

TEMPLATE

DATED 202[7]

GBR DEPOT CODE

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PART A
ORGANISATION OF THE CODE AND DEFINITIONS
Condition A1 - General

1.1 General Interpretation

Unless the context otherwise requires:

1.1.1 This Depot Code

References to this Depot Code mean this Depot Code as modified from time to time.

1.1.2 Parts, Conditions, paragraphs and Annexes

References to Parts, Conditions and paragraphs are to Parts, Conditions and paragraphs of this Depot Code and references to Annexes are to Annexes to this Depot Code.

1.1.3 References to statutory provisions

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

1.1.4 Interpretation Act

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

1.1.5 Definitions in the 1993 Act and 2026 Act

Terms and expressions defined in sections 81 to 83 (inclusive) and 151 of the 1993 Act and sections [35, 52, 73, 96 and Part 4 of Schedule 2] of the 2026 Act shall, unless the contrary intention appears, have the same meanings in this Depot Code.

1.1.6 Notices etc

Wherever in this Depot Code provision is made for the giving or issuing of any notice, consent or approval by any person, that notice, consent or approval shall, unless otherwise specified, be in accordance with the notice requirements set out in the Relevant Agreement and the words "notify",

"consent" or "approve" (and cognate expressions) shall be construed accordingly.

1.1.7 References to person

Any reference to a person shall be construed as including, where appropriate, a reference to a firm, company, corporation, government, state or agency of a state, association or partnership (whether or not having separate legal personality) and the legal personal representatives, successors, successors in title and permitted assignees of any person.

1.1.8 Conflict

In the event of any conflict (whether as to interpretation or otherwise) between the provisions of this Depot Code and the provisions of a Relevant Agreement, the following order of precedence shall apply:

- (a) this Depot Code; and
- (b) the provisions of that Relevant Agreement.

1.1.9 Time Limits

Where in this Depot Code or any Relevant Agreement any obligation of a person is required to be performed within a specified time limit, that obligation shall continue after that time limit if that person fails to comply with that obligation within the time limit.

1.1.10 Headings

The headings and references to headings shall be disregarded in construing this Depot Code.

1.1.11 Companies Act definitions

The words "subsidiary", "holding company" and "company" shall have the same meanings in this Depot Code as in the Companies Act 2006.

1.1.12 Use of present tense

Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.

1.1.13 **Permission to use**

References in this Depot Code to the grant to a User of permission to use the Depot shall be construed to mean:

- (a) the grant of permission for the User and its Associates to use the Depot for the purpose of obtaining Depot Services for or in connection with the provision of services for the carriage of passengers by railway or services for the carriage of goods by railway, whether or not the Depot Facility Owner is to provide those Depot Services itself or to secure their provision by another; and
- (b) to the extent reasonably necessary to give full effect to the permission in Condition A1.1.13(a), and subject to Condition A1.1.14, permission for the User and its Associates to:
 - (i) enter upon the Depot, with or without vehicles;
 - (ii) bring things onto the Depot keep them there and remove them;
 - (iii) use and maintain any things kept, or buildings or other works constructed, on the Depot (whether by the User or another);
 - (iv) carry out such works as shall have been approved in accordance with this Depot Code; and
 - (v) exercise the rights over the Adjacent Property set out in Conditions J4, J5 and J8 (other than J8.1),

provided that the permissions in Conditions A1.1.13(a) and A1.1.13(b) shall be in common with, but not in priority to, any other User subject, in each case and in all respects, to:

- (1) this Depot Code;
 - (2) any Relevant Restriction arising under any Existing Agreement;
- and

- (3) while the User is exercising any permissions conferred by Condition A1.1.13(b) any other restriction on such permissions which may from time to time be reasonably imposed by the Depot Facility Owner in accordance with the Depot Access Agreement.

1.1.14 Permission to use under Condition A1.1.13(b)

In relation to the permissions specified in Condition A1.1.13(b):

- (a) the User shall, and shall procure that its Associates (other than passengers) shall, wherever reasonably practicable, first obtain the consent of the Depot Facility Owner (which consent shall not be unreasonably withheld or delayed);
- (b) the User shall promptly remove any vehicle or other thing so brought onto the Depot when reasonably directed to do so by the Depot Facility Owner; and
- (c) while exercising any permissions conferred by Condition A1.1.13(b) the User shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Depot Facility Owner shall specify.

1.1.15 Good Faith

The Depot Facility Owner and all Users shall, in exercising their respective rights and complying with their respective obligations under this Depot Code (including when conducting any discussions or negotiations arising out of the application of this Depot Code or exercising any discretion under them) at all times act in good faith.

1.1.16 "An after tax basis":

References to indemnity payments on an after tax basis shall be construed to mean payments of the monies which are the subject of the indemnity (in each case, the "indemnifying amount"), after:

- (a) first, if the loss or other matter in respect of which the indemnifying amount is to be paid gives rise to any relief from taxation for the beneficiary of the indemnity (for the purposes only of this Condition

A.1.1.16 referred to as "the beneficiary"), reducing the indemnifying amount by the amount of tax saved (calculated on the basis of the assumption in paragraph (i) below) by the beneficiary by virtue of the relief; and

- (b) secondly, if the indemnity payment is subject to taxation in the hands of the beneficiary, increasing the indemnifying amount (after any reduction under paragraph (a) above) to an amount (the "grossed up amount") which is such that the net amount retained by the beneficiary from the indemnity payment, after the deduction of tax (calculated on the basis of the assumption in paragraph (ii) below) therefrom, equals the indemnifying amount (less any reduction under paragraph (a) above);

and in applying the above, it shall be assumed that:

- (i) for the purposes of paragraph (a) above, the amount of tax saved is calculated as the difference between:
 - (x) the amount of tax which would be payable by the beneficiary in respect of the accounting period of the beneficiary in which the relief arises, on the assumption that the beneficiary is subject to tax on its Taxable Profits in such accounting period; and
 - (y) the amount of tax which would be payable by the beneficiary in respect of such accounting period, on the assumption that the beneficiary is subject to tax on an amount equal to its Taxable Profits in such accounting period minus the amount of such relief;

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

- (ii) for the purposes of paragraph (b) above, the amount of the deduction of tax from the indemnity payment is calculated as the difference between:

- (x) the amount of tax which would be payable by the beneficiary in respect of its accounting period in which the indemnity payment is taxable, if the beneficiary were subject to tax on its Taxable Profits in such accounting period; and
- (y) the amount of tax which would be payable by the beneficiary in respect of such accounting period, if the beneficiary were subject to tax on an amount equal to its Taxable Profits in such accounting period minus the grossed up amount as calculated in paragraph (b) above;

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

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

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

as and when such adjustments can be conclusively determined, such payment will be made either by or to the beneficiary as may be required to give effect to the above paragraphs.

1.2 Definitions

Unless the context otherwise requires:

"1993 Act" means the Railways Act 1993;

"2006 Act" means the Railways Act 2026;

"Access Charge" has the meaning set out in Part F;

"Accounting Half-Year" means a period of six months commencing at the commencement of each Financial Year;

"Accounting Period" means a period of 28 days or such other period of between 21 and 35 days as shall be determined by the Depot Facility Owner on reasonable grounds;

"Accounting Year" means the First Year, the Last Year and any complete Financial Year during the term of a Depot Access Agreement;

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

"Adjacent Works" means the works listed in paragraph 7 of Schedule 1 of the Depot Access Agreement;

"Affiliate" means, in relation to a party:

- (a) a company or corporation which is either a holding company or a subsidiary of that party; or

- (b) a company or corporation which is a subsidiary of a holding company of which that party is also a subsidiary;

"Applicable Systems Interfaces" has the meaning attributed to it in the Depot Access Agreement;

"Associate" has the meaning attributed to "associate" in section 17(7) of the 1993 Act;

"Beneficiary Train Preparation" means, in respect of any railway vehicle or combination of railway vehicles, any routine preparation works which a Beneficiary requires to be carried out to that railway vehicle or combination of railway vehicles before it departs from the Depot;

["BRB Scheme" means the arrangements maintained in respect of the Insured Risks by the Board;]

["British Rail Telecommunications Transfer Scheme" means the transfer scheme made under section 85 of the 1993 Act by the Board in favour of BR Telecommunications Limited with an effective date of 1 April 1994 and references to that scheme include (where the context requires) any transfer schemes which affect or are made in addition to that transfer scheme, made from time to time under section 85 of the 1993 Act by the Board with an effective date after 1 April 1994;]

"Business Day" means any day of the week (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London [and Glasgow] [and Cardiff];

"Change of Law" means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

- (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or

- (b) Value Added Tax;

"Commencement Date" means the date upon which the relevant Depot Access Agreement becomes fully effective in accordance with its terms;

"Competent Authority" means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not) which has, in respect of a Relevant Agreement, jurisdiction over either or both of the parties to, or the subject matter of, that Relevant Agreement, provided that "Competent Authority" shall not include:

- (a) His Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power;
- (b) the Regulator, except to the extent that they shall specify by notice to the parties at any time and from time to time, and subject to such conditions (if any) as they shall so specify;
- (c) subject to paragraph (b) above any court, tribunal or arbitral body exercising its powers in any reference made to it pursuant to or arising out of any access contract or any act or omission or fact, matter or thing associated with any such contract or the relationship created or evidenced by it;

"Conditions Efficacy Date" means the date upon which this Depot Code first became effective being the earlier of the Relevant Date and the date upon which the first Relevant Agreement comes into effect in respect of the Depot;

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

["Consultee" means any User or the Depot Facility Owner (other than the Proposer) as consultee in relation to a Proposal for Change or DFO Change Proposal;]

"Contingent Charges" means, in respect of each Accounting Period, the aggregate of the charges payable in respect of the Contingent Services provided during that Accounting Period;

"Contingent Services" means any Depot Services for which a Minimum Level of Services has not been specified;

"Decision Criteria" means the decision criteria set out in Condition R1;

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

"Demarcation Agreements" means any demarcation agreement, whenever entered into prior to or after the Conditions Efficacy Date relating to the Depot or any part of it provided for in the agreement specified in paragraph 1.4 of Schedule 17 of the Depot Access Agreement;

"Depot" means the Depot described in paragraph 4 of Schedule 1 of the Depot Access Agreement and includes:

- (a) the buildings, structures, fixtures, fittings, the Depot Facility Owner's Conduits, and other works for the time being at the Depot, any alteration or additions to the Depot [];
- (b) any canopies of the Depot which project beyond the blue edging on the Plan; and
- (c) the Equipment;

but excluding:

- (d) the Excluded Equipment;
- (e) the Excepted Equipment; and
- (f) the mines and minerals in and under the Depot and (where mines and minerals are not owned by the Depot Facility Owner) any right of support from such

mines and minerals other than any such transmissible rights which are enjoyed by the Depot Facility Owner;

"Depot Access Agreement" means any particular access contract incorporating this Depot Code;

"Depot Facilities" means:

- (a) such plant, equipment, track and associated infrastructure and accommodation as is necessary for the provision of the Depot Services, the Depot Facility Owner's Own Services and any other services to be provided by the Depot Facility Owner to any person and which are likely to affect the ability of the Depot Facility Owner to provide the Depot Services or the Depot Facility Owner's Own Services or any such other services; and
- (b) such staff as are necessary to carry out the services referred to in paragraph (a) above;

