

ANNEXES TO HAL STATION ACCESS CONDITIONS 2018:
HEATHROW TERMINALS 2 AND 3 STATION

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ANNEX 1

COMMON STATION AMENITIES AND SERVICES

1 Common Station Amenities for all Users

1.1 All forecourts, concourses, platforms, subways, overbridges, and other parts of the Station necessary or expedient to enable access to and egress from the Station and access to, egress from and the use of the amenities listed in paragraphs 1.2 and 1.3 (other than such areas of the concourse (if any) as are described in paragraph 24 of Annex 9 and for the duration(s) therein mentioned);

1.2 staff amenities for the non-exclusive use of each User's staff and the staff of its Associates and any person engaged by a User or any of its Associates;

1.3 first aid amenities available for all users of the Station (where set out and to the standard set out in the safety case relating to the Station);

1.4 fire detection, fire alarm, fire prevention and fire fighting equipment and sprinkler systems and other safety equipment reasonably considered by the Station Facility Owner to be necessary for the safe operation of the Station; and

1.5 machinery and equipment necessary for the proper use of the amenities set out in paragraphs 1.1 to 1.3 (inclusive), including all lifts and escalators subject to any restrictions which the Station Facility Owner may reasonably consider appropriate and notify to each User, having regard to the nature or condition of such machinery.

2 Common Station Amenities for Passenger Operators

2.1 All forecourts, concourses, platforms, subways, overbridges and other parts of the Station necessary or expedient to enable access to, egress from and the use of the amenities listed in paragraphs 2.2 to 2.7 (inclusive) and paragraph 2.15;

2.2 public toilets;

2.3 NOT USED;

2.4 a reasonable number of emergency telephones;

2.5 NOT USED;

2.6 NOT USED;

2.7 NOT USED;

2.8 fixed timetable departure boards on the concourse and each platform (where appropriate), for use by each Passenger Operator and its Associates to advertise the departure times of its Passenger Services from the Station and boards for the display of the statutory and compulsory notices supplied by each User, both with reasonable prominence and equal prominence with the notices of the Station Facility Owner and other Passenger Operators;

2.9 a reasonable number of moveable boards for use by each Passenger Operator and its Associates to inform its or their customers of any alteration to train timetables or movements, the Station Services or the Common Station Amenities, which cannot be efficiently communicated by the use of any available electronic passenger information systems;

- 2.10 NOT USED;
- 2.11 electronic passenger information systems, in positions of reasonable prominence;
- 2.12 a public address system which is clearly audible throughout the Station;
- 2.13 passenger self-help trolleys;
- 2.14 a public clock;
- 2.15 NOT USED;
- 2.16 the areas open to the public adjacent to or adjoining any ticket, booking or passenger information outlet;
- 2.17 wheelchair or other suitable transport for passengers with impaired mobility and ramps to allow safe wheelchair access to trains; and
- 2.18 clear, unambiguous and unbranded directional signage within the Station.

3 Common Station Services for all Users

- 3.1 Cleaning of the Station;
- 3.2 heating, ventilating and cooling of the Station to such temperatures as the Station Facility Owner reasonably determines and securing the provision of adequate quantities of hot water to the Common Station Amenities;
- 3.3 proper lighting of the Station;
- 3.4 such policing as may be required by statute and such security measures as the Station Facility Owner reasonably considers are necessary. For the avoidance of doubt, additional security measures requested by any User shall be installed, maintained and operated at that User's expense, subject to first obtaining the permission of the Station Facility Owner;
- 3.5 display of the notices reasonably requested and provided by a User;
- 3.6 punctual despatch of trains operated by or on behalf of any User;
- 3.7 the provision of competent and appropriately trained staff to supervise the arrival and departure of trains; and
- 3.8 NOT USED

4 Common Station Services for Passenger Operators

- 4.1 NOT USED;
- 4.2 display of emergency or temporary timetables and notices of engineering works;
- 4.3 the provision of sufficient numbers of competent and appropriately trained staff who will wear uniforms maintained in good order, including a name badge to provide reasonable customer services and assistance to each Passenger Operator's passengers (including any who are disabled), including customer assistance in relation to boarding and alighting from trains, and handling of luggage;

4.4 the provision of sufficient numbers of competent and appropriately trained staff to provide reasonable mobility assistance to each Passenger Operator's passengers (including any who are disabled);

4.5 display or announcement (with visibility and/or audibility which is at least equal to that given to the display or announcement of every Passenger Operator and its Associates), on or through all such Passenger Information Systems as shall be available at the Station, of such up-to-date and comprehensible information relating to the railway passenger services operated by Passenger Operators as the Station Facility Owner is reasonably capable of displaying or announcing and as is available to the Station Facility Owner;

4.6 display at the Station of information as to the availability of tickets for travel on all railway passenger services operated by Passenger Operators and where they may be purchased;

4.7 communication to passengers of such up-to-date train running information as is available to the Station Facility Owner and as relates to, or is likely to relate to, or be relevant in relation to, all railway passenger services operated by Passenger Operators;

4.8 NOT USED;

4.9 the provision of a central radio system to which system-compliant hand-held radio handsets and roving microphones owned, operated and maintained by Passenger Operators can connect;

4.10 provision to the relevant Passenger Operator of details of Station reception arrangements provided by the Station Facility Owner for disabled customers who have reserved journeys via the disabled persons reporting system on the Station "help-page" of the computer reservation system maintained by the relevant Passenger Operator, and updating of this information as necessary;

4.11 NOT USED; and

4.12 NOT USED.

5 The Station shall be open for the use of the staff of Users and their Associates (other than passengers) for the following hours:

24 hours a day

and to the public for the following hours:

04:30 – 00:30

6 Station: Heathrow

Station name: Heathrow Terminals 2 and 3 Station

Address/location: Heathrow Airport, Harmondsworth, London, TW6 2GA

County or London Borough: Hillingdon

The Station is shown shaded green on the Plan and includes the inner surfaces, airspace of the platforms, equipment, boundary walls, fences and gates belonging to the Station (whether or not identified by lettering on the Plan), but excludes structures.

7 Default Interest Rate

The interest rate shall be 2 per cent. above the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period.

8 Core Facilities

8.1 NOT USED;

8.2 NOT USED;

8.3 those ticket sales and passenger information facilities which are necessary to obtain tickets for and information about the train services provided to or from the Station by a User; and

8.4 staff toilets used by employees of a User.

9 Location of Station Register

Station Manager's Office, Heathrow Terminal 2 and 3 Station

10 Station Facilities

The following, to the extent that they exist at the Station:

10.1 Platforms;

10.2 forecourts, concourses and subways

10.3 points of access to and egress from the Station and the platforms;

10.4 ticket, booking and passenger information offices;

10.5 public toilets;

10.6 NOT USED

10.7 NOT USED

10.8 staff toilets for use by Users and their Associates' staff;

10.9 NOT USED;

10.10 electronic passenger information systems;

10.11 lifts and escalators;

10.12 Services;

10.13 NOT USED;

10.14 public address system;

