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Standard Station Lease Document – 2004

Lease Document

between

Network Rail Infrastructure Limited
as Network Rail

and

[Insert name of Relevant Franchise Operator] Limited
as Station Facility Owner

relating to

Leases of stations in *[insert name of franchise]* franchise,
England and Wales

Term: Starting on the Lease Start Date and expiring on *[insert date]*
subject to earlier termination in accordance with the terms of this
Lease Document

Simmons & Simmons

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PARTICULARS

1. **Date:** *[Insert date]*
2. **Network Rail:** **NETWORK RAIL INFRASTRUCTURE LIMITED**, (company registration no. 2904587) whose registered office is at 40 Melton Street, London NW1 2EE.
3. **Station Facility Owner:** *[Insert name of Relevant Franchise Operator]* **LIMITED**, (company registration no. *[Insert Company number]*) whose registered office is at *[Insert registered office]*.
4. **Guarantor:** [].
5. **The Stations:** The stations named in the relevant column of the Stations Table and more particularly described in the Station Access Conditions applicable to each of them and references in this Lease Document to "Station" shall be read and construed as being references to each such Station or to the relevant Station as applicable.
6. **Lease Start Date:** *[Note: In some cases this will be the Franchise Commencement Date (including, if specified, a time). In all other cases it will be the date of the Lease Document].*
7. **Term:** The term of years commencing on the Lease Start Date and ending at 02.00 hours on *[Insert Date]*.
8. **Yearly Rent:** The Property Rent and the LTC Rent.
9. **Property Rent:** In respect of each Station the annual sum set out in the relevant column of the Stations Table against the relevant Station.
10. **LTC Rent:** In respect of each Station the annual sum payable by the Station Facility Owner in respect of the relevant Station in accordance with paragraph 6.1(B) of the Standard Station Letting Conditions.
11. **Rent Start Date:** The Lease Start Date.
12. **Rent Adjustment Dates:** *[The Rent Start Date,] 01 April [200A] and each following 01 April.*
[Note:
(a) If the Lease Document is dated before 01 April in any calendar year, delete the words in square brackets and insert at "A" the same calendar year as that in which the grant of the tenancies created by the Lease Document occurred.
(b) If the Lease Document is dated on or after 01 April in any calendar year and the review due under the previous franchise lease on 01 April of that year has occurred, delete the words in square brackets and insert at "A" the calendar year following that in which

the grant of the tenancies created by the Lease Document occurred.

- (c) If the Lease Document is dated on or after 01 April in any calendar year and the review due under the previous franchise lease on 01 April of that year has not occurred, retain the words in square brackets and insert at "A" the calendar year following that in which the grant of the tenancies created by the Lease Document occurred.
- (d) In the (unlikely) case that the review due under the previous franchise lease on 01 April in the calendar year preceding that in which the grant of the Lease Document occurred is still outstanding, appropriate provision will be required to give effect to that review from the Lease Start Date.
- (e) If the review position differs as between stations, then the above principles should be used to identify the appropriate date for each of them, to be set out either as above or by way of adding an extra column to the Stations Table.]

- | | | | |
|-----|-------------------------------------|----------------|--|
| 13. | Standard Letting Conditions: | Station | The Network Rail Standard Station Franchise Letting Conditions 2004 |
| 14. | Station Conditions: | Access | <p>(a) The National Station Access Conditions 1996 (England and Wales) which are applicable to all of the Stations; and</p> <p>(b) in respect of each Station, the Annexes applicable to such Station (each of the ORR reference numbers for which, as at the date of this Lease Document, are set out in the relevant column of the Stations Table)</p> <p>as each has been or is modified or amended in respect of the Stations, or any of them, prior to the date of this Lease Document or from time to time, in either case with the approval of ORR.</p> |
| 15. | Relevant Conditions: | Special | Any special conditions applicable to the Stations, or any of them, identified in the Stations Table. |
| 16. | Franchise Agreement: | | The franchise agreement made between the SRA and [Name of Franchisee] dated [Insert Date], including any modification to that agreement. |
| 17. | SRA: | | The Strategic Rail Authority established under s.201 of the Transport Act 2000 or the appropriate person or body being the successor or successors to the relevant functions of the Strategic Rail Authority. |
| 18. | ORR: | | The Office of Rail Regulation as established under the Railways and Transport Safety Act 2003 or the appropriate person or body being the successor or successors to the |

relevant functions of the Office of Rail Regulation.

19. **Station Facility** *[Insert details provided by Relevant Franchise Operator]* of
Owner's Surveyor: *[Insert address].*

20. **Stations Table:**

The Stations				
Name	Property Rent	ORR number Annexes	Reference for	Relevant Special Conditions
				[none] [see Schedule]

THIS LEASE DOCUMENT is made between Network Rail and the Station Facility Owner and (where applicable) the Guarantor.

1. **Demise**

Network Rail demises to the Station Facility Owner separately each of the Stations for the Term YIELDING AND PAYING the Yearly Rent applicable to the relevant Station TOGETHER WITH the rights set out in Part J of the Station Access Conditions and EXCEPT AND RESERVING the rights set out in Part K of the Station Access Conditions. This Lease Document takes effect as the grant of a separate lease in relation to each of the Stations, and references in this Lease Document to "this Lease" and "the Term" shall be read and construed respectively as being references to each such separate lease and to the term of each such lease.

2. **Incorporated Matters**

This Lease incorporates and is subject to:

- 2.1 the Particulars;
- 2.2 the Standard Station Letting Conditions;
- 2.3 the Station Access Conditions; and
- 2.4 the Relevant Special Conditions,

all of which shall be read as one with this Lease as if set out in full in it (but in the case of the Station Access Conditions and the Relevant Special Conditions, in respect of the letting of the Station to which each of them relates).

[2A. Subject to and without prejudice to paragraphs 2 and 3 of the Standard Station Letting Conditions, this Lease is granted subject to all leases, underleases, agreements for lease, agreements for underlease, licences and all other rights of occupation or other rights over or in respect of the Station granted by any previous station facility owner or tenant of the Station (or any part thereof) whether or not Network Rail is also a party to such arrangement and the Station Facility Owner covenants with Network Rail to observe and perform all of the obligations on the part of the previous station facility owner or tenant of the Station (or any part thereof) given or undertaken in any such lease, underlease, agreement, licence or other document or arrangement as aforesaid.]

3. **Conflicts**

In case of conflict:

- 3.1 the Relevant Special Conditions take priority over the Standard Station Letting Conditions; and
- 3.2 the Station Access Conditions take priority over the Relevant Special Conditions and the Standard Station Letting Conditions.

4. **Mutual Covenant**

Network Rail and the Station Facility Owner covenant each with the other under this Lease to perform and observe their respective obligations contained in this Lease.

5. **References in incorporated Documents to Railtrack, the Franchising Director and the Regulator**

Any reference to "Railtrack", the "Franchising Director" or the "Regulator" in any document incorporated in this Lease (including any definitions incorporating them and any headings) shall be read and construed as references to "Network Rail", the "SRA" and the "ORR" respectively.

6. **New Stations**

Network Rail and the Station Facility Owner acknowledge that if in the future they enter into any additional lease or leases of a station or stations (in this clause referred to as the "New Station" or "New Stations") that incorporates (save as to the land demised and the rents reserved) the terms and conditions of this Lease Document, then Network Rail and the Station Facility Owner shall by way of record (but not by way of variation of the Lease Document) re-state the Stations Table from time to time showing details not only of the Stations but also of the New Station or New Stations being the name, Property Rent, ORR Reference number for Annexes and any Relevant Special Conditions applicable to the New Station or to each such New Station.

7. **Exclusion of Landlord and Tenant Act 1954**

[The Stations are to be used for or in connection with the provision of the services for the carriage of passengers by railway which are to be provided by the Station Facility Owner pursuant to the Franchise Agreement and therefore pursuant to s.31 of the Act Part II of the Landlord and Tenant Act 1954 shall not apply to any tenancy created by this Lease [except for those Stations mentioned in the following paragraph]].

7.1 [The Station Facility Owner hereby confirms that before [the date of this Lease]/[it became contractually bound to enter into the tenancy created by this Lease] *[Note: select first alternative if going straight to lease, second if there is an agreement for lease]:*

(A) Network Rail served on the Station Facility Owner a notice dated 200[] in relation to the tenancy created by this Lease ("the Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order"); and

(B) the Station Facility Owner, or a person duly authorised by the Station Facility Owner, in relation to the Notice made [a declaration]/[a statutory declaration] ("the Declaration") dated 200[] in a form complying with the requirements of Schedule 2 of the Order.

7.2 The Station Facility Owner further confirms that, where the Declaration was made by a person other than the Station Facility Owner, the declarant was duly authorised by the Station Facility Owner to make the Declaration on the Station Facility Owner's behalf.

7.3 [Network Rail and the Station Facility Owner confirm that there is no Agreement for Lease to which this Lease gives effect.] *[Note: only need this clause where going straight to lease.]*

7.4 Network Rail and the Station Facility Owner agree to exclude the provisions of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by this Lease.

[Note: If the Station Facility Owner operates a Station or Stations but its trains do not call there, then the words in square brackets at the end of the first paragraph above must be retained, and the first paragraph should be numbered 7.1, with the remaining paragraphs

being renumbered accordingly. In that case the relevant Station(s) should be referred to in the second paragraph and the procedure under s.38A(3) of the Landlord and Tenant Act 1954 must be followed. The second paragraph need not be used where the first applies to all Stations.]

8. **Contracts (Rights of Third Parties) Act 1999**

- 8.1 Save as provided in this Clause 8 or as expressly provided elsewhere in this Lease, no person who is not a party to this Lease shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease.
- 8.2 ORR and the SRA shall have the right under the Contracts (Rights of Third Parties) Act 1999 to directly enforce any such rights as have been granted to them under this Lease.