"Depot Facility Owner's Conduits" means those Conduits at or outside the Depot used exclusively for the purposes of the Depot (to the extent that they are not or do not become adopted or public conduits);

"Depot Facility Owner's Contingent Services" means services which are provided by the Depot Facility Owner at or from the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner and which are not included in the Depot Facility Owner's Maximum Level of Services;

"Depot Facility Owner's Environmental Indemnity" means the indemnity given by the Depot Facility Owner pursuant to Condition M4.2;

"Depot Facility Owner's Maximum Level of Services" means services to be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner, specified as such in Schedule 20 of the Depot Access Agreement;

"Depot Facility Owner's Minimum Level of Services" means services to be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner, specified as such in Schedule 20 of the Depot Access Agreement;

"Depot Facility Owner's Own Services" means the Depot Facility Owner's Minimum Level of Services, the Depot Facility Owner's Variable Level of Services and the Depot Facility Owner's Contingent Services;

"Depot Facility Owner's Running Maintenance Programme" means, in respect of each type of railway vehicle operated by the Depot Facility Owner, the specification for maintenance and Depot Facility Owner's Work Arising as set out in the documentation supplied to the Depot Facility Owner by the owner of that railway vehicle, as listed in of Schedule 20 of the Depot Access Agreement;

"Depot Facility Owner's Specification" means a specification referred to in Schedule 20 of the Depot Access Agreement;

"Depot Facility Owner's Variable Level of Services" means services which may be carried out at the Depot in relation to railway vehicles operated by or on behalf of the Depot Facility Owner in excess of the Depot Facility Owner's Minimum Level of Services but not exceeding the Depot Facility Owner's Maximum Level of Services;

"Depot Facility Owner's Work Arising" means further maintenance and repair work and procedures required to be carried out at the Depot on any railway vehicle operated by or on behalf of the Depot Facility Owner to prepare that railway vehicle for service and arising from maintenance, specified as such in Schedule 20 of the Depot Access Agreement;

"Depot Services" means any services provided by the Depot Facility Owner to a User in accordance with any Depot Access Agreement;

["DFO Change Proposal" means a proposal:

- (a) which, if implemented in accordance with its terms, would involve the carrying out of works of construction, reconstruction, development, redevelopment or refurbishment of, on or to the Depot or any part of it, and which either:
 - (i) would or could reasonably be expected to have the effect of changing materially and affecting adversely whether during its implementation or after its completion:

- (A) the ability of the Depot Facility Owner to provide the Depot Services; or
 - (B) the ability of the Depot Facility Owner to carry out the Depot Facility Owner's Own Services; or
- (ii) would necessitate the closure of all or part of the Depot; or
- (b) (except when such may arise pursuant to an Existing Agreement) to enter into an agreement or other arrangement which will result or could reasonably be expected to result in a Relevant Restriction;]

"Diagram" means a description of a service for the carriage of passengers or goods by railway proposed to be run by a Relevant Operator, showing the number and type of railway vehicles used for the purpose of that service and the start and end times and principal places of each relevant journey, as specified in the Depot Access Agreement to which the Relevant Operator is a party and, in the case of the Depot Facility Owner, in Schedule 20 of the Depot Access Agreement;

"Diagram Departure Time" means, in respect of any railway vehicle or combination of railway vehicles, the time specified in the relevant Diagram for the presentation of that railway vehicle or combination of railway vehicles by the Depot Facility Owner at the appropriate departure signal as being ready for departure from the Depot;

"Direction" means, in respect of a Relevant Agreement, any direction, requirement, instruction or rule binding on either or both of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;

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

"Dispute Resolution Body" has the meaning given to it in the GBR Code;

"Effective Date" means the date on which the Relevant Operator first commences use of the Depot pursuant to the relevant Depot Access Agreement (or any such date as may be specified in that agreement);

["Elements of the Depot" means those constituent parts of the Depot which form part of the Depot from time to time;]

"Emergency" means:

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

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

"Environment" means the air, water and land and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground;

"Environmental Condition" means:

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

at, in, under or originating from the Depot which (in either case) is in breach of Environmental Law and has resulted or could reasonably be expected to result in the Depot Facility Owner incurring any material liability or being subject to the direction of

any Competent Authority under Environmental Law, or could reasonably be expected otherwise materially adversely to affect the continued use of the Depot for its present use from time to time in accordance with Condition O4;

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

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

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

"Environmental Liability Commencement Date" means 3rd October 2002.

"Equipment" means the items of equipment, plant, machinery and apparatus at the Depot owned by the Depot Facility Owner from time to time;

"Excepted Equipment" means all telecommunications apparatus within the extended definition of [section 151 of the Telecommunications Act 2003] , absolutely owned by BR Telecommunications Limited or any other telecommunications operator licensed under the 1993 Act;

"Excluded Equipment" means:

- (a) the items of Equipment (if any) referred to in paragraph 6 of Schedule 1 of the Depot Access Agreement;
- (b) telecommunications apparatus within the extended definition in [section 151 of the Telecommunications Act 2003] other than Excepted Equipment;
- (c) any item of equipment not included in paragraphs (a) or (b) of this definition:
 - (i) which is (from time to time) used exclusively (whether by the Depot Facility Owner or at its direction) for the purposes of the Depot Facility Owner's railway undertaking or function; and/or
 - (ii) which from time to time forms part of the railway infrastructure (as defined in the [Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I.No. 599 2006)]) for which the Depot Facility Owner is responsible as part of the infrastructure safety case as referred to in the above regulations;

"Excluded Existing Agreements" means:

- (a) those agreements and instruments listed or described in paragraph 1.1 of Schedule 17 of the Depot Access Agreement ;
- (b) all wayleaves, easements or licences (or agreements for the foregoing) relating to the passage of services or Conduits affecting the Depot (whether or not so listed in paragraph 1.1 of Schedule 17 of the Depot Access Agreement) entered into or granted by the Depot Facility Owner or its predecessors in title at any time before the Conditions Efficacy Date, to:
 - (i) any public or local authority or public utility company or other person carrying out the function of the provision of Services; and
 - (ii) any other person;
- (c) [agreements or instruments relating to land now owned by third parties, provided that the rights and liabilities arising under such agreements or

instruments were transferred to the Depot Facility Owner under the Railtrack Transfer Scheme;]

- (d) the Demarcation Agreements;
- (e) any rights of third parties over and in respect of the Adjacent Property which result or are likely to result in a Relevant Restriction;
- (f) easements completed or to be completed pursuant to the agreement referred to in paragraph 1.3 of Schedule 17 of the Depot Access Agreement relating to BR Telecommunications Limited; and
- (g) all agreements and instruments completed or to be completed pursuant to any of the agreements referred to in paragraph 1.3 of Schedule 17 of the Depot Access Agreement relating to the Adjacent Property;

"Existing Agreements" means the Included Existing Agreements, the Excluded Existing Agreements, any Superior Estate Grant and all other agreements entered into after the Conditions Efficacy Date the entering into of and which are approved in accordance with Part C;

"Existing Works" means the works listed in paragraph 7 of Schedule 1 of the Depot Access Agreement and any other works which shall have been approved from time to time in accordance with Part C;

"Financial Undertaking" means an undertaking:

- (a) to pay the whole of the costs of carrying out a Proposal for Change or DFO Change Proposal, together with:
 - (i) any other reasonable costs, direct losses and expenses (including loss of revenue) which are incurred by the Depot Facility Owner or the User to whom it is given to the extent that such costs are directly attributable to, and are incurred in the carrying out of, the change in question; and
 - (ii) such part of any increased net costs of operating the Depot as shall be directly attributable to the carrying out of the change in question;

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

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

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

"Fleet Vehicle" means those railway vehicles in respect of which Depot Services are to be provided;

["Full Proposal" means any DFO Change Proposal, not being a Material Variation, made subsequent to or instead of an Initial Proposal in respect of that DFO Change Proposal, accompanied only by the information set out in Condition C1.4.4, and made prior to the commencement of any works falling within the definition of DFO Change Proposal;]

"Full Replacement Cost" means the cost of replacing the Depot to the standard set out in Condition E2.2.2 and shall include any Value Added Tax and other taxes payable, reasonable provision for costs escalation between the commencement or renewal date of insurance cover and the date of replacement, professional and statutory fees, demolition, site clearance and shoring up;

"GBR Code" means the GBR Code as modified from time to time;

"GBR" means Great British Railways Limited, a company registered in England under number [**] having its registered office at [**];

"Good Industry Practice" means acting in a proper and proficient manner in accordance with methods and practices customarily used in good and prudent railway industry practice (including Railway Group Standards and Safety Obligations) and with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced and competent operators of light maintenance depots engaged in similar activities under similar circumstances and conditions;

"Hand-Over Time" means, in respect of any railway vehicle or combination of railway vehicles, the Diagram Departure Time less that period of time specified in paragraph 9 of Schedule 1 of the Depot Access Agreement as the time allowed for Beneficiary Train Preparation for that type of railway vehicle or combination of railway vehicles;

"Included Existing Agreements" means:

- (a) those agreements or instruments listed or described in paragraph 1.2 of Schedule 17 of the Depot Access Agreement;
- (b) such other agreements or instruments completed or to be completed pursuant to the agreements referred to in paragraph 1.3 of Schedule 17 of the Depot Access Agreement other than:
 - (i) the Demarcation Agreements;
 - (ii) easements referred to in paragraph (f) of the definition of "Excluded Existing Agreements"; and
 - (iii) any agreement or instrument relating to the Adjacent Property which does not result and is not likely to result in a Relevant Restriction;
- (c) all rights of third parties acquired or granted at any time before the Conditions Efficacy Date (other than those in paragraph (c) of the definition of "Excluded Existing Agreements") over or in respect of the occupation of (or the entitlement to occupy) any part of the Depot; and
- (d) all rights of third parties arising under Statute or by operation of law;

["Initial Proposal" means a DFO Change Proposal accompanied only by the information set out in Condition C1.4.3 which may be made at any time prior to a Full Proposal;]

"Insured Risks" means:

- (a) (to the extent that these are normally insurable in respect of the Depot on normal commercial terms with a member of the Association of British Insurers)

fire, lightning, explosion, aircraft but not hostile aircraft, subterranean fire, earthquake, riot and civil commotion, malicious damage, impact (including impact by rolling stock of any type), flood, storm, tempest and subsidence; and

- (b) such other insurable risks as the Depot Facility Owner and the Users may agree in accordance with the terms of this Depot Code;

"Last Year" means the period beginning on the day immediately following the last day of the last complete Financial Year prior to the Expiry Date, and ending on the earlier of the Expiry Date or the date of termination of the Depot Access Agreement;

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

- (a) any enactment to the extent that it applies to that person; and
- (b) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) above to have effect in a way which is different to that in which it previously had effect;

"Maintenance" means:

- (a) in relation to every part of the Depot:
 - (i) any treatment, operation, attendance or work of a routine and foreseeable nature whether necessary at regular or irregular intervals which is required from time to time to facilitate the efficient and safe operation and/or use of the relevant part for any purpose permitted by Condition O4 in compliance with the requirements of any Statute;
 - (ii) the replacement of such parts of the Depot as are designed for regular replacement; and
 - (iii) any inspection or certification required by Statute or for the purpose of any treatment, operation or works described in this paragraph (a);