10.15 public clock; and

10.16 escape shafts and head-buildings

APPENDIX 1 TO ANNEX 1

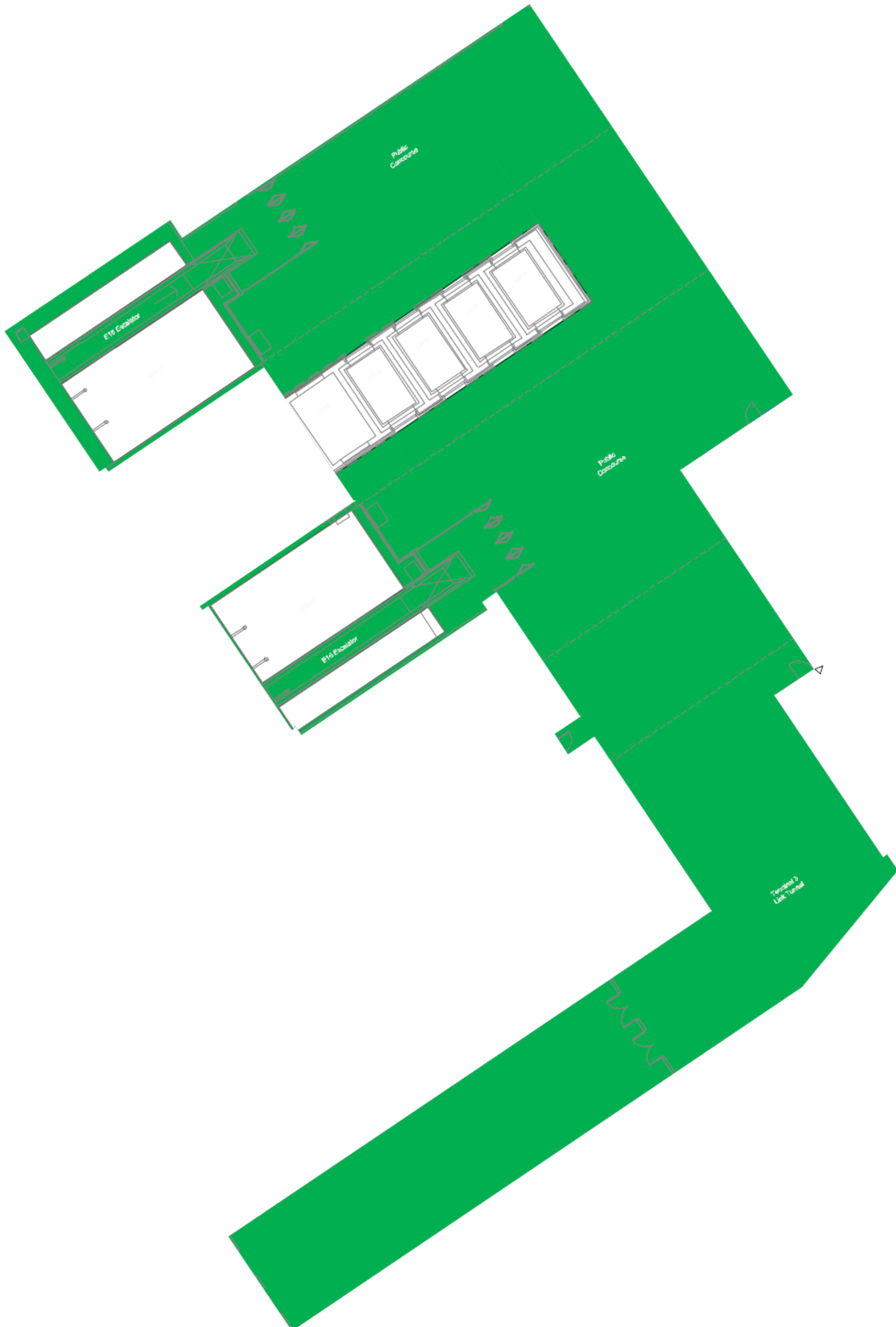
Specification for Common Services

N/A

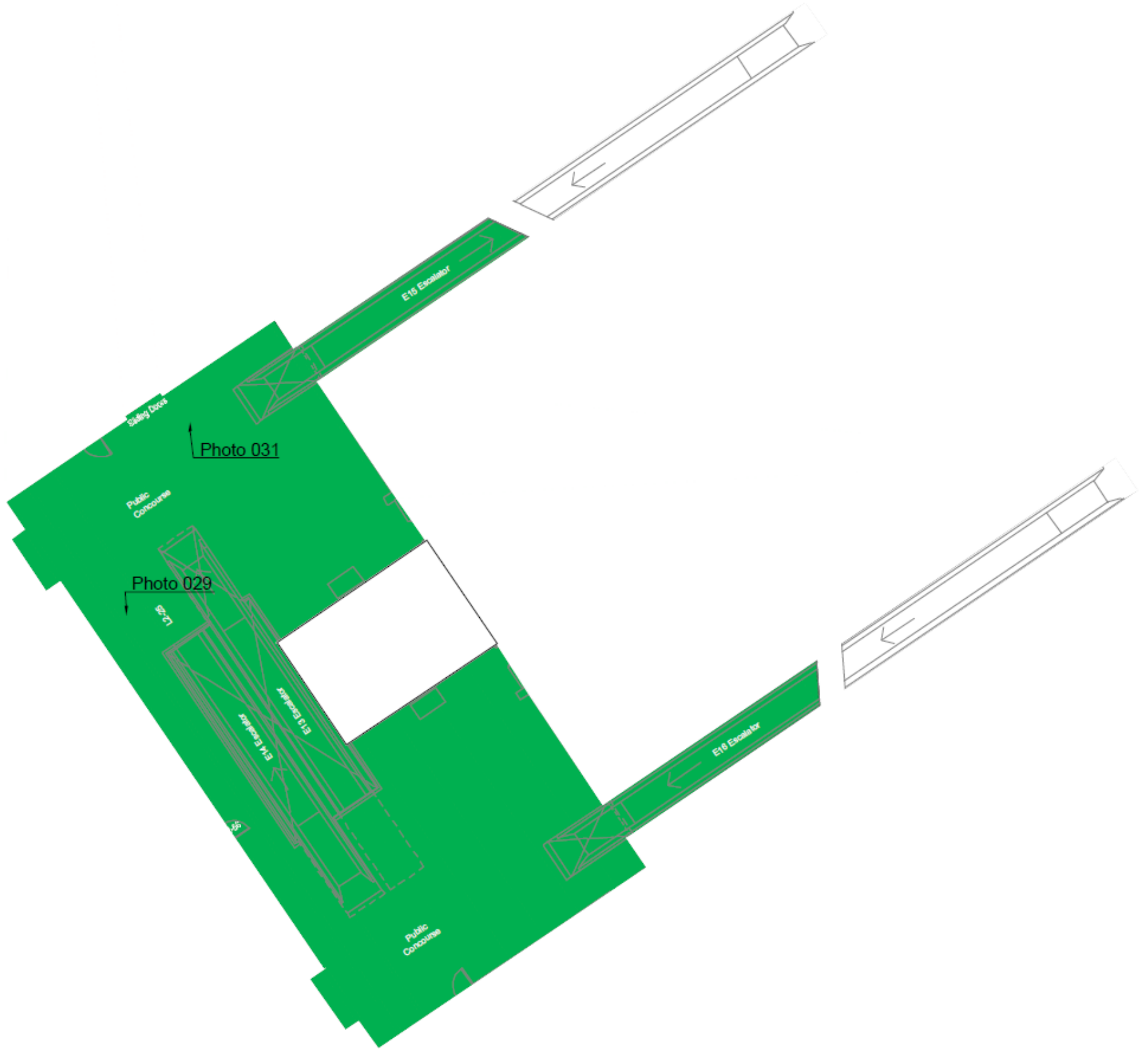
APPENDIX 2 TO ANNEX 1

The Plan

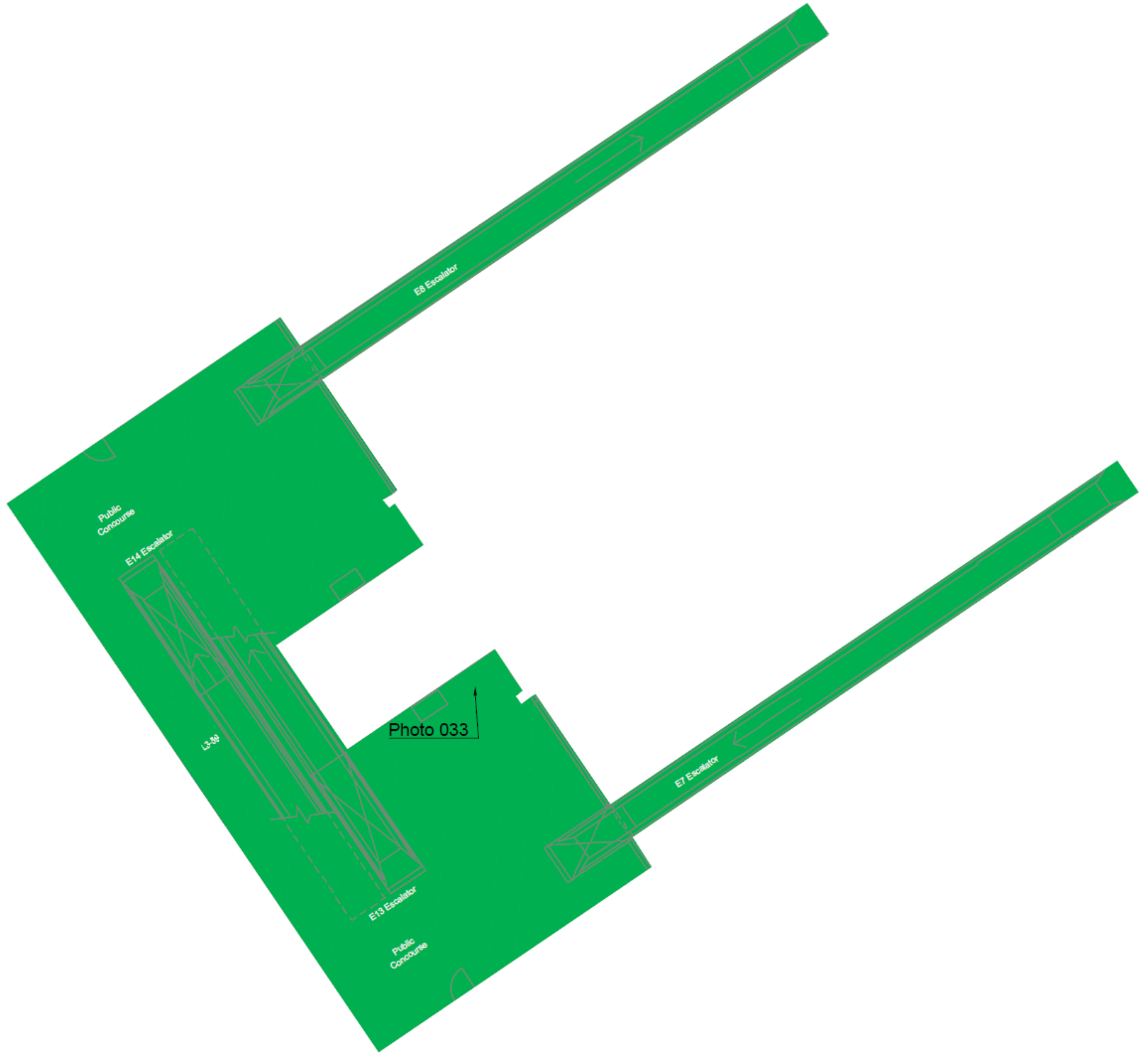
Central Terminal Area - Level A0



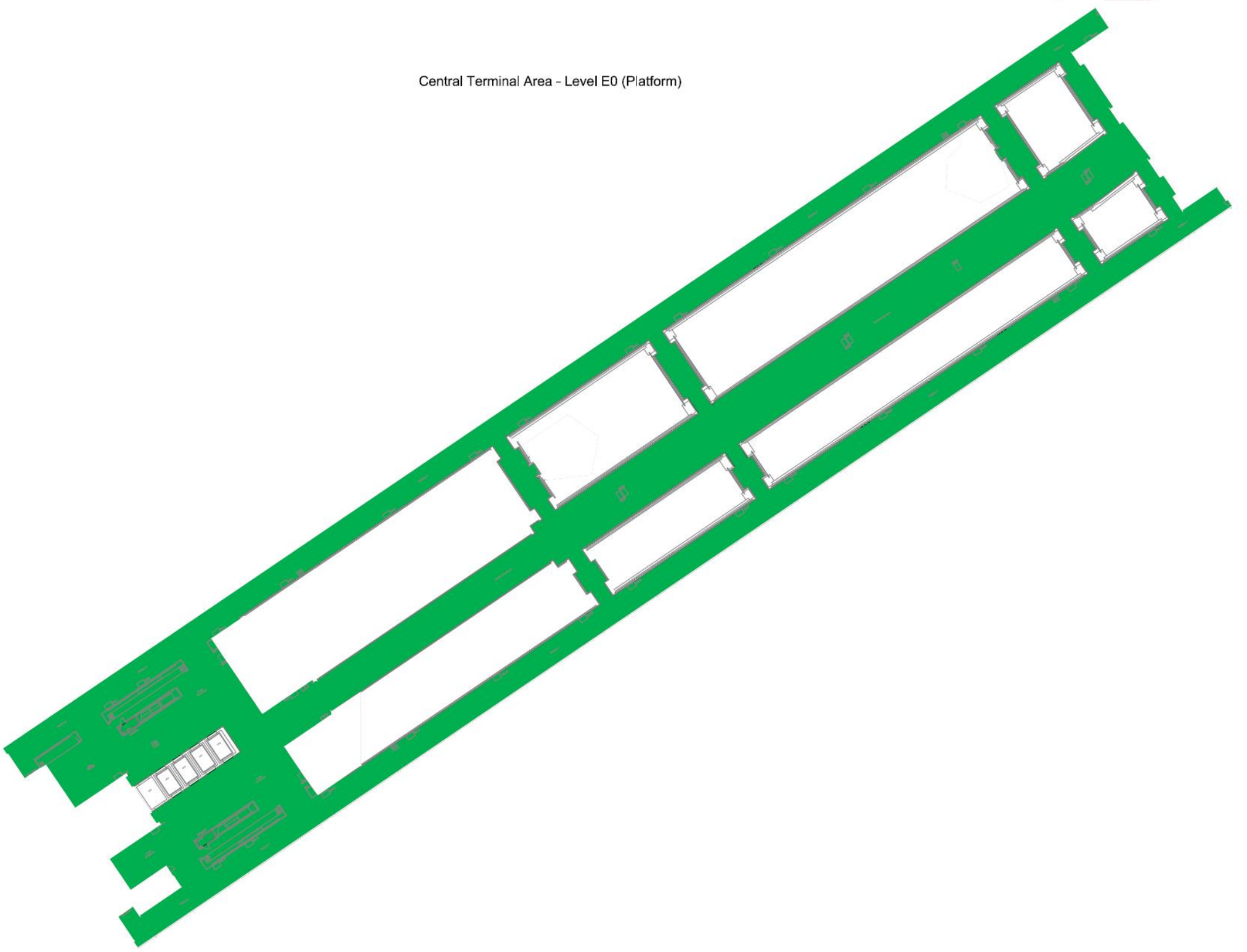
Central Terminal Area - Level B0



Central Terminal Area - Level C0



Central Terminal Area - Level E0 (Platform)



APPENDIX 3 TO ANNEX 1

STATEMENT OF CONDITION

Item	Condition				Item	Condition			
	P	F	G	X		P	F	G	X
1. External Façade			X		16. Water Services			X	
2. Roofs & Roof Drainage				X	17. Gas Services and Appliances				X
3. Canopies				X	18. Heating Circuits				X
4. Chimneys [(flue dilution) <i>if applicable</i>]				X	19. Air Conditioning			X	
5. Substructure			X		20. Main Switchgear			X	
6. Superstructure				X	21. Electric Circuits/Devices			X	
7. Retaining Walls			X		22. Lighting Internal			X	
8. External Decoration				X	23. Security and Fire Alarm Systems			X	
9. Internal Decoration			X		24. Driver Only Operated Systems			X	
10. Windows, Doors & Internal Joinery			X		25. Toilets and Plumbing			X	
11. Internal Walls			X		26. Drainage			X	
12. Floors			X		27. Platforms			X	
13. Ceilings			X		28. Lighting Platform/External			X	
14. Staircases			X		29. Car Parks, Roads and External Works				X
15. Lifts and Escalators			X		30. Footbridges				X

Item	Condition					Condition			
	P	F	G	X		P	F	G	X
31. Underpasses and Subways			X		45. Mezzanine				X
32. Boundary Fences/Walls				X					
33. Landscaping				X					
34. Shelter and Cycle Racks				X					
35. Vent Systems			X						
36. Train Tanking				X					
37. Emergency Lighting			X						
38. Barrier Roof									
39. Main entrance doors			X						
40. Tenant lift			X						
41. Gates & Barriers				X					
42. Water meters				X					
43. Generators				X					
44. CCTV		X							
45. Barrier Gates/Doors			X						
46. Ticket machines (owned by the SFO)			X						
47. Others (to be specified)				X					

Note: Condition Codes:

P – Poor – Serviceable but with considerable deterioration or weathering from the installed condition.

F – Fair – Serviceable but with some deterioration or weathering from the installed condition.

G – Good – Generally sound condition as originally installed.

X – Item not present.

APPENDIX 4 TO ANNEX 1
HEATHROW TERMINALS 2 AND 3 STATION - EQUIPMENT INVENTORY

<u>Description</u>	<u>Present at Station</u>	<u>Quantity (where applicable)</u>
(1) Traction supply equipment (includes OHLE structures and/or feeder cables to conductor rails, but not the rails)	YES	N/A
(2) Signalling equipment (includes gantries cables and other apparatus)	YES	N/A
(3) water and electricity utility supply equipment and transmission media	YES	N/A
(4) Sub-stations Meter rooms and main switch gear housing	YES	N/A
(5) Boilers and heating systems	NO	N/A
(6) Station Facility Owner's temporary buildings	NO	N/A
(7) Sprinkler	YES	N/A
(8) Security Installations (including CCTV) and Fire Alarm Systems	YES	N/A
(9) Air Conditioning Plant and Equipment	YES	N/A
(10) Retail Telecomms Systems. This means the systems identified in (a) below, including (but not limited to) items mentioned in (b) below but excluding items mentioned in (c) below;		
(a)public address systems information display systems (including LED, LCD, or flap-type (Solari boards) and monitoring monitor based systems)	YES	N/A
station clock systems	YES	N/A
closed circuit TV for crowd control	YES	N/A
(b) customer terminal/ premises equipment associated with such systems e.g. processors, displays, speakers and amplifiers	YES	N/A
local cabling and wiring, including any local data/ analogue communications devices associated with the Station	YES	N/A