9. **Costs**

Each party shall be responsible for their own costs and disbursements for preparing, settling, engrossing and completing this Lease Document together with VAT.

EXECUTED and **DELIVERED** by Network Rail and the Station Facility Owner and (where applicable) the Guarantor as a deed on the first date shown in the Particulars.

THE SCHEDULE : RELEVANT SPECIAL CONDITIONS

[None]

THE COMMON SEAL OF)
NETWORK RAIL INFRASTRUCTURE)
LIMITED was affixed in the presence of:)

THE COMMON SEAL OF)
THE STATION FACILITY OWNER)
was affixed in the presence of:)

Director

Secretary

NETWORK RAIL STANDARD STATION FRANCHISE LETTING CONDITIONS 2004

We confirm that these are the Network Rail Standard Station Franchise Letting Conditions 2004.

.....

Signed by

On behalf of

SIMMONS & SIMMONS
CityPoint
One Ropemaker Street
London EC2Y 9SS

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NETWORK RAIL STANDARD STATION FRANCHISE LETTING CONDITIONS 2004

1. DEFINITIONS AND INTERPRETATION

In this Lease unless the context otherwise requires:-

- 1.1 **"Beneficiary"** means a person who is party to, and is granted rights under, a Station Access Agreement;
- 1.2 **"Group Company"** means any company which for the time being is a member of the same group of companies (within the meaning given to that expression in s.42 Landlord and Tenant Act 1954) as the relevant party, as the context demands;
- 1.3 **"this Lease"** means any lease which incorporates the Standard Station Letting Conditions and the Station Access Conditions and includes any document expressed to be supplemental to this Lease or made pursuant to this Lease;
- 1.4 **"Particulars"** means the part of this Lease so entitled;
- 1.5 **"Network Rail's Surveyor"** means The Director of Railway Estates, Network Rail, 40 Melton Street, London NW1 2EE;
- 1.6 **"Station Facility Owner's Surveyor"** means the surveyor described in paragraph 18 of the Particulars;
- 1.7 **"Standard Station Letting Conditions"** means these Network Rail Standard Station Franchise Letting Conditions 2004;
- 1.8 **"Station Licence"** means the station licence granted under the Act in respect of the Station;
- 1.9 **"Station Safety Case"** means a current and accepted safety case under the terms of the Railways (Safety Case) Regulations 2000 in respect of the operation of the Station;
- 1.10 **"Statutory Documents"** means the Track Access Agreement, the Station Licence and the Franchise Agreement collectively and individually and all other documents forming part of or referred to in them or any of them;
- 1.11 **"Term"** means the term created by this Lease as stated in the Particulars;
- 1.12 **"Track Access Agreement"** means the track access agreement(s) between Network Rail and the Station Facility Owner subsisting from time to time in relation to the use of track leading from or to the Station;
- 1.13 the terms defined in the Particulars have the meanings specified there subject to any amplification set out in this paragraph;
- 1.14 if at any time either Network Rail or the Station Facility Owner consists of more than one person then their respective obligations can be enforced against those constituent persons jointly and against each individually;
- 1.15 references in this Lease to costs of Network Rail or the Station Facility Owner include reasonable and proper in-house or administrative costs reasonably and properly incurred;
- 1.16 references in the Standard Station Letting Conditions to paragraphs are to paragraphs of the Standard Station Letting Conditions;

- 1.17 words or expressions importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neuter genders and vice versa; and the words "include" and "including" are to be construed without limitation;
- 1.18 signature of this Lease by an individual as a witness to its execution under seal by Network Rail shall also constitute signature by that individual for the purposes of s.2 Law of Property (Miscellaneous Provisions) Act 1989 and the same applies to the signature by an individual as a witness to the execution under seal by the Station Facility Owner and any Guarantor of the counterpart of this Lease; and
- 1.19 where the Station Access Conditions contain provisions defining or governing the interpretation of words and expressions, those words and expressions shall have the same definitions or the same interpretations in the Standard Station Letting Conditions; but any reference to a "Franchise Agreement" is to the Franchise Agreement which subsists from time to time relating to the provision by the Station Facility Owner of services for the carriage of passengers by railway.

2. **INCLUDED EXISTING AGREEMENTS**

This Lease is granted subject to and with the benefit of the Included Existing Agreements (where appropriate and so far as they relate to the Station and Network Rail can lawfully grant this).

3. **EXCLUDED EXISTING AGREEMENTS**

This Lease is granted subject to both the Excluded Existing Agreements and the Global Agreements insofar as they affect the Station but without the benefit of them except as may be provided in paragraph 9 and as may be provided in the Station Access Conditions or the Relevant Special Conditions.

4. **ALTERATIONS OR ADDITIONS TO THE STATION MADE PRIOR TO THE LEASE START DATE**

If prior to the Lease Start Date the Station Facility Owner (or any franchise operator or franchisee under a previous lease (if any) of the Station) made any alteration or addition to that Station or any of the Stations:

- 4.1 with the written consent of Network Rail, where a condition of that consent was that the Station Facility Owner (or the predecessor in title) would on or before the expiry of the term of the lease then current reinstate that Station or those Stations, that condition shall operate as if it had required that reinstatement to be effected on or before the expiration of the Term, and shall be treated as an obligation of the Station Facility Owner under this Lease;
- 4.2 notwithstanding the termination or surrender of the lease (the "former lease") current when the alteration or addition was carried out any entitlement to remove the alteration or addition which was available to the Station Facility Owner under the former lease shall be treated as available to the Station Facility Owner under this Lease on the same basis in all respects as it was available under the former lease.

5. **PRIOR LEASE**

5.1 In this paragraph:

- (A) "**Prior Lease**" means any lease made between Network Rail (whether or not then known as Railtrack PLC) and the Station Facility Owner or any predecessor in title to the Station Facility Owner before the date of this Lease in respect of the relevant Station;

(B) **"Future Rights and Liabilities"** means the rights and liabilities of the parties arising pursuant to the Prior Lease which accrue with effect from and after the date of this Lease;

(C) **"Accrued Rights and Liabilities"** means the rights and liabilities of the parties arising pursuant to the Prior Lease

(1) which accrued before the date of this Lease, and

(2) in relation to the adjustment of the Yearly Rent first reserved by the Prior Lease, pursuant to the First Schedule of the Prior Lease and with effect from any Rent Adjustment Date referred to in the Prior Lease which fell before the date of this Lease.

5.2 To the extent relevant, this Lease is granted subject to and with the benefit of the Prior Lease but in relation only to the Future Rights and Liabilities to the intent and with the effect that the Accrued Rights and Liabilities remain the property of and enforceable by and against the relevant party.

5.3 It is agreed and declared that the term of years created by the Prior Lease (but not the Accrued Rights and Liabilities) is merged and extinguished in the Term in respect of the relevant Station, but to the intent and with the effect that the Accrued Rights and Liabilities and the enforcement of them by and against the relevant party are not prejudiced by this Lease or by that merger and extinguishment.

5.4 Network Rail and the Station Facility Owner agree that, notwithstanding the merger and extinguishment referred to in paragraph 5.3, the Accrued Rights and Liabilities remain the property of and enforceable by and against the relevant party, in the same way in all respects as would have been the case if this Lease had not been granted.

6. **STATION FACILITY OWNER'S OBLIGATIONS**

The Station Facility Owner covenants with Network Rail:-

6.1 **Yearly Rent**

to pay to Network Rail without deduction or set-off (save as required by statute or authorised by the Station Access Conditions):-

(A) the Property Rent in advance by equal quarterly payments on the usual quarter days in every year and:

(1) the first payment or proportionate payment (apportioned on a daily basis by reference to the annual sum) as from and including the Rent Start Date is to be paid at the Rent Start Date; and

(2) if this Lease ends on a date other than one of the usual quarter days the Station Facility Owner is to make on the last quarter day (apportioned on a daily basis by reference to the annual sum) a proportionate payment up to the end of the Term; and

(B) the LTC Rent (being the Long Term Charge) by four-weekly instalments in arrears, each such payment to be made not later than 14 days after the end of the four week period in question (the first of which starts on the Lease Start Date) and by a last instalment (apportioned on a daily basis) for the period from and including the day after the end of the final four week period which occurs prior to the end of the Term up to the end of the Term to be paid not later than 14 days after the end of the Term, such LTC Rent not in any circumstances (for so long as one or more Station Access Agreements exist) to exceed (in respect of each Station):-

$$(A - B) + C + D$$

where:

"A" is the amount of the Long Term Charge for such Station for the period in question,

"B" is the aggregate of each Passenger Operator's Proportion of the Long Term Charge for such Station payable by all Passenger Operators to the Station Facility Owner under a Station Access Agreement but not paid within 7 days of the due date for their payment,

"C" is the aggregate of all sums payable for the time being by the Station Facility Owner in respect of such Station under Conditions L4 and L5.4 of the Station Access Conditions,

and

"D" is the aggregate of all sums unpaid or withheld by any Passenger Operator in respect of such Station which were at any relevant time taken into account in the computation of "B", but which are paid or made good in whole or part to the Station Facility Owner after being so taken into account;

6.2 Notice of disputes

to give notice to Network Rail of any material dispute relating to the Station or any right granted to the Station Facility Owner under this Lease immediately the Station Facility Owner is aware of the dispute;

6.3 Alterations

not to make any alteration or addition to the Station (other than internal non-structural alterations) without the written consent of Network Rail (such consent not to be unreasonably withheld or delayed) but so that:

- (A) any such works to which Network Rail has consented shall be carried out in accordance with plans and specifications approved by Network Rail (such approval also not to be unreasonably withheld or delayed) and (if reasonably so required by Network Rail) under the superintendence of Network Rail and to the reasonable satisfaction in all respects of Network Rail and to the satisfaction of any authority or body having jurisdiction;
- (B) the Station Facility Owner shall on making any alteration or addition to the Station which does not require Network Rail's consent furnish to Network Rail plans and specifications of such works to the extent that such exist and/or are relevant to the nature of the works;
- (C) Network Rail now confirms its consent under paragraph 6.3 to any alteration or addition (and dispenses with the requirements of paragraphs 6.3(A) and 6.3(B)) insofar as both the consent and the requirements concern any alteration or addition:
 - (1) in relation to which (following an enquiry to that effect from the Station Facility Owner) Network Rail has confirmed in writing to the Station Facility Owner that consent under paragraph 6.3 is not required, and that confirmation may be for a particular class of works generally, or for specific works;

- (2) which the Station Facility Owner is required to carry out under the Statutory Documents (save for the Franchise Agreement) or the Station Access Conditions;
 - (3) which Network Rail approves in writing from time to time under the Statutory Documents or the Station Access Conditions;
 - (4) for which the Statutory Documents (save for the Franchise Agreement) or the Station Access Conditions provide that the approval of Network Rail is not required;
 - (5) in relation to which a Proposal for Change is at any time accepted;
- (D) The Station Facility Owner shall give to Network Rail reasonable prior notice of the start of any works referred to in paragraph 6.3(C) (but not those referred to in paragraph 6.3(C)(5)) and such information about those works as Network Rail reasonably requires;

6.4 Alienation

not to assign, transfer, charge, underlet or part with possession of the whole or any part or parts of the Station (whether in relation to this Lease or any inferior interest in the Station) except as provided in paragraphs 6.5, 6.6 and 6.7 but so that, notwithstanding paragraphs 6.5, 6.6 and 6.7, no consent shall be required for:-

- (A) an act which the Station Facility Owner is required to carry out under the Statutory Documents (save for the Franchise Agreement) or the Station Access Conditions;
- (B) an act which Network Rail approves from time to time in writing under the Statutory Documents or the Station Access Conditions;
- (C) an act for which the Statutory Documents (save for the Franchise Agreement) or the Station Access Conditions provide that the approval of Network Rail is not required;
- (D) the assignment of the whole of an underlease of part of the Station except that any underletting or grant referred to in paragraph 6.4(F) cannot be assigned to a person who is not a Beneficiary without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
- (E) the entry by the Station Facility Owner into access contracts (whether or not pursuant to the directions of the Regulator under the Act);
- (F) the underletting of Core Facilities, or the grant (otherwise than by an assignment of any part or parts of the Station) of use or occupation of the Core Facilities, to a Beneficiary (subject to compliance with paragraph 6.6(F)) without (in any such case) taking a premium but so that none of paragraphs 6.6(B), 6.6(D) or 6.6(E) shall apply to any underletting, or grant of use or occupation of, Core Facilities to a Beneficiary;
- (G) the entry by the Station Facility Owner into concession agreements which:
 - (1) do not create the relationship of landlord and tenant, and
 - (2) do not contravene, and the effect of which would not contravene, paragraph 6.6(A);

6.5 Charging

not to mortgage, charge, or otherwise create any security in respect of the whole of this Lease:-

- (A) without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed); or
- (B) in contravention of s.27(3) or (4) of the Act;

6.6 Underletting

not to underlet the whole of the Station. Not to underlet any part or parts of the Station (whether or not immediately derived out of this Lease) otherwise than subject to all of the following conditions:-

- (A) the underletting shall not be such as materially to prejudice the operation of the Station as a railway station nor (together with other underlettings) such as to comprise the whole (or substantially the whole) of the Station;
- (B) the underletting shall only be with the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
- (C) the underletting shall be at not less than the then market rent for the relevant part or parts of the Station without taking a premium;
- (D) the underletting shall not include property not in Network Rail's ownership;
- (E) the underletting shall be on full repairing terms insofar as such are reasonably possible and appropriate in the light of property market conditions and the nature, size and location of the property concerned;
- (F) any underletting or grant of Core Facilities shall:-
 - (1) (in the case of an underletting) before the underlease is completed or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with the provisions of s. 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or the effective implementation of any other procedure from time to time authorised by Statute to provide for such exclusion) and adequate evidence of such exclusion has been produced by the Station Facility Owner to Network Rail;
 - (2) contain provisions the effect of which shall be that if this Lease comes to an end in any way whatsoever the landlord or the grantor for the time being under the underletting or grant ("the reversioner") shall be contractually entitled to terminate the underletting or grant by giving not less than six months' prior written notice to the undertenant or grantee expiring at any time Provided that in any case where the undertenant or grantee is a Beneficiary:-
 - (a) such notice may only be given if this Lease comes to an end otherwise than where it is replaced at the same time or immediately afterwards by a document of similar effect contemplated by the first Franchise Agreement made under the Act relating to the Station; and
 - (b) such notice may only be given within four months and two weeks after this Lease comes to an end; and

- (c) such notice may only be served by the reversioner where there are reasons (other than commercial reasons) relating to the proper operation of the Station as a railway station or the proper operation of the network (as defined in the Act) or any part of it; and
- (d) the reversioner shall following the giving of such notice use all reasonable endeavours to provide suitable alternative accommodation at or in reasonable proximity to the Station for the residue of the original term of the terminated underlease or grant but otherwise on the same terms (mutatis mutandis) as the terminated underlease or grant including (without limitation) the exclusion from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954 as referred to in paragraph 6.6(F)(1) and at an Open Market Rent for the user permitted by the underletting or grant;

In this paragraph 6.6(F)(2) the expression "an Open Market Rent" means the yearly rent at which the relevant Core Facilities might reasonably be expected to be let as a whole with vacant possession in the open market (after the expiry of a rent-free period of such length as would reasonably be negotiated in the open market between a willing lessor and a willing lessee) without a premium as between a willing lessor and willing lessee as at the date of completion of the transaction (the "Replacement Lease") referred to in paragraph 6.6(F)(2)(d) having regard to the terms of the Replacement Lease and on the following assumptions:-

- (i) that the relevant Core Facilities may be used for the use permitted by the Replacement Lease and that the works of adaptation necessary to be carried out so that such use of the relevant Core Facilities shall not contravene any statutes shall have been carried out at the lessor's expense in accordance with all relevant statutes;
- (ii) that any destruction or damage to the relevant Core Facilities has been made good

and Provided that if the Open Market Rent shall not have been agreed within 28 days of a figure being quoted to the undertenant or grantee then the matter shall be referred for determination by arbitration by a single arbitrator who (failing agreement between landlord and tenant as to his appointment) shall be nominated on their joint application (or if either of them shall neglect forthwith to concur in the application then on the sole application of the other) by the President for the time being or other appropriate officer of the Royal Institution of Chartered Surveyors and the provisions of the Arbitration Act 1996 shall apply to any such determination; and

- (3) prohibit the taking of a premium on its assignment and the Station Facility Owner shall (so far as it is reasonably able to do so) enforce this prohibition;
- (G) the underletting shall be such that the underlessee may only deal with the relevant part of the Station by way of assignment or charge of the whole;
- (H) the underletting shall contain provisions the effect of which shall be that if this Lease is lawfully terminated pursuant to Part C of the Station Access Conditions or paragraph 17 in relation to the whole or any part of the Station, the underletting shall contractually be capable of termination by the Station Facility Owner at the same time as such lawful termination of this Lease;

- (I) the underletting shall prohibit the undertenant from doing or omitting anything which if done or omitted by the Station Facility Owner would contravene any of the obligations of the Station Facility Owner under this Lease;
- (J) where the underletting is of or includes a part to be used for residential purposes, it shall not be one which gives (or in relation to which any Statute gives) any person security of tenure after the end of the contractual term of the underletting, except where the underletting is a grant by way of the compulsory renewal with such security of a residential underletting which subsisted on 1st April 1994;

Provided that nothing in this paragraph 6.6 shall render the Station Facility Owner liable to Network Rail to the extent that a court orders a renewal of an underletting pursuant to Part II of the Landlord and Tenant Act 1954 on terms inconsistent with that paragraph (subject to the Station Facility Owner using all reasonable endeavours to avoid that outcome having regard to the other provisions of this paragraph 6.6);

6.7 Assignment of whole

- (A) the assignment of the whole of the Station to a company wholly owned by the SRA shall be subject to the following conditions (without prejudice to the operation of s.220 of the Transport Act 2000 where applicable):-
 - (1) that this shall be only with the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
 - (2) that the Franchise Agreement shall have come to an end without this Lease having been terminated;
 - (3) that such assignment shall not prevent Network Rail from enforcing any outstanding breach of the Station Facility Owner's obligations under this Lease to the extent that Network Rail may lawfully do so; and
 - (4) that as a condition of Network Rail's consent to such assignment it may be required that all payments due from the Station Facility Owner are discharged on or before completion of such assignment where such payments relate to the period between the date of any notification to the SRA that Network Rail shall or may seek to exercise termination rights in respect of this Lease and the date of completion of such assignment;
- (B) the assignment of the whole of the Station to a company which is a franchisee or franchise operator under a franchise agreement other than the Franchise Agreement shall be subject to the following conditions:-
 - (1) that this shall only be with the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
 - (2) that following assignment, references in this Lease to the Franchise Agreement shall be treated as referring to the relevant franchise agreement, when the context so admits; and
 - (3) either:
 - (i) the Station Facility Owner provides written confirmation from the SRA that the proposed assignment has been directed or approved by the SRA in the furtherance of the strategies from time to time of the SRA; or