- (b) in relation to all Equipment, all treatment, operations and works which are:
 - (i) recommended in a current manufacturer's operating or maintenance manual at the intervals and in the manner so recommended but where there are no such manuals in relation to any Equipment, such treatment, operations or works as accord with current railway industry practice in relation to the maintenance of such Equipment; and
 - (ii) necessary to comply with Good Industry Practice, and to the extent of any inconsistency between paragraph (b)(i) and this paragraph (b)(ii), this paragraph (b)(ii) shall prevail;

["**Material Variation**" means, in respect of any DFO Change Proposal which has been approved, any proposal, or series of minor modifications which together would constitute a proposal (other than one which has been accepted pursuant to the provisions of Conditions C3.7 or C4), which if implemented would:

- (a) have the effect of a Proposal for Change; and/or
- (b) have an effect on the Depot which is materially and adversely different from that detailed in the relevant DFO Change Proposal;]

["**Material Variation Question**" means any dispute or question as to whether or not any works proposed as part of, or proposed modification to, a DFO Change Proposal is a Material Variation;]

"**Maximum Level of Services**" means the maximum volume of Depot Services which the Depot Facility Owner has undertaken to provide to a User in respect of each Accounting Period, pursuant to and as specified in the relevant Depot Access Agreement;

"**Minimum Charge**" means, in respect of each Accounting Period, the aggregate of the charges payable in respect of the Minimum Level of Services prescribed for that Accounting Period;

"Minimum Level of Services" means the minimum volume of Depot Services which each User has undertaken to pay for and the Depot Facility Owner has undertaken to provide to that User in respect of each Accounting Period, pursuant to and as specified in the relevant Depot Access Agreement;

"Minimum Sum" shall have the meaning given to it in Condition E2.5;

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

"Network" means the network of which the Depot Facility Owner is the facility owner and which is situated in England, Wales and Scotland;

"Network Emergency" means any situation or circumstance which the Depot Facility Owner reasonably considers requires immediate or urgent action in order:

- (a) to safeguard the safety or security of persons or property on or adjacent to the Network or any part thereof; or
- (b) where such situation or circumstance was unforeseen and could not reasonably have been foreseen, to maintain or restore the effective operation of the Network or any part thereof;

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

["Notice of Objection" means a notice given by a User to the Depot Facility Owner or given by the Depot Facility Owner to each User during the Decision Period which contains a statement that the User or the Depot Facility Owner (as the case may be) objects to the Proposal for Change or DFO Change Proposal in question on the grounds that the change in question would have a material and adverse effect on its use of or interest in the Depot, as the case may be;]

"Notifiable Condition" means such condition (if any) as shall be specified in Schedule 18 to a Depot Access Agreement;

["Passenger Operator" means a passenger service operator with permission to use the Depot pursuant to a Depot Access Agreement [and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)];]

"Plan" means the plan of the Depot to be provided by the Depot Facility Owner to any User or Potential User on request;

"Planning Acts" means the "planning Acts" as defined in section 336 Town and Country Planning Act 1990, the Planning and Compensation Act 1991 and any other Statute of a similar nature;

"Potential Users" means potential or prospective beneficiaries at the Depot including any other persons which the Depot Facility Owner has identified as being a potential or prospective beneficiary at the Depot;

["Proposal for Change" means a proposal:

- (a) for any works in relation to the Depot which, if implemented in accordance with its terms, would or could reasonably be expected to have the effect of changing materially and affecting adversely whether during its implementation or after its completion:
 - (i) the ability of the Depot Facility Owner to provide the Depot Services; or
 - (ii) the ability of the Depot Facility Owner to carry out the Depot Facility Owner's Own Services; or
- (b) (except when such may arise pursuant to an Existing Agreement) to enter into any agreement or other arrangement the purpose or effect of which involves or could reasonably be expected to involve any of the matters described in (a) above; or
- (c) to close all or part of the Depot;

- (d) (except when such may arise pursuant to an Existing Agreement) to enter into an agreement or other arrangement which will result or could reasonably be expected to result in a Relevant Restriction;

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

["**Proposer**" means a person who makes a Proposal for Change or a DFO Change Proposal;]

["**Railtrack Transfer Scheme**" means the transfer scheme made under section 85 of the 1993 Act by the Board in favour of Railtrack with an effective date of 1st April 1994 and references to that scheme include (where the context requires) any transfer schemes which affect or are made in addition to that transfer scheme, made from time to time under section 85 of the 1993 Act by the Board with an effective date after 1 April 1994;]

"Railway Group Standards" means:

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

in each case as authorised pursuant to the document known as the Railway Group Standards Code prepared in accordance with the licence held by the Depot Facility Owner;

"Railway Substructure" means any bridge, viaduct, railway arch, raft, tunnel, passageway or substructure which is either shown by green hatching on the Plan or identified pursuant to Part S of the Depot Code;

"Railway Superstructure" means such part of any bridge which belongs to the Depot Facility Owner, viaduct, railway arch, raft or overlying structure which is either shown by red hatching on the Plan or identified pursuant to Part S of the Depot Code;

"Regulator" means the Office of Rail and Road;

"Relevant Agreement" means any agreement or other instrument incorporating any or all of this Depot Code;

"Relevant Date" means, in relation to a Depot Access Agreement, the first date upon which a Depot Access Agreement in respect of the Depot comes into effect;

"Relevant Operator" means each of the Depot Facility Owner and any User;

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

"Repair" means in relation to every part of the Depot (including the Equipment), the carrying out of any work required:

- (a) so that the Depot is safe for operation and/or use for any purpose permitted by Condition O4 in compliance with the requirements of any Statute; and
- (b) to keep the Depot in a condition which is consistent with Good Industry Practice;

but does not include the carrying out of:

- (d) any Maintenance;
- (e) any work to the Depot which is the responsibility of any third party now or in the future entitled to occupy any part of the Depot under any of the Existing Agreements; or
- (f) renewal of any item of Equipment or Element of the Depot save where the Depot Facility Owner elects to carry out such renewal;

["Requisite Majority" means passenger service operators whose train departures from the Depot, expressed as a percentage of Total Departures, together are at least equal to [85%] of the Total Departures as at the relevant date;]

"Safety Obligations" means all applicable obligations and laws concerning health and safety (including any duty of care arising at common law, arising under Statute, statutory instrument, and codes of practice compliance with the provisions of which is mandatory) in Great Britain;

"Secretary of State" means the Secretary of State referred to in section 1 of the 1993 Act;

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

"Spot Bid" has the meaning ascribed to it in the [GBR Code];

"Statute" includes (with the exception of the 1993 Act and the 2026 Act) every existing or future Act of Parliament and every existing or future instrument, scheme, rule, regulation, bye-law, order, notice, direction, licence, consent or permission made or given under any of them and reference to a Statute includes any amendment, extension or re-enactment of it for the time being in force;

"Subrogation" means the right of the insurer to legally pursue a third party to recover the amount of the claim paid to the insured for their loss.

"Substantial Damage" means damage or destruction of a building on the Depot or of any of the Equipment which is so extensive that repair or reinstatement of that building or that Equipment to its original form would not be economically viable;

"Superior Estate Grant" means the agreement or instrument granting any estate right or interest of any nature:

- (a) under which the Depot Facility Owner for the time being holds the Depot; or
- (b) for the time being expectant (immediately or mediately) on the expiry or sooner determination of an estate right or interest referred to in paragraph (a); or
- (c) out of which (whether or not immediately) an estate right or interest referred to in paragraph (a) was derived;

"Superior Estate Owner" means any person for the time being entitled to an estate right or interest referred to in paragraph (b) or paragraph (c) in the definition of Superior Estate Grant;

"System" means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site;

"Systems Interface" means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them;

"Third Party Works" means Discretionary Third Party Works and Non-Discretionary Third Party Works;

"Timetable Development Period" has the meaning ascribed to it in the [GBR Code];

"Total Departures" means the aggregate departures of trains from the Depot where provided for in Diagrams during the immediately preceding six Accounting Periods (or such lesser number of whole Accounting Periods as shall have elapsed from the Commencement Date);

"Train Ready Time" means, in respect of any train, the time at which that train is presented by the Depot Facility Owner at the appropriate depot departure signal as being ready for departure from the Depot;

"User" means a person (whether or not an operator of trains) who is a beneficiary in respect of a Depot Access Agreement [and GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services)];

"User's Specification" means any specification referred to in any schedule to a Depot Access Agreement;

"Value Added Tax" or **"VAT"** means value added tax within the meaning of the Value Added Tax Act 1994;

"Variable Charges" means in respect of each Accounting Period, the aggregate of the charges payable in respect of the Variable Level of Services provided during that Accounting Period;

"Variable Level of Services" means Depot Services provided by the Depot Facility Owner to a User in excess of the Minimum Level of Services but not exceeding the Maximum Level of Services specified in the Depot Access Agreement;

"Work Arising", in relation to any User, has the meaning ascribed to it in the Depot Access Agreement between the Depot Facility Owner and that User; and

"Working Timetable" has the meaning ascribed to it in Part [D] of the GBR Code.

1.3 **Several Liability**

Each User and the Depot Facility Owner shall be severally responsible for its own acts, omissions, costs and liabilities and for the acts, omissions, costs and liabilities of its employees, agents and subcontractors and shall, save as provided elsewhere in any Relevant Agreement, not be responsible for the acts, omissions, costs and liabilities of any other person.

1.4 **Relevant Special Conditions**

This Depot Code incorporate the provisions (if any) set out in Paragraph 8.1 of Schedule 1 of the Depot Access Agreement.

1.5 **Construction of agreements**

References in any Depot Access Agreement or this Depot Code to an agreement or any other document (including any Diagram, Running Maintenance Programme or any Depot Facility Owner's Running Maintenance Programme) include that agreement or other document as from time to time supplemented, varied, amended or novated (any such being a "change") only if one of the following conditions shall have been satisfied:

- (a) if the change is the amendment of an access agreement, the provisions of Part B shall have been satisfied;
- (b) not used;

- (c) if the change is the amendment of a document other than an access agreement (whether it is a change made pursuant to the terms of the document in question or in any other manner), the change shall be one:
 - (i) made in accordance with the terms of the relevant document or this Depot Code; or
 - (ii) required or permitted by applicable law.

[1.6 Where references in this Depot Code are made to an entity's Depot Access Agreement, such references shall, in the context of GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services), be read as if GBR (acting in its capacity as the provider and operator of railway passenger services and any related train services) had entered into a Depot Access Agreement with the Depot Facility Owner.]

PART B
MODIFICATIONS TO THE DEPOT ACCESS DOCUMENTATION

Condition B1 - Application of Part C of the GBR Code

- 1.1 Where a party wishes to amend this Depot Code, the provisions of Part C of the GBR Code shall apply.