(b)Circuits connecting retail telecomms systems to remote locations (using intermediate and/or trunk telecomms cabling) or providing connections to other applications (for example, a form of information generator)	YES	N/A
(11) External lighting including platforms	NO	
(12) Drainage	YES	N/A
(13) Gas installations, fittings and fixed appliances	YES	N/A
(14) Electrical installations including fixed appliances	YES	N/A
(15) Electrical power supply sockets and light fittings	YES	N/A

(16) Driver only operation equipment	YES	N/A
(17) Central heating systems	YES	N/A
(18) Sanitary installations and fittings where accessible and/or visible	YES	N/A
(19) Sanitary installations and fittings where not accessible or visible	YES	N/A
(20) Hot and cold water & soil waste plumbing installations where accessible and/or visible	YES	N/A
(21) Hot and cold water and soil waste plumbing installations where not accessible or visible	YES	N/A
(22) Flues	NO	
(23) Fixed seats	YES	N/A
(24) Train despatch equipment	YES	N/A
(25) Fixed and moveable fire appliances	YES	N/A
(26) Pumping station	YES	N/A
(28) Lift installations	YES	Passenger (4) Fire (1) Goods (2)
(29) Escalator installations	YES	8
(30) Glasden ticket units	NO	
(31) Platform barriers	YES	N/A
(32) Cycle racking	NO	
(33) Waiting room furniture	NO	
(34) Left luggage units	NO	
(35) Customer service telephones & equipment	YES	N/A

HEATHROW TERMINALS 2 AND 3 STATION - ELEMENTS INVENTORY

Description

A. Substructures (excluding any finishes)

- (1) Foundations
- (2) Arches and subways
- (3) Structural slabs at ground level or below
- (4) Damp proof membrane at ground floor level and below
- (5) Retaining walls

B. Superstructure

- (6) Damp proof course
- (7) Frames, beams columns (excluding finishes)
- (8) Structural slabs (above ground floor level)
- (9) Floors (excluding finishes)
- (10) External staircases (excluding finishes)
- (11) Internal staircase (excluding finishes)

Roofs (Excluding Canopies)

- (12) Roof structure
- (13) Decking, coverings insulation
- (14) Roof access ladders, walkways and guardrails
- (15) Roof lights
- (16) Roof drainage
- (17) Station roof
- (18) Tankrooms and roof mounted plant above the roof line

Walls and Cladding

- (19) External and load bearing walls (excluding finishes)
- (20) External cladding
- (21) Internal load bearing walls (excluding finishes)
- (22) Internal non-load bearing walls (excluding finishes)
- (23) Partitions

- (24) Windows external and internal excluding glass
- (25) External doors
- (26) Internal doors

C. Finishes and surface

- (27) External & internal wall finishes and coating including paint
- (28) Floor (except terrazzo) finishes within buildings
- (29) Finishes to frames beams columns (other than (37)(A))
- (30) Fire resistant coatings/finishes
- (31) Staircase finishes
- (32) Ceiling finishes
- (33) Internal joinery (skirtings architraves)
- (34) Other glazing including windows and doors

D. Platforms and external structures

- (35) Platform structure including supporting and retaining walls
- (36) Platform copers
- (37) Platform wearing surfaces (except terrazzo)
- (38) Fixed ramps
- (39) Loading docks
- (40) Retaining walls

E. Other

- (41) Main drainage outfall
- (42) Other underground drainage installations
- (43) Nominated signs
- (44) Station signage

APPENDIX 6 TO ANNEX 1

N/A

APPENDIX 7 TO ANNEX 1

1 Railway Superstructure

1.1 Within the area edged blue on the Plan, any bridge, viaduct, railway arch, raft or overlying structure which is not coloured or hatched in any manner on the Plan shall:

1.1.1 not be Railway Superstructure if it is listed in Column 1 of Table 1; and

1.1.2 be Railway Superstructure if it is listed in Column 2 of Table 1.