- (ii) the circumstances and conditions specified for the purposes of s.19(1A) of the Landlord and Tenant Act 1927 set out in paragraph 6.7(D) below respectively exist and are satisfied but without prejudice to the right of Network Rail to withhold consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where such imposition would be reasonable;
- (C) the assignment of the whole of the Station to a company which is lawfully assuming the benefit of the Franchise Agreement (or its wholly owned subsidiary where that subsidiary is intended both to take this Lease and act as franchise operator as defined in s.23(3) of the Act) shall be subject to the following conditions:-
 - (1) that this shall only be in a case where the prospective assignment is to be made concurrently with a similar assignment of all other railway facilities held on lease by the Station Facility Owner from Network Rail in conjunction with the operation of the franchise which is the subject of the Franchise Agreement; and
 - (2) that this shall only be with the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
- (D) the circumstances and conditions referred to in paragraph, 6.7(B)(3)(ii) are that:
 - (1) prior to any assignment Network Rail receives written evidence satisfactory to Network Rail that the SRA has consented to the proposed assignee (the "Assignee");
 - (2) prior to any assignment the Station Facility Owner shall enter into an agreement (in this Lease called an "authorised guarantee agreement") with Network Rail (whose costs shall be paid by the Station Facility Owner on a full indemnity basis) in the terms (mutatis mutandis) set out in schedule 1;
 - (3) if so required by Network Rail the Station Facility Owner shall procure that any person (including the Guarantor) who has covenanted with Network Rail to guarantee the observance and performance of the Station Facility Owner's covenants and conditions contained and incorporated in this Lease (whether such guarantee is contained in this Lease or in any lease expressed to be supplemental to this Lease) enters into the authorised guarantee agreement and covenants with Network Rail as primary obligor (and not merely as guarantor) in the terms (mutatis mutandis) set out in schedule 2 for the purpose of guaranteeing the observance and performance by the Station Facility Owner of its obligations under the authorised guarantee agreement. Provided that the provisions of this paragraph shall not apply to any person who has covenanted in an authorised guarantee agreement to guarantee the observance and performance of the Station Facility Owner's covenants;
 - (4) the Station Facility Owner shall procure that prior to any assignment the Assignee enters into direct covenants with Network Rail (whose costs shall be paid by the Station Facility Owner on a full indemnity basis) to pay the Yearly Rent, and to perform and observe the covenants by the Station Facility Owner and conditions contained and incorporated in this Lease during the residue of the Term or (if a shorter period) until the Assignee shall be released from such covenants and conditions. Provided that where the Assignee is more than one person or company such covenants shall be entered into jointly and severally;

- (5) if Network Rail shall reasonably so require, the Station Facility Owner shall procure that prior to any assignment a guarantor or guarantors resident in the United Kingdom and whose financial standing shall have been approved in writing by Network Rail (such approval not to be unreasonably withheld) as primary obligor (and not merely as guarantor) shall enter into direct covenants with Network Rail (whose costs shall be paid by the Station Facility Owner on a full indemnity basis) in the form (mutatis mutandis) set out in schedule 2 Provided that in considering whether such a guarantor or guarantors will be required, Network Rail shall have regard to whether the Assignee (or, where the Assignee is a franchise operator or franchisee, the relevant franchisee) has guarantee arrangements with the SRA in relation to its franchise or with Network Rail under leases of franchised stations;
- (6) where the Assignee is a person (which for the avoidance of doubt includes a corporation) resident in a jurisdiction other than:-
 - (a) one within the United Kingdom; or
 - (b) one in respect of which there is an applicable treaty for the mutual enforcement of civil judgements,

Network Rail is reasonably satisfied that a judgement obtained in England and Wales against the Assignee can be enforced in the relevant jurisdiction without difficulty; and
- (7) the Station Facility Owner has paid all Yearly Rent due and payable under this Lease at the date of the assignment of this Lease to the Assignee.

6.8 Variations of underlettings

not to vary or agree to the variation of the terms of any underletting of the whole or any part of the Station (whether or not immediately derived out of this Lease) (including any commutation or reduction of rent) without the consent of Network Rail (such consent not to be unreasonably withheld or delayed) but the consent of Network Rail shall not be required in relation to any variation which does not contravene and which is not inconsistent with the requirements of paragraph 6.6;

6.9 Registration

in relation to any event referred to in paragraphs 6.4, 6.5, 6.6 and 6.7, and any disposition or devolution of the title to this Lease or any interest inferior to it, to give to Network Rail on the 25th March, the 24th June, the 29th September and the 25th December in every year and (if this does not occur on any of those dates) on the date of the expiration or sooner determination of the Term notice of each of them that has not previously been notified to Network Rail under this paragraph with short particulars of any assignment, transfer, underlease, or other instrument which shall effect or evidence such event, disposition or devolution of title and, if required by Network Rail, a certified copy of the assignment, transfer, underlease or other instrument (and in the case of an underlease in respect of which the provisions of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954 have been excluded a certified copy of both the notice served by the landlord thereunder and of the tenant's declaration or statutory declaration in response pursuant to section 38A of that Act) for retention by Network Rail;

6.10 Yielding up

at the expiration or sooner determination of the Term:-

- (A) to yield up to Network Rail the Station with vacant possession (subject to subsisting Existing Agreements and any subsisting underleases authorised under the terms of

this Lease) in a state of repair and condition which is in accordance with the Station Facility Owner's obligations, having first (if so reasonably required by Network Rail) removed:-

- (1) any buildings or works erected after the date of this Lease in respect of which any planning, bye-law or other permission may have been granted for a limited period only; and
- (2) any indication of the name or business of the Station Facility Owner and of any other occupier who has vacated; and
- (3) all tenant's fixtures, fittings, furniture and effects,

except as may be agreed by Network Rail and in each case having made good all damage caused to the Station by or in such removal; and

- (B) to deliver to Network Rail the counterparts of any underlease of the Station or any part of it and of any agreement or instrument supplemental to or entered into pursuant to that underlease and any other agreement or instrument under the control of the Station Facility Owner which affects the Station or any part of it.

7. NETWORK RAIL'S OBLIGATIONS

Network Rail covenants with the Station Facility Owner:-

7.1 Quiet enjoyment

- (A) that subject to the Station Facility Owner paying the Yearly Rent on the due dates and performing and observing its other obligations under this Lease the Station Facility Owner shall quietly enjoy the Station without any interruption by Network Rail or any person lawfully claiming through, under or in trust for Network Rail or by title paramount Provided that neither:-

- (1) the proper carrying on by Network Rail of its undertaking on the Adjacent Property in exercise of and subject to its statutory and common law powers and obligations; nor
- (2) any permission properly given by Network Rail for any other person to use railway facilities (other than the Station); nor
- (3) the proper exercise by any person of any right given to Network Rail by this Lease; nor
- (4) the existence or lawful exercise by any person claiming by title paramount of any right, discretion or power which has been disclosed to the Station Facility Owner before the date of this Lease

shall constitute a breach of this covenant nor be in derogation of Network Rail's grant;

- (B) the Station Facility Owner agrees that for the purposes of paragraph 7.1(A)(4) there has been disclosed to it:-

- (1) anything within the actual knowledge of the Station Facility Owner;
- (2) everything in this Lease (including in the matters incorporated by clause 2 of this Lease) or in anything referred to in this Lease (including in those incorporated matters), and

- (3) anything disclosed by Network Rail on the grant of the first lease (if any) of the Station to a franchise operator;

7.2 Mines and minerals

- (A) not to work and not (so far as it may lawfully do so) to permit or cause to be worked any mines and minerals in and under the Station to the extent that these are owned by Network Rail;
- (B) where mines and minerals in and under the Station are not owned by Network Rail and are proposed to be worked by third parties to act in accordance with the provisions of Condition G.5 of the Station Access Conditions as though such proposals arose under Existing Agreements;

7.3 Reversionary or concurrent leases

upon receipt of written request from the Station Facility Owner forthwith to enter into any reversionary or concurrent lease (or any agreement for such lease) so as to grant or confirm the grant to the relevant lessee of a lease of any part of the Station in a form and in accordance with terms approved by Network Rail (such approval not to be unreasonably withheld or delayed) Provided that the terms of such proposed letting are not otherwise in breach of the relevant terms of this Lease and in particular paragraphs 6.4 and 6.6 (those paragraphs being read for this purpose as if for all references to underlettings or underleases there were substituted references to reversionary or concurrent leases, or agreements for them (as appropriate)); and

7.4 Payments to Superior Estate Owner

to pay the rent and (to the extent that the Station Facility Owner is not required to pay them under this Lease) any other monies payable by Network Rail to the Superior Estate Owner under any Superior Estate Grant.

8. ADJUSTMENT OF PROPERTY RENT

8.1 In this paragraph 8:-

- (A) "**Adjustment Figure**" means the RPI figure published for the month immediately preceding the relevant Rent Adjustment Date;
- (B) "**Base Figure**" means the RPI figure published for the month of March immediately preceding the Lease Start Date or, if the first Rent Adjustment Date is the Rent Start Date, the RPI figure published for the month of March in the previous calendar year;
- (C) "**Current Rent**" means the Property Rent for each Station at the level applicable immediately before the relevant Rent Adjustment Date;
- (D) "**RPI**" means the All Items Retail Prices Index published by the Office for National Statistics or by any other publisher, as that index or publisher may be renamed from time to time; and
- (E) "**Substituted Rent**" means in respect of each Station on each Rent Adjustment Date either:

- (1) the sum equal to the value of A in pounds sterling in the following formula:

$$A = B \times \frac{C}{D}$$

where

B = the Property Rent for the relevant Station at the level set out in the Stations Table
C = the Adjustment Figure
D = the Base Figure

or

- (2) the sum agreed or determined by arbitration under any alternative method of calculation or any alternative index agreed or determined by arbitration pursuant to paragraph 8.5.

8.2 For each Station, with effect from each Rent Adjustment Date the Current Rent shall be substituted by the Substituted Rent.

8.3 Network Rail shall as soon as reasonably practicable after the relevant Rent Adjustment Date give notice to the Station Facility Owner of the Substituted Rent together with supporting calculations which, save in case of error, shall not be open to question by the Station Facility Owner.

8.4 If Network Rail fails to give notice together with supporting calculations to the Station Facility Owner in accordance with paragraph 8.3 in relation to any Rent Adjustment Date the Station Facility Owner shall be entitled to give notice to Network Rail of the Substituted Rent together with supporting calculations. Save in case of error the figures in the Station Facility Owner's notice shall not be open to question by Network Rail but the Station Facility Owner shall not be entitled to give notice under this paragraph 8.4 after Network Rail has given notice under paragraph 8.3.

8.5 The parties shall consult together with a view to agreeing an alternative index or method of calculation for the Substituted Rent which as closely as possible gives effect to the intention of the parties in this paragraph 8:-

- (A) if after the date of this Lease the reference base used to compile the RPI changes or the RPI changes in any other way and it is agreed, or if the parties cannot agree it is determined by arbitration, that the change is material for the purposes of this paragraph; or
- (B) if the RPI ceases to be published or for any other reason it becomes impossible to calculate the sum referred to in paragraph 8.1(E) by reference to the relevant Base Figure and the relevant Adjustment Figure; or
- (C) if the RPI shall be published at materially less frequent intervals than at the date of this Lease

but in the event of failure to agree or if any other dispute or question arises between the parties with respect to the construction or effect of this paragraph 8.5 or the calculation of either of the sums referred to in paragraph 8.1(E) then the matter shall be determined by arbitration.

8.6 Changes to this paragraph 8 resulting from arbitration or agreement under paragraph 8.5 shall be evidenced in a deed of variation which Network Rail and the Station Facility Owner and the Guarantor will complete as soon as practicable such deed in case of failure to agree by Network Rail and the Station Facility Owner to be settled by Conveyancing Counsel to be appointed jointly by the parties or (in case of failure to agree) to be appointed on the application of either of the parties by the President for the time being or other appropriate officer of the Law Society.

- 8.7 Time is not of the essence in relation to the date by which any notice (with supporting calculations) under paragraphs 8.3 and 8.4 is to be given.
- 8.8 Until the sum to be substituted for the Current Rent for a Station with effect from any Rent Adjustment Date pursuant to paragraph 8.2 has been agreed or determined the Station Facility Owner shall continue to pay the Current Rent for that Station to Network Rail on account of the Property Rent.
- 8.9 On the fifth working day after the agreement or determination of the sum referred to in paragraph 8.8 an appropriate payment shall be made by the relevant party to the other of any underpayment or overpayment so as to put the parties in the position they would have been in had that sum been agreed or determined before the rent payment date in respect of the Property Rent which immediately precedes the relevant Rent Adjustment Date together with, in respect of each part of that payment, interest calculated at the Default Interest Rate from the day when that part would have been payable until actual payment.
- 8.10 If by reason of any Statute in force at any time there is a restriction on the adjustment or rebasing of the Property Rent in accordance with this paragraph 8 or on Network Rail's right to recover the Property Rent in full then and in any such case Network Rail may at any time after such Statute shall cease to have such effect by not less than one month's notice in writing given to the Station Facility Owner require that a date specified in such notice and occurring at any time before the next following Rent Adjustment Date shall be a Rent Adjustment Date. Thereupon this Lease shall in all respects be read and construed as if the date so specified had been an additional Rent Adjustment Date and the provisions of this paragraph 8 shall have effect accordingly.

9. PAYMENT OF THE SFO'S PROPORTION

9.1 In this paragraph 9:

(A) "SFO's Proportion"

means 25% of (a) minus (b) where:

(a) = the Income; and

(b) = any management or equivalent fee payable by Network Rail for management of the Telephone Contract, save that where such management is carried out by Network Rail or any company or firm controlled by Network Rail (b) = a fair and reasonable management, or equivalent, fee;

(B) "Income"

means sums in the nature of a licence fee or equivalent payable pursuant to the Telephone Contract by a Third Party, but only in so far as such sums relate to the Stations;

(C) "Telephone Contract"

means the telephone contract referred to below, which is a Global Agreement:

Date: 30.06.1993

Document: Payphones Agreement

Parties: (1) British Railways Board

(2) BR Telecommunications Limited

- (3) British Telecommunications PLC;
and

(D) **"Third Party"**

means the other party to the Telephone Contract other than British Railways Board (now Network Rail).

- 9.2 As soon as reasonably practicable following its receipt and in any event within 14 days of its receipt, Network Rail (as agent for the Station Facility Owner) shall account to the Station Facility Owner for the SFO's Proportion, and any dispute as to such proportion shall be referred to arbitration.
- 9.3 Network Rail shall keep and maintain proper records reflecting monies received by it as agent for the Station Facility Owner under the Telephone Contract and shall make such information available to the Station Facility Owner upon prior reasonable notice, but only to the extent that such information is necessary for calculating the SFO's Proportion.
- 9.4 Save as mentioned in paragraph 9.5 all sums due to either party under this paragraph 9 are exclusive of VAT, if any, which shall be charged in addition in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be payable by the paying party only against receipt from the supplying party of a valid VAT invoice in respect of that supply.
- 9.5 Should it be determined following discussions with HM Customs & Excise that the procedures outlined in paragraphs 78 and 79 of HM Customs & Excise notice 700 are applicable then Network Rail and the Station Facility Owner shall liaise in good faith and act in a timely manner to ensure that all necessary VAT compliance obligations are observed. Each party will be responsible for the preparation and submission of its own VAT returns and each party shall provide such information to the other as the other may reasonably require to enable it to prepare and submit such VAT returns.

10. **RE-ENTRY**

- 10.1 This Lease is on condition that on the occurrence of any of the events mentioned below it shall be lawful for Network Rail to re-enter upon the Station (or any part of it in the name of the whole), upon which this Lease shall come to an end but without prejudice to any claim by Network Rail in respect of prior breach of the Station Facility Owner's obligations. The events are:

- (A) if any of the Yearly Rent or related Value Added Tax shall be unpaid for 21 days after becoming payable (whether formally demanded or not); or
- (B) if there shall be a substantial or material failure in the performance or observance of any covenant on the Station Facility Owner's part or conditions contained in this Lease which (if capable of being remedied) is not started to be remedied within one month of the giving of notice by Network Rail to the Station Facility Owner requiring remedy and diligently proceeded with; or
- (C) if any step which has a reasonable prospect of success is taken by any person with a view to the administration of the Station Facility Owner and/or the Guarantor under part II of the Insolvency Act 1986; or
- (D) if the Station Facility Owner and/or the Guarantor stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:-

- (1) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000", or such higher figure as the parties may agree from time to time in writing; and
 - (2) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand; or
- (E) the directors of the Station Facility Owner and/or the Guarantor make any proposal under section 1 of the Insolvency Act 1986, or the Station Facility Owner and/or the Guarantor makes any readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts; or
 - (F) any step is taken to enforce security over or a distress, execution or other similar process is levied or served against the whole or a substantial part of the assets of the Station Facility Owner and/or the Guarantor or the undertaking of the relevant party, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security; or
 - (G) any step is taken by any person with a view to the winding-up of the Station Facility Owner or the Guarantor or any person presents a winding-up petition in respect of the Station Facility Owner or the Guarantor which is not dismissed within 14 days, or the Station Facility Owner and/or the Guarantor ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by Network Rail before that step is taken (which approval shall not be unreasonably withheld or delayed); or
 - (H) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed or referred to in paragraphs 10.1(C) to 10.1(G) (inclusive); or
 - (I) the coming to an end (by reason of default by the Station Facility Owner and/or the Guarantor) of any of the Statutory Documents; or
 - (J) the coming to an end for any reason of any of the Statutory Documents if when the relevant document ends it is not replaced at the same time by a document to similar effect; or
 - (K) the receipt by Network Rail of actual notice that the Station Facility Owner and/or the Guarantor (being a company) has been dissolved or has otherwise ceased to exist; or
 - (L) the closure of the whole of the Station following the determination by the SRA that the closure is a minor closure or in accordance with the final decision on the closure question, within the meaning of that expression in s.41(9) of the Act

unless in any case where any of paragraphs 10.1(C) to 10.1(H) (inclusive) apply, a railway administration order (or application for it) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to that party pursuant to section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending or unless in the case of paragraphs 10.1(C), 10.1(F) and 10.1(G) or 10.1(H) in relation to matters analogous or equivalent to the matters in paragraphs 10.1(C), 10.1(F) and 10.1(G) the relevant petition,

proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures.

- 10.2 If any of the events listed in paragraphs 10.1(C) to 10.1(H) (inclusive) shall occur in respect of any Guarantor, but no other event under this paragraph 10 shall have occurred and be subsisting, Network Rail shall allow the Station Facility Owner a reasonable interval (being not more than three months) within which to procure that another party reasonably acceptable to Network Rail shall guarantee the obligations of the Station Facility Owner under this Lease in a manner acceptable to Network Rail (acting reasonably) with the same effect as if that other party had joined in and executed this Lease on its grant in place of the relevant Guarantor (any dispute in respect of such matters being referred to arbitration) and Network Rail shall not enforce its rights under this paragraph 10 in respect of those events after an acceptable replacement guarantee having this effect shall have been provided to it.

11. **DISTRESS**

Network Rail's right to distrain for all unpaid rent against anything which is necessary for the provision of Station Services does not arise until after the giving of notice of the arrears.

12. **NON-ACCEPTANCE OF RENT**

If Network Rail shall because of its belief on reasonable grounds that there has been a material breach by the Station Facility Owner of any of the Station Facility Owner's obligations under this Lease refrain from demanding and/or accepting rent or any other moneys due under this Lease then the Station Facility Owner shall pay to Network Rail interest at the Default Interest Rate (both before and after any judgement) on such rent or other moneys calculated from the due date for payment for the period during which Network Rail shall so refrain (credit being given for any sums paid by the Station Facility Owner and accepted by Network Rail as mesne profits).

13. **ARBITRATION**

Except where otherwise provided, where provision is made in this Lease for determination of an issue by arbitration or third party determination the issue shall be resolved in the manner prescribed by Condition H5 of the Station Access Conditions.

14. **DETERMINATION OF THIS LEASE FOLLOWING DESTRUCTION OR DAMAGE**

If the Station is damaged or destroyed by any cause whatsoever (whether or not by an Insured Risk) so as to become wholly or substantially unfit for the use permitted by Station Access Condition O5 then:-

- 14.1 If Network Rail is unable (having used all reasonable endeavours) to obtain all necessary planning consents and all other necessary licences, approvals and consents necessary in order lawfully to carry out the repair, reinstatement and making good of the Station in accordance with Station Access Condition E3 then Network Rail shall notify the Station Facility Owner in writing when it becomes aware of such inability and either Network Rail or the Station Facility Owner may determine this Lease by giving to the other at any time not less than 14 days' notice; and
- 14.2 If Network Rail shall have failed substantially to complete the repair, reinstatement and making good of the Station in accordance with Station Access Condition E3 by the date which is three years after the relevant damage or destruction occurred then the Station Facility Owner may determine this Lease by giving to Network Rail at any time within the period of six months following that date not less than 14 days' notice

and determination under this paragraph 14 shall be without prejudice to any claim by any party to this Lease in respect of any prior breach of the obligations of any other party to this Lease.

15. **OTHER PROPERTY AND IMPLIED EASEMENTS**

Nothing in this Lease shall:-

- 15.1 confer on the Station Facility Owner any right to the benefit of or to enforce any covenant or agreement contained in any other instrument relating to any other property (except as provided in Part J of the Station Access Conditions) or limit or affect the right of Network Rail to deal with the Adjacent Property at any time in such manner as may be thought fit (without prejudice to the rights expressly granted to the Station Facility Owner under this Lease);
- 15.2 impliedly confer upon or grant to the Station Facility Owner any easement, right, liberty, privilege or advantage other than those expressly granted by this Lease and the provisions of s.62 Law of Property Act 1925 shall not apply in relation to this Lease; or
- 15.3 override paragraph 6 of Schedule 4 to the Act where Network Rail is an interested person for the purposes of that Schedule.

16. **STATION FACILITY OWNER'S EFFECTS**

The Station Facility Owner irrevocably appoints Network Rail to be its agent to store or dispose of any tenant's or trade fixtures, fittings or chattels left by the Station Facility Owner on the Station for more than fourteen days after the expiration or sooner determination of the Term or such longer period, if any, as may previously have been agreed in writing between Network Rail and the Station Facility Owner, such storage and disposal being on such terms as Network Rail thinks fit and without Network Rail being liable to the Station Facility Owner save to account for the proceeds of sale less the cost of storage (if any) and any other expenses reasonably incurred by Network Rail.

17. **PARTIAL DETERMINATION**

- 17.1 This paragraph 17 applies to any works which are necessary for the proper operation of Network Rail's railway undertaking and are the subject of a Proposal for Change which has been accepted and the acceptance of which remains effective.
- 17.2 For the purpose of carrying out works to which this paragraph 17 applies and which cannot reasonably be carried out without obtaining vacant possession of premises comprised in the areas which are shown marked red (or otherwise identified) on the Plan, or which are below or immediately adjoining any Railway Superstructure and which are inconsistent with the continuation of this Lease in respect of such premises for any reason (including, without limitation, the time required to complete the works and/or the effect of the works on such premises), Network Rail may by notice to the Station Facility Owner determine this Lease in respect of such premises.
- 17.3 The date specified for determination in any notice given under paragraph 17.2 shall be no less than six months after the date of receipt of such notice save that where possession of the relevant premises is urgently required for carrying out repairs then the date specified for determination in the relevant notice shall be no less than 28 days after the date of receipt of such notice.
- 17.4 Network Rail shall use reasonable endeavours to minimise the effect of determination and to provide alternative facilities reasonably comparable to the premises in respect of which this Lease shall have been determined but (to the extent that this does not result in the provision of alternative facilities or they are not reasonably comparable to the premises in respect of which this Lease shall have been determined) there will be a reduction of the

Property Rent of an amount to be agreed or (in the event of failure to agree) determined by arbitration.

- 17.5 Any determination pursuant to this paragraph 17 shall be without prejudice to the rights of either party in respect of any previous breach of the terms of this Lease.

18. **NOTICES TO BE GIVEN**

Any notice in writing given under this Lease to Network Rail shall be treated as effectively served if and only if addressed to Network Rail and served by recorded delivery or registered post upon Network Rail's Surveyor at the address given for him in paragraph 1 or upon such other person at such address as Network Rail may from time to time appoint for that purpose and notify to the Station Facility Owner in writing; and any notice in writing that under this Lease is to be given to the Station Facility Owner shall be treated as effectively served if and only if addressed to the Station Facility Owner's Surveyor served by recorded delivery upon the Station Facility Owner's Surveyor at the address given for him in paragraph 1 or upon such other person at such address as the Station Facility Owner may from time to time appoint for that purpose and notify to Network Rail in writing.

19. **GOVERNING LAW AND JURISDICTION**

This Lease shall be governed by and construed in accordance with English law and, save as expressly provided for in this Lease and subject to the Station Access Conditions, the parties irrevocably agree that the Courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Lease.

20. **AGREEMENT FOR SURRENDER**

- 20.1 In this paragraph "Surrender Event" means any of:

- (A) the expiration of any period of experimental operation of the Station (or its related passenger services) under s.48 of the Act Provided that the Station Facility Owner shall be entitled to serve written notice on Network Rail at any time which is not more than six nor less than three months before the date of such expiration (as to both of which periods time shall be of the essence) indicating that it wishes to continue operating the Station in which case no surrender of this Lease shall be required pursuant to this paragraph 20.1(A);
- (B) the cessation of the use and/or the operation of the Station for the provision of station services (as defined in s.83 of the Act) other than:-
 - (1) cessation arising from Force Majeure operating on the Station Facility Owner;
 - (2) cessation caused by a breach of any obligation owed by Network Rail to the Station Facility Owner;
 - (3) (subject to paragraphs 20.1(B)(1) and 20.1(B)(2)) cessation for any period of less than 3 months unless the aggregate of that period with any other period of cessation in the same calendar year exceeds 6 months; or
- (C) the inability of the Station Facility Owner to use and/or operate the Station for the provision of railway services as defined in s.83 of the Act as a result of any breach of any obligation owed by Network Rail to the Station Facility Owner other than:-
 - (1) inability arising from Force Majeure operating on Network Rail;
 - (2) inability caused by a breach of any obligation owed by the Station Facility Owner to Network Rail;

- (3) (subject to paragraphs 20.1(C)(1) and 20.1(C)(2)) inability for any period of less than 3 months unless the aggregate of that period with any other period of inability in the same calendar year exceeds 6 months.
- 20.2 Subject to the relevant party giving notice in writing in accordance with this paragraph 20, the Station Facility Owner agrees to surrender and Network Rail agrees to accept a surrender of this Lease with completion to take place by operation of law on the date specified in such notice.
- 20.3 Upon actual completion of such surrender, the Station Facility Owner and Network Rail will be released from any future liability under their respective covenants in this Lease without prejudice to any subsisting breaches and, if called upon to do so by the covenantor, the covenantee will execute a release under seal to this effect.
- 20.4 In respect of a Surrender Event described in paragraph 20.1(A), Network Rail and the Station Facility Owner may each give not less than three months' notice requiring completion.
- 20.5 In respect of a Surrender Event described in paragraph 20.1(B), either Network Rail or (subject to paragraph 20.6) the Station Facility Owner may give not less than twenty Business Days' notice requiring completion.
- 20.6 The Station Facility Owner shall only be entitled to give notice under paragraph 20.5 requiring completion of the surrender following the determination by the SRA that the closure is a minor closure or when the final decision on the closure question (within the meaning attributed to that expression by section 41(9) of the Act) has previously been that the proposed closure of the Station would be allowed to take effect;
- 20.7
- (A) The Station Facility Owner shall reimburse Network Rail in respect of expenditure properly and reasonably incurred by Network Rail in carrying out works which need to be carried out directly as a result of the cessation of railway operations at the Station including if so required (without limitation) the cost of securing the site of the Station against trespass, fencing, plainlining and decommissioning signalling equipment and apparatus;
 - (B) Network Rail shall give the Station Facility Owner an estimate of the expenditure referred to in paragraph 20.7(A) as soon as reasonably possible after a request by the Station Facility Owner to do so (but not more than once during the Term);
 - (C) any estimate provided under paragraph 20.7(B) shall be without prejudice to the Station Facility Owner's obligations in paragraph 20.7(A);
 - (D) the payments referred to in paragraph 20.7(A) shall be made by the Station Facility Owner within 20 Business Days of receipt of the Station Facility Owner of copies of the invoices relating to them, except where the Station Facility Owner has before the end of that period of 20 Business Days (as to which time shall be of the essence) applied to the President of the Royal Institution of Chartered Surveyors under paragraph 20.7(E) in which case:
 - (1) the Station Facility Owner shall pay to Network Rail within 20 Business Days after receipt of the copies of those invoices the proportion of those payments which it does not dispute; and
 - (2) the Station Facility Owner shall pay to Network Rail within 20 Business Days after determination of the dispute under paragraph 20.7(E) the balance of those payments which it has not previously paid to Network Rail or (as the

case may require) the balance of such part of those payments as may have been determined to be payable under paragraph 20.7(E);

- (E) any dispute arising between Network Rail and the Station Facility Owner under paragraphs 20.7(A) to 20.7(D) inclusive shall be determined, not as provided in Station Access Condition H5 but by a surveyor appointed by agreement between Network Rail and the Station Facility Owner or (in the absence of agreement) by the President of the Royal Institution of Chartered Surveyors on the application of either Network Rail or the Station Facility Owner made not later than 20 Business Days after receipt by the Station Facility Owner of copies of the invoices mentioned in paragraph 20.7(D) (as to which period time shall be of the essence);
 - (F) the surveyor mentioned in paragraph 20.7(E) shall determine all matters referred to him as an expert and his determination shall be final and binding on Network Rail and the Station Facility Owner;
 - (G) if the surveyor mentioned in paragraph 20.7(E) does not reduce the amount of the invoices mentioned in paragraph 20.7(D) which are payable by the Station Facility Owner to Network Rail by more than 5% then the Station Facility Owner shall, in addition to payment to Network Rail of the amount due to it under paragraph 20.7(D) pay to Network Rail interest at the Default Interest Rate on that amount for the period from the date on which it was demanded by Network Rail until the date on which it is paid.
- 20.8 In respect of a Surrender Event described in paragraph 20.1(C), the Station Facility Owner may give not less than 20 Business Days' notice requiring completion.
- 20.9 Receipt by a party of a notice under this paragraph 20 shall not prevent it from itself giving notice, completion to take place on the earlier of the dates specified in the notices.
- 20.10 After the events or circumstances which gave rise to or constituted a Surrender Event have ceased to apply and/or subsist, a notice in accordance with this paragraph 20 may not be given in respect of it.
- 20.11 Any dispute or difference arising in relation to this paragraph 20 shall (subject to paragraphs 20.7(E) and 20.7(F)) be determined by arbitration.

21. RELEASES

Without prejudice to outstanding rights of action:-

- 21.1 the Station Facility Owner's rights and obligations under this Lease shall terminate upon any lawful assignment of this Lease (other than to an Affiliate of the Station Facility Owner);
- 21.2 Network Rail's rights and obligations under this Lease shall terminate upon Network Rail completing a disposal of its interest in the Station to a person who:-
 - (A) is not an Affiliate of Network Rail at completion of such disposal;
 - (B) has been approved in writing by the Station Facility Owner (acting reasonably and without delay, having regard to the financial standing of such person and its ability to perform and observe the obligations of Network Rail under this Lease); and
 - (C) prior to completion of such disposal has entered into a direct covenant with the Station Facility Owner to observe and perform the obligations of Network Rail under this Lease.

22. REDEVELOPMENT ETC.

- 22.1 At any time whilst acceptance of a Network Rail Change Proposal remains effective, and subject to paragraph 22.5, the Station Facility Owner shall, if Network Rail so requires, give written notice (contractual and/or statutory) to any lawful undertenant, licensee or other occupant and take any other appropriate action to determine that person's right to occupy any relevant part of the Station specified in the relevant Network Rail Change Proposal and if the Station Facility Owner fails to comply promptly with any such requirement Network Rail may as the agent of the Station Facility Owner (Network Rail's irrevocable authority to do which is now confirmed by the Station Facility Owner) give the requisite notice and/or take the requisite action.
- 22.2 The Station Facility Owner and Network Rail shall from time to time promptly provide the other with such information and assistance as it may reasonably require to enable it to give notice and/or take any action contemplated by paragraph 22.1.
- 22.3 Network Rail shall pay on written demand on the due date all sums to which any person referred to in paragraph 22.1 is entitled from the Station Facility Owner pursuant to the relevant tenancy or agreement in consequence of notice given and/or action taken by Network Rail pursuant to that paragraph and shall pay on written demand all reasonable and proper costs and expenses reasonably and properly incurred by the Station Facility Owner in connection with the service of the notice and any resulting proceedings.
- 22.4 As from the date on which any lawful undertenant, licensee or other occupier shall quit the part of the Station occupied by it following notice served under paragraph 22.1 the Property Rent shall be reduced by such amount as Network Rail and the Station Facility Owner agree (or in default of agreement, as shall be determined by arbitration) as being fair and reasonable.
- 22.5 Where any lawful undertenant is a Passenger Operator, the Station Facility Owner shall, in the circumstances referred to in paragraph 22.1, notify the SRA of its intention to terminate that undertenant's right to occupy the relevant part of the Station as soon as practicable after acceptance of the relevant Network Rail Change Proposal and, unless the SRA consents in writing to a shorter notice period, no notice terminating that undertenant's right to occupy the relevant part of the Station shall have effect until three months from the date of such notice.

23. COLLATERAL AGREEMENTS

- 23.1 Network Rail offers irrevocably in favour of any User (and any person who upon entering into a Station Access Agreement becomes a User ("Potential User")) to enter into a Collateral Agreement with any User forthwith on written request made by the Station Facility Owner or any User (and any Potential User).
- 23.2 Network Rail undertakes to the Station Facility Owner that Network Rail will not revoke the offer made by Network Rail in paragraph 23.1.

24. STATION ACCESS AGREEMENTS

- 24.1 The Station Facility Owner shall from time to time take all reasonable steps to collect the Passenger Operator's Proportion of the Long Term Charge which is payable to it by a Passenger Operator from time to time under the Station Access Agreement.
- 24.2 Where a Passenger Operator is 14 Business Days or more in arrear with a payment of its Passenger Operator's Proportion of the Long Term Charge under the Station Access Agreement, Network Rail may take under the Collateral Agreement all reasonably necessary steps to procure that such breach of the terms of the Station Access Agreement by the relevant Passenger Operator is remedied.

24.3 If Network Rail:-

- (A) shall have taken the reasonably necessary steps referred to in paragraph 24.2, but not procured remedy of the relevant breach; and
- (B) shall have established to the reasonable satisfaction of the Station Facility Owner that no viable counterclaim or proper defence exists in respect of the breach,

then the Station Facility Owner shall forthwith give to the SRA such notice as it may be required to give pursuant to the Franchise Agreement and thereafter take such steps as it is entitled to take to determine the Station Access Agreement between itself and the Passenger Operator in respect of whom Network Rail has taken those steps.

24.4 The Station Facility Owner shall on any Station Access Agreement being terminated pursuant to paragraph 24.3 not release the relevant Passenger Operator from its obligation to pay the relevant Passenger Operator's Proportion of the Long Term Charge for the period up to the date of termination.

24.5 (Subject always and for the avoidance of doubt to Condition H5 of the Station Access Conditions) the reasonably necessary steps referred to in paragraph 24.2 shall extend to the institution of proceedings in the High Court or the County Court, and prosecution of those proceedings until judgment in favour of or against Network Rail is given or, as the case may be, not given in a decision of the court at first instance, and the taking of reasonable steps to enforce any judgment Network Rail may obtain in its favour, but shall not include any other steps.

24.6 The Station Facility Owner covenants with Network Rail that it shall from time to time promptly notify Network Rail of all amounts not paid to it by any Passenger Operators under a Station Access Agreement in respect of the Passenger Operator's Proportion of the Long Term Charge within 14 Business Days of the due date for payment.

25. **LAWFULNESS OF NETWORK RAIL'S GRANT**

25.1 Subject to paragraph 25.2, if the estate, right or interest under which Network Rail holds the Station or any obligation binding on Network Rail contained or referred to in a Superior Estate Grant is such that this Lease cannot lawfully be granted at all or cannot lawfully be granted on one or more of the terms expressed in it then, to the extent necessary to render this grant lawful, this Lease shall be substituted by and take effect as the grant by Network Rail to the Station Facility Owner of such estate, right or interest (if any) upon such terms as nearly equivalent to the estate and terms intended to be granted by this Lease as Network Rail can lawfully grant to the Station Facility Owner.

25.2 Paragraph 25.1 operates so as to render the grant effected by this Lease lawful but otherwise as between Network Rail and the Station Facility Owner does not operate to reduce or extinguish the obligations of the Station Facility Owner under this Lease or to place the Station Facility Owner in a better position than it would have been in if the estate and terms intended to be granted by this Lease were lawful.

26. **LIMITATION ON RIGHTS OF RE-ENTRY ETC.**

26.1 Network Rail shall not peaceably re-enter the Station, nor enforce any judgment which it may obtain for possession of the Station, without having given the SRA three months' prior written notice of its intention to re-enter the Station peaceably or (in the case of enforcement of a judgment for possession) to serve a writ or summons claiming possession of the Station. In either case the period of three months may be reduced to such shorter period as the SRA may from time to time agree in writing.

26.2 Should Network Rail at any time serve any notice or take any other proceeding or step to exercise any right of forfeiture (other than referred to in paragraph 26.1) it shall immediately notify the SRA in writing of such notice, proceeding or step.

26.3 Any purported exercise of any right of re-entry in contravention of this paragraph 26 shall be void Provided that this paragraph 26 shall not have effect during any period in which either the SRA, or any company under its control (within the meaning attributed to that word by s.840 Income and Corporation Taxes Act 1988), is the Station Facility Owner.

27. **NOTIFICATION OF CHANGES TO STATION ACCESS CONDITIONS**

Where any change is made to the Station Access Conditions otherwise than in accordance with Parts B or C of those conditions the Station Facility Owner shall provide Network Rail with written details of such change within seven days of such change taking effect.

28. **STATION FACILITY OWNER'S OPTION TO DETERMINE**

28.1 If the Station Facility Owner (being a franchise operator or franchisee) wishes to determine this Lease with effect from 02.00 hours:

28.1.1 on the day after the date upon which the Franchise Agreement shall expire through the passage of time; or

28.1.2 on any subsequent date

it may do so by giving to Network Rail not less than two months' prior notice in writing of such wish and on the date specified in the Station Facility Owner's Notice the Term shall cease and determine.

28.2 Any determination of this Lease pursuant to this paragraph 28 shall be without prejudice to any claim by any party to this Lease in respect of any prior breach of the obligations of any other party to this Lease.

29. **GUARANTEE PROVISIONS**

In consideration of this demise and at the request of the Station Facility Owner the Guarantor as primary obligor (and not merely as guarantor) covenants with Network Rail in the terms of schedule 2.

**SCHEDULE 1 : AUTHORISED GUARANTEE AGREEMENT(FOR INCLUSION IN THE
LICENCE TO ASSIGN)**

- 1.1 [IN consideration of this Licence granted at the request of the Station Facility Owner, of the Assignee and of the Surety] the Station Facility Owner covenants with Network Rail (for the benefit of Network Rail and any person for the time being entitled in reversion immediately expectant upon the tenancy granted by the Lease) as primary obligor (and not merely as guarantor) that [as from the date of the assignment authorised by this Licence and] throughout the residue of the Term (save and to the extent that the Assignee is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Assignee will punctually pay the Yearly Rent and other sums payable under the Lease and will perform and observe the lessee's covenants and conditions contained in the Lease and that in the event of default by the Assignee the Station Facility Owner will indemnify and keep indemnified Network Rail (and any other person as mentioned above) against all actions, claims, costs, demands, expenses, liabilities and losses arising or incurred by Network Rail (and any other person as mentioned above) in consequence of such default.

Provided that any neglect, time or forbearance of Network Rail in enforcing any payment or covenant or condition or any disclaimer of the tenancy granted by the Lease by a trustee in bankruptcy or by a liquidator or the fact that the Assignee (being a company) shall be dissolved or shall otherwise cease to exist or the determination of such tenancy pursuant to the proviso for re-entry in the Lease or the release of any one or more persons for the time being constituting the Station Facility Owner or any other act or thing (including, without limitation, Network Rail refraining from demanding or accepting any rent or other moneys due under the Lease, the surrender of any part of the premises demised and any variation of the terms of the Lease) whereby (but for this provision) the Station Facility Owner might or would have been released or the liability of the Station Facility Owner would have been affected shall not release, exonerate or in any way affect the liability of the Station Facility Owner under this clause;

- 1.2 The Station Facility Owner further covenants on the same basis that if so required by Network Rail by written notice to the Station Facility Owner within three months after the receipt by Network Rail of notice of the disclaimer of the tenancy granted by the Lease by a trustee in bankruptcy or liquidator of the Assignee (an "Event") and provided that the SRA shall not have indicated that any new lease is to be granted to the SRA or its nominee, then the Station Facility Owner will take from Network Rail the grant of another lease of the Station for the residue of the term of years granted by the Lease unexpired at the date of such Event. Such lease is to be at the same rents as are reserved by the Lease (including any revised rent agreed or determined under the Lease) and subject to the like covenants, provisos and conditions in all respects (including the proviso for re-entry) as are contained in the Lease, but so that the times (if any) at which Network Rail shall be entitled to revise the Yearly Rent shall be the same times as are specified in the Lease. Such further lease shall not be completed until it has been validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with s.38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or by effectively implementing any other procedure from time to time authorised by Statute to provide for this) and the Station Facility Owner covenants to do all things reasonably required by Network Rail to ensure that the further lease is validly excluded as aforesaid. The lease shall contain a reference to the agreement of Network Rail and the Station Facility Owner pursuant to s.38A of that Act. The Station Facility Owner will indemnify and keep indemnified Network Rail (and any other person as mentioned above) on a full indemnity basis against all solicitors' costs and disbursements and also surveyors' fees incurred by Network Rail in connection with the giving of such notice, the grant of such lease and the grant of any such licence and will on the execution of such further lease execute and deliver to Network Rail a counterpart.

- 1.3 Where the Station Facility Owner consists of more than one person any covenant by them shall take effect as a joint and several covenant.

SCHEDULE 2: GUARANTEE PROVISIONS

1.1 Guarantee and Indemnity

The Guarantor as primary obligor (and not merely as guarantor) in consideration of this demise and at the request of the Station Facility Owner hereby covenants with Network Rail that:

- (A) throughout the Term (save and to the extent that the Station Facility Owner is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Station Facility Owner will punctually pay the Yearly Rent and other sums payable under this Lease and will perform and observe the Station Facility Owner's covenants and conditions contained and incorporated in this Lease; and
- (B) (as far as permitted by law and notwithstanding paragraph 1.7 of this Schedule) throughout the Term (save and to the extent that the Station Facility Owner is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Station Facility Owner will observe and perform the obligations of the Station Facility Owner (whether as primary obligor or guarantor) contained in any authorised guarantee agreement

and that in the event of default by Station Facility Owner the Guarantor will indemnify and keep indemnified Network Rail against all actions, claims, costs, demands, expenses, liabilities and losses arising or incurred by Network Rail in consequence of such default. Provided that any neglect, time or forbearance of Network Rail in enforcing any payment or covenant or condition or any disclaimer of this demise by a liquidator or by a trustee in bankruptcy or the fact that the Station Facility Owner (being a company) shall be dissolved or shall otherwise cease to exist or the determination of this demise or the release of any one or more persons for the time being constituting the Guarantor or any other act or thing (including, without limitation, Network Rail refraining from demanding or accepting any rent or other moneys due under this Lease, the surrender of any part of the Station and any variation of the terms of this Lease) whereby (but for this provision) the Guarantor might or would have been released or the liability of the Guarantor would have been affected shall not release, exonerate or in any way affect the liability of the Guarantor under this Schedule.

1.2 Postponement of Rights of Guarantor

The Guarantor shall not claim in competition with Network Rail in any liquidation, bankruptcy, arrangement, scheme or composition with creditors of or concerning the Station Facility Owner and shall pay to Network Rail all moneys it shall receive by way of proceeds of any judgment or any distribution from any liquidator, trustee in bankruptcy, receiver or administrator of the Station Facility Owner and shall hold for the benefit of Network Rail all security and rights the Guarantor may from time to time have over assets of the Station Facility Owner and the Guarantor shall not be subrogated to any rights of or security held by Network Rail in respect of any liabilities of the Station Facility Owner or the Guarantor under this Lease for so long as such liabilities remain unperformed or undischarged.

1.3 Waiver

The Guarantor hereby waives any right to require Network Rail to proceed against the Station Facility Owner or to exercise any other right or remedy whatsoever which might be available to Network Rail before proceeding or exercising any right arising pursuant to this Schedule.

1.4 Disclaimer, etc

If so required by Network Rail by written notice to the Guarantor within three months after an Insolvency Event, and provided that the SRA shall not have indicated that any new lease is to be granted to the SRA or its nominee, then the Guarantor will take from Network Rail a grant of another lease of the Station for the residue of the Term unexpired at the date of such Insolvency Event. Such lease is to be at the same rents as are reserved by this Lease (including any revised rent agreed or determined under this Lease) and subject to the like covenants, provisos and conditions in all respects (including the proviso for re-entry) as are contained in this Lease, but so that the times (if any) at which Network Rail shall be entitled to revise the Yearly Rent shall be the same times as are specified in this Lease. Such further lease shall not be completed until it has been validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with s.38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or by effectively implementing any other procedure from time to time authorised by Statute to provide for this) and the Guarantor covenants to do all things reasonably required by Network Rail to ensure that the further lease is validly excluded as aforesaid. The lease shall contain a reference to the agreement of Network Rail and the Guarantor pursuant to s.38A of that Act. The Guarantor will indemnify and keep indemnified Network Rail (and any other person as mentioned above) on a full indemnity basis against all solicitors' costs and disbursements and also surveyors' fees incurred by Network Rail in connection with the giving of such notice, the grant of such lease and the grant of any such licence and will on the execution of such further lease execute and deliver to Network Rail a counterpart.

1.5 If no New Lease

If an Insolvency Event occurs as a result of which the Guarantor ceases to be liable under paragraph 1.1 of this Schedule and for any reason Network Rail does not require the Guarantor to accept a new lease of the Station as is mentioned in paragraph 1.4 of this Schedule then the Guarantor shall pay to Network Rail on demand amounts equal to the Yearly Rent reserved by this Lease and which would have been payable by the Station Facility Owner during the period mentioned below but for any Insolvency Event and indemnify Network Rail from and against the costs and expenses arising or incurred by Network Rail in performing and observing the Station Facility Owner's covenants and conditions contained and incorporated in this Lease for the period commencing with the date of such Insolvency Event and ending on whichever is the earlier of the date six months after the date of such Insolvency Event and the date (if any) upon which the Station is re-let.

1.6 Benefit of Guarantee and Indemnity

All the provisions of this clause shall enure for the benefit of the successors and assigns of Network Rail under this Lease or any other person for the time being entitled in reversion immediately expectant upon the tenancy granted by this Lease without the necessity for any assignment.

1.7 Authorised Guarantee Agreement

Without prejudice to paragraph 1.1(B) of this Schedule the Guarantor covenants with Network Rail and by way of a separate covenant with the Station Facility Owner that it will at the request of Network Rail enter into the authorised guarantee agreement referred to in paragraph 6.7(D)(2) prior to any assignment of the Station and will covenant with Network Rail as primary obligor (and not merely as guarantor) in the terms (mutatis mutandis) set out in this Schedule for the purpose of guaranteeing the observance and performance by the Station Facility Owner of its obligations in the authorised guarantee agreement.

1.8 Joint and Several Liability

Where the Guarantor consists of more than one person any covenant by them shall take effect as a joint and several covenant.

1.9 Insolvency Event

In this Schedule "Insolvency Event" means any of the events in respect of the Station Facility Owner listed or referred to in paragraphs 10.1(C) to 10.1(H) inclusive, unless the exception referred to in the paragraph following paragraph 10.1(L) shall apply.