PART C
CHANGES TO THE DEPOT

Condition C1 - Proposal for Change

- 1.1 No User or the Depot Facility Owner shall take any action falling within the definition of a Proposal for Change or a DFO Change Proposal, save in accordance with this Part C, except:
 - 1.1.1 in performance of an obligation imposed on it under this Depot Code which is expressed not to require compliance with this Part C; or
 - 1.1.2 in exercise of a right granted, excepted or reserved to it under Condition M3.1;
 - 1.1.3 where a restriction, suspension or alteration to any permission to use the Depot to permit that action may be imposed under Condition D1 or D2.1 and the relevant Condition is not expressed to require compliance with this Part C; or
 - 1.1.4 where Condition G8.5 provides that this Part C does not apply.
- 1.2 Any User shall be entitled at any time to make a Proposal for Change other than a DFO Change Proposal. The Depot Facility Owner shall be entitled to make a DFO Change Proposal and, if necessary for the purpose of satisfying any of its obligations under this Depot Code, any other Proposal for Change.
- 1.3 A Proposal for Change shall be sent to the Depot Facility Owner, together with sufficient copies of such proposal to enable the Depot Facility Owner to distribute a copy to each person entitled to receive one.
- 1.4 A Proposal for Change or a DFO Change Proposal shall be in writing and shall contain:
 - 1.4.1 in respect of any Proposal for Change or any DFO Change Proposal, such information in relation to the proposal as shall be reasonably necessary to enable each of the persons to whom it is required to be sent in accordance with Condition C1.5 to evaluate the effect which the change in question or the process of its implementation, if made in accordance with the terms of the proposal, will have or is likely to have on their customers and their businesses (where applicable) and any proposals for apportionment of the costs of carrying

out the change in question and any Financial Undertaking Provided that in respect of a DFO Change Proposal where such information is not available at the time of any Initial Proposal, the Depot Facility Owner shall provide such information as part of a Full Proposal;

1.4.2 in respect of a DFO Change Proposal, the information, indemnities and undertakings described in Conditions C3.1 and C3.2;

1.4.3 where the proposal is an Initial Proposal such information described in Condition C3.1 as is available to the Depot Facility Owner at the time of making the proposal provided that the Depot Facility Owner shall be entitled to make more than one Initial Proposal;

1.4.4 where the proposal is a Full Proposal, all such information described in Condition C3.1 insofar as such information has not already been supplied in any Initial Proposal;

1.4.5 where the proposal is a Material Variation, all such information described in Condition C3.1 as is relevant to the Material Variation.

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

1.5.1 promptly provide a copy of such proposal to each User , together with any information required to be provided by it or received by it from the person making such a proposal, under Condition C1.4;

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

1.5.3 give a reasonable period (not being less than 45 days) to each User to submit a Notice of Objection in relation to the proposal.

- 1.6 Copies of any representations or objections received by the Depot Facility Owner from any person listed in Condition C1.5.1, or made by the Depot Facility Owner on his own behalf, shall be provided to the relevant Proposer and every other User within 5 Business Days of their receipt by the Depot Facility Owner, or when made by the Depot Facility Owner shall be provided promptly.
- 1.7 The Depot Facility Owner shall consult with the relevant Proposer in relation to that proposal and that person shall be entitled to amend the proposal and resubmit it to the Depot Facility Owner in accordance with the procedures laid down in this Condition C1.
- 1.8 A DFO Change Proposal shall only be made by the making of an Initial Proposal, a Full Proposal or a Material Variation.
- 1.9 Acceptance by the Relevant Operators of an Initial Proposal in accordance with Condition C4 is only acceptance of such details as comprise such proposal and such acceptance is accompanied by a reservation for subsequent approval by the Relevant Operators of any Material Variations and of all matters set out in Condition C3.1 not particularised in the Initial Proposal.
- 1.10 The Depot Facility Owner shall not commence or proceed with any works falling within the definition of DFO Change Proposal until a Full Proposal has been accepted in accordance with Condition C4.
- 1.11 No Relevant Operator may withdraw any acceptance of any Initial Proposal as provided for in Condition C1.9 save where:
- (a) Condition C3.4 applies; and
 - (b) details supplied as part of any subsequent Initial Proposal or Full Proposal give rise to a Material Variation of any Initial Proposal previously accepted by any Relevant Operator pursuant to Condition C4 unless such Material Variation is not accepted or is rejected in accordance with C4.

Condition C2 - Evaluation and response to a Proposal for Change or DFO Change Proposal

- 2.1 Each Consultee shall be entitled to be paid in accordance with Conditions C2.10 and C2.11 100% of all costs reasonably incurred by it in evaluating and responding to any Proposal for Change or DFO Change Proposal.
- 2.2 Each Consultee shall, in respect of any Proposal for Change or DFO Change Proposal, if requested to do so in writing by the Depot Facility Owner, provide (at no cost to the Proposer), a preliminary written response (which, unless the Consultee indicates otherwise, shall be binding on it). Such response shall be provided as soon as practicable, and in any event within the period of 28 days commencing on the date of the request for a preliminary response, and any such preliminary response in which the Consultee dissents from the Proposal for Change or DFO Change Proposal shall include the reasons for such dissent.
- 2.3 Each Consultee shall, in respect of any such Proposal for Change or DFO Change Proposal, upon request from the Depot Facility Owner from time to time, provide the Depot Facility Owner with:
- 2.3.1 a written estimate of the costs which may be reasonably incurred by it in evaluating and responding to such proposal; and
- 2.3.2 such information as may be reasonably necessary to assess the reasonableness of any such estimate.
- 2.4 It shall be a condition of every Proposal for Change or DFO Change Proposal that the Proposer thereof shall, if requested by any Consultee, provide to that Consultee reasonable assurances of payment in respect of any material work to be carried out for the purposes of its evaluation and response, before commencing such work.
- 2.5 Each Consultee shall ensure that any estimates given by it pursuant to Condition C2.3 are, so far as reasonably practicable, accurate on the basis of the information available to it.
- 2.6 A Consultee shall incur no further costs (except any costs which cannot reasonably be avoided) in evaluating and responding to a Proposal for Change or DFO Change Proposal with which the Proposer does not wish to proceed, upon receipt of notice to that effect.

- 2.7 Each Consultee shall use its reasonable endeavours to minimise its costs of evaluating and responding to any Proposal for Change or DFO Change Proposal, and shall, where it reasonably considers it appropriate, liaise with other Consultees in order to achieve that minimisation.
- 2.8 Any Proposer other than the Depot Facility Owner shall use all reasonable endeavours to facilitate consultation by the Depot Facility Owner with the persons specified in Condition C1.5.1 to the extent reasonably necessary so as to enable those persons properly to evaluate and respond to that proposal.
- 2.9 The Depot Facility Owner shall, at the cost of the Proposer, exercise its rights under this Condition C2 (including the enforcement of the obligations of a Consultee to the Depot Facility Owner under this Condition C2) in accordance with such reasonable requests as may from time to time be made by the Proposer.
- 2.10 If the Depot Facility Owner is the Proposer, it shall make the payments specified in Condition C2.1.
- 2.11 If the Depot Facility Owner is not the Proposer, such Proposer shall pay to the Depot Facility Owner an amount sufficient to enable the Depot Facility Owner to make the payment specified in Condition C2.1 (and the amount due to the Depot Facility Owner) and the Depot Facility Owner shall thereupon make the payments specified in Condition C2.1.

Condition C3 - DFO Change Proposal

- 3.1 A DFO Change Proposal shall incorporate a detailed plan of the proposed works on or to the Depot, and shall include such of the following information as is required by Condition C1.4.2:
- 3.1.1 details as to those parts of the Depot which will be affected during and after implementation of the proposal;
- 3.1.2 the nature and detailed specification of the development to which the proposal relates, including the design, type, size and location of any proposed
- (a) alternative facilities (both whilst any works are being carried out and after the works have been completed);

- (b) (if requested by the Depot Facility Owner) alternative accommodation and facilities in place of those normally occupied by each Relevant Operator and any affected third party; and
- 3.1.3 the estimated timetable for the commencement, conduct and completion of the development to which the proposal relates and each material part thereof;
- 3.1.4 proposals for obtaining any relevant planning consents;
- 3.1.5 proposed working arrangements (including those in relation to safety);
- 3.1.6 proposed alternative arrangements in respect of access to and from the highway whilst the works are being carried out (if appropriate);
- 3.1.7 proposed insurance arrangements;
- 3.1.8 any proposal to exercise any right under Condition C10 and the date upon which the Depot Facility Owner proposes to exercise such right; and
- 3.1.9 confirmation from the Depot Facility Owner that any work plan entered into with any third party relating to the works comprised in any DFO Change Proposal will where relevant contain provisions which require such third party to notify the Depot Facility Owner of any Material Variation.
- 3.2 A DFO Change Proposal shall be accompanied by the following:
 - 3.2.1 the offer of an indemnity in favour of each User to pay to it such sum as shall fairly and reasonably compensate that person for any material adverse effect of the proposal on its existing and future business; and
 - 3.2.2 the offer of an undertaking in favour of each User and each affected third party to whom the Depot Facility Owner has agreed to make available alternative accommodation or facilities to enter into, prior to the commencement of any works pursuant to the proposal, such ancillary deeds and agreements as may reasonably be required by that person, in relation to his permission to use the Depot (in the case of a User), in relation to its operation of the Depot (in the

case of the Depot Facility Owner) and in relation to such alternative accommodation (in the case of such a third party).

3.3 Not used.

3.4 A DFO Change Proposal shall cease to have effect in each of the following circumstances:-

3.4.1 in the case of a Full Proposal not preceded by any Initial Proposal if the works in the relevant DFO Change Proposal have not commenced within three years (or such other period as the relevant approved DFO Change Proposal shall specify) of the date upon which the DFO Change Proposal was approved pursuant to this Part C;

3.4.2 (a where the Depot Facility Owner makes any Initial Proposal in respect of any DFO Change Proposal if the Full Proposal is not submitted to the Users for approval within three years from the date upon which the first Initial Proposal for that DFO Change Proposal is approved pursuant to this Part C; and

(b where the works of any such approved DFO Change Proposal have not commenced within two years (or such other period as the approved DFO Change Proposal shall specify) of the date upon which the Full Proposal is approved as a DFO Change Proposal pursuant to this Part C;

3.4.3 in the case of a Material Variation if the works described in the Material Variation have not commenced within three years (or such other period as the Material Variation shall specify) of the date upon which the Material Variation is approved as a DFO Change Proposal pursuant to this Part C.

3.5 Each or any of the Users and the Depot Facility Owner may by notice to each of the others of them request that an expert shall be appointed by agreement between them for the purpose of determining any Material Variation Question which may arise at any time in connection with any particular DFO Change Proposal and in default of such agreement within fourteen days of such notice the Disputes Secretary appointed under

Part M of the GBR Code shall appoint that expert on the request of any User or the Depot Facility Owner.

- 3.6 Each of the Users and the Depot Facility Owner may refer the Material Variation Question to the expert appointed pursuant to Condition C3.5. Each or any of the Users and the Depot Facility Owner (other than the person who referred the Material Variation Question to the expert) who wish to be a party to the dispute shall then submit their written submissions to the expert within fourteen days of receipt of written notification of his appointment. The expert shall then consider all submissions received by him, determine the Material Variation Question and notify the Depot Facility Owner and each User of his decision in writing within fourteen days. The expert shall act as an expert and not as an arbitrator and the decision of the expert shall in the absence of manifest error be final and binding for the purposes of this Depot Code. All costs incurred by the expert and all reasonable costs of the parties to the dispute shall be borne by whichever of the Users and the Depot Facility Owner as the expert determines. In the absence of such determination the costs incurred by the expert and all reasonable costs of the successful party to the dispute shall be borne equally by all other parties to the dispute, each such other party bearing their own costs.
- 3.7 The Depot Facility Owner shall be entitled to propose modifications to a DFO Change Proposal and shall in that regard supply all such information described in Condition C3.1 as is relevant to those modifications and the Users shall be deemed to have accepted for the purposes of this Depot Code that any such modifications which are referred to in any information supplied are not a Material Variation to that DFO Change Proposal if:
- (a) the Depot Facility Owner has stated when supplying that information that in its opinion such modifications are not a Material Variation; and
 - (b) none of the Users notifies the Depot Facility Owner within fourteen days of the receipt of that information that it disputes that opinion.