Table 1

Column 1

Column 2

1 footbridge providing access from one station platform to another

4 raft supporting office building or similar commercial development, together with all leased parts of such building or development

2 any area subject to a station trading tenancy

5 road bridge

3 any area at first and/or upper floor levels subject to a residential tenancy

6 rail bridge

7 footbridge (except one described in item 1)

1.2 The Station shall:

1.2.1 include the land and airspace within and covered by the arches or spans of the Railway Superstructure, any boundary structures sealing off the mouth of any such arches or spans and the land airspace and works beneath the raft; and

1.2.2 exclude any part of the Railway Superstructure and the works and airspace above it.

2 Railway Substructure

2.1 Any bridge, viaduct, railway arch, raft, tunnel, passageway or substructure which is not coloured or hatched in any manner on the Plan shall:

2.1.1 not be Railway Substructure if it is listed in Column 1 of Table 2; and

2.1.2 be part of Railway Substructure if listed in Column 2 of Table 2.

Table 2

Column 1

Column 2

1 subway or tunnel connecting station buildings or platforms

3 arch space (except one described in item 2)

2 arch space used as station car park or to provide access to the Station or otherwise integral to the operation of the Station as a railway station

4 subway or tunnel (except one described in item 1)

2.2 The Station shall:

2.2.1 include the surface of the ground or soil (if any) over the Railway Substructure and the ballast, sleepers, and metals laid there together with all airspace above the ground or soil surface (or if there is no such surface, then above the surface of the Railway Substructure itself) and also includes the airspace within any tunnel or passageway which is part of the Railway Substructure; and

2.2.2 exclude any part of the Railway Substructure, the airspace within any arches or spans beneath it and the land and works below it.

ANNEX 2

1. Station Qualifying Expenditure

1.1 Station Qualifying Expenditure (QX) recovers the reasonable costs payable or incurred by the Station Facility Owner in providing or procuring (in an efficient manner) the provision of the Common Station Amenities or the Common Station Services to Passenger Operators, or which can be properly attributed to the operation of the Station for or in connection with the provision by Passenger Operators of services for the carriage of passengers. This includes the costs attributable to:

- a) station cleaning, refuse collection and disposal; and
- b) the provision of operational staff.

1.2 It consists of a fixed element for the Charging Period and management fee element which is levied as a percentage of the fixed QX charge and recovers indirect central costs and overheads that arise from operating the HAL stations. The QX management fee also includes a profit element which aims to recover the risk associated with providing 'QXable' services on a fixed term basis. A QX management fee of 6.54% of the Qualifying Expenditure (excluding station management contract) is payable by the Passenger Operator in respect of that Accounting Year in respect of the overheads and reasonable profit of the Station Facility Owner by way of a management fee for operating or procuring the operation of the Station.

2. Station Long Term Charge

2.1 The Station Long Term Charge recovers the reasonable costs payable or incurred by the Station Facility Owner in providing or procuring (in an efficient manner) the provision of the Common Station Amenities or the Common Station Services to Passenger Operators, or which can be properly attributed to the operation of the Station for or in connection with the provision by Passenger Operators of services for the carriage of passengers that do not vary as a result of operating a train. This includes the costs attributable to:

- a) the maintenance and/or repair of those Elements of the Station and those items of Equipment listed in the Elements Inventory or the Equipment Inventory;
- b) the costs and expenses of carrying out the renewal obligations of the Station Facility Owner; and
- c) the payment of the fees and expenses of any professional adviser or valuer reasonably engaged by the Station Facility Owner in connection with any of the provisions of this Annex 2.

ANNEX 3

NOT USED

ANNEX 4

EXISTING WORKS

1 Existing Works

Station fire system replacement works

Terminal 1 closure works, including gate at the end of the CTA station and temporary fire alarm installation, fire alarm replacement.

2 NOT USED

ANNEX 5

EXISTING AGREEMENTS

1 Existing Agreements

N/A

ANNEX 6

NOT USED

ANNEX 7

NOT USED

ANNEX 8

NOT USED

ANNEX 9

MISCELLANEOUS PROVISIONS

- (1) NOT USED.
- (2) NOT USED.
- (3) NOT USED.
- (4) The percentage referred to in the definition "Requisite Majority" is 80%.
- (5) NOT USED.
- (6) NOT USED.
- (7) NOT USED.
- (8) NOT USED.
- (9) NOT USED.
- (10) NOT USED.
- (11) NOT USED.
- (12) NOT USED.
- (13) NOT USED.
- (14) The amount referred to in Condition L7.1.2(a) is £1,000.
- (15) The amount referred to in Condition L7.1.2(b) is £1,000.
- (16) The amount referred to in Condition L7.1.2(c) is £1,000.
- (17) The amount referred to in Condition L7.1.3(a) is £3,000.
- (18) The amount referred to in Condition L7.1.3(b) is £3,000.
- (19) The amount referred to in Condition L7.1.3(c) is £3,000.
- (20) NOT USED.
- (21) The number of years referred to in Condition Q1.1 is 6.
- (22) NOT USED.
- (23) NOT USED.
- (24) NOT USED
- (25) NOT USED.
- (26) The Core Facilities referred to in the definition "Change" are those ticket sales and passenger information facilities and the messrooms, cloakrooms and staff toilets referred to in Annex 1 in the paragraph headed "Core Facilities" (if any).

(27) NOT USED.

(28) NOT USED.

ANNEX 10

DISREPAIRS TO BE REMEDIED

- 1 None
- 2 None

ANNEX 11

NOT USED.

ANNEX 12

NOT USED

ANNEX 13

TEMPLATE CO-OPERATION AGREEMENT BETWEEN INDUSTRY PARTIES (STATION
FACILITY OWNER AND RELEVANT OPERATORS)

Co-operation Agreement

between

[] LIMITED

as the Proposer

and

[] LIMITED

as the MCC

relating to

[] Station

Note: this document should only be used in connection with Material Change Proposals made between Railway Industry parties.

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THIS AGREEMENT is dated

and made

BETWEEN:

(1) [] **LIMITED** (company registration number [] (the "Proposer"); and

(2) [] **LIMITED** (company registration number [] (the "MCC").

WHEREAS:

- (1) [There is in respect of the Station a "Relevant Agreement" which incorporates the SACs made between the Proposer and the MCC (*to be used where one party is the Station Facility Owner and the other party is a Relevant Operator*)] [The Proposer and the MCC are parties to agreements which incorporate the SACs (*to be used between parties where either of them is a Material Change Consultee to the MCP i.e. there is no agreement between them, but both separately are parties to an agreement which incorporates the SACs, so that they are both bound by the SACs.*)].
- (2) The Proposer has issued the MCP to the MCC and this Agreement concerns the implementation of the MCP.
- (3) The purpose of this Agreement is:
 - (i) **co-operation** – to establish appropriate principles concerning the basis upon which the MCC and the Proposer will co-operate with each other throughout the implementation of the MCP in order to minimise any material adverse effect of the MCP upon the MCC's Business; and
 - (ii) **financial undertaking** – to provide a financial undertaking to pay to the MCC the MCC Costs and such part of any increased net costs in respect of the Station for which the MCC is responsible pursuant to the Relevant Agreement as shall be directly attributable to the implementation of the MCP and to set out appropriate procedures to be followed in relation to any claim by the MCC pursuant to the financial undertaking.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the contrary intention appears:

"Control Period" means the period between the reviews of Station Facility Owner's funding requirements by the ORR;

"Fixed Sum" has the meaning given that expression in clause 4.1 of this Agreement;

"implementation of the MCP" means the implementation and carrying out of works or other activities within the station change process as outlined by the MCP;

"MCC" means the Material Change Consultee being the second party to this Agreement;

“MCC’s Business” means the business of [operating the Station, running services for the carriage of passengers by railway and acting in its capacity as tenant of the Station] [operating the Network and acting in its capacity as landlord of the Station];

“MCC Costs” means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the MCC in evaluating and responding to the MCP (whether or not the MCP is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue) but taking into account and netting off against such costs, losses and expenses:

- (A) the benefit (if any) to be obtained or likely to be obtained by the MCC as a consequence of the implementation of the MCP; and
- (B) the ability or likely future ability of the MCC to recoup any costs, losses and expenses from third parties including passengers and customers;

“MCP” means a Material Change Proposal for the Station issued on [];

“Proposer” means the proposer of a Material Change Proposal being the first party to this Agreement;

“Relevant Agreement” means [an access agreement] dated [] made between the Proposer and the MCC incorporating the SACs;

“Required Interference” has the meaning given that expression in clause 3.1 of this Agreement;

“Required Interference Proposal” has the meaning given that expression in clause 5.1 of this Agreement;

“SACs” means the Station Access Conditions and Annexes applicable to the Station;

“Savings Suggestion” has the meaning given that expression in clause 11.2 of this Agreement;

“Station” means [] Station;

“Unplanned Interference” has the meaning given that expression in clause 7.1 of this Agreement.

1.2 In this Agreement the following rules of interpretation shall apply:

- (A) References in the singular shall include the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (B) References to a particular clause or sub-clause shall be references to that clause or sub-clause in this Agreement (except to the extent that the context requires otherwise);
- (C) Reference to this Agreement is a reference to this agreement as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to it or in accordance with any terms of it;
- (D) Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments,

orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it;

- (E) Headings are included for convenience only and are to be ignored for the purposes of interpretation; and
- (F) Unless a contrary intention appears, words and expressions defined in the SACs shall have the same meanings when used in this Agreement.

2. CO-OPERATION

- 2.1 The parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights as set out in this Agreement.

3. FINANCIAL UNDERTAKING

- 3.1 When undertaking the implementation of the MCP, the Proposer shall use its reasonable endeavours not to prevent, hinder, obstruct, delay or interfere with the MCC's Business except insofar as it cannot reasonably be avoided or, acting reasonably, it is nevertheless necessary to do so in order to implement the MCP (the "**Required Interference**").
- 3.2 MCC Costs arising by reason of a material adverse impact upon the MCC's Business from the Required Interference, or any MCC Costs arising by reason of the impact upon the MCC's Business from the MCP following completion, shall be compensated to the MCC in accordance with clauses 4, 6, 7 or 8, as applicable.
- 3.3 The Proposer of the MCP shall pay emerging costs in accordance with clauses 6, 7 and 8, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum in accordance with clause 4.
- 3.4 NOT USED
- 3.5 For the avoidance of doubt, the costs and payments for procuring the works and services in order to carry out the works or activities referred to in the MCP will be paid in accordance with the MCP.

4. PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM

- 4.1 If the MCC desires to recover compensation by way of a Fixed Sum, it shall within a reasonable period after the date of this Agreement serve notice on the Proposer identifying the fixed amount of compensation it will accept (the "**Fixed Sum**") in full and final settlement of all MCC Costs.
- 4.2 Within 40 Business Days following the receipt of any such notice the Proposer shall serve notice on the MCC indicating whether it accepts or rejects such offer and if it fails to serve any such notice it shall be deemed to have rejected such offer.
- 4.3 If the Proposer in its discretion accepts the MCC's offer (both the form of payment and the amount) in relation to a Fixed Sum, the Proposer shall, subject to clause 4.4, pay the Fixed Sum to the MCC within 20 Business Days from the date of any agreement under clause 4.2 and from the date of such agreement the provisions of clauses 6, 7 and 8 shall cease to apply.
- 4.4 At the request of the Proposer and in circumstances where it would be reasonable to do so having regard to the cash flow implications on the Proposer's and the MCC's respective Businesses, the Proposer shall be entitled to pay the Fixed Sum by instalments of such sums and at such intervals as the Proposer and the MCC may agree (on the assumption that,

wherever possible, the MCC should be entitled to receive instalments as and when costs are incurred by it) but in default of agreement over the circumstances in which it would be reasonable to pay by instalments, or over the amount or frequency of such instalments, the same may be referred by either party to dispute resolution under clause 14.

5. NOTICE OF A REQUIRED INTERFERENCE

5.1 Where the Proposer is able to reasonably anticipate that the implementation of the MCP or a phase of the MCP will result in Required Interference then the Proposer shall so far as reasonably possible provide 40 Business Days' written notice to the MCC of the relevant Required Interference together with:

- (A) a description of the relevant Required Interference and those parts of the MCC's Business that the Proposer considers are likely to be materially affected by it; and
- (B) such supporting information as is available to the Proposer at that time and which will be reasonably required by the MCC for the purpose of complying with its obligations under clause 6.3 (save that such supporting information does not need to be provided where compensation for MCC Costs is being paid by way of a Fixed Sum under clause 4).

The Proposer shall be permitted to serve further notice(s) together with appropriate supporting information in relation to the relevant Required Interference if and whenever the Proposer reasonably believes there is a change that will impact upon the level of relevant Required Interference and the adverse effect caused to the MCC's Business arising from implementation of the relevant phase of the MCP (the original notice and any such further notice shall each be a "**Required Interference Proposal**").

6. ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE

6.1 This clause 6 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.

6.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 5.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 6.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 14.

6.3 The MCC's response to the Proposer under clause 6.2 shall:

- (A) confirm whether or not MCC Costs will be directly attributable to the relevant Required Interference Proposal and if so provide the Proposer with reasonable information in support thereof;
- (B) state the estimated amount of any MCC Costs directly attributable to the relevant Required Interference Proposal and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) in relation to the relevant Required Interference Proposal;
- (D) make any proposals for reaching agreement in relation to the terms on which any MCC Costs are to be compensated; and

- (E) make any proposals for satisfying the mitigation obligation under clause 11 and estimate the costs of performing such obligation.

6.4 The Proposer shall be entitled

- (A) to undertake the relevant Required Interference after service of any Required Interference Proposal under clause 5.1 regardless of whether or not the MCC has provided the response under clause 6.3; and/or
- (B) to submit a Savings Suggestion as outlined at clause 11; and/or
- (C) either to agree the MCC response in relation to the level and manner of MCC Costs payable in the response issued pursuant to clause 6.3 or refer the MCC response and its contents to dispute resolution in accordance with clause 14.

6.5 For the avoidance of doubt, the Proposer shall be entitled to undertake the implementation of the MCP and phases of the same without having identified any Required Interference or having served notices in accordance with clause 5.1 but shall make payment of MCC Costs in accordance with clause 8.

7. UNPLANNED MATERIAL INTERFERENCE WITH THE MCC'S BUSINESS

7.1 This clause 7 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum, and it applies where as a consequence of the implementation of the MCP there is:

- (A) unanticipated or unplanned interference that results in a prevention, hindrance, obstruction, delay or interference with the MCC's Business at the Station; and/or
- (B) some Required Interference that has not (for any reason) been the subject of a Required Interference Proposal given by the Proposer in accordance with clause 5.1 above

(each of which circumstances are referred to below as an "**Unplanned Interference**").

7.2 After an Unplanned Interference event, the MCC shall within 30 Business Days or such longer period as the MCC may propose as being reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) provide to the Proposer a notice that shall:

- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 14;
- (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
- (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 11 and estimate the costs of performing such obligations.

7.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 7.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 14.

8. PAYMENT OF MCC COSTS

8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.

8.2 The Proposer shall pay any MCC Costs within 20 Business Days of agreement or determination (whether under clause 6.4 or 7.3 in relation to MCC Costs arising from the Required Interference or the Unplanned Interference, or under clause 14 in relation to other MCC Costs) of the level and manner of payment of the MCC Costs (or the relevant instalment of them).

8.3 At the request of the MCC and in circumstances where it would be reasonable to do so having regard to the cash flow implications on the MCC's Business, the Proposer shall make payments on account of the MCC Costs payable under clause 8.2 on a without prejudice basis of such sums and at such intervals as the Proposer and the MCC may agree but in default of agreement over the circumstances in which it would be reasonable to make payments on account, or over the amount or frequency of such payments, the same may be referred by either party to dispute resolution under clause 14.

9. REPAYMENT OF OVERPAID MCC COSTS

9.1 As soon as practicable after the total amount of MCC Costs (the "**Final MCC Costs**") is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the "**Total MCC Costs Paid**") and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the "**Overpaid MCC Costs**").

9.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 14.

9.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within 20 Business Days of agreement or determination of the amount of such costs under clauses 9.1 and 9.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 9.1 (the "**Interest Commencement Date**"), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.

9.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 9 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

10. FAILURE TO IMPLEMENT MCP

10.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the "**Partial MCC Costs Amount**") (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).

- 10.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer's notice, or either party may refer the same to dispute resolution under clause 14.
- 10.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 10.2 of the level of the Partial MCC Costs Amount.
- 10.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer's notice given under clause 10.1 exceeds the Partial MCC Costs Amount then the provisions of clause 9 shall apply mutatis mutandis to any such overpaid amount.

11. MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION

- 11.1 The MCC is required to take all reasonable steps which are within its power and which are not prohibited by or in breach of any existing Legal Requirement to reduce the extent of the MCC Costs resulting from the implementation of the MCP by the Proposer and without prejudice thereto (without being obliged to incur additional expenditure or loss of revenue unless these are compensated for by the Proposer) take all reasonable steps to mitigate and minimise any adverse impact on the MCC's Business of the implementation of the MCP and to conduct its business in such manner as responds efficiently to the occurrence of any Required Interference and/or Unplanned Interference.
- 11.2 The Proposer may submit suggestions (each of which is a "**Savings Suggestion**") to the MCC identifying potential opportunities for making savings in MCC Costs arising from the implementation of the MCP and if the MCC at its discretion accepts the Savings Suggestion then the MCC shall implement the same.
- 11.3 If the MCC accepts and implements the Savings Suggestion then the Proposer shall pay the reasonable and direct losses and expenses of implementation of the Savings Suggestion including loss of profit (but not consequential costs, losses or expenses save for loss of profit) recoverable under this Agreement but the MCC must provide the Proposer with such supporting evidence as it reasonably requires showing the extent of the same.

12. LIMITATIONS ON THE FINANCIAL UNDERTAKING

- 12.1 The MCC shall not be entitled to claim or be paid under the terms of this Agreement to the extent that the MCC will be or is entitled to payment of a sum or compensation in respect of the works or activities in the MCP or other associated work under the terms of:
- (A) any Track Access Agreement with [the Station Facility Owner] [the MCC]; and/or
 - (B) any Network Change under Conditions G and H of the Network Code; and/or
 - (C) the Relevant Agreement relating to the Station; and/or
 - (D) any lease from [the Station Facility Owner of premises at the Station; and /or
 - (E) any other agreement with the Proposer or a third party,

in respect of the same MCC Costs provided always that if only part of an amount payable under this Agreement has been recovered or can be recovered by the MCC under such other agreement, then the remainder of the MCC Costs payable under this Agreement will remain payable to the MCC by the Proposer pursuant to this Agreement.

- 12.2 The Proposer shall have no liability under this Agreement in respect of:

- (A) MCC Costs arising after a period of five years from the date the Station asset(s) identified in the MCP become operational;
- (B) MCC Costs not notified in writing to the Proposer with appropriate supporting information in accordance with the requirements of this Agreement;
- (C) matters that result from Repair, Maintenance and/or renewals activity and works that fall within Part D or Part M of the SACs where such activity and works would have been undertaken in any event in accordance with the SACs regardless of whether such works and activities were contemplated by the MCP;
- (D) works and activities that are outside of the Station Change process contained in the SACs and/or outside of the MCP [; or]
- (E) [works and activities that the MCC is required to undertake by virtue of the provisions of its franchise agreement [concession agreement] (if any)].

12.3 Notwithstanding the provisions of clause 12.2(A), in circumstances where the implementation of the MCP straddles more than one [franchise term] [Control Period] [concession agreement] and the MCC costs have not been taken into account by the [Secretary of State] [ORR] in the calculations relating to any subsequent [franchise term] [concession agreement] [Control Period] after the one in which the MCP is made, then the Proposer shall continue to pay the MCC Costs arising during the remainder of the time period set out in clause 12.2(A) to the extent such costs have not been taken into account.

13. **ALTERNATIVE ACCOMMODATION**

13.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 13.2 (the “**Additional Accommodation**”) used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:

(A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC’s Business having regard to the functionality of its previous accommodation; and

(B) arrangements for and timing of the relocation to the alternative accommodation

have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and

(C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.

