsfleet International Station and Ashford International Station set out in the best estimate notified to the User pursuant to Condition 90.2(A) as being payable by all Users in a particular Financial Year on the basis that all Users pay the Total Variable Charge.

57.8 The Uninsured Liability Amount shall be calculated as follows:

$$UL_{FY} = \text{£}5,000,000 \text{ (Indexed)} \times \frac{UT_{QX}}{TS_{QX}}$$

where:

UL_{FY} means the Uninsured Liability Amount in respect of a particular Financial Year;

UT_{QX} has the meaning ascribed to that term in Condition 57.7; and

TS_{QX} has the meaning ascribed to that term in Condition 57.7.

57.9 For the purpose of Conditions 57.5 and 57.6, "insured losses" shall mean damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (in this Condition 57.9, the "**Losses**") to the extent that they are recoverable from insurance maintained by, in the case of Condition 57.5, the Station Facility Owner and, in the case of Condition 57.6, the User (or would have been so recoverable had such party maintained the insurance it is required to maintain pursuant to these Station Access Conditions) and all other Losses shall be treated as uninsured losses.

57.10 Nothing in this Condition 57 shall be construed as excluding or limiting the liability of the Station Facility Owner or a User or any of their respective officers, employees and agents for fraud, wilful default or for death or personal injury resulting from the negligence of such persons.

58. Force Majeure

58.1 Force Majeure relief under this Condition 58:

(A) extinguishes:

- (1) the obligation of the FM Affected Party to perform a Relevant Obligation to the extent that it is prevented from doing so by reason of the relevant Force Majeure Event; and
- (2) the obligation of the FM Affected Party to indemnify the other party under Condition 56 in respect of Relevant Losses sustained as a result of the

failure of the FM Affected Party to perform a Relevant Obligation; but

- (B) is not available in respect of:
 - (1) any obligation to pay money under Part 17; or
 - (2) any other obligation to do or refrain from doing any other thing provided for in the Station Access Agreement.

58.2 A FM Affected Party is entitled to Force Majeure relief if and to the extent that:

- (A) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (B) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
 - (1) to avoid the occurrence of the Force Majeure Event; and
 - (2) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (C) except in the case of paragraph (g) of the definition of Force Majeure Event, none of the FM Affected Party, its officers, employees or agents caused the Force Majeure Event.

58.3 Without prejudice to Condition 58.2, a FM Affected Party is only entitled to claim Force Majeure relief under this Condition 58 if it complies with the obligations to give FM Notices, FM Reports and provide other information under Condition 58.4 and to perform its obligations under Condition 58.5.

58.4 (A) In relation to any Relevant Force Majeure Event:

- (1) as soon as reasonably practicable after the FM Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Condition 58 (and, in any event, within 72 hours of becoming aware of such circumstances), the FM Affected Party shall give a FM Notice; and
- (2) the FM Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the FM Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and remedial measures proposed by the FM Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

(B) Following the giving of a FM Notice:

- (1) the FM Affected Party shall give a FM Report as soon as practicable, and in any event within 7 days of service of the FM Notice; and
- (2) the FM Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the FM Notice and containing such information as may reasonably be required by the FM Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the FM Affected Party's performance of the

Relevant Obligations.

- (C) The FM Affected Party shall promptly give the FM Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the FM Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the FM Non-affected Party from time to time.
- 58.5 The FM Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:
- (A) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and
 - (B) minimise the duration of the Force Majeure Event,
- and shall keep the FM Non-affected Party fully informed of the actions which it has taken or proposes to take under this Condition 58.5.
- 58.6 The right of a FM Affected Party to relief under Condition 58.1 shall cease on the earlier of:
- (A) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
 - (B) the date on which such performance would no longer have been prevented or materially impeded if the FM Affected Party had complied with its obligations under Condition 58.5.

59. Application of this Part and Mitigation

- 59.1 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.
- 59.2 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

60. General Environmental Obligations

Environmental Information Requirements

60.1 (A) The Station Facility Owner shall:

- (1) provide each User with a copy of its Environmental Policy. The Station Facility Owner shall review its Environmental Policy from time to time and at least once every calendar year and, where applicable, update its Environmental Policy so as to ensure that it continues to comply with all Legal Requirements and Applicable Standards and reflects good industry practice. The Station Facility Owner shall provide a copy of its Environmental Policy to each User promptly following the updating of the same;
- (2) develop and operate an environmental management system giving effect to its Environmental Policy and incorporating and giving effect to the CRC Action Plan, which has regard to the requirements of ISO 14001 (or any successor standard), which together with its Environmental Policy shall constitute the "**SFO Environmental Documentation**";
- (3) participate in an annual environmental forum consisting of representatives of the Station Facility Owner, the Users and any other persons the Station Facility Owner may reasonably choose (the "**Environmental Forum**") to promote a consistent approach to environmental management and improvement across the Station;
- (4) review the SFO Environmental Documentation from time to time and at least once every calendar year and update it as appropriate so as to ensure that it:
 - (a) complies with all Legal Requirements and Applicable Standards; and
 - (b) reflects good industry practice; and
- (5) notify each User of the person or persons who is/are responsible on behalf of the Station Facility Owner for managing environmental issues at the Station.

(B) Each User shall:

- (1) develop and comply with an Environmental Policy which has due regard to the Environmental Policy of the Station Facility Owner (as may be amended from time to time) and specifically with due regard to adopting good industry practice in relation to energy efficiency, recognising the desirability of improving on energy efficiency including reducing energy use, in the context of the Carbon Reduction Commitment regime as it applies to the User's use of the Station;
- (2) develop and operate an environmental management system giving effect to its Environmental Policy and incorporating and giving effect to the CRC Action Plan, which has regard to the requirements of ISO 14001 (or any

successor standard);

- (3) participate in the Environmental Forum to promote a consistent approach to environmental management and improvement across the Station;
 - (4) have provided the Station Facility Owner with a copy of its current environmental policy and environmental management system (together the "**User Environmental Documentation**") by the Commencement Date;
 - (5) review its User Environmental Documentation from time to time and at least once every calendar year commencing from [1 April] 2012 and, where appropriate, update such User Environmental Documentation so as to ensure that it:
 - (a) complies with all Legal Requirements and Applicable Standards;
 - (b) reflects good industry practice; and
 - (c) continues to have due regard to the Environmental Policy of the Station Facility Owner;
 - (6) have notified the Station Facility Owner of the person or persons who is or are responsible on behalf of the User for managing environmental issues arising from that User's use of the Station by the Commencement Date and promptly provide the Station Facility Owner with revised particulars of such person or persons from time to time.
- (C) The Station Facility Owner and each User shall respectively ensure that all of its staff (including its contractors, agents and employees) are aware of the environmental requirements that are relevant to activities carried out by them at the Station and the Station Facility Owner and each User shall work together in good faith and in a co-operative fashion with a view to continuous improvement of their respective environmental performance in relation to the operation and use of the Station.
- (D) The User shall in using the Station pursuant to the Station Access Agreement, follow good industry practice with respect to energy efficiency and the Carbon Reduction Commitment as applicable to the Station. If the Station Facility Owner has obligations in relation to the Carbon Reduction Commitment with respect to the use of the Station, each User shall:
- (1) perform those obligations which relate to that User;
 - (2) perform those obligations which relate to the zones of the Station in which the User is the sole User; and
 - (3) cooperate with other Users and the Station Facility Owner so that the Station Facility Owner is able to fulfill its obligations under the Carbon Reduction Commitment where the User uses a zone of the Station in common with another User or Users,
- in each case following good industry practice and in compliance with the CRC Action Plan. The parties shall be responsible for any payments as provided in the CRC Action Plan.
- (E) In the event that any User or the Station Facility Owner commissions a third party environmental assessment or advice which might reasonably be beneficial to the other party, the relevant party shall use reasonable endeavours to procure that it includes an acknowledgement by its authors that the other party can rely on it.

- (F) The Station Facility Owner and each User shall co-operate with the other in providing reasonable information and reasonable assistance to the other to enable any assessment (which is itself reasonably requested):
 - (1) by the Station Facility Owner as to the extent to which that User is complying with its User Environmental Documentation and its obligations under this Part 12;
 - (2) by the relevant User as to the extent to which the Station Facility Owner is complying with the SFO Environmental Documentation and its obligations under this Part 12.
- (G) The Station Facility Owner shall be entitled to carry out environmental management audits of a User from time to time so as to assess the extent to which that User is complying with its User Environmental Documentation and its obligations under this Part 12.

Information as to materials to be transported

- 60.2 Each User shall from time to time, and within a reasonable time of being requested to do so by the Station Facility Owner, provide the Station Facility Owner with:
- (A) information as to any materials it proposes to transport at the Stations which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;
 - (B) in relation to such materials as are referred to in sub-paragraph (A) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

General Information - Users

- 60.3 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.

General Information – Station Facility Owner

- 60.4 The Station Facility Owner shall promptly notify a User (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which the Station Facility Owner is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect the User. The Station Facility Owner shall at all times exercise due diligence to inform itself of any circumstances which would require notification.
- 60.5 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.

- 60.6 No User shall be liable for any Environmental Damage to the extent that it existed as at the Environmental Liability Commencement Date.
- 60.7 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.

Information following Environmental Damage

- 60.8 (A) Following the occurrence of any Environmental Damage, each User shall on request of the Station Facility Owner promptly provide the Station Facility Owner access to the User's train maintenance records, environmental incidents records or other records as are relevant in connection with such Environmental Damage.
- (B) Following the occurrence of any Environmental Damage, the Station Facility Owner shall on request of a User, provide to such User access to the Station Facility Owner's environmental incidents records as are relevant in connection with such Environmental Damage.

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

61.1 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.