Condition C4 - Acceptance of a Proposal for Change or DFO Change Proposal

- 4.1 Subject to the remaining provisions of this Condition C4, a Proposal for Change or DFO Change Proposal shall be deemed to have been accepted at the expiry of a Decision Period if no Relevant Operator shall have given a Notice of Objection.

- 4.2 Any dispute as to the validity of a Notice of Objection shall be resolved in accordance with Condition H5.
- 4.3 Notwithstanding the failure of a Proposal for Change or DFO Change Proposal to be accepted pursuant to Condition C4.1 and subject to Condition C4.5, it shall be deemed to have been accepted if a Financial Undertaking has been given within the Decision Period by the Depot Facility Owner, any User or number of Users individually or collectively to the remaining Users or the Depot Facility Owner (as appropriate).
- 4.4 The Depot Facility Owner shall, as soon as reasonably practicable after the expiry of 8 Business Days from the end of the Decision Period, notify each User of the acceptance or rejection of the relevant Proposal for Change or DFO Change Proposal and of any notice given under Condition C4.5 and received within that period.
- 4.5 A Proposal for Change or DFO Change Proposal shall not be accepted or rejected if:
- 4.5.1 a Relevant Operator shall have:
- (a) given notice to all other Relevant Operators within 30 days after the end of the Decision Period of his intention to commence proceedings of the kind referred to in Condition C4.5.2; and
 - (b) commenced such proceedings not later than 30 days after the giving of such notice; and
- 4.5.2 the objector shall establish in final proceedings in accordance with Condition H5 that if the Proposal for Change or DFO Change Proposal in question is carried out, or not carried out, as the case may be, in accordance with its terms:
- (a) its interests under or in respect of the Relevant Agreement would be, or are likely to be, unfairly prejudiced; and
 - (b) any such prejudice which it would or would be likely to sustain outweighs, or is likely to outweigh, any prejudice which any other User or the Depot Facility Owner shall have established that, whether alone or together with any other Relevant Operator, it would or would be likely to sustain in respect of its interests under or in respect of a Relevant

Agreement in the case of a Relevant Operator or in relation to the Depot in respect of the Depot Facility Owner if the Proposal for Change or DFO Change Proposal were carried out, or not carried out (as the case may be), in accordance with its terms.

4.6 In determining whether the interests of any User or the Depot Facility Owner shall be, or shall be likely to be, prejudiced for the purposes of Condition C4.5, regard shall be had to all relevant circumstances, and in particular there shall also be taken into account:

4.6.1 the expectations which:

- (a) the Users in question has in respect of its interests in relation to the Depot; and
- (b) the Depot Facility Owner has in respect of its interests in relation to the Depot and, to the extent that any Proposal for Change relates in whole or part to items of Equipment;

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

4.6.3 the interests of other users of the Depot; and

4.6.4 where the Depot Facility Owner has served a Notice of Objection in accordance with Condition C1.5.3, the extent to which the Depot Facility Owner's interests would be materially and adversely affected if the Proposal for Change were implemented in accordance with its terms,

and, in addition, in the case of a DFO Change Proposal:

4.6.5 the planning policies and restraints under the Planning Acts which influence the design of the proposed development, including any new light maintenance depot and their effect on the viability of the proposal;

- 4.6.6 the likely property market conditions relating to the proposed development and railway operational needs of the Depot Facility Owner and each User relating to the demand for a new or improved light maintenance depot and their effect on the viability of the proposal; and
- 4.6.7 the benefits or disadvantages which have accrued or are likely to accrue to the Depot Facility Owner and each User in consequence of the proposal other than any loss of development profit which the Depot Facility Owner shall sustain or be likely to sustain except and to the extent that the tribunal shall be satisfied that any such loss of development profit ought properly to be taken in account having regard to the overall impact of the proposal on the respective railway businesses of the Depot Facility Owner and the Users and the relative importance of the benefits and disadvantages to each of them.
- 4.7 A Proposal for Change or DFO Change Proposal shall be accepted or rejected in accordance with the outcome of such final proceedings.
- 4.8 Notwithstanding the other provisions of this Condition C4, a Proposal for Change shall be deemed to have been accepted if every User and the Depot Facility Owner (other than the Proposer) shall consent in writing to that Proposal for Change.
- 4.9 Where a Proposal for Change is deemed to be accepted pursuant to Condition C4.8:
- 4.9.1 the Decision Period in relation to that Proposal for Change shall be deemed to have ended on the date on which the condition specified in Condition C4.8 shall have been satisfied; and
- 4.9.2 Condition C4.5 shall not apply in respect of that Proposal for Change.

Condition C5 – Not used

Condition C6 – Not used

Condition C7 – Not used

Condition C8 - Implementation of a Proposal for Change or DFO Change Proposal

- 8.1 The Depot Facility Owner shall not be obliged to implement an approved DFO Change Proposal, but if it does so it shall carry out the change proposed in accordance with the approved DFO Change Proposal. The Depot Facility Owner shall give notice to the Users as soon as it becomes aware that there is no reasonable prospect of the DFO Change Proposal being implemented.
- 8.2 The Depot Facility Owner shall carry out the changes proposed in accordance with any Proposal for Change which shall have been approved pursuant to this Part C.
- 8.3 Subject to Condition C8.4 and insofar as such costs are not the subject of any Financial Undertakings, the cost of implementing a Proposal for Change shall be apportioned between each User and the Depot Facility Owner in accordance with the provisions of that Proposal for Change.
- 8.4 The costs of implementing a DFO Change Proposal shall be borne by the Depot Facility Owner.

Condition C9 - Changes imposed by law

- 9.1 Where the Depot Facility Owner is required (other than at its own request or instigation) to implement a change which would otherwise be the subject of a Proposal for Change or DFO Change Proposal, as a result of any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition H5, the Depot Facility Owner shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions C1.5.1 and C1.5.2 in respect of that change as if it were a Proposal for Change or DFO Change Proposal, as the case may be, and shall thereafter keep each Relevant Operator, as appropriate, fully informed of the progress in or towards implementing that change but shall otherwise be entitled to implement such change without being required to comply with any other requirement of this Part C.
- 9.2 The provisions of Condition P2 shall have effect in relation to any costs of complying with or in consequence of any change referred to in Condition C9.1.

Condition C10 - Unilateral Amendment of Diagrams and Running Maintenance Programmes

- 10.1 The Depot Facility Owner shall be entitled at any time and from time to time to make such variations or amendments to any of the Depot Facility Owner's Diagrams or any

of the Depot Facility Owner's Running Maintenance Programmes or Depot Facility Owner's Specifications as it may in its absolute discretion determine provided that:

- (a) any such variation or amendment would not or could not reasonably be expected to have the effect of changing materially and affecting adversely the ability of the Depot Facility Owner to provide Depot Services;
- (b) any such variation or amendment will have effect from the date which is 5 Business Days after the date when the Depot Facility Owner gives notice to each User of such variation or amendment; and
- [(c) the variation or amendment is one which is permitted by Condition A1.5.]

10.2 Any User shall be entitled at any time and from time to time to make such variations or amendments to any of the User's Diagrams or any of the User's Running Maintenance Programmes or User's Specifications as it may in its absolute discretion determine provided that:

- (a) such variation or amendment would not or could not reasonably be expected to have the effect of changing materially and affecting adversely the ability of the Depot Facility Owner to provide Depot Services or the Depot Facility Owner's Own Services;
- (b) any such variation or amendment will have effect from the date which is 5 Business Days after the date when the User gives notice to the Depot Facility Owner of such variation or amendment; and
- [(c) the variation or amendment is one which is permitted by Condition A1.5.]

PART D
WORKS, REPAIRS AND MAINTENANCE

Condition D1 - Existing Works, Third Party Works and Emergencies

- 1.1 Subject to Conditions D2.4 and D.3 and notwithstanding the provisions of its licence, the Depot Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Depot if and to the extent that it is reasonably necessary to:
- 1.1.1 permit the carrying out of Existing Works or Non-Discretionary Third Party Works, provided that in the case of Existing Works the Depot Facility Owner shall consult with each User and carry out the Existing Works in each case in accordance with the requirements specified in paragraph 7 of Schedule 1 of the Depot Access Agreement;
 - 1.1.2 safeguard the safety or security of persons or property in an Emergency at or affecting the Depot;
 - 1.1.3 in a Network Emergency; or
 - 1.1.4 if necessary in accordance with Condition M3.1.

Condition D2 - Repairs and Maintenance and other works

- 2.1 Subject to Conditions D2.3 and D3.1, the Depot Facility Owner shall be entitled to restrict, suspend or alter any permission to use the Depot if and to the extent that it is reasonably necessary to:
- 2.1.1 permit Repair, Maintenance, Discretionary Third Party Works or Minor Works to be made or carried out at or in relation to the Depot;
 - 2.1.2 permit any works conducted in accordance with the provisions of Part K to be made or carried out subject to compliance with the provisions of Part C insofar as such works involve a Proposal for Change;
 - 2.1.3 permit any action to prevent, mitigate or remedy any Environmental Condition to be made or carried out in accordance with the provisions of Part M subject to compliance with the provisions of Part C insofar as such action involves a Proposal for Change (save where otherwise provided for in Part M);

- 2.1.4 permit any works conducted in accordance with an obligation under Part E, to be made or carried out, subject to compliance with the provisions of Part C where such works are undertaken to remedy Substantial Damage; and
- 2.1.5 permit any works conducted in accordance with the Direction of any Competent Authority or as a result of any Change of Law, subject to compliance with the provisions of Condition C9.
- 2.2 Not used.
- 2.3 The Depot Facility Owner shall, if it intends to restrict, suspend or alter any permission to use the Depot in accordance with Condition D2.1 (otherwise than in a trivial respect):
 - 2.3.1 provide reasonable notice to each User of:
 - (a) the date and time proposed for the restriction, suspension or alteration; and
 - (b) a reasonable programme of works for the carrying out of the works in question; and
 - 2.3.2 use all reasonable endeavours timeously to consult with each Relevant Operator in relation to such restriction, suspension or alteration and, as far as reasonably practicable, shall minimise the extent and period of any such restriction, suspension or alteration, having regard to the likely effect of the relevant works on the business of each Relevant Operator who may be affected.
- 2.4 The Depot Facility Owner shall, as far as is reasonably practicable, minimise the extent and period of any restriction, suspension or alteration pursuant to Condition D1 and D2.
- 2.5 Where any Existing Works are proposed to be carried out:
 - 2.5.1 where the Depot Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts

C and D as if the exercise of the discretion in question were a Proposal for Change; and

2.5.2 where it has no such absolute discretion in relation to the carrying out of such works it shall, so far as reasonably practicable, comply with Condition D3.

Condition D3 - Alternative arrangements

3.1 Where the Depot Facility Owner restricts, suspends or alters permission to use the Depot in accordance with Condition D1 or D2, it shall, to the extent reasonably practicable, make prompt and adequate provision, to a standard which is as near as is reasonably practicable to the standard at the Depot provided for in the Relevant Agreement, for:

3.1.1 suitable alternative arrangements in respect of access to and egress from the highway; and

3.1.2 each User's Associates (other than passengers) to pass to and from trains operated by or on behalf of that User which obtain Depot Services at the Depot,

and the Depot Facility Owner shall use all reasonable endeavours to make prompt and adequate provision for suitable alternative arrangements so as to enable each User and its Associates to obtain Depot Services at the Depot with minimum disruption, difficulty or inconvenience.