13.2 If the MCC identifies any Station Facility:

(A) which is affected by the Proposer’s MCP;

(B) that is reasonably necessary for use in connection with its rail business; and

(C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

then it shall inform the Proposer that alternative accommodation needs to be provided. The Proposer shall be entitled either to agree with the MCC that such accommodation needs to be provided or refer the matter to dispute resolution under clause 14.

- 13.3 For the avoidance of doubt, in considering whether any alternative accommodation is reasonably adequate there shall be no assumption that it shall be a like for like replacement.
- 13.4 In the event of any dispute under this clause 13 either party may refer the matter for dispute resolution under the terms of clause 14.

14. DISPUTES

- 14.1 Disputes arising out of or in connection with this Agreement shall be resolved in accordance with the following escalation process:
- (A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;
 - (B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
 - (C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.
- 14.2 Nothing in clause 14.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this Agreement directly (whether or not the dispute has been escalated in accordance with clause 14.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

15. ASSIGNMENT

- 15.1 This Agreement is personal to the parties and neither the Proposer nor the MCC shall assign all or any part of the benefit of or its rights or benefits under this Agreement.

16. GENERAL

- 16.1 This Agreement shall not create or be taken to evidence any partnership, joint venture or agency between the parties. Neither party is hereby authorised to act as agent of the other, without the other party's prior written consent.
- 16.2 No indulgence granted by either party shall constitute or be construed as a waiver of the other party's strict rights under this Agreement.
- 16.3 If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
- 16.4 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement.
- 16.5 Each party admits that it has not entered into this Agreement in reliance upon any representation or promise of the other party.
- 16.6 No variation of any of the terms of this Agreement shall be effective unless it is in writing and signed on behalf of each of the parties.

17. NOTICES

17.1 Any notice or other document to be given or served under this Agreement shall be in writing and sent by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or delivered to or sent by first class post or facsimile to the other party to be served at its registered office.

17.2 Any such notice or document shall be deemed to have been served:

- (A) If sent by e-mail, at the time it leaves the electronic gateway of the sender;
- (B) if delivered, at the time of delivery;
- (C) if sent by facsimile, upon receipt of the appropriate confirmation report; or
- (D) if posted by pre-paid first class post, on the second Business Day following that on which the envelope containing the same was posted.

Provided that, for the purposes of Clauses 17.2(A), 17.2(B) and 17.2(C) where the notice is delivered or transmitted outside the hours of 9 a.m. to 5 p.m. on a Business Day, or at any time on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next Business Day.

18. VAT

18.1 If and to the extent that the fulfilment by either party of an obligation on its part contained or referred to in this Agreement shall constitute or shall at any time be found to constitute a supply of goods or a supply of services for the purposes of the Value Added Tax Act 1994 and/or that VAT is chargeable in respect of any supply made pursuant to this Agreement then the party in receipt of such supply shall pay to the supplier thereof the amount of such VAT payable in connection therewith upon receipt of a valid VAT invoice or invoices giving the requisite details of the taxable supplies.

18.2 Where either party agrees to pay the other an amount of money pursuant to this Agreement such amount shall be regarded as being exclusive of VAT and such agreement shall be construed as requiring the additional payment by the payer to the payee of any VAT properly chargeable in respect of the relevant supply made or to be made by the payee to the payer upon receipt of a valid VAT invoice.

19. COUNTERPARTS

19.1 This Agreement may be executed in counterparts, each of which will constitute one and the same document.

20. THIRD PARTIES

20.1 This Agreement gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

ANNEX 14

TEMPLATE CO-OPERATION AGREEMENT WHERE PROPOSER IS A STATION INVESTOR
AND MATERIAL CHANGE CONSULTEE IS A RELEVANT OPERATOR

Co-operation Agreement

between

[] LIMITED

as the Proposer

and

[] LIMITED

as the MCC

relating to

[] Station

Note: this document should only be used in connection with Material Change Proposals made by Station Investors at Franchised Stations.

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THIS AGREEMENT is dated

and made

BETWEEN:

(1) [] **LIMITED** (company registration number [] whose registered office is at [] (the "Proposer"); and

(2) [] **LIMITED** (company registration number [] whose registered office is at [] (the "MCC").

WHEREAS:

- (1) The Proposer has issued the MCP to the MCC and this Agreement concerns the implementation of the MCP.
- (2) Each of the Relevant Operators wish the Proposer to be bound by the provisions of Part C of the Station Access Conditions in respect of the MCP and the Proposer has agreed to be bound by those provisions.
- (3) The purpose of this Agreement is:
 - (i) **co-operation** – to establish appropriate principles concerning the basis upon which the MCC and the Proposer will co-operate with each other throughout the implementation of the MCP in order to minimise any material adverse effect of the MCP upon the MCC's Business; and
 - (ii) **financial undertaking** – to provide a financial undertaking to pay to the MCC the MCC Costs and such part of any increased net costs in respect of the Station for which the MCC is responsible pursuant to the Relevant Agreement as shall be directly attributable to the implementation of the MCP and to set out appropriate procedures to be followed in relation to any claim by the MCC pursuant to the financial undertaking.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the contrary intention appears:

"APA" means an Asset Protection Agreement (as that expression is defined in the SACs) entered into between (1) Station Facility Owner and (2) the Proposer before, on or after the date of this Agreement in relation to the carrying out of the works or other activities [as] [including those] outlined by the MCP;

"Control Period" means the period between the reviews of Station Facility Owner's funding requirements by the ORR;

"Fixed Sum" has the meaning given that expression in clause 6.1 of this Agreement;

"implementation of the MCP" means the implementation and carrying out of works or other activities within the station change process as outlined by the MCP;

“MCC” means the Material Change Consultee being the second party to this Agreement;

“MCC’s Business” means the business of [operating the Station, running services for the carriage of passengers by railway and acting in its capacity as tenant of the Station] [operating the Network and acting in its capacity as landlord of the Station];

“MCC Costs” means the reasonable and direct costs, losses and expenses including but not limited to all costs reasonably incurred by the MCC in evaluating and responding to the MCP (whether or not the MCP is implemented) and any loss of profit or loss of revenue (but not consequential costs, losses or expenses save for loss of profit or loss of revenue) but taking into account and netting off against such costs, losses and expenses:

- (A) the benefit (if any) to be obtained or likely to be obtained by the MCC as a consequence of the implementation of the MCP; and
- (B) the ability or likely future ability of the MCC to recoup any costs, losses and expenses from third parties including passengers and customers;

“MCP” means a Material Change Proposal for the Station issued on [];

“Property Agreement” means an agreement dated [] made between [Station Facility Owner] [the MCC] and the Proposer [giving the Proposer access and other rights over or in respect of the Station in connection with the implementation of the MCP;]

“Proposer” means the proposer of a Material Change Proposal being the first party to this Agreement;

“Relevant Agreement” means [a lease] [an access agreement] dated [] made between [Station Facility Owner and the MCC] [the MCC and []] incorporating the SACs;

“Required Interference” has the meaning given that expression in clause 5.1 of this Agreement;

“Required Interference Proposal” has the meaning given that expression in clause 7.1 of this Agreement;

“SACs” means the Station Access Conditions and Annexes applicable to the Station;

“Savings Suggestion” has the meaning given that expression in clause 13.2 of this Agreement;

“Station” means [] Station;

“Unplanned Interference” has the meaning given that expression in clause 9.1 of this Agreement.

1.2 In this Agreement the following rules of interpretation shall apply:

- (A) References in the singular shall include the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (B) References to a particular clause or sub-clause shall be references to that clause or sub-clause in this Agreement (except to the extent that the context requires otherwise);
- (C) Reference to this Agreement is a reference to this agreement as amended, supplemented or novated from time to time and includes a reference to any document

which amends, is supplemental to, novates, or is entered into, made or given pursuant to it or in accordance with any terms of it;

- (D) Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it;
- (E) Headings are included for convenience only and are to be ignored for the purposes of interpretation; and
- (F) Unless a contrary intention appears, words and expressions defined in the SACs shall have the same meanings when used in this Agreement.

2. PARTICIPATION

- 2.1 In all matters relating to or arising from the MCP, the Proposer shall comply with and be liable under the provisions of Part C of the SACs as if it was a Relevant Operator.

3. LIMITATION

- 3.1 The Proposer shall not acquire under this Agreement:
 - (A) any rights or liabilities in connection with any other MCP; or
 - (B) any rights or liabilities from or to any Relevant Operator in connection with the MCP other than as set out in this Agreement or in Part C of the SACs.
- 3.2 The rights and liabilities set out in this Agreement shall be without prejudice to the rights and liabilities set out in the [APA,] [Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station made between the Proposer and the Station Facility Owner to the extent that the rights and liabilities set out in the [APA,] [the Property Agreement] or in any other agreement relating to the implementation of the works or the acquisition of rights over or in respect of the Station do not conflict with the rights and liabilities set out in this Agreement or in Part C of the SACs.

4. CO-OPERATION

- 4.1 The parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights as set out in this Agreement.

5. FINANCIAL UNDERTAKING

- 5.1 When undertaking the implementation of the MCP, the Proposer shall use its reasonable endeavours not to prevent, hinder, obstruct, delay or interfere with the MCC's Business except insofar as it cannot reasonably be avoided or, acting reasonably, it is nevertheless necessary to do so in order to implement the MCP (the "**Required Interference**").
- 5.2 MCC Costs arising by reason of a material adverse impact upon the MCC's Business from the Required Interference, or any MCC Costs arising by reason of the impact upon the MCC's Business from the MCP following completion, shall be compensated to the MCC in accordance with clauses 6, 8, 9 or 10, as applicable.

- 5.3 The Proposer of the MCP shall pay emerging costs in accordance with clauses 8, 9 and 10, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum in accordance with clause 6.
- 5.4 NOT USED.
- 5.5 For the avoidance of doubt, the costs and payments for procuring the works and services in order to carry out the works or activities referred to in the MCP will be paid in accordance with the MCP.