- 61.2 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.
- 61.3 Any action taken by a User pursuant to Condition 61.2 shall be at its own cost.
- 61.4 Where a User fails to take or complete any action required by Condition 61.2 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.
- 61.5 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.

- 61.6 Where the Station Facility Owner receives notification from a User pursuant to Condition 61.5, 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 62 which could give rise to an obligation of the Station Facility Owner to indemnify the User under the SFO's Environmental Indemnity.

62. The Station Facility Owner's remedial action

- 62.1 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.
- 62.2 Subject to Condition 62.1, 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 reasonable notice to the Users.
- 62.3 Where any action is taken pursuant to Conditions 62.1 or 62.2 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.

63. Environmental indemnities

- 63.1 Subject to Condition 57, 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.
- 63.2 Subject to Condition 57, 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 63.2 for any Environmental Liability which results from the User's failure to comply with the obligations contained in this Part 12.
- 63.3 If any payment is made by:
- (A) the Station Facility Owner to a User under Conditions 62.3 or 63.2; or
 - (B) a User to the Station Facility Owner under Condition 63.1,

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.

64. Conduct of claims

- 64.1 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 61.5. 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.
- 64.2 The User shall not settle any claim of the kind referred to in Condition 61.5 without the Station Facility Owner's written consent (such consent not to be unreasonably withheld or delayed).
- 64.3 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.

65. Confidentiality

- 65.1 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

66. Station Facility Owner's obligations

- 66.1 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 30 September 2010 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 66.1(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 and maintenance of the Station, such endeavours to include:
 - (1) by accepting the most economically advantageous tender 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 (Indexed) 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) exercise reasonable skill and care, and act in good faith;
- (e) 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;
- (f) 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
- (g) 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 66.1(E)(2) provided that the term of any such agreement or arrangement is not extended or renewed (other than pursuant to its terms) 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 (Indexed); 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 66.1(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) exercise reasonable skill and care, and act in good faith;
- (e) 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;
- (f) 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;
- (g) consult with each User (other than a User which submits a bid) upon each bid, rebid and amendments to bid; and
- (h) give notice to each User of the name and address of the tenderer who at the conclusion of negotiations has submitted the most economically advantageous bid to provide such work or service in accordance with Condition 66.1(E)(3)(c) and of the amount of that bid;

and the Station Facility Owner shall then promptly either:

- (i) award the relevant contract; or
- (j) notify the Users that the Station Facility Owner will during the

period referred to in Condition 66.1(E)(3)(c)(ii) provide such work or service at a cost equal to the most economically advantageous bid; and

- (4) if the Station Facility Owner shall notify the Users pursuant to Condition 66.1(E)(3)(j), 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 81.1, be Qualifying Expenditure,

provided that, in minimising the costs of the operation and maintenance of the Station pursuant to this Condition 66.1(E), the Station Facility Owner shall not take any action which will (or there is a reasonable risk will) result in a drop in the standard or quantum of any of the Common Station Services, Common Station Amenities, International Common Station Amenities and/or International Common Station Services without the prior consent of all those Users who are likely to be affected by such action (such consent not to be unreasonably withheld or delayed);

- (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 84.3, 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)) 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 97.3) 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);
- (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 Condition 5 and 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 Users (other than the User to whom the previous letting had been granted) any such offer being made:
 - (a) first to whichever of those Users, such User being a Passenger Operator, whom shall bear the greatest proportion of Qualifying Expenditure and, if not accepted within 7 days by that User, being so made to each of the other of those Users, such Users being Passenger Operators in turn in descending order of the proportion of Qualifying Expenditure borne by them, and if no such Users accepts within 7 days of such offer, then
 - (b) to whichever of those Users, such User being a Non-Passenger Operator, whom shall bear to the greatest proportion of Qualifying Expenditure and, if not accepted within 7 days by that User, being so made to each of the other of those Users who are Non-Passenger Operators, in turn in descending order of the proportion of Qualifying Expenditure borne by them; and
 - (2) where such Core Facility is a ticket office for the retailing of tickets for travel in the United Kingdom, to such User as is the lead retailer from time to time having the obligation to operate one or more ticket offices at the Station; and
- (R) take all reasonable steps to procure that any performance-related payment which the Station Facility Operator is entitled to receive from a sub-contractor or sub-

contractors who have been appointed to provide the Common Station Amenities and/or Common Station Services is recovered from such sub-contractor or sub-contractors.

66.2

- (A) Any cost savings directly arising from the Station Facility Owner and/or Station Facility Operator's management of the provision of the Common Station Amenities and/or Common Station Services specified in Condition 66.2(C) in any Financial Year shall be allocated between the Station Facility Owner and Users on the following basis:
 - (1) 30% of such cost savings shall be credited to the Station Facility Owner; and
 - (2) 70% of such cost savings shall be credited to the Users.
- (B) For the purposes of Condition 66.2(A), cost savings shall be calculated by comparing expenditure from Financial Year to Financial Year on the basis that the standard and quantum of the provision of the services specified in Condition 66.2(C) is the same from Financial Year to Financial Year.
- (C) This Condition 66.2 shall apply to the provision of the following Common Station Amenities and Common Station Services:
 - (1) direct staffing costs;
 - (2) indirect staffing costs;
 - (3) reductions in the quantum of electricity, gas, water and any other utilities consumed at the Station;
 - (4) reactive repairs;
 - (5) business expenses;
 - (6) professional fees;
 - (7) technology costs; and
 - (8) cleaning, upon renewal of the cleaning subcontract.
- (D) Condition 66.2(A) shall apply only in respect of the Financial Year in which the cost savings are made. In the following Financial Year, Qualifying Expenditure shall be adjusted to take into account all of the cost savings made in respect of the previous Financial Year.

66.3 If a User reasonably believes that the Station Facility Owner has not used all reasonable endeavours to minimise the costs of the operation and maintenance of the Station pursuant to Condition 66.1(E) then:

- (A) that User shall so notify the Station Facility Owner and all other Users as soon as reasonably practicable;
- (B) that User and the Station Facility Owner shall discuss and seek to resolve the matter; and

- (C) if the matter is not resolved within 28 days (or such time as agreed between that User and the Station Facility Owner) to the reasonable satisfaction of that User, then the matter shall be resolved in accordance with the Dispute Resolution Procedure.

67. Users' obligations

67.1 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 67 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 Directions of a Competent Authority with whose Directions 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, the safety management system and safety certificate 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, 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.

68. Standard of works

68.1 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 the Safety Obligations, the Relevant Consents and methods and practices customarily used in good and prudent building practice (including the Applicable 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

69. Encroachments

- 69.1 No User shall stop up or obstruct any window or other opening at the Station and/or the Adjacent Property except so far as such action shall be necessary to preserve the safety or security of persons or property at the Station and/or the Adjacent Property and the User in question shall notify the Station Facility Owner of such action.
- 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 and/or the Adjacent Property 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 and/or the Adjacent Property 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 NR Network or HS1.

71. Excavations/Excluded Equipment

- 71.1 No User shall carry out any continuous unsupported excavation at the Station and/or the Adjacent Property, or do anything at the Station and/or the Adjacent Property which will or is likely to endanger the safety or stability of the Station and/or the Adjacent Property, 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 and/or the Adjacent Property 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 and/or the Adjacent Property 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 60.5, the proper use of the Station and/or the Adjacent Property 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 and/or the Adjacent Property anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.
- 72.4 Without prejudice to Condition 60.5 nothing in Conditions 72.2, 72.3 or 72.5 shall prevent the lawful bringing onto the Station and/or the Adjacent Property of anything which may

reasonably be required for or in connection with use of the Station and/or the Adjacent Property 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 and/or the Adjacent Property 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 and/or the Adjacent Property to which the Smoke-free (Premises and Enforcement) Regulations 2006 apply or naked light within any part of the Station and/or the Adjacent Property 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 and/or the Adjacent Property, 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 and/or the Adjacent Property or the Conduits at or used for the Station and/or the Adjacent Property 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 and/or the Adjacent Property

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 and/or the Adjacent Property

75.1 No User shall without having obtained the prior written approval of the Station Facility Owner, having obtained all Required Consents and complying with any requirements of the Station Facility Owner and such Required Consents:

- (A) cut into or injure the brickwork, foundations or any other part of the Railway Substructure or Railway Superstructure; or
- (B) install against or within the Railway Substructure or Railway Superstructure any equipment, machinery, boiler, flue, chimney or furnace; or
- (C) carry out any paint spraying beneath the Railway Substructure or Railway Superstructure.

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, so far as they affect the Station and/or the Adjacent Property 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, its officers, employees, contractors or agents (other than such as arises from a breach of any obligation of, or the negligence of, the Station Facility Owner, its officers, employees, contractors 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 Users.

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 30.3, 66.1(I), 66.1(J) and 66.1(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 13.1) 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. Basis of accounting and payment

80.1 Without prejudice to the obligations of any person under a licence for the operation of the Station or the operation of trains on the NR Network and/or on HS1 or under the Railways 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.

80.2 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 13 and 79 relate.

81. Apportionment of costs

81.1 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.

82. Minimisation of costs

82.1 Where the Station Facility Owner is entitled under these Station Access Conditions to recoup or obtain reimbursement from any User of any costs or expenses, the Station Facility Owner shall use reasonable endeavours to incur such costs or expenses pursuant to the most

economically advantageous terms.