Condition D4 – Not used

Condition D5 - The Depot Facility Owner's obligations

5.1 The Depot Facility Owner shall ensure that:

5.1.1 Maintenance and/or Repair (as the case may be) is carried out to all Equipment and all parts of the Depot in accordance with Good Industry Practice and renewal shall be undertaken whenever it is fair and equitable that renewal should take place it is reasonably necessary and the most economic method of repair;

5.2 The Depot Facility Owner's obligations in Condition D5.1 shall extend to adequately painting and decorating (which shall include the application of preservative treatments where appropriate) the interior and exterior of any buildings forming part of the Depot.

5.3 The Depot Facility Owner shall not be in breach of its obligations under Conditions D5.1 and D5.2 if, and to the extent that, the Depot or the relevant part of it is subject to any Existing Agreement and, having taken all reasonable steps to fulfil its obligations under Conditions D5.1 and D5.2, the Depot Facility Owner has been unable to fulfil those obligations by virtue of the provisions of such Existing Agreement or any failure to obtain any consent (either unconditionally or on reasonable terms) from a relevant third party necessary before the relevant obligations may be discharged.

5.4 The Depot Facility Owner shall, so far as practicable keep the Depot (and any adjoining road frontage where litter emanates from the Depot) free from refuse, and in a clean and tidy condition.

Condition D6 - Equipment

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

Condition D7 - Conduits free from obstruction

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

PART E
INSURANCE
Condition E1 - Not used

Condition E2 - Responsibility for effecting insurance

- 2.1 The Depot Facility Owner shall insure and keep insured the Depot against:
- 2.1.1 property owner's liability, third party liability and such other risks in respect of which a reasonable and prudent operator of the Depot would effect and maintain insurance (other than the Insured Risks); and
 - 2.1.2 the Insured Risks with a member of the Association of British Insurers or with Lloyds of London underwriters upon reasonable commercial terms provided that the terms of such insurance shall not unreasonably restrict any User's use of the Depot;
- 2.2 The Depot Facility Owner shall, in respect of any insurance effected pursuant to Condition E2.1.2, use all reasonable endeavours to procure that
- 2.2.1 such insurance is effected for the Full Replacement Cost provided that such insurance shall be on terms that if any occurrence of an Insured Risk shall affect more than one Affected Facility the Minimum Sum shall apply only once in respect of that occurrence to the Affected Facilities as a whole; and
 - 2.2.2 such insurance is effected so that in the event of Substantial Damage to the Depot, it shall be replaced with a modern equivalent building of a size and specification to meet modern requirements (unless exact replacement of the Depot is required by any public body pursuant to listed building or other legislation or by a Superior Estate Owner).
- 2.3 Each User shall, if it is not a public service operator, effect and maintain appropriate insurance with a member of the Association of British Insurers or with Lloyds of London underwriters against third party liability and such other risks in respect of which a reasonable and prudent train operator would effect and maintain insurance.
- 2.4 Each User shall, in respect of any insurance policy to which Condition E2.3 applies, provide the Depot Facility Owner with suitable evidence, promptly upon receipt of a

request from the Depot Facility Owner for such evidence, that such insurance policy is in full force and effect, that all premiums have been paid up to date and that no circumstances exist which might lead to that policy being avoided.

2.5 The Minimum Sum shall be £[10,000].

Condition E3 - Destruction of or damage to the Depot

3.1 If the Depot is destroyed or damaged by an Insured Risk (including by or an act of terrorism) then:

3.1.1 an amount up to the Minimum Sum; and

3.1.2 all monies payable under insurance policies effected by the Depot Facility Owner pursuant to Condition E2.1.2,

shall be applied by the Depot Facility Owner as soon as reasonably practicable in the repair, reinstatement and making good of the Depot, subject to:

3.1.3 agreement pursuant to Condition E3.2; and

3.1.4 the Depot Facility Owner obtaining all necessary permissions and approvals which the Depot Facility Owner shall use all reasonable endeavours to obtain as soon as reasonably practicable.

provided that if any occurrence of an Insured Risk shall affect the Depot and one or more other Affected Facilities then any monies applied by the Depot Facility Owner pursuant to Condition E3.1.1 shall be required to be applied to the Depot only in the same proportion as the amount of insured damage suffered at the Depot from the occurrence of the Insured Risk bears to the total amount of insured damage so suffered at all Affected Facilities.

3.2 As soon as practicable following any destruction of or damage referred to in Condition E3.1, the Depot Facility Owner shall consult with the Users and shall use all reasonable endeavours to agree:

3.2.1 the necessary reinstatement works, which in the case of Substantial Damage (and save where required by reason of the listed building or similar status of

the Depot or by a Superior Estate Owner) shall be the construction of a modern equivalent of the building(s) or Equipment damaged or destroyed; and

3.2.2 the programme for the carrying out of such reinstatement works,

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

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

3.4 If the monies recovered under any insurance policy maintained by the Depot Facility Owner pursuant to Condition E2.1 are not sufficient to meet the cost to the Depot Facility Owner of fulfilling its obligations under Condition E3.2, the Depot Facility Owner shall bear the shortfall.

Condition E4 - Provision of documents

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

4.1.1 evidence of the insurance policy under, or in respect of which, the User has an interest and which relates to the Depot or any risk of, or in any way associated with, the operation of the Depot;

4.1.2 reasonable details of any amount payable by any User in respect of any such insurance policy; and

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

Condition E5 - Maintenance of insurance

5.1 In respect of each insurance policy to which Condition E4 applies, the person effecting such insurance shall procure that:

- 5.1.1 if and to the extent that any User has an insurable interest capable of being covered by such policy and to the extent that any User reasonably so requests, any User is named as a co-insured under such policy on such terms as shall be reasonable;
- 5.1.2 the policy is maintained and all claims are duly filed, and all proper steps to collect proceeds are duly taken in respect of such policy; and
- 5.1.3 if such insurance policy is not required under a licence held by the Depot Facility Owner or the Depot Facility Owner does not hold a licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to any User by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given.

Condition E6 - Increase of premium or invalidation of policy

- 6.1 A User shall not, and shall procure that its Associates (other than passengers) do not, bring on to or do or omit to do at the Depot anything which it is aware, or it ought reasonably to be aware, would:
 - 6.1.1 invalidate any insurance of the Depot or any Adjacent Property; or
 - 6.1.2 increase the premium payable for that insurance; or
 - 6.1.3 render wholly or partly irrecoverable the monies which otherwise would have been payable under that insurance, subject to the User receiving notice of any material provision of the insurance of the Adjacent Property which does not apply to insurance of the Depot; or
 - 6.1.4 increase the likelihood or risk of the Depot Facility Owner incurring any costs in undertaking repair, reinstatement and making good under Condition E3.
- 6.2 The Depot Facility Owner and any User shall procure that any tenant or any person deriving title under or authorised by the Depot Facility Owner to enter the Depot shall comply with Condition E6.1.
- 6.3 The User responsible for any act or omission contemplated by Condition E6.1 shall pay the Depot Facility Owner on demand the amount of:

6.3.1 any increase in premium referred to in Condition E6.1.2; and

6.3.2 any irrecoverable insurance monies referred to in Condition E6.1.3; and

6.3.3 the amount of the increase in the cost of repair, reinstatement and making good by reason of the User's (or Associate's) breach of Condition E6.1,

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

Condition E7 - Waiver of Rights

7.1 The Depot Facility Owner shall use all reasonable endeavours to procure that any insurance policy to which Condition E4 applies shall include a waiver of the relevant insurer's right of subrogation against each User.

7.2 The Depot Facility Owner waives any rights and remedies it may have against each User in respect of any accidental loss, or destruction of, or damage caused by an Insured Risk.

Condition E8 - Not used

PART F
ACCESS CHARGING

Condition F1 - The Access Charge

- 1.1 The Access Charge shall, in respect of each Accounting Period, be the aggregate of the following in respect of that Accounting Period:
- 1.1.1 the Minimum Charge payable for that Accounting Period;
- 1.1.2 the Variable Charges payable for that Accounting Period; and
- 1.1.3 the Contingent Charges payable for that Accounting Period.
- 1.2 At the end of each Accounting Period, the Depot Facility Owner shall submit to each User an invoice which covers the Minimum Charge, the Variable Charges and the Contingent Charges for that Accounting Period, in sufficient detail to enable such User to make a proper assessment of the charges being levied.
- 1.3 The Depot Facility Owner shall transmit together with the invoice any performance and any other supporting information reasonably required by the relevant User to be produced by the Depot Facility Owner in accordance with the Depot Access Agreement.
- 1.4 Subject to any contrary provision in the Depot Access Agreement, the User shall pay the Access Charge in accordance with Condition F2.1. If liability to pay any part of an invoice shall be in dispute or questioned by the User, the User shall not pay that part which shall be in dispute or questioned but the balance not in dispute shall be paid by the User in accordance with Condition F2.

Condition F2 - Payment

- 2.1 Subject to any contrary provision in the Depot Access Agreement, each User shall pay the Access Charge for each Accounting Period within 28 days of the receipt of the invoice for the same delivered in accordance with Condition F1.2.
- 2.2 All invoices other than VAT invoices which shall be supplied in accordance with Clause 14.2 of the Depot Access Agreement shall be sent to the address for service of the

recipient set out in the Depot Access Agreement with a copy to the bank or other financial institution providing the payment facility referred to in Condition F2.3.

- 2.3 All amounts payable under this Part F shall, except as may otherwise be agreed by the parties from time to time, be paid by direct debit mandate or standing order mandate to such bank account in the United Kingdom as may be nominated by the Depot Facility Owner from time to time.

Condition F3 - Accounts

- 3.1 Without prejudice to any obligation of the Depot Facility Owner under its licence, the Depot Facility Owner shall keep financial records in such a way as to enable all material revenue and expenditure to be clearly distinguishable and analysed in respect of each of the Depot Services provided to each User in respect of which a fixed price is not specified in that User's Depot Access Agreement.
- 3.2 The Depot Facility Owner shall make available to each User, the financial records in respect of the Depot Services to be provided to that User referred to in Condition F3.1.

Condition F4 - Review of Access Charge

- 4.1 Either party to a Depot Access Agreement may:
- (a) formally review (with each other), the Access Charge:
 - (i) once at any time in the twelve month period following the Commencement Date or such other longer first period as may be agreed between the parties; and
 - (ii) once at any time in every successive twelve month period following the first twelve month period or such other longer first period referred to in Condition F4.1(i)(a) as may be agreed between the parties; and
 - (b) at the conclusion of any such review, negotiate with each other with a view to reaching agreement on any amendments within 60 days following the conclusion of such review or such other period as may be agreed between the parties, such amendments to take effect from the date agreed between the parties.

- 4.3 If the parties to a Depot Access Agreement fail to reach agreement with each other on such amendments within 60 days following the conclusion of such review or such other period which had been agreed between the parties, the matters in dispute may be referred by either of them for determination by an arbitrator appointed and acting in accordance with the relevant provisions of Part M of the GBR Code. Such determination shall:
- (a) be final and binding on the parties to a Depot Access Agreement; and
 - (b) establish the proposed amendments to this Depot Code and any relevant Depot Access Agreement.