6. PAYMENT OF COMPENSATION BY WAY OF A FIXED SUM

- 6.1 If the MCC desires to recover compensation by way of a Fixed Sum, it shall within a reasonable period after the date of this Agreement serve notice on the Proposer identifying the fixed amount of compensation it will accept (the “**Fixed Sum**”) in full and final settlement of all MCC Costs.
- 6.2 Within 40 Business Days following the receipt of any such notice the Proposer shall serve notice on the MCC indicating whether it accepts or rejects such offer and if it fails to serve any such notice it shall be deemed to have rejected such offer.
- 6.3 If the Proposer in its discretion accepts the MCC’s offer (both the form of payment and the amount) in relation to a Fixed Sum, the Proposer shall, subject to clause 6.4, pay the Fixed Sum to the MCC within 20 Business Days from the date of any agreement under clause 6.2 and from the date of such agreement the provisions of clauses 8, 9 and 10 shall cease to apply.
- 6.4 At the request of the Proposer and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the Proposer’s and the MCC’s respective Businesses, the Proposer shall be entitled to pay the Fixed Sum by instalments of such sums and at such intervals as the Proposer and the MCC may agree (on the assumption that, wherever possible, the MCC should be entitled to receive instalments as and when costs are incurred by it) but in default of agreement over the circumstances in which it would be reasonable to pay by instalments, or over the amount or frequency of such instalments, the same may be referred by either party to dispute resolution under clause 16.

7. NOTICE OF A REQUIRED INTERFERENCE

- 7.1 Where the Proposer is able to reasonably anticipate that the implementation of the MCP or a phase of the MCP will result in Required Interference then the Proposer shall so far as reasonably possible provide 40 Business Days’ written notice to the MCC of the relevant Required Interference together with:
- (A) a description of the relevant Required Interference and those parts of the MCC’s Business that the Proposer considers are likely to be materially affected by it; and
 - (B) such supporting information as is available to the Proposer at that time and which will be reasonably required by the MCC for the purpose of complying with its obligations under clause 8.3 (save that such supporting information does not need to be provided where compensation for MCC Costs is being paid by way of a Fixed Sum under clause 6).

The Proposer shall be permitted to serve further notice(s) together with appropriate supporting information in relation to the relevant Required Interference if and whenever the Proposer reasonably believes there is a change that will impact upon the level of relevant Required Interference and the adverse effect caused to the MCC’s Business arising from

implementation of the relevant phase of the MCP (the original notice and any such further notice shall each be a “**Required Interference Proposal**”).

8. ANTICIPATED MCC COSTS OF REQUIRED INTERFERENCE

- 8.1 This clause 8 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.
- 8.2 Following receipt of any Required Interference Proposal and any supporting information given pursuant to clause 7.1, the MCC shall within 15 Business Days or within such longer period as the MCC may propose to be reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) respond to the Proposer with the information required under clause 8.3 to a degree of completeness and certainty consistent with the level of detail provided at that time by the Proposer, and state clearly any assumptions made in providing that response. Any failure to agree the period for response shall be referred for resolution in accordance with clause 16.
- 8.3 The MCC's response to the Proposer under clause 8.2 shall:
- (A) confirm whether or not MCC Costs will be directly attributable to the relevant Required Interference Proposal and if so provide the Proposer with reasonable information in support thereof;
 - (B) state the estimated amount of any MCC Costs directly attributable to the relevant Required Interference Proposal and provide the Proposer with reasonable information in support thereof;
 - (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) in relation to the relevant Required Interference Proposal;
 - (D) make any proposals for reaching agreement in relation to the terms on which any MCC Costs are to be compensated; and
 - (E) make any proposals for satisfying the mitigation obligation under clause 13 and estimate the costs of performing such obligation.
- 8.4 The Proposer shall be entitled
- (A) to undertake the relevant Required Interference after service of any Required Interference Proposal under clause 7.1 regardless of whether or not the MCC has provided the response under clause 8.3; and/or
 - (B) to submit a Savings Suggestion as outlined at clause 13; and/or
 - (C) either to agree the MCC response in relation to the level and manner of MCC Costs payable in the response issued pursuant to clause 8.3 or refer the MCC response and its contents to dispute resolution in accordance with clause 16.
- 8.5 For the avoidance of doubt, the Proposer shall be entitled to undertake the implementation of the MCP and phases of the same without having identified any Required Interference or having served notices in accordance with clause 7.1 but shall make payment of MCC Costs in accordance with clause 10.

9. UNPLANNED MATERIAL INTERFERENCE WITH THE MCC'S BUSINESS

9.1 This clause 9 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum, and it applies where as a consequence of the implementation of the MCP there is:

- (A) unanticipated or unplanned interference that results in a prevention, hindrance, obstruction, delay or interference with the MCC's Business; and/or
- (B) some Required Interference that has not (for any reason) been the subject of a Required Interference Proposal given by the Proposer in accordance with clause 7.1 above

(each of which circumstances are referred to below as an "**Unplanned Interference**").

9.2 After an Unplanned Interference event, the MCC shall within 30 Business Days or such longer period as the MCC may propose as being reasonably practicable and to which the Proposer may consent (such consent not to be unreasonably withheld or delayed) provide to the Proposer a notice that shall:

- (A) describe the Unplanned Interference to a degree of completeness and certainty as shall be reasonably sufficient to allow the Proposer to investigate the same, including but not limited to the date, time and location of the same and stating clearly any assumptions made in providing that notice. Any failure to agree the period for such notice shall be referred for resolution pursuant to the dispute resolution in accordance with clause 16;
- (B) confirm the extent to which the MCC Costs have or will arise in relation to the relevant Unplanned Interference and provide the Proposer with reasonable information in support thereof;
- (C) make any proposal for a mechanism for determining the MCC Costs (or any adjustment thereto) as a result of the relevant Unplanned Interference; and
- (D) provide details of any actions or steps the MCC has taken to satisfy the mitigation obligation under clause 13 and estimate the costs of performing such obligations.

9.3 The Proposer shall be entitled either to agree the MCC notice provided in accordance with clause 9.2 in relation to the level and manner of the MCC Costs payable in relation to the Unplanned Interference or refer the same to dispute resolution under clause 16.

10. PAYMENT OF MCC COSTS

10.1 This clause 10 shall apply, unless the parties agree to compensation of MCC Costs by way of a Fixed Sum.

10.2 The Proposer shall pay any MCC Costs within 20 Business Days of agreement or determination (whether under clause 8.4 or 9.3 in relation to MCC Costs arising from the Required Interference or the Unplanned Interference, or under clause 16 in relation to other MCC Costs) of the level and manner of payment of the MCC Costs (or the relevant instalment of them).

10.3 At the request of the MCC and in circumstances where it would be reasonable to do so having regard to the cashflow implications on the MCC's Business, the Proposer shall make payments on account of the MCC Costs payable under clause 10.2 on a without prejudice basis of such sums and at such intervals as the Proposer and the MCC may agree but in default of agreement over the circumstances in which it would be reasonable to make

payments on account, or over the amount or frequency of such payments, the same may be referred by either party to dispute resolution under clause 16.

11. REPAYMENT OF OVERPAID MCC COSTS

- 11.1 As soon as practicable after the total amount of MCC Costs (the “**Final MCC Costs**”) is agreed or determined pursuant to this Agreement the Proposer shall calculate the total of any instalments of MCC Costs and/or of any MCC Costs paid on account (the “**Total MCC Costs Paid**”) and if the Total MCC Costs Paid exceeds the Final MCC Costs then the Proposer shall serve notice on the MCC of the overpaid amount (the “**Overpaid MCC Costs**”).
- 11.2 The MCC shall be entitled to agree the Overpaid MCC Costs specified in the Proposer’s notice, or either party may refer the same to dispute resolution under clause 16.
- 11.3 The MCC shall repay to the Proposer any Overpaid MCC Costs within 20 Business Days of agreement or determination of the amount of such costs under clauses 11.1 and 11.2. If any Overpaid MCC Costs are still outstanding on the day after the date falling 20 Business Days after the notice in clause 11.1 (the “**Interest Commencement Date**”), interest on such outstanding amounts shall accrue at the average of the base lending rates published from time to time by The Royal Bank of Scotland plc during any relevant period, from the Interest Commencement Date until the date of actual repayment.
- 11.4 Where compensation of MCC Costs is being paid by way of a Fixed Sum, this clause 11 shall only apply where the MCP is only partially implemented or is withdrawn following commencement of implementation.

12. FAILURE TO IMPLEMENT MCP

- 12.1 Where a MCP is only partially implemented or is withdrawn following commencement of implementation then the Proposer shall notify the MCC of its intention to discontinue the MCP and its calculation of the amount of MCC Costs consistent with the maximum total amount as specified in the Relevant Undertaking attributable to the partially implemented MCP (the “**Partial MCC Costs Amount**”) (which amount shall not include the loss of benefit (if any) which would or may have resulted from a full implementation of the MCP although to avoid doubt it shall take account of and net off against such costs the benefit (if any) of such partially implemented MCP).
- 12.2 The MCC shall be entitled to agree the Partial MCC Costs Amount specified in the Proposer’s notice, or either party may refer the same to dispute resolution under clause 16.
- 12.3 The Proposer shall pay any Partial MCC Costs Amount (to the extent not already paid under the provisions of this Agreement) within 20 Business Days of agreement or determination under clause 12.2 of the level of the Partial MCC Costs Amount.
- 12.4 If the total amount paid of any instalments of MCC Costs and/or of any MCC Costs paid on account [or of any Fixed Sum or of any instalments of the Fixed Sum] at the date of the Proposer’s notice given under clause 12.1 exceeds the Partial MCC Costs Amount then the provisions of clause 11 shall apply mutatis mutandis to any such overpaid amount.

13. MITIGATION OF ADVERSE IMPACT OF IMPLEMENTATION

- 13.1 The MCC is required to take all reasonable steps which are within its power and which are not prohibited by or in breach of any existing Legal Requirement to reduce the extent of the MCC Costs resulting from the implementation of the MCP by the Proposer and without prejudice thereto (without being obliged to incur additional expenditure or loss of revenue unless these are compensated for by the Proposer) take all reasonable steps to mitigate and minimise any adverse impact on the MCC’s Business of the implementation of the

MCP and to conduct its business in such manner as responds efficiently to the occurrence of any Required Interference and/or Unplanned Interference.