- 82.2 The Station Facility Owner shall take such steps as may be available to it to minimise the amount of rates, such rates being levied by the appropriate local authority on a non-discretionary basis, that will be attributable to the Station, including, if so requested by Users forming the Requisite Majority, appealing against any determination that is made, provided that such Users forming the Requisite Majority agree that all costs and expenses (including legal expenses) reasonably incurred by the Station Facility Owner in undertaking such an appeal shall be reimbursed to the Station Facility Owner. In such a case, such costs and expenses (including legal expenses) shall be reimbursed by those Users forming the Requisite Majority to the Station Facility Owner. Where such an appeal is successful, any costs and expenses saved as a result shall be allocated proportionately between those Users who reimbursed the Station Facility Owner's costs and expenses (including legal expenses) of undertaking such an appeal and not amongst any other Users.

PART 16: GENERAL

83. Confidentiality

83.1 Except as permitted by Condition 83.4, all data and information acquired or received by any party under or pursuant to a Station Access Agreement ("**Confidential Information**") 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.

83.2 Except as permitted by Condition 83.4, the Station Facility Owner shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

83.3 Except as permitted by Condition 83.4, the User shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

83.4 Any party to the Station Access Agreement shall be entitled to divulge any data or information to which Condition 83.1 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 83.4(E), 83.4(F), and 83.4(O) is seeking or obtaining finance or any advisers to such entity, or any rating agency from whom such party is seeking a rating in connection with such 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 any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon

obtaining an undertaking of confidentiality from the insurer or insurance broker;

- (J) to the extent required by the Act, the CTRL Acts, the Railways Regulations, any other Legal Requirements, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (K) to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;
- (L) pursuant to the order of any court or tribunal of competent jurisdiction;
- (M) 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;
- (N) to a passenger transport executive or its successor to the extent that the party disclosing the same is legally obliged to do so;
- (O) 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 83.4(O) 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);

- (P) in the case of the Station Facility Owner, to any other infrastructure manager with regard to any access related issue affecting both such infrastructure manager and the Station Facility Owner, upon obtaining an undertaking of strict confidentiality from such other infrastructure manager;
- (Q) in the case of the Station Facility Owner, to any prospective buyer of the Station Facility Owner (or its business), or any equity investor in the Station Facility Owner and any of their respective lenders and advisers, upon obtaining an undertaking of strict confidentiality from such prospective buyer, equity investor, lender or adviser;
- (R) in the case of the Station Facility Owner, to any potential transferee or assignee of the Concession Agreement and/or a potential nominated undertaker of HS1 (other than the Station Facility Owner) under section 34 of the CTRL Act and any of their respective lenders and advisers, upon obtaining an undertaking of strict confidentiality from such potential transferee or assignee of the Concession Agreement or potential nominated undertaker of HS1 under section 34 of the CTRL Act or any of their respective lenders or advisers;
- (S) in the case of the Station Facility Owner, to the Station Facility Operator , upon obtaining an undertaking of confidentiality from such Station Facility Operator;
- (T) in the case of the Station Facility Owner, to any potential Station Facility Operator and its respective lenders and advisers, upon obtaining an undertaking of strict confidentiality from such potential Station Facility Operator, lender or adviser;
- (U) in the case of a User, to any prospective buyer of the User (or its business), or any equity investor in the User and any of their respective lenders and advisers, upon obtaining an undertaking of strict confidentiality from such prospective buyer, equity investor, lender or adviser; and
- (V) in the case of a User, to any potential successor operator or franchisee and its respective lenders and advisers, upon obtaining an undertaking of strict confidentiality from such potential successor operator, franchisee, lender or adviser.

83.5 **Return of Confidential Information**

A party to a Station Access Agreement shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (A) is made on or within two months after the Expiry Date or, if the Station Access Agreement lapses or is terminated earlier, is made within two months after the date on which the Station Access Agreement lapses or is terminated;
- (B) is reasonable; and
- (C) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

83.6 **Retention or destruction of Confidential Information**

If a party to a Station Access Agreement has not received a request to return any Confidential Information to the other party under within the time limits specified in Condition 83.5, it shall take all reasonable steps to destroy such Confidential Information.

83.7 **Ownership of Confidential Information**

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

83.8 **Disclosure pursuant to a Station Access Agreement**

Nothing in this Condition 83 restricts the right of a party to a Station Access Agreement to disclose information to which this Condition 83 applies to the extent that it is permitted or required so to do under these Station Access Conditions or to a Station Access Agreement.

83.9 **Freedom of Information Act 2000**

- (A) Condition 83.4 shall not permit a User to divulge any data or information following a Request for Information (which for the purposes of this Condition 83.9 shall have the meaning ascribed to it in the Freedom of Information Act 2000 (“FOIA”)) under FOIA. Any such Request for Information shall be addressed by the parties in accordance with the remaining provisions of this Condition 83.9.
- (B) Where a User is subject to the requirements of FOIA, the Station Facility Owner shall cooperate with such User to facilitate the User’s compliance with its information disclosure obligations under FOIA.
- (C) Where a User receives a Request for Information which may result in such User disclosing Confidential Information, the User shall promptly notify the Station Facility Owner in writing and shall provide the Station Facility Owner with a copy of such Request for Information and details of the Confidential Information which it proposes to disclose in response to such Request for Information.
- (D) Within 5 Business Days of receipt of the notice from the User pursuant to Condition 83.9(C), the Station Facility Owner shall be entitled to make representations to the User if the Station Facility Owner believes that: (i) such Confidential Information is not required to be disclosed to satisfy the Request for Information; or (ii) such Confidential Information is “exempt information” within the definition set out in FOIA.
- (E) If the Station Facility Owner does not make any representations to the User within the period specified in Condition 83.9(D), the User shall be entitled to disclose such Confidential Information pursuant to the Request for Information.
- (F) If the Station Facility Owner makes any representations to the User in accordance with Condition 83.9(D), the User shall carefully consider: (i) such representations; and (ii) whether it is obliged under FOIA to disclose such Confidential Information pursuant to the Request for Information. Following such careful consideration, if the User reasonably believes that it is obliged under FOIA to disclose such Confidential Information to satisfy the Request for Information, it shall be entitled to do so.

83.10 **Survival**

This Condition 83 shall survive termination of the Station Access Agreement.

84. Payments, default interest and VAT

84.1 Default interest: Without prejudice to any other rights or remedies which one party may have in respect of the failure of another party to pay any amount on the due date, 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, shall accrue daily and shall be compounded monthly.

84.2 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.

84.3 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 HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT

paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

85. Invalidity and waiver

- 85.1 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.
- 85.2 Waiver: No waiver by any party of any failure 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.
- 85.3 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.

86. Passenger Transport Executives

- 86.1 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.

87. Assignment and Novation

- 87.1 Subject to Conditions 87.2 and 87.4, neither party may assign, transfer, novate, mortgage, charge, declare itself a trustee for a third party, dispose of any of its rights and/or obligations or create any encumbrance or other security interest over the whole or any part of its rights and/or obligations under the Station Access Agreement without the prior written consent of the other party.
- 87.2 The Station Facility Owner may at any time and from time to time without consulting with or obtaining the consent of the User assign, transfer, novate, mortgage, charge, declare itself a trustee for a third party, dispose of any of its rights and/or obligations or create any encumbrance or other security interest over the whole or any part of its rights and benefits under the Station Access Agreement to a HS1 Ltd Permitted Transferee (the "**SFO Transfer**") provided that by reference to circumstances existing at the time of such SFO Transfer:

- (A) the Users shall not be obliged to pay any new party any greater amount than it would have been obliged to pay under the Station Access Agreement if no such SFO Transfer had taken place;
 - (B) notwithstanding that such obligations may following such SFO Transfer be owed to a new party, the User's obligations under the Station Access Agreement shall not be increased as a result of the SFO Transfer; and
 - (C) there shall be no reduction or diminution in the User's rights under the Station Access Agreement as a result of such SFO Transfer.
- 87.3 Notwithstanding Condition 87.2, the Station Facility Owner may not novate or otherwise transfer any of its obligations under the Station Access Agreement to a company which does not possess the necessary skills and resources to perform the obligations of the Station Facility Owner under the Station Access Agreement.
- 87.4 A User may at any time and from time to time without consulting with or obtaining the consent of the Station Facility Owner assign, transfer, novate, mortgage, charge, declare itself a trustee for a third party, dispose of any of its rights and/or obligations or create any encumbrance or other security interest over the whole or any part of its rights and benefits under the Station Access Agreement to a User Permitted Transferee (the "**User Transfer**") provided that by reference to circumstances existing at the time of such User Transfer:
- (A) the Station Facility Owner shall not be obliged to pay any new party any greater amount that it would have been obliged to pay under the Station Access Agreement if no such User Transfer had taken place;
 - (B) notwithstanding that such obligations may following such User Transfer be owed to a new party, the Station Facility Owner's obligations under the Station Access Agreement shall not be increased as a result of the User Transfer; and
 - (C) there shall be no reduction or diminution in the Station Facility Owner's rights under the Station Access Agreement as a result of such User Transfer.
- 87.5 Notwithstanding Condition 87.4, a User may not novate or otherwise transfer any of its obligations under the Station Access Agreement to a company which does not possess the necessary skills and resources to perform the obligations of such User under the Station Access Agreement.

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.

88. Definitions:

88.1 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 the Station Facility Owner pursuant to Condition 92.1(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 100.1 and 100.2;
- (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 100.1 and 100.3; 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 100.1 and 100.4;

"**Common Zone LTC**" means 39.50% of Long Term Charge provided that where:

- (a) the Station is used by one or more Domestic Northbound Passenger Operators and one or more Domestic Southbound Passenger Operators, but not any International Passenger Operator, the Common Zone LTC shall be increased by the full amount of the International Zone LTC; or

- (b) the Station is used by one or more Domestic Northbound Passenger Operators and one or more International Passenger Operators, but not any Domestic Southbound Passenger Operator, the Common Zone LTC shall be increased by the full amount of the Domestic Southbound Zone LTC; or
- (c) the Station is used by one or more Domestic Southbound Passenger Operators and one or more International Passenger Operators, but not any Domestic Northbound Passenger Operator, the Common Zone LTC shall be increased by the full amount of the Domestic Northbound Zone LTC; or
- (d) the Station is used only by one or more Domestic Northbound Passenger Operators, the Common Zone LTC shall be increased by the full amount of the sum of the Domestic Southbound Zone LTC and International Zone LTC; or
- (f) the Station is used only by one or more Domestic Southbound Passenger Operators, the Common Zone LTC shall be increased by the full amount of the sum of the Domestic Northbound Zone LTC and International Zone LTC; or
- (g) the Station is used only by one or more International Passenger Operators, the Common Zone LTC shall be increased by the full amount of the sum of the Domestic Northbound Zone LTC and Domestic Southbound Zone LTC;

"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 Passenger Operator's Proportion" means, save as provided in Conditions 100.1 and 100.2, 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 98;

"Domestic Northbound Zone LTC" means 9.42% of Long Term Charge;

"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 Passenger Operator's Proportion" means, save as provided in Conditions 100.1 and 100.4, 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 98;

"Domestic Southbound Zone LTC" means 7.55% of Long Term Charge;

"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 91.3(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) Condition 90.5(B)(1);
- (ii) Condition 91.2(A)(1);
- (iii) Condition 91.3(B); and
- (iv) Condition 91.3(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 100.1 and 100.3, 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 98;

"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 calculated in accordance with (and subject to variation in accordance with) Condition 105;

"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 100;

"Passenger Operator's Proportion" means, save as provided in Condition 100, 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 98 for the purposes of the Station Access Agreement;

"Performance Event" has the meaning ascribed to it in Condition 47.1;

"Performance Payment" has the meaning ascribed to it in Condition 47.1;

"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 90.2(B) or Condition 90.4(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 91.1 or 91.3(D);

"Risk Premium" means in respect of any particular Fixed Charge (other than one determined pursuant to Condition 91.3(C)), the amount referred to in (as the case may be):

- (i) Condition 90.5(B)(2), where that Fixed Charge is provided for pursuant to Condition 90.5 (B)(1);
- (ii) Condition 91.2(A)(2) where that Fixed Charge is provided for pursuant to Condition 91.2 (A)(1); or
- (iii) Condition 91.3(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 98 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 98 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 98 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 shall be calculated as follows:

$$TVCDNPO = \sum \frac{((POP \times CZQX) + (DNPOP \times DNZQX))}{D}$$

where:

TVCNPO is the Total Variable Charge in respect of the Domestic Northbound Passenger Operator in respect of the Accounting Year;

Σ is the summation across all days in the Accounting Year;

POP is, in respect of each day during the Accounting Year, the Passenger Operator's Proportion on that day;

CZQX is the Common Zone QX;

DNPOP is, in respect of each day, the Domestic Northbound Passenger Operator's Proportion on that day;

DNZQX is the Domestic Northbound Zone QX; and

D is the number of days in the Accounting Year.

(b) each International Passenger Operator shall be calculated as follows:

$$TVCIPO = \frac{\Sigma ((POP \times CZQX) + (IPOP \times IZQX))}{D}$$

where:

TVCIPO is the Total Variable Charge in respect of the International Passenger Operator in respect of the Accounting Year;

Σ is the summation across all days in the Accounting Year;

POP is, in respect of each day during the Accounting Year, the Passenger Operator's Proportion on that day;

CZQX is the Common Zone QX;

IPOP is, in respect of each day, the International Passenger Operator's Proportion on that day;

IZQX is the International Zone QX; and

D is the number of days in the Accounting Year.

(c) each Domestic Southbound Passenger Operator shall be calculated as follows:

$$TVCDSPO = \frac{\Sigma ((POP \times CZQX) + (DSPOP \times DSZQX))}{D}$$

where:

TVCDSPO is the Total Variable Charge in respect of the Domestic Southbound Passenger Operator in respect of the Accounting Year;

Σ is the summation across all days in the Accounting Year;

POP is, in respect of each day during the Accounting Year, the Passenger Operator's Proportion on that day;

CZQX is the Common Zone QX;

DSPOP is, in respect of each day, the Domestic Southbound Passenger Operator's Proportion on that day;

DSZQX is the Domestic Southbound Zone QX; and

D is the number of days in the Accounting Year.

89. General

89.1 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.

89.2 Where the First Year will commence on a date not being 1 April in any year, then Conditions 90 to 97 (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.

90. Notice of Charges

90.1 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.

90.2 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 90.1; and
 - (2) any other Common Station Amenities or Common Station Services.

90.3 The notice referred to in Condition 90.2 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.

90.4 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 90.2 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 90.4(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 90.2 or Condition 90.4(A) as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.

90.5 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 90.1, 90.2 and 90.4 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 90.5(A) applies include with any notice referred to in Condition 90.3 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.

91. Determination and Payment of Charges

91.1 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 90.4(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.

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

- (A) Condition 91.1(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 90.2 or 90.4(A); or
- (B) Condition 91.1(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 91.3(C)) the Risk Premium in respect of that Fixed Charge,

shall be determined in accordance with Condition 91.3.

91.3 Where Condition 91.2(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 91.3(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.

91.4 Any determination pursuant to Condition 91.3(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 Total 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.

91.5 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.

91.6 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 (each four-week period being a "**Chargeable Period**") which shall, in so far as is practicable, be in an equal amount for each instalment; and
- (B) where a User is a Passenger Operator, an amount equivalent to any Performance Payment payable by the Station Facility Owner to other Passenger Operators in respect of a Performance Event caused by such User pursuant to Condition 49.7.

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

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

91.7 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 91.3(C):

- (A) Conditions 91.5 and 91.6 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 91.4 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 94.

92. Certificate of Residual Variable Charge and Fixed Costs

92.1 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.

92.2 The certificate shall contain information in an amount of detail which is at least equal to that required by Condition 90.3 in relation to the charges and costs to which it relates.

93. Adjustments for excess and short payments

93.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 91.6 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 92.1, 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 93.1(A) above at the Standard Interest Rate, calculated pursuant to Condition 94.

93.2 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 91.6 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 92.1, 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 93.2(A) above at the Standard Interest Rate, calculated pursuant to Condition 94.

94. Calculation of Interest

94.1 Interest payable pursuant to Conditions 91 and 93 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.

95. Inspection of books, records and accounts

95.1 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.

96. Adjustment following inspection

96.1 If, upon or following any inspection in accordance with Condition 95 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.

96.2 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.

96.3 If the shortfall referred to in Condition 96.1 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.

97. Accounts

97.1 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railways 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.

97.2 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railways Regulations, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition 97.1 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 97.1 above.

97.3 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 90.2 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.

97.4 Any comparison provided pursuant to Condition 97.3 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 97.3; 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 97.1(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 90.2 and which has been actually incurred; and
- (C) compare any such expenditure and contributions with that estimate.

98. Calculation of number of Vehicles operated

98.1 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 98.3,

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 departs 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 98.1 would give rise to a materially different number in any case; or
- (ii) any Passenger Operator shall request that such number be so recalculated.

98.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 98.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

98.3 For the purposes of Condition 98.1(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.

98.4 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 98.1, 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 98. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

99. Calculation of Passenger Operators' Shares of Qualifying Expenditure

99.1 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 98 each time a recalculation is undertaken pursuant to Condition 98.

99.2 Where a Passenger Operator ceases to operate Vehicles from the Domestic Northbound Zone, International Zone and/or Domestic Southbound Zone (as applicable) so that no Passenger Operators operate from such Zone or Zones:

- (A) the Station Facility Owner shall be responsible for the costs and expenses incurred in demobilising such Zone or Zones and such costs and expenses shall not form part of Qualifying Expenditure;
- (B) following the demobilisation of such Zone or Zones, the Station Facility Owner shall be responsible for any costs and expenses arising in relation to the demobilised Zone or Zones and such costs and expenses shall not form part of Qualifying Expenditure; and
- (C) any unavoidable increase in costs and expenses directly attributable to occupied Zone or Zones which arise as a result of the demobilisation of the unoccupied Zone or Zones shall form part of Qualifying Expenditure.

100. Calculation of Passenger Operators' Shares of Long Term Charge

100.1 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 98 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 100.5 from its Passenger Operator's Proportion of Common Zone LTC that applied immediately prior to the recalculation in question.

100.2 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 98 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 100.5 from its Domestic Northbound Passenger Operator's Proportion of Domestic Northbound Zone LTC that applied immediately prior to the recalculation in question.

100.3 **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 98 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 100.5 from its International Passenger Operator's Proportion of International Zone LTC that applied immediately prior to the recalculation in question.

100.4 **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 98 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 100.5 from its Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC that applied immediately prior to the recalculation in question.

100.5 The percentage referred to in Conditions 100.1, 100.2, 100.3 and 100.4 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

Alteration to existing percentage share required to

Northbound Zone LTC, International Zone LTC or Domestic Southbound Zone LTC immediately prior to the recalculation in question **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%

101. Early Termination of a Station Access Agreement

101.1 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.

101.2 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:

- (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 98.1;

- "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.

102. Contributions from Third Parties

- 102.1 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 102.1(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.
- 102.2 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.

103. Repair and Maintenance of Non-Listed Items

- 103.1 Subject to Condition 103.2, 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) Renewal shall be deemed to be chargeable to Long Term Charge; and
- (B) Maintenance and Repair shall be deemed to be chargeable to Qualifying Expenditure.

103.2 In the event that the Station Facility Owner or any User is of the opinion that the allocation made pursuant to Condition 103.1 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.

LONG TERM CHARGE

104. Definitions

104.1 In Conditions 104 and 105, unless the context otherwise requires:

"Adverse Change" means a Relevant Change of Law such that:

- (a) the amount of Available Life Cycle Funds for the current Review Period is or is likely to be insufficient to enable the Station Facility Owner to carry out the Life Cycle Works at the Station; and/or
- (b) the carrying out the Life Cycle Works at the Station in the current Review Period would not enable: (i) the Station Facility Owner to comply with its obligations under the HS1 Lease (in respect of St Pancras International Station) and/or the Life Cycle Purpose; and/or (ii) the Station Facility Operator to comply with its Safety Obligations in respect of the Station;

"Asset Management Strategy" means, in relation to a Station, the asset renewal regime relating to that Station developed by the Station Facility Owner in accordance with the LTC Schedule and as approved by the Government's Representative pursuant to the LTC Schedule and as modified from time to time by the Life Cycle Reports approved by the Government's Representative pursuant to the LTC Schedule;

"Authority" has the meaning given to it in Condition 105.2.1;

"Available Life Cycle Funds" means, in respect of a Station, the amount set out in the Asset Management Strategy for that Station as being available in any Review Period or Overhang Period to fund the carrying out of Life Cycle Works at the Station;

"Change in Circumstances" means, in respect of a Station, any material change in the asset renewal regime affecting that Station which was not reasonably foreseeable by the Station Facility Owner at the time the relevant Life Cycle Report was submitted to the Government's Representative and which will result in a decrease in the aggregate amount of the Long Term Charge payable by the Users of that Station;

"Chargeable Period" has the meaning given to it in Condition 91.6(A);

"Element of the Station"	means, in relation to a Station, each element of the Station as identified in the Asset Management Strategy for that Station;
"First Review Period"	means the period commencing on 1 April 2011 and expiring on 31 March 2015;
"Government's Representative"	means such person(s), firm(s) or company(ies) that the Secretary of State may appoint to be his representative(s) or any substitute as may be appointed from time to time to discharge the functions ascribed to the role in the LTC Schedule;
"Interim Review"	means an interim review of the Long Term Charge carried out by the Station Facility Owner in accordance with Condition 105.4;
"Life Cycle Period"	means the period of fifty (50) years commencing on 1 April 2011;
"Life Cycle Purpose"	means ensuring that each Station shall be in good and substantial repair and condition during the whole of the Life Cycle Period;
"Life Cycle Report"	means, in respect of each Station, the report to be provided by the Station Facility Owner pursuant to the LTC Schedule prior to the commencement of each Review Period other than the First Review Period and as may be modified in accordance with the LTC Schedule;
"Life Cycle Works"	means, in relation to each Station, the works of replacement and renewal to be undertaken in respect of each Element of the Station referred to generally in the Asset Management Strategy and specifically in the Life Cycle Reports approved by the Government's Representative;
"Long Term Charge Commencement Date"	means [1 April 2012];
"LTC Schedule"	means, in relation to St Pancras International Station, Schedule 10 (<i>Stations Repair and Renewal</i>) of the HS1 Lease (in the form in force as at [1 April 2012]);
"Overhang Period"	means, in relation to St Pancras International Station, each of the four successive periods of five years following expiry of the Term;
"Provisional Review Notice"	has the meaning given to it in Condition 105.3.6;
"Relevant Change of Law"	means a Change of Law or the Direction of a Competent Authority;
"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;
"Review Notice"	has the meaning given to it in Condition 105.3.5;

"Review Period"		means the First Review Period and each successive period of five years commencing on the day after the expiry of the previous Review Period and expiring on the fifth anniversary of the expiry of the previous Review Period (other than in respect of the last Review Period, which shall expire on the last day of the Term);
"Second Review Period"	Review	means the Review Period immediately following the First Review Period;
"Station Works"	Safety	means, in relation to a Station, the renewals and replacements undertaken by the Station Facility Operator in order to discharge its Safety Obligations in respect of that Station but which were not identified in the current Lifecycle Report; and
"Term"		in relation to St Pancras International Station, has the meaning given to it in the HS1 Lease.

105. Calculation of the Long Term Charge

105.1 Principal formula

105.1.1 Calculation

Subject to any modifications pursuant to Conditions 105.2, 105.3 and / or 105.4 the Long Term Charge in Relevant Year t (and in proportion for any period comprising less than a full Relevant Year) shall be such amount as is calculated in accordance with the following formula:

$$LTC_t = LTC_{RP}(\text{Indexed})$$

where:

LTC_t means the Long Term Charge in Relevant Year t ;

LTC_{RP} means:

- (a) during the period commencing on the Long Term Charge Commencement Date and ending on 31 March 2015, in respect of Relevant Year t , the value specified in paragraph 3 of Annex 8; and
- (b) from and including 1 April 2015, in respect of each Review Period or Overhang Period (as applicable), the value specified in the most recent Review Notice or Provisional Review Notice given by the Station Facility Owner to the Users.

105.2 **Modification of Long Term Charge**

105.2.1 *Modification notice*

The Secretary of State or the Government's Representative (in either case the "**Authority**") shall have the right to issue a modification notice pursuant to this Condition 105.2 and the Long Term Charge shall be modified as specified in such notice, provided:

- (a) the Authority shall be satisfied as to the need for the modifications as provided in Condition 105.2.2;
- (b) the Authority shall have complied with the requirements of Condition 105.2.3; and
- (c) the modification shall have effect from the date specified in the modification notice.

105.2.2 *Conditions applying to the right to issue a modification notice*

The Authority shall not be entitled to issue a notice under Condition 105.2.1 unless the Authority 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 Authority, have led the Authority to arrive at materially different conclusions as to the appropriate level of the Long Term Charge and will result in the aggregate amount of the Long Term Charge payable by the Users of the Station being reduced.

105.2.3 *Consultation*

The Authority shall, in determining the modifications to the Long Term Charge contemplated by this Condition 105.2, consult such persons and to such extent as he shall consider appropriate.

105.2.4 *Compliance*

Provided the provision of Condition 105.2 have been complied with the Long Term Charge will be reduced as set out in the modification notice issued by the Authority in accordance with Condition 105.2.1. The Authority shall be entitled to enforce this Condition 105.2.4 pursuant to the Contracts (Rights of Third Parties) Act 1999.

105.3 **Review of the Long Term Charge**

105.3.1 Subject to Condition 105.3.3, the Station Facility Owner shall be entitled, in conjunction with preparing a Life Cycle Report for the Station in accordance with the LTC Schedule, to review the amount of the Long Term Charge prior to the commencement of the Second Review Period and each subsequent Review Period

and Overhang Period.

105.3.2 Where pursuant to Condition 105.3.1, the Station Facility Owner considers, in accordance with the terms of the LTC Schedule and Condition 105.3.3, that the Long Term Charge should be modified with effect from the commencement of the Second Review Period or a subsequent Review Period or Overhang Period, the Station Facility Owner shall at least 20 Business Days prior to submitting the Life Cycle Report containing the proposed modifications to the Long Term Charge to the Government's Representative:

- (a) notify each User of:
 - (i) the proposed modification(s) to the Long Term Charge (including any modification resulting from a Relevant Change of Law); and
 - (ii) its assessment of the modified amount of Long Term Charge for each Relevant Year in the applicable Review Period or Overhang Period; and
- (b) provide each User with such information as it shall reasonably require, in a form and to an amount of detail which is sufficient, to make a proper assessment of the effect of the proposed modification(s) to the Long Term Charge (including the effect of any Relevant Change of Law).

105.3.3 The Station Facility Owner shall only be entitled to review and modify the Long Term Charge (pursuant to Condition 105.3.1 and Condition 105.3.2) for the following reasons:

- (a) to ensure that there are sufficient Available Lifecycle Funds to carry out the Lifecycle Works. In ascertaining the sufficiency of the Available Lifecycle Funds the Station Facility Owner shall have regard to the Asset Management Strategy, the Life Cycle Purpose and any other relevant factor including, but not limited to, changes to the forecasts of deterioration and remaining life of each Element of the Station and changes to the Lifecycle Works or the costs of those Lifecycle Works;
- (b) to ensure the continuing validity of the interest rate assumptions underlying the setting of the Long Term Charge;
- (c) to recover any additional costs suffered or incurred by the Station Facility Owner in connection with any Station Safety Works;
- (d) to recover any reasonably and properly incurred financing related costs suffered or incurred by the Station Facility Owner as a result of the Station Facility Owner having funded all or part of the cost of any Lifecycle Works itself due to there being insufficient Available Lifecycle Funds;
- (e) as a result of a Relevant Change of Law; or
- (f) for any other reason agreed between the Station Facility Owner and the affected Users.

105.3.4 *Consultation*

The Government's Representative shall, in reviewing and approving any modification to the Long Term Charge proposed by the Station Facility Owner,

consult such persons and to such extent as the Government's Representative shall consider appropriate.

105.3.5 *Review Notice*

Where the Life Cycle Report for the Station, including any modifications to the Long Term Charge proposed by the Station Facility Owner and notified to the Users in accordance with Condition 105.3.2, has been approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule at least 30 Business Days prior to the commencement of the relevant Review Period or Overhang Period (as the case may be), the Station Facility Owner shall no later than 10 Business Days from the date of such approval or determination give written notice to each User (a "**Review Notice**"):

- (a) specifying the Long Term Charge (calculated in accordance with the restrictions set out in this Condition 105 and the LTC Schedule) for the first Relevant Year in the next Review Period or Overhang Period (as the case may be); and
- (b) providing any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the modification(s) to the Long Term Charge.

105.3.6 *Provisional Review Notice*

Where the Life Cycle Report for the Station and/or any modifications to the Long Term Charge notified to the Users in accordance with Condition 105.3.2 have not been approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule at least 30 Business Days prior to the commencement of the relevant Review Period or Overhang Period (as the case may be) the Station Facility Owner shall be entitled to serve a written notice on each User (a "**Provisional Review Notice**") no later than 20 Business Days prior to the commencement of the next Review Period or Overhang Period (as the case may be) which:

- (a) specifies an interim amount of Long Term Charge (calculated in accordance with the restrictions set out in this Condition 105 and the LTC Schedule) for the first Relevant Year in the relevant Review Period or Overhang Period (as the case may be); and
- (b) provides any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the interim amount of the Long Term Charge.

105.3.7 Where the Life Cycle Report for the Station and/or any modifications to the Long Term Charge notified to the Users in accordance with Condition 105.3.2 for the relevant Review Period is approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule after the Station Facility Owner has served a Provisional Review Notice in accordance with Condition 105.3.6, the Station Facility Owner shall no later than 20 Business Days from the date of such approval or determination give written notice to each User ("**Final Review Notice**"):

- (a) specifying the Long Term Charge for the first Relevant Year in the next Review Period or Overhang Period (as the case may be);
- (b) specifying the amount of any overpayment or underpayment of Long Term Charge by the User calculated by comparing what amount was paid by the User in accordance with the Provisional Review Notice and what amount should have been so paid for that period in accordance with the Final Review Notice; and
- (c) providing any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the modifications to the Long Term Charge and the calculation of any overpayment or underpayment by the User.

105.3.8 For the purposes of Condition 105.1 a Final Review Notice shall replace any Provisional Review Notice with effect from the commencement of the relevant Review Period or Overhang Period (as the case may be) and shall be treated as if it were a Review Notice.

105.3.9 If the Station Facility Owner elects not to serve a Review Notice in accordance with Condition 105.3.5 or a Provisional Review Notice in accordance with Condition 105.3.6, the value of LTC_{RP} at the commencement of the next Review Period or Overhang Period (as the case may be) shall remain unchanged, pending review or revision in accordance with these Station Access Conditions.

105.3.10 Where, in accordance with 105.3.7, the Station Facility Owner has calculated that:

- (a) a User has made an overpayment of any Long Term Charge, the Station Facility Owner shall, no later than 20 Business Days from the date of such Final Review Notice, reimburse the User the amount of such overpayment; and
- (b) a User has made an underpayment of any Long Term Charge, the Station Facility Owner shall be entitled to invoice the User the amount of such underpayment in accordance with this Part 17.

105.4 **Interim Review**

105.4.1 The Station Facility Owner shall be entitled to initiate an Interim Review at any time following the occurrence of an Adverse Change or a Change in Circumstances.

105.4.2 On or prior to the Station Facility Owner initiating an Interim Review following the occurrence of an Adverse Change or a Change in Circumstances, the Station Facility Owner shall promptly notify each User in writing:

- (a) that it intends to initiate an Interim Review;
- (b) the circumstances which has resulted in the Station Facility Owner initiating an Interim Review; and
- (c) the proposed changes to the Life Cycle Report and/or any modifications to the Long Term Charge which the Station Facility Owner proposes as a result of the occurrence of the Adverse Change (subject to Condition 105.4.3) or the Change in Circumstances or otherwise.

105.4.3 In the case of a proposed modification of the Long Term Charge as a result of an Adverse Change, the Station Facility Owner shall ensure the proposed modified amount is such an 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 (having regard to Condition 13) 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. Where the Station Facility Owner has subcontracted its obligations in respect of renewal and replacement of the Station to the Station Facility Operator, the Station Facility Owner shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Facility Operator so that the Station Facility Operator acts in the manner of a prudent land owner responsible for the structural integrity and maintenance of the Station and behaves with due efficiency and economy; and
- (b) which it is fair and reasonable be borne by the Users having regard to, amongst other things, the Decision Criteria.

105.4.4 The Station Facility Owner shall provide the Users with such information as they shall reasonably require, in a form and amount of detail which is sufficient to enable Users to make a proper assessment of the Adverse Change or the Change in Circumstances, the proposed changes to the Life Cycle Report and any proposed modification of the Long Term Charge.

105.4.5 The Government's Representative shall, as part of any Interim Review, consult such persons and to such extent as he shall consider appropriate.

105.4.6 If:

- (a) the Government's Representative approves the amendments to the Life Cycle Report and/or any modification of the Long Term Charge which the Station Facility Owner proposed as part of the Interim Review; or
- (b) following the referral of the matter to the Dispute Resolution Procedure, it is determined that the Life Cycle Report and/or the Long Term Charge should be modified,

the Station Facility Owner shall promptly notify each User in writing of the modified Long Term Charge for the remainder of the Review Period or Overhang Period (as the case may be).

105.4.7 Any modifications to the Long Term Charge notified to Users pursuant to Condition 105.4.6 shall take effect on and from the commencement of the Chargeable Period which commences after the date of such notice.

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.

88. Definitions

88.1 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 the Station Facility Owner pursuant to Condition 92.1(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 100.1 and 100.2; 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 100.1 and 100.3;

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

"**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 Southbound Passenger Operator's Proportion**" means, save as provided in Conditions 100.1 and 100.3, 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 98;

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

"**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 91.3(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) Condition 90.5(B)(1);
- (ii) Condition 91.2(A)(1);
- (iii) Condition 91.3(B); and
- (iv) Condition 91.3(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 100.1 and 100.2, 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 98;

"**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 calculated in accordance with (and subject to variation in accordance with) Condition 105;

"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 100;

"Passenger Operator's Proportion" means, save as provided in Condition 100, 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 98 for the purposes of the Station Access Agreement;

"Performance Event" has the meaning ascribed to it in Condition 47.1;

"Performance Payment" has the meaning ascribed to it in Condition 47.1;

"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 90.2(B) or Condition 90.4(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 91.1 or 91.3(D);

"Risk Premium" means in respect of any particular Fixed Charge (other than one determined pursuant to Condition 91.3(C)), the amount referred to in (as the case may be):

- (i) Condition 90.5(B)(2), where that Fixed Charge is provided for pursuant to Condition 90.5(B)(1);
- (ii) Condition 91.2(A)(2) where that Fixed Charge is provided for pursuant to Condition 91.2(A)(1); or
- (iii) Condition 91.3(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 98 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 98 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 shall be calculated as follows:

$$TVCIPO = \sum \frac{((POP \times CZQX) + (IPOP \times IZQX))}{D}$$

where:

TVCIPO is the Total Variable Charge in respect of the International Passenger Operator in respect of the Accounting Year;

\sum is the summation across all days in the Accounting Year;

POP is, in respect of each day during the Accounting Year, the Passenger Operator's Proportion on that day;

CZQX is the Common Zone QX;

IPOP is, in respect of each day, the International Passenger Operator's Proportion on that day;

IZQX is the International Zone QX; and

D is the number of days in the Accounting Year.

- (b) each Domestic Southbound Passenger Operator shall be calculated as follows:

$$TVCDSPO = \sum \frac{((POP \times CZQX) + (DSPOP \times DSZQX))}{D}$$

where:

TVCDSPO is the Total Variable Change in respect of the Domestic Southbound Passenger Operator in respect of the Accounting Year;

\sum is the summation across all days in the Accounting Year;

POP is, in respect of each day during the Accounting Year, the Passenger Operator's Proportion on that day;

CZQX is the Common Zone QX;

DSPOP is, in respect of each day, the Domestic Southbound Passenger Operator's Proportion on that day;

DSZQX is the Domestic Southbound Zone QX; and

D is the number of days in the Accounting Year.

89. General

89.1 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.

89.2 Where the First Year will commence on a date not being 1 April in any year, then Conditions 90 to 97 (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.

90. Notice of Charges

90.1 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.

90.2 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 90.1; and
 - (2) any other Common Station Amenities or Common Station Services.

90.3 The notice referred to in Condition 90.2 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.

90.4 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 90.2 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 90.4(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 90.2 or Condition 90.4(A) as the Passenger Operator may from time to time reasonably request, promptly upon receipt of any such request.

90.5 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 90.1, 90.2 and 90.4 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 90.5(A) applies include with any notice referred to in Condition 90.3 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.

91. Determination and Payment of Charges

91.1 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 90.4(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.

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

- (A) Condition 91.1(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 90.2 or 90.4(A); or
- (B) Condition 91.1(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 91.3(C)) the Risk Premium in respect of that Fixed Charge,

shall be determined in accordance with Condition 91.3.

91.3 Where Condition 91.2(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 91.3(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.

91.4 Any determination pursuant to Condition 91.3(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 Total 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.

91.5 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.

91.6 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 (each four-week period being a “**Chargeable Period**”), which shall, in so far as practicable, be in an equal amount for each instalment; and

(B) where a User is a Passenger Operator, an amount equivalent to any Performance Payment payable by the Station Facility Owner to other Passenger Operators in respect of a Performance Event caused by such User pursuant to Condition 49.7.

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

(i) the end of the Chargeable Period in question; or

(ii) the date of receipt of an invoice for such payment.

91.7 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 91.3(C):

(A) Conditions 91.5 and 91.6 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 91.4 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 94.

92. Certificate of Residual Variable Charge and Fixed Costs

92.1 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.

92.2 The certificate shall contain information in an amount of detail which is at least equal to that required by Condition 90.3 in relation to the charges and costs to which it relates.

93. Adjustments for excess and short payments

93.1 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 91.6 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 92.1, 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 93.1(A) above at the Standard Interest Rate, calculated pursuant to Condition 94.

93.2 If, in relation to any Accounting Year or Accounting Half-Year, the amount paid by a Passenger Operator pursuant to Condition 91.6 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 92.1, 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 93.2(A) above at the Standard Interest Rate, calculated pursuant to Condition 94.

94. Calculation of Interest

- 94.1 Interest payable pursuant to Conditions 91 and 93 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.

95. Inspection of books, records and accounts

- 95.1 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.

96. Adjustment following inspection

- 96.1 If, upon or following any inspection in accordance with Condition 95 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.

- 96.2 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.

- 96.3 If the shortfall referred to in Condition 96.1 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.

97. Accounts

97.1 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railways 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.

97.2 Without prejudice to any obligation of the Station Facility Owner under any station licence and the Railways Regulations, the accounts to be kept and maintained by the Station Facility Owner in accordance with Condition 97.1 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 97.1 above.

97.3 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 90.2 and the Station Facility Owner's then best estimate of the Total Variable Charge for that Accounting Year.

97.4 Any comparison provided pursuant to Condition 97.3 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 97.3; 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 97.1(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 90.2 and which has been actually incurred; and
- (C) compare any such expenditure and contributions with that estimate.

98. Calculation of number of Vehicles operated

98.1 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 98.3,

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 departs 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 98.1 would give rise to a materially different number in any case; or
- (ii) any Passenger Operator shall request that such number be so recalculated.

98.2 The Station Facility Owner shall procure that the results of any calculation made pursuant to Condition 98.1 shall be made available to all Passenger Operators not later than 7 days after the calculation shall have been made.

98.3 For the purposes of Condition 98.1(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.

98.4 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 98.1, 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 98. If no such estimate shall have been so provided, the Station Facility Owner shall use its own estimate for such purpose.

99. Calculation of Passenger Operators' Shares of Qualifying Expenditure

99.1 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 98 each time a recalculation is undertaken pursuant to Condition 98.

99.2 Where a Passenger Operator ceases to operate Vehicles from the International Zone and/or Domestic Southbound Zone (as applicable) so that no Passenger Operators operate from such Zone or Zones:

- (A) the Station Facility Owner shall be responsible for the costs and expenses incurred in demobilising such Zone or Zones and such costs and expenses shall not form part of Qualifying Expenditure;
- (B) following the demobilisation of such Zone or Zones, the Station Facility Owner shall be responsible for any costs and expenses arising in relation to the demobilised Zone or Zones and such costs and expenses shall not form part of Qualifying Expenditure; and
- (C) any unavoidable increase in costs and expenses directly attributable to occupied Zone or Zones which arise as a result of the demobilisation of the unoccupied Zone or Zones shall form part of Qualifying Expenditure.

100. Calculation of Passenger Operators' Shares of Long Term Charge

100.1 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 98 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 100.4 from its Passenger Operator's Proportion of Common Zone LTC that applied immediately prior to the recalculation in question.

100.2 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 98 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 100.4 from its International Passenger Operator's Proportion of International Zone LTC that applied immediately prior to the recalculation in question.

100.3 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 98 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 100.4 from its Domestic Southbound Passenger Operator's Proportion of Domestic Southbound Zone LTC that applied immediately prior to the recalculation in question.

100.4 The percentage referred to in Conditions 100.1, 100.2 and 100.3 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%

101. Early Termination of a Station Access Agreement

101.1 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.

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

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

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 98.1;
- "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.

102. Contributions from Third Parties

102.1 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 102.1(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.

102.2 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.

103. Repair and Maintenance of Non-Listed Items

103.1 Subject to Condition 103.2, 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) Renewal shall be deemed to be chargeable to Long Term Charge; and
- (B) Maintenance and Repair shall be deemed to be chargeable to Qualifying Expenditure.

103.2 In the event that the Station Facility Owner or any User is of the opinion that the allocation made pursuant to Condition 103.1 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.

LONG TERM CHARGE

104. Definitions

104.1 In Conditions 104 and 105, unless the context otherwise requires:

"Adverse Change" means a Relevant Change of Law such that:

- (a) the amount of Available Life Cycle Funds for the current Review Period is or is likely to be insufficient to enable the Station Facility Owner to carry out the Life Cycle Works at the Station; and/or
- (b) the carrying out the Life Cycle Works at the Station in the current Review Period would not enable: (i) the Station Facility Owner to comply with its obligations under the HS1 Lease (in respect of Stratford International Station and Ebbsfleet International Station) and the Ashford Deed (in respect of Ashford International Station) and/or the Life Cycle Purpose; and/or (ii) the Station Facility Operator to comply with its Safety Obligations in respect of the Station;

"Ashford Deed" means the Supplemental Deed given by the Station Facility Owner in favour of the Secretary of State in connection with the repair and renewal of Ashford International Station;

"Asset Management Strategy"		means, in relation to a Station, the asset renewal regime relating to that Station developed by the Station Facility Owner in accordance with the LTC Schedule and as approved by the Government's Representative pursuant to the LTC Schedule and as modified from time to time by the Life Cycle Reports approved by the Government's Representative pursuant to the LTC Schedule;
"Authority"		has the meaning given to it in Condition 105.2.1;
"Available Life Cycle Funds"	Life	means, in respect of a Station, the amount set out in the Asset Management Strategy for that Station as being available in any Review Period or Overhang Period to fund the carrying out of Life Cycle Works at the Station;
"Change in Circumstances"		means, in respect of a Station, any material change in the asset renewal regime affecting that Station which was not reasonably foreseeable by the Station Facility Owner at the time the relevant Life Cycle Report was submitted to the Government's Representative and which will result in a decrease in the aggregate amount of the Long Term Charge payable by the Users of that Station;
"Chargeable Period"		has the meaning given to it in Condition 91.6(A);
"Element of the Station"		means, in relation to a Station, each element of the Station as identified in the Asset Management Strategy for that Station;
"First Review Period"	Review	means the period commencing on 1 April 2011 and expiring on 31 March 2015;
"Government's Representative"		means such person(s), firm(s) or company(ies) that the Secretary of State may appoint to be his representative(s) or any substitute as may be appointed from time to time to discharge the functions ascribed to the role in the LTC Schedule;
"Interim Review"		means an interim review of the Long Term Charge carried out by the Station Facility Owner in accordance with Condition 105.4;
"Life Cycle Period"		means the period of fifty (50) years commencing on 1 April 2011;
"Life Cycle Purpose"	Cycle	means ensuring that each Station shall be in good and substantial repair and condition during the whole of the Life Cycle Period;
"Life Cycle Report"		means, in respect of each Station, the report to be provided by the Station Facility Owner pursuant to the LTC Schedule prior to the commencement of each Review Period other than the First Review Period and as may be modified in accordance with the LTC Schedule;
"Life Cycle Works"		means, in relation to each Station, the works of replacement and renewal to be undertaken in respect of each Element of the Station referred to generally in the Asset Management Strategy and specifically in the Life Cycle Reports approved by the

Government's Representative;

"Long Term Charge Commencement Date"	means [1 April] 2012;
"LTC Schedule"	means: <ul style="list-style-type: none">(a) in relation to Stratford International Station and Ebbsfleet International Station, Schedule 10 (<i>Stations Repair and Renewal</i>) of the HS1 Lease (in the form as in force as at [1 April 2012]); and(b) in relation to Ashford International Station, the Ashford Deed (in the form as in force as at [1 April 2012]);
"Overhang Period"	means: <ul style="list-style-type: none">(a) in relation to Stratford International Station and Ebbsfleet International Station, each of the four successive periods of five years following expiry of the Term; and(b) in relation to Ashford International Station, the successive periods of five years following expiry of the Term;
"Provisional Review Notice"	has the meaning given to it in Condition 105.3.6;
"Relevant Change of Law"	means a Change of Law or the Direction of a Competent Authority;
"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;
"Review Notice"	has the meaning given to it in Condition 105.3.5;
"Review Period"	means the First Review Period and each successive period of five years commencing on the day after the expiry of the previous Review Period and expiring on the fifth anniversary of the expiry of the previous Review Period (other than in respect of the last Review Period, which shall expire on the last day of the Term);
"Second Review Period"	means the Review Period immediately following the First Review Period;
"Station Safety Works"	means, in relation to a Station, the renewals and replacements undertaken by the Station Facility Operator in order to discharge its Safety Obligations in respect of that Station but which were not identified in the current Lifecycle Report; and
"Term"	(a) in relation to Stratford International Station and Ebbsfleet International Station, has the meaning given to it in the HS1

Lease; and

- (b) in relation to Ashford International Station, has the meaning given to it in the Ashford Deed.

105. Calculation of the Long Term Charge

105.1 Principal formula

105.1.1 Calculation

Subject to any modifications pursuant to Conditions 105.2, 105.3 and / or 105.4 the Long Term Charge in Relevant Year t (and in proportion for any period comprising less than a full Relevant Year) shall be such amount as is calculated in accordance with the following formula:

$$LTC_t = LTC_{RP}(\text{Indexed})$$

where:

LTC_t means the Long Term Charge in Relevant Year t ;

LTC_{RP} means:

- (a) during the period commencing on the Long Term Charge Commencement Date and ending on 31 March 2015, in respect of Relevant Year t , the value specified in paragraph 3 of Annex 8; and
- (b) from and including 1 April 2015, in respect of each Review Period or Overhang Period (as applicable), the value specified in the most recent Review Notice or Provisional Review Notice given by the Station Facility Owner to the Users.

105.2 Modification of Long Term Charge

105.2.1 Modification notice

The Secretary of State or the Government's Representative (in either case the "**Authority**") shall have the right to issue a modification notice pursuant to this Condition 105.2 and the Long Term Charge shall be modified as specified in such notice, provided:

- (a) the Authority shall be satisfied as to the need for the modifications as provided in Condition 105.2.2;
- (b) the Authority shall have complied with the requirements of Condition 105.2.3; and

- (c) the modification shall have effect from the date specified in the modification notice.

105.2.2 *Conditions applying to the right to issue a modification notice*

The Authority shall not be entitled to issue a notice under Condition 105.2.1 unless the Authority 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 Authority have led the Authority to arrive at materially different conclusions as to the appropriate level of the Long Term Charge and will result in the aggregate amount of the Long Term Charge payable by the Users of the Station being reduced.

105.2.3 *Consultation*

The Authority shall, in determining the modifications to the Long Term Charge contemplated by this Condition 105.2, consult such persons and to such extent as he shall consider appropriate.

105.2.4 *Compliance*

Provided the provision of Condition 105.2 have been complied with the Long Term Charge will be reduced as set out in the modification notice issued by the Authority in accordance with Condition 105.2.1. The Authority shall be entitled to enforce this Condition 105.2.4 pursuant to the Contracts (Rights of Third Parties) Act 1999.

105.3 **Review of the Long Term Charge**

105.3.1 Subject to Condition 105.3.3, the Station Facility Owner shall be entitled, in conjunction with preparing a Life Cycle Report for the Station in accordance with the LTC Schedule, to review the amount of the Long Term Charge prior to the commencement of the Second Review Period and each subsequent Review Period and Overhang Period.

105.3.2 Where pursuant to Condition 105.3.1, the Station Facility Owner considers, in accordance with the terms of the LTC Schedule and Condition 105.3.3, that the Long Term Charge should be modified with effect from the commencement of the Second Review Period or a subsequent Review Period or Overhang Period, the Station Facility Owner shall at least 20 Business Days prior to submitting the Life Cycle Report containing the proposed modifications to the Long Term Charge to the Government's Representative:

- (a) notify each User of:
 - (i) the proposed modification(s) to the Long Term Charge (including any modification resulting from a Relevant Change of Law); and
 - (ii) its assessment of the modified amount of Long Term Charge for

each Relevant Year in the applicable Review Period or Overhang Period; and

- (b) provide each User with such information as it shall reasonably require, in a form and to an amount of detail which is sufficient, to make a proper assessment of the effect of the proposed modification(s) to the Long Term Charge (including the effect of any Relevant Change of Law).

105.3.3 The Station Facility Owner shall only be entitled to review and modify the Long Term Charge (pursuant to Condition 105.3.1 and Condition 105.3.2) for the following reasons:

- (a) to ensure that there are sufficient Available Lifecycle Funds to carry out the Lifecycle Works. In ascertaining the sufficiency of the Available Lifecycle Funds the Station Facility Owner shall have regard to the Asset Management Strategy, the Life Cycle Purpose and any other relevant factor including, but not limited to, changes to the forecasts of deterioration and remaining life of each Element of the Station and changes to the Lifecycle Works or the costs of those Lifecycle Works;
- (b) to ensure the continuing validity of the interest rate assumptions underlying the setting of the Long Term Charge;
- (c) to recover any additional costs suffered or incurred by the Station Facility Owner in connection with any Station Safety Works;
- (d) to recover any reasonably and properly incurred financing related costs suffered or incurred by the Station Facility Owner as a result of the Station Facility Owner having funded all or part of the cost of any Lifecycle Works itself due to there being insufficient Available Lifecycle Funds;
- (e) as a result of a Relevant Change of Law; or
- (f) for any other reason agreed between the Station Facility Owner and the affected Users.

105.3.4 *Consultation*

The Government's Representative shall, in reviewing and approving any modification to the Long Term Charge proposed by the Station Facility Owner, consult such persons and to such extent as the Government's Representative shall consider appropriate.

105.3.5 *Review Notice*

Where the Life Cycle Report for the Station, including any modifications to the Long Term Charge proposed by the Station Facility Owner and notified to the Users in accordance with Condition 105.3.2, has been approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule at least 30 Business Days prior to the commencement of the relevant Review Period or Overhang Period (as the case may be), the Station Facility Owner shall no later than 10 Business Days from the date of such approval or determination give written notice to each User (a "**Review Notice**"):

- (a) specifying the Long Term Charge (calculated in accordance with the restrictions set out in this Condition 105 and the LTC Schedule) for the

first Relevant Year in the next Review Period or Overhang Period (as the case may be); and

- (b) providing any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the modification(s) to the Long Term Charge.

105.3.6 *Provisional Review Notice*

Where the Life Cycle Report for the Station and/or any modifications to the Long Term Charge notified to the Users in accordance with Condition 105.3.2 have not been approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule at least 30 Business Days prior to the commencement of the relevant Review Period or Overhang Period (as the case may be) the Station Facility Owner shall be entitled to serve a written notice on each User (a "**Provisional Review Notice**") no later than 20 Business Days prior to the commencement of the next Review Period or Overhang Period (as the case may be) which:

- (a) specifies an interim amount of Long Term Charge (calculated in accordance with the restrictions set out in this Condition 105 and the LTC Schedule) for the first Relevant Year in the relevant Review Period or Overhang Period (as the case may be); and
- (b) provides any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the interim amount of the Long Term Charge.

105.3.7 Where the Life Cycle Report for the Station and/or any modifications to the Long Term Charge notified to the Users in accordance with Condition 105.3.2 for the relevant Review Period is approved by the Government's Representative or otherwise determined in accordance with the LTC Schedule after the Station Facility Owner has served a Provisional Review Notice in accordance with Condition 105.3.6, the Station Facility Owner shall no later than 20 Business Days from the date of such approval or determination give written notice to each User ("**Final Review Notice**");

- (a) specifying the Long Term Charge for the first Relevant Year in the next Review Period or Overhang Period (as the case may be);
- (b) specifying the amount of any overpayment or underpayment of Long Term Charge by the User calculated by comparing what amount was paid by the User in accordance with the Provisional Review Notice and what amount should have been so paid for that period in accordance with the Final Review Notice; and
- (c) providing any additional supporting information as the User may reasonably require in a form and to an amount of detail which is sufficient to make a proper assessment of the effect of the modifications to the Long Term Charge and the calculation of any overpayment or underpayment by the User.

105.3.8 For the purposes of Condition 105.1 a Final Review Notice shall replace any Provisional Review Notice with effect from the commencement of the relevant Review Period or Overhang Period (as the case may be) and shall be treated as if it were a Review Notice.

105.3.9 If the Station Facility Owner elects not to serve a Review Notice in accordance with Condition 105.3.5 or a Provisional Review Notice in accordance with Condition 105.3.6, the value of LTC_{RP} at the commencement of the next Review Period or Overhang Period (as the case may be) shall remain unchanged, pending review or revision in accordance with these Station Access Conditions.

105.3.10 Where, in accordance with 105.3.7, the Station Facility Owner has calculated that:

- (a) a User has made an overpayment of any Long Term Charge, the Station Facility Owner shall, no later than 20 Business Days from the date of such Final Review Notice, reimburse the User the amount of such overpayment; and
- (b) a User has made an underpayment of any Long Term Charge, the Station Facility Owner shall be entitled to invoice the User the amount of such underpayment in accordance with this Part 17.

105.4 **Interim Review**

105.4.1 The Station Facility Owner shall be entitled to initiate an Interim Review at any time following the occurrence of an Adverse Change or a Change in Circumstances.

105.4.2 On or prior to the Station Facility Owner initiating an Interim Review following the occurrence of an Adverse Change or a Change in Circumstances, the Station Facility Owner shall promptly notify each User in writing:

- (a) that it intends to initiate an Interim Review;
- (b) the circumstances which has resulted in the Station Facility Owner initiating an Interim Review; and
- (c) the proposed changes to the Life Cycle Report and/or any modifications to the Long Term Charge which the Station Facility Owner proposes as a result of the occurrence of the Adverse Change (subject to Condition 105.4.3) or the Change in Circumstances or otherwise.

105.4.3 In the case of a proposed modification of the Long Term Charge as a result of an Adverse Change, the Station Facility Owner shall ensure the proposed modified amount is such an 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 (having regard to Condition 13) 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. Where the Station Facility Owner has subcontracted its obligations in respect of renewal and replacement of the Station to the Station Facility Operator, the

Station Facility Owner shall be deemed to have acted as a prudent land owner responsible for the structural integrity and maintenance of the Station behaving with due efficiency and economy where it has used reasonable endeavours to manage the Station Facility Operator so that the Station Facility Operator acts in the manner of a prudent land owner responsible for the structural integrity and maintenance of the Station and behaves with due efficiency and economy; and

- (b) which it is fair and reasonable be borne by the Users having regard to, amongst other things, the Decision Criteria.

105.4.4 The Station Facility Owner shall provide the Users with such information as they shall reasonably require, in a form and amount of detail which is sufficient to enable Users to make a proper assessment of the Adverse Change or the Change in Circumstances, the proposed changes to the Life Cycle Report and any proposed modification of the Long Term Charge.

105.4.5 The Government's Representative shall, as part of any Interim Review, consult such persons and to such extent as he shall consider appropriate.

105.4.6 If:

- (a) the Government's Representative approves the amendments to the Life Cycle Report and/or any modification of the Long Term Charge which the Station Facility Owner proposed as part of the Interim Review; or
- (b) following the referral of the matter to the Dispute Resolution Procedure, it is determined that the Life Cycle Report and/or the Long Term Charge should be modified,

the Station Facility Owner shall promptly notify each User in writing of the modified Long Term Charge for the remainder of the Review Period or Overhang Period (as the case may be).

105.4.7 Any modifications to the Long Term Charge notified to Users pursuant to Condition 105.4.6 shall take effect on and from the commencement of the Chargeable Period which commences after the date of such notice.