PART G
EXISTING AGREEMENTS AND THIRD PARTY RIGHTS

Condition G1 - General

- 1.1 No User shall do, or permit to be done, anything which might reasonably be expected to cause a breach of any obligations contained in any Existing Agreement in so far as it is aware of any such obligations and such obligations relate to the Depot or any part of it.

Condition G2 - Costs of compliance

- 2.1 The Depot Facility Owner shall (on an after tax basis) indemnify each User, and keep it indemnified, against all costs and expenses reasonably and properly incurred by it in and as a consequence of its complying with its obligations under Conditions G1.1 in relation to any [] Existing Agreement.

Condition G3 - Representations, warranties and undertakings

- 3.1 Not used.
- 3.2 Not used.
- 3.3 The Depot Facility Owner shall comply with the obligations binding on the Depot Facility Owner and contained in the Existing Agreements insofar only as the User is not required to comply with such obligations under Condition G1.1 and non-compliance by the Depot Facility Owner would or could have a material adverse effect on such User or its business.
- 3.4 The Depot Facility Owner represents, warrants and undertakes to each User that:
- 3.4.1 it will not enter into any agreement or other arrangement which results or is likely to result in a Relevant Restriction, except such as may arise pursuant to:
- (a) any Existing Agreement; or
- (b) this Depot Code.

Condition G4 - Not used

Condition G5 - Exercise of discretion/Grant of consent

5.1 Where any Existing Agreement contains rights and/or obligations:

5.1.1 whose exercise or effect depends on the exercise of any discretion, or the granting of any consent, approval or waiver by the Depot Facility Owner; and

5.1.2 the rights in respect of which may be exercised so as to protect the permission to use of any User,

the Depot Facility Owner shall, when exercising such discretion or granting such consent, approval or waiver, subject to the terms of that Existing Agreement, consult with and have due regard to any representations which may be made by any User and shall at all times ensure, so far as reasonably practicable, that any disruption to the operation and/or use of the Depot is minimised in all respects.

5.2 Where any works are proposed to be carried out under the terms of any Existing Agreement:

5.2.1 where the Depot Facility Owner has an absolute discretion in relation to the carrying out of such works, it shall comply with the relevant Conditions in Parts C and D as if the exercise of the discretion in question were a Proposal for Change; and

5.2.2 where it has no such absolute discretion in relation to the carrying out of such works, it shall, so far as reasonably practicable, comply with Condition D3.1.

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

Condition G6 – Additional agreements and Wayleave grants

6.1 The Depot Facility Owner may:

6.1.1 enter into additional agreements with third parties in respect of the Depot; and

6.1.2 grant wayleaves or easements at the Depot to any public authority or public utility company or other persons, including (without limitation) rights of way,

which do not impose a Relevant Restriction or prevent the use of the Depot for any purpose permitted by Condition O4.

- 6.2 The Depot Facility Owner may retain the benefit of grants pursuant to Condition G6.1.2, including rents or other payments arising under them, except for any compensation for damage suffered by each User which shall be paid to the User in question promptly upon receipt.
- 6.3 No grant shall be made pursuant to Condition G6.1.2 until each User has been consulted and the Depot Facility Owner shall have had due regard to that operator's interests in the Depot including the operational integrity of the Depot and that operator's existing and future plans for its use and enjoyment of the Depot.
- 6.4 Any grant of rights of way made pursuant to Condition G6.1.2 shall require the grantee to comply with the Depot Facility Owner's reasonable requirements in relation to safety or security and to give due consideration to its and any User's representations regarding the effect of the exercise of the rights in question on its and the User's operations. Any grant of a right of entry to carry out works made pursuant to Condition G6.1.2 shall, so far as reasonably practicable, incorporate provisions controlling entry upon the Depot no less beneficial to Users who may be affected than the provisions of Conditions D2.3.2 and N4.

Condition G7 - Superior Estate Owner consent

Where, under this Depot Code, the consent of the Depot Facility Owner is required, and such consent may be given by the Depot Facility Owner only with the permission of a Superior Estate Owner arising under a Superior Estate Grant in existence before 1 April 1994, it is a condition precedent to the grant of that consent that such permission is first obtained, provided that the Depot Facility Owner shall use all reasonable endeavours to obtain such permission.

Condition G8 - Supplemental Agreements

- 8.1 In this Condition G8:

8.1.1 "Relevant Arrangement" means:

- (a) an estate, interest or charge in or over land; or

- (b) any agreement or other arrangement, whether or not of a similar nature,

which in any such case is contemplated by a Supplemental Agreement;

8.1.2 "Supplemental Agreement" means any one or more of:

- (a) [an Agreement dated 1 April 1994 and made between the British Railways Board (1) and Railtrack (2) and entitled "Agreement for Leases, Site Demarcations, Connection Agreements and BRT Easements" which forms part of the Railtrack Transfer Scheme;
- (b) an Agreement dated 1 April 1994 and made between Railtrack (1) and the British Railways Board (2) and entitled "Supplemental Agreement for Leases (Real Property)" which forms part of the Railtrack Transfer Scheme;
- (c) an Agreement dated 1 April 1994 and made between Railtrack (1) and the British Railways Board (2) and entitled "Property Miscellaneous Provisions Agreement" which forms part of the Railtrack Transfer Scheme;
- (d) an Agreement dated 1 April 1994 and made between Railtrack (1) and BR Telecommunications Limited (2) and entitled "Framework Agreement relating to Grant of Easement and Property Leases" which forms part of the Railtrack Transfer Scheme and the British Rail Telecommunications Transfer Scheme;]
- (e) an Agreement dated 1 April 1994 and made between the British Railways Board (1) and BR Telecommunications Limited (2) and entitled "Agreement for Leases, Property Licences and Grant of Easements" which forms part of the British Rail Telecommunications Transfer Scheme;
- (f) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement to provide access to and accommodation at the Board's Properties for the

storage and sorting of mail and for use of employees of The Post Office";

- (g) an Agreement dated 2 August 1989 and made between the British Railways Board (1) and The Post Office (2) and entitled "Agreement for Carriage of Letter Mail";
- (h) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Interim Agreement - Agreement for the Carriage of Letter Mail";
- (i) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Property Agreement - Agreement for The Post Office's use of the Board's Properties; or
- (j) an Agreement dated 16 December 1993 and made between the British Railways Board (1) and The Post Office (2) and entitled "Ten Year Agreement - Agreement for the Carriage of Letter Mail";]

8.2 If the Depot Facility Owner intends to take any relevant action it/they shall give notice to each other and to each User:

8.2.1 stating that intention;

8.2.2 giving sufficient details of the relevant action and the Relevant Restriction in question to enable the recipient to make an accurate assessment of the likely effect of the Relevant Restriction on its permission to use the Depot; and

8.2.3 referring to this Condition G8.

8.3 Subject to Condition G8.4, a relevant action for the purpose of this Condition G8 is an action taken whether or not pursuant to or in accordance with an obligation in a Supplemental Agreement:

8.3.1 to implement or amend a Supplemental Agreement; or

8.3.2 to grant, enter into or amend a Relevant Arrangement; or

8.3.3 to exercise any discretion under or in respect of a Supplemental Agreement or a Relevant Arrangement,

and which creates or is reasonably likely to create a Relevant Restriction.

8.4 Where on the Conditions Efficacy Date a person used or occupied a Depot for the purposes of its undertaking in a way that was and has continued to be continuous and apparent and, as against the Depot Facility Owner or its predecessors in title, lawful, the granting to that person (or to a person who has succeeded to the relevant part of that person's undertaking) of a legal right to do so is not a relevant action for the purpose of this Condition G8 and Part C does not apply to it.

8.5 The granting to Rail Express Systems Limited (or to a person who has succeeded to the relevant part of its undertaking) of a lease of a unit of accommodation at the Depot occupied (or to be occupied) by [HM Post Office] pursuant to the agreements referred to in Condition G8.1.2(f) - (j) inclusive is not a relevant action for the purpose of this Condition G8 and Part C does not apply to it.

8.6 The Depot Facility Owner may take the relevant action specified in the notice given under Condition G8.2 unless it is not fair and reasonable that the Relevant Restriction in question should be created having regard to:

8.6.1 the reason for the Relevant Restriction;

8.6.2 its likely duration and extent;

8.6.3 the interests of the Depot Facility Owner (including any contractual obligations entered into prior to the Conditions Efficacy Date to take the relevant action) and all Users;

8.6.4 the nature and extent of the rights to use or occupy the Depot which were being lawfully exercised on the Conditions Efficacy Date;

8.6.5 the interests of the Board in disposing of those parts of its undertaking in respect of which it was lawfully exercising rights to use or occupy the Depot on the Conditions Efficacy Date; and

8.6.6 the reasonable expectations of Users when they entered into their Relevant Agreements;

and the objecting party has commenced proceedings under Condition G8.7 within the 30 day period mentioned therein.

8.7 Any dispute as to whether having due regard to the factors specified in Condition G8.6, it is fair and reasonable that the Relevant Restriction in question should be created shall be determined in accordance with Part M of the GBR Code.

8.8 If and to the extent that the Depot Facility Owner complies with its obligations in this Condition G8 in respect of a relevant action, Part C does not apply to that relevant action.

PART H
LITIGATION AND DISPUTES

Condition H1 - Notification by the Depot Facility Owner - Disputes

Without prejudice to Part M, the Depot Facility Owner shall promptly notify each User of any dispute relating to:

- 1.1 the Depot; or
- 1.2 any rights granted to the User under any Relevant Agreement,

which the Depot Facility Owner (acting reasonably) believes may have a material and adverse effect on the User's business at the Depot.

Condition H2 - Notification by Depot Facility Owner - Events

- 2.1 Not used.
- 2.2 Without prejudice to Part M, the Depot Facility Owner shall promptly notify each User of:
 - 2.2.1 any incidents, accidents or circumstances causing damage to the Depot, the cost of remedying which is likely to exceed the amount specified in paragraph 8.2 of Schedule 1 of the Depot Access Agreement; and
 - 2.2.2 any claim, litigation, lien, demand or judgment relating to the Depot or the provision of the Depot Services where the total amount in dispute and/or the total amount of damages together with any costs are likely to exceed paragraph 8.3 of Schedule 1 of the Depot Access Agreement],

which in any case may materially and adversely affect the interests of that User in the Depot or under any Relevant Agreement.

Condition H3 - Notification by User

Without prejudice to Part M:

- 3.1 Not used.

- 3.2 Each User shall promptly notify the Depot Facility Owner of any claim, litigation, lien, demand or judgment brought by it or against it which is likely to affect the operation of the Depot, the provision of the Depot Services or the Depot Facility Owner's Own Services which in any case may materially and adversely affect the interests of the Depot Facility Owner in the Depot or under any Relevant Agreement.
- 3.3 Notwithstanding Conditions H2 and H4, a User shall have the right to participate in any prosecution, defence or settlement conducted in accordance with such Conditions at its sole cost and expense, provided that such participation shall neither prejudice its conduct by the Depot Facility Owner nor reduce the User's share of the cost of such action.

Condition H4 - Authority of Depot Facility Owner

- 4.1 Without prejudice to Part M, the Depot Facility Owner shall have the authority to commence, prosecute, defend, pursue or settle any claim, litigation, lien, demand or judgment relating to the operation of the Depot or the provision of the Depot Services or the Depot Facility Owner's Own Services (other than between the Depot Facility Owner and a User) on behalf of both itself and, if appropriate, any Users, [provided that the Depot Facility Owner shall have no such authority or obligation without the prior consent of Relevant Operators representing the Requisite Majority] where:
- 4.1.1 the dispute is likely materially and adversely to affect the Depot Facility Owner's ability to operate the Depot; or
- 4.1.2 the amount of the dispute and/or the total amount of the damages together with costs are likely to exceed [£29,000].

Condition H5 - Resolution of disputes and claims

- 5.1 Save as otherwise provided in this Depot Code, any dispute or claim arising out of or in connection with this Depot Code or a Relevant Agreement shall be resolved by the Dispute Resolution Body (save where the parties agree to submit the dispute to mediation instead), followed, if either party shall be dissatisfied with the decision of the Dispute Resolution Body or the ruling of the Chairman thereof (as the case may be), by referral to such other mechanism (other than mediation) as the Dispute Resolution Body shall specify, pursuant in each case to Part M of the GBR Code.

PART I

PROVISION OF INFORMATION

Condition I1 - General Obligation

- 1.1 The Depot Facility Owner shall, upon reasonable request by any User or Potential User, provide such information relating to the Depots, its operation, and any matter which may affect the rights or obligations of a User under or in respect of its Depot Access Agreement, as is reasonably necessary.
- 1.2 The Depot Facility Owner shall provide such information within a reasonable time and in such form as it reasonably considers appropriate.

Condition I2 - Limitations

- 2.1 The Depot Facility Owner shall not be required to provide information to the extent that:
 - 2.2.1 disclosure would, in its reasonable opinion, materially prejudice the commercial interests of any person;
 - 2.2.2 disclosure is prohibited by law or by any obligation of confidentiality; or
 - 2.2.3 disclosure would be contrary to the public interest.
- 2.2 Where information is withheld under Condition I2.1, the Depot Facility Owner shall, where reasonably practicable, provide a summary of the relevant matter.

PART J
RIGHTS GRANTED OVER ADJACENT PROPERTY

Condition J1 Not used

Condition J2 Not used

Condition J3 – Not used

Condition J4 - Rights of way

- 4.1 Subject to Condition J9.1, each User shall have the right of way over the Adjacent Property to and from the Depot for all purposes in connection with the User's permission to use the Depot. Any such right shall be over such of the roadways, vehicular access areas or footpaths which, at the relevant time, provide access to the Depot.
- 4.2 Without prejudice to Condition J4.1, where the Plan shows land coloured brown the User shall have the right to pass to and from the Depot over that land for all purposes in connection with the User's use and enjoyment of the Depot.
- 4.3 If the rights in Conditions J4.1 or J4.2 are exercised, the User shall procure that (to the extent that the right includes by implication a right to load and/or unload) loading and/or unloading is carried out in a reasonable manner.

Condition J5 - Emergency rights

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

Condition J6 – Not Used

Condition J7 - Not used

Condition J8 - Entry upon the Adjacent Property

Subject to Condition J9.1, each User shall have the right at any reasonable time upon reasonable notice to the Depot Facility Owner, or in an Emergency at any time, to enter upon the Adjacent Property with or without vehicles, plant and machinery

for the purpose of doing anything that may be required to preserve or to protect life or property.

Condition J9 - Exercise and enjoyment of rights

- 9.1 The exercise of rights pursuant to Conditions J4, J5 and J8 shall be:
 - 9.1.1 subject to due consideration being given to the Depot Facility Owner's representations in respect of the effect on its operations; and
 - 9.1.2 in common with the Depot Facility Owner and any other person to whom rights are granted over the Adjacent Property or who is authorised to use that property.
- 9.2 The Depot Facility Owner shall use all reasonable endeavours to ensure that no person shall overload Conduits on, or obstruct a right of way over, the Adjacent Property so as materially to prejudice any User's permission to use the Depot.

Condition J10 - Works costs

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

PART K
DEPOT FACILITY OWNER'S PROPERTY RIGHTS

Condition K1 - Property interests

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

Condition K2 - Exercise of rights granted

2.1 The Depot Facility Owner shall not (and shall use all reasonable endeavours to ensure that no person shall) save pursuant to an Existing Agreement or the operation of a Depot Access Agreement, overload Conduits on, or obstruct a right of way over, the Depot, so as materially to prejudice any User's permission to use the Depot.

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

PART L
REMEDIES

Condition L1 - Delays

- 1.1 The Depot Facility Owner shall each day record accurately the Train Ready Time in respect of each train operated by or on behalf of a Relevant Operator. If any such train is cancelled or for any other reason no Train Ready Time occurs in respect of it, the Depot Facility Owner shall record that fact. The Depot Facility Owner shall maintain such record up to date and shall make the same available to any User upon request at reasonable times and from time to time.

Condition L2 - Indemnities

- 2.1 Subject to Condition L3, the Depot Facility Owner shall (on an after tax basis) indemnify each User, and keep each of them indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Depot Facility Owner of any of its obligations under the a Depot Access Agreement to which the User in question is a party with the Depot Facility Owner.
- 2.2 Subject to Condition L3, each User shall (on an after tax basis) indemnify the Depot Facility Owner and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the User of any of its obligations under that User's Depot Access Agreement .

Condition L3 - Limitation on claims

- 3.1 The Depot Facility Owner shall not be liable under the indemnity specified in Condition L2.1 in respect of any incidence of delay to a train operated by or on behalf of any User.
- 3.2 Save as otherwise expressly provided in any Depot Access Agreement (including this Depot Code), no party to a Depot Access Agreement may recover or seek to recover

from any other party to that agreement any amount in respect of any loss of revenue (including fare revenue, subsidy, access charges to third parties and incentive payments) in connection with the subject matter of such Depot Access Agreement, which is or is alleged to be caused to it by the other party.

- 3.3 Save as otherwise expressly provided in any Depot Access Agreement (including this Depot Code), the remedies provided for in this Depot Code and to the extent applicable Part M of the GBR Code shall be the sole remedies available to the parties in respect of any matters for which such remedies would, but for the limitations in Condition L3.1, be available.
- 3.4 Save as expressly provided in any Depot Access Agreement or in this Depot Code no person shall be entitled to recover damages, abate its Access Charge, or otherwise obtain reimbursement or restitution in respect of any claim under a Depot Access Agreement or this Depot Code if and to the extent that the loss in respect of which it is seeking to recover such damages, abatement, reimbursement or restitution has been recovered under any other agreement or by operation of law

Condition L4 - Force Majeure

- 4.1 "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstance or any combination of events or circumstances beyond the reasonable control of any party to a Relevant Agreement which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means. Without prejudice to that generality, "Force Majeure" under this Condition L4.1 shall, subject to Condition L4.1.2, include the following events and circumstances:
- 4.1.1 war damage, enemy action, terrorism, the act of any government or government instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by Her Majesty's Government (or any department, minister, official or nominee thereof) where acting as shareholder of the party in question or other than pursuant to the Crown prerogative or a statutory function or power), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God, strike or any industrial action by employees of any person other than the party claiming the benefit of this Condition L4 or of its Affiliates, or the provision by the Depot Facility Owner of such assistance as may be reasonable to co-operate in alleviating the effects of an incident adversely affecting the safety or security of persons or property;

and shall exclude the following events and circumstances:

- 4.1.2 [any act of the Regulator], any lack of funds, any strike or other industrial action involving the employees of the party claiming the benefit of this Condition L4 or of its Affiliates, any accumulation (other than one of exceptional severity or of an exceptional nature) of ice, rain, water, snow or leaves on or affecting railway assets, or any breach of a contractual obligation owed to the party claiming the benefit of this Condition L4.
- 4.2 No party to a Relevant Agreement shall be responsible for any failure to fulfil its obligations under such agreement if, and to the extent that, such failure shall be caused by, or directly or indirectly by reason of, Force Majeure, which makes it impossible or impracticable for that party to comply with such obligations.
- 4.3 A party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under the Relevant Agreement.
- 4.4 As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the occurrence of the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under the Relevant Agreement.
- 4.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under the Relevant Agreement.

PART M
ENVIRONMENTAL PROTECTION

Condition M1 - General environmental obligations

- 1.1 Each User shall promptly notify the Depot Facility Owner (and in such case where such notification is given orally shall promptly confirm such notification in writing) of any Environmental Damage or any circumstance of which that User is aware and which it is reasonably foreseeable is likely to give rise to, or which has given rise to, an Environmental Condition. Each User shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.
- 1.2 No User shall take action which it knows, or ought reasonably to know, could materially:
- (A) increase the risk of the Depot Facility Owner being liable under the Depot Facility Owner's Environmental Indemnity or increase the extent of such liability;
 - (B) prejudice the defence of any claim brought against the Depot Facility Owner by a Competent Authority or any other person; or
 - (C) increase the cost of remedying any Environmental Condition,
- provided that a User may in any event take such action either if required to do so by any Competent Authority or in order to comply with Environmental Law.
- 1.3 No User shall be liable for any Environmental Damage to the extent that it existed as at the Environmental Liability Commencement Date.
- 1.4 The rights and obligations of each User in respect of the Depot under this Part M shall apply equally to any part of the Adjacent Property which is subject to an Environmental Condition resulting from the activities of the User at the Depot.

Condition M2 – Remedial action required as a result of a User's activities

- 2.1 Where:
- (A) the Depot Facility Owner becomes aware that, as a result of any activities of a User, or its Associates, an Environmental Condition exists or has occurred at the Depot or the Adjacent Property and the Depot Facility Owner reasonably

considers that action is required to prevent, mitigate or remedy that Environmental Condition; or

- (B) the Depot Facility Owner is given a Direction by a Competent Authority that any action is required to prevent, mitigate or remedy an Environmental Condition resulting from activities of a User or its Associates at the Depot or the Adjacent Property,

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

- 2.2 Any User responsible for the Environmental Condition shall promptly take such action as is reasonably necessary to prevent, mitigate or remedy the Environmental Condition and shall provide the Depot Facility Owner with the opportunity to supervise such action (the reasonable costs of such supervision to be borne by the User). The User shall complete such action within a reasonable time and to the reasonable satisfaction of the Depot Facility Owner.
- 2.3 Any action taken by a User pursuant to Condition M2.2 shall be at its own cost.
- 2.4 Where a User fails to take or complete any action required by Condition M2.2 within a reasonable time and to the reasonable satisfaction of the Depot Facility Owner, the Depot Facility Owner shall be entitled to take or complete such action.
- 2.5 Within 21 days of receiving notification of any act or potential claim, judgment, order, notice, direction or injunction which could give rise to the Depot Facility Owner being liable under the Depot Facility Owner's Environmental Indemnity, the User shall provide the Depot Facility Owner with written details thereof. Such details shall include copies of all relevant data, reports, advice, opinions, statements, correspondence and any other relevant document.
- 2.6 Where the Depot Facility Owner receives notification from a User pursuant to Condition M2.5, the Depot Facility Owner shall have a right to:
 - (A) defend, contest, comply with or settle any claim, judgment, order, notice, direction or injunction; and/or

- (B) take any action or carry out any works to prevent, mitigate or remedy the condition of the Depot pursuant to Condition M3 which could give rise to an obligation of the Depot Facility Owner to indemnify the User under the Depot Facility Owner's Environmental