- 13.2 The Proposer may submit suggestions (each of which is a “**Savings Suggestion**”) to the MCC identifying potential opportunities for making savings in MCC Costs arising from the implementation of the MCP and if the MCC at its discretion accepts the Savings Suggestion then the MCC shall implement the same.
- 13.3 If the MCC accepts and implements the Savings Suggestion then the Proposer shall pay the reasonable and direct losses and expenses of implementation of the Savings Suggestion including loss of profit (but not consequential costs, losses or expenses save for loss of profit) recoverable under this Agreement but the MCC must provide the Proposer with such supporting evidence as it reasonably requires showing the extent of the same.

14. LIMITATIONS ON THE FINANCIAL UNDERTAKING

14.1 The MCC shall not be entitled to claim or be paid under the terms of this Agreement to the extent that the MCC will be or is entitled to payment of a sum or compensation in respect of the works or activities in the MCP or other associated work under the terms of:

- (A) any Track Access Agreement with [the Station Facility Owner] [the MCC]; and/or
- (B) any Network Change under Conditions G and H of the Network Code; and/or
- (C) the Relevant Agreement relating to the Station; and/or
- (D) any lease from [the Station Facility Owner] [the MCC] of premises at the Station; and /or
- (E) [the APA; and/or]
- (F) [the Property Agreement; and/or]
- (G) any other agreement with the Proposer or a third party,

in respect of the same MCC Costs provided always that if only part of an amount payable under this Agreement has been recovered or can be recovered by the MCC under such other agreement, then the remainder of the MCC Costs payable under this Agreement will remain payable to the MCC by the Proposer pursuant to this Agreement.

14.2 The Proposer shall have no liability under this Agreement in respect of:

- (A) MCC Costs arising after a period of five years from the date the Station asset(s) identified in the MCP become operational;
- (B) MCC Costs not notified in writing to the Proposer with appropriate supporting information in accordance with the requirements of this Agreement;
- (C) matters that result from Repair, Maintenance and/or renewals activity and works that fall within Part D or Part M of the SACs where such activity and works would have been undertaken in any event in accordance with the SACs regardless of whether such works and activities were contemplated by the MCP;
- (D) works and activities that are outside of the Station Change process contained in the SACs and/or outside of the MCP [; or]

(E) [works and activities that the MCC is required to undertake by virtue of the provisions of its franchise agreement [concession agreement] (if any)].

14.3 Notwithstanding the provisions of clause 14.2(A), in circumstances where the implementation of the MCP straddles more than one [franchise term] [Control Period] [concession agreement] and the MCC costs have not been taken into account by the [Secretary of State] [ORR] in the calculations relating to any subsequent [franchise term] [concession agreement] [Control Period] after the one in which the MCP is made, then the Proposer shall continue to pay the MCC Costs arising during the remainder of the time period set out in clause 14.2(A) to the extent such costs have not been taken into account.

15. ALTERNATIVE ACCOMMODATION

15.1 The Proposer undertakes not to carry out any works to any Core Facility or any Station Facility agreed or determined under clause 15.2 (the “**Additional Accommodation**”) used by the MCC at the Station which would result in the MCC being unable to use such Core Facility or Additional Accommodation until such time as:

(A) alternative accommodation replacing the relevant Core Facility or Additional Accommodation reasonably adequate for the MCC’s Business having regard to the functionality of its previous accommodation; and

(B) arrangements for and timing of the relocation to the alternative accommodation

have been approved by the MCC, such approval not to be unreasonably withheld or delayed; and

(C) the effective date of termination of the use of the relevant Core Facility or Additional Accommodation accords with the approved relocation arrangements.

15.2 If the MCC identifies any Station Facility:

(A) which is affected by the Proposer’s MCP;

(B) that is reasonably necessary for use in connection with its rail business; and

(C) in respect of which the MCC demonstrates with supporting evidence, in such detail as is reasonably necessary and appropriate, that it cannot be adequately compensated for MCC Costs directly attributable to the implementation of the MCP

then it shall inform the Proposer that alternative accommodation needs to be provided. The Proposer shall be entitled either to agree with the MCC that such accommodation needs to be provided or refer the matter to dispute resolution under clause 16.

15.3 For the avoidance of doubt, in considering whether any alternative accommodation is reasonably adequate there shall be no assumption that it shall be a like for like replacement.

15.4 In the event of any dispute under this clause 15 either party may refer the matter for dispute resolution under the terms of clause 16.

16. DISPUTES

16.1 Disputes arising out of or in connection with this Agreement shall be resolved in accordance with the following escalation process:

(A) within 5 Business Days of notification by either party to the other that it believes there is a dispute and that such dispute should be escalated in accordance with this

clause, the appropriate managers of the parties shall discuss the dispute with a view to resolution;

- (B) if the parties are unable to resolve the dispute in accordance with paragraph (A), the dispute shall be escalated within a further 5 Business Days to the parties' appropriate senior managers for resolution;
- (C) if the dispute is not resolved pursuant to paragraphs (A) and (B) then the dispute shall be resolved in accordance with the Access Dispute Resolution Rules in force at the relevant time.

16.2 Nothing in clause 16.1 shall prevent either party at any time from referring a dispute arising out of or in connection with this Agreement directly (whether or not the dispute has been escalated in accordance with clause 16.1) for determination in accordance with the Access Dispute Resolution Rules in force at the relevant time.

17. ASSIGNMENT

17.1 This Agreement is personal to the parties and neither the Proposer nor the MCC shall assign all or any part of the benefit of or its rights or benefits under this Agreement.

18. GENERAL

18.1 This Agreement shall not create or be taken to evidence any partnership, joint venture or agency between the parties. Neither party is hereby authorised to act as agent of the other, without the other party's prior written consent.

18.2 No indulgence granted by either party shall constitute or be construed as a waiver of the other party's strict rights under this Agreement.

18.3 If any provision of this Agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

18.4 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement.

18.5 Each party admits that it has not entered into this Agreement in reliance upon any representation or promise of the other party.

18.6 No variation of any of the terms of this Agreement shall be effective unless it is in writing and signed on behalf of each of the parties.

19. NOTICES

19.1 Any notice or other document to be given or served under this Agreement shall be in writing and sent by e-mail to such dedicated e-mail address as each of the relevant parties shall have notified in writing to the party serving the notice or delivered to or sent by first class post or facsimile to the other party to be served at its registered office.

19.2 Any such notice or document shall be deemed to have been served:

- (A) If sent by e-mail, at the time it leaves the e-mail gateway of the sender;
- (B) if delivered, at the time of delivery;
- (C) if sent by facsimile, upon receipt of the appropriate confirmation report; or

- (D) if posted by pre-paid first class post, on the second Business Day following that on which the envelope containing the same was posted.

Provided that, for the purposes of clauses 19.2(A), 19.2(B) and 19.2(C) where the notice is delivered or transmitted outside the hours of 9 a.m. to 5 p.m. on a Business Day, or at any time on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next Business Day.

20. VAT

- 20.1 If and to the extent that the fulfilment by either party of an obligation on its part contained or referred to in this Agreement shall constitute or shall at any time be found to constitute a supply of goods or a supply of services for the purposes of the Value Added Tax Act 1994 and/or that VAT is chargeable in respect of any supply made pursuant to this Agreement then the party in receipt of such supply shall pay to the supplier thereof the amount of such VAT payable in connection therewith upon receipt of a valid VAT invoice or invoices giving the requisite details of the taxable supplies.
- 20.2 Where either party agrees to pay the other an amount of money pursuant to this Agreement such amount shall be regarded as being exclusive of VAT and such agreement shall be construed as requiring the additional payment by the payer to the payee of any VAT properly chargeable in respect of the relevant supply made or to be made by the payee to the payer upon receipt of a valid VAT invoice.

21. COUNTERPARTS

- 21.1 This Agreement may be executed in counterparts, each of which will constitute one and the same document.

22. THIRD PARTIES

- 22.1 This Agreement gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

Signed by

for and on behalf of [

] LIMITED

.....
(Signature of named signatory)

ANNEX 15

TEMPLATE STATION INVESTOR PARTICIPATION DEED

Template Station Investor Participation Deed

Part 1: Template Station Investor Participation Deed (England & Wales)

This DEED is dated _____ and is made by

- (1) **[STATION INVESTOR]** (the “**Station Investor**”) in favour of
- (2) each other person having rights or obligations in relation to the making of Material Changes under the Station Access Conditions (the “**Conditions**”) relating to **[insert details of Station]** (the “**Material Change Consultees**”).

WHEREAS:

- (A) The Station Investor has made a Material Change Proposal in respect of the Station dated _____, to which this Deed is attached (the “**Specified Proposal**”);
- (B) The Material Change Consultees wish the Station Investor to be bound by the provisions of Part C of the Conditions in respect of the Specified Proposal.

NOW THIS DEED WITNESSES:

1 DEFINITIONS

Unless the context requires otherwise, words and phrases defined in Part A of the Conditions shall have the same meanings in this Deed.

2 PARTICIPATION

In all matters relating to or arising from the Specified Proposal, the Station Investor shall comply with, and be liable under, the provisions of Part C of the Conditions as if it was a Relevant Operator as set out in Part A of the Conditions.

3 LIMITATION

The Station Investor shall not acquire under this Deed:

- (a) any liability in connection with any other Material Change Proposal; or
- (b) except as provided in Clause 4.2, any other liability to any Material Change Consultee in connection with the Specified Proposal.

4 GOVERNING LAW AND DISPUTE RESOLUTION

4.1 Governing law

This Deed shall be governed by and construed in accordance with the laws of England and Wales.

4.2 Dispute resolution

Any dispute which may arise out of, or in connection with, this Deed shall be referred for resolution under the Dispute Resolution Procedure, and for these purposes, the Station Investor shall have the same rights and obligations as any other relevant party under the Dispute Resolution Procedure.

5 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

5.1 Subject to Clause 5.2, no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

5.2 ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under Part C of the Conditions.

EXECUTED as a DEED by)

[STATION INVESTOR])

in the presence of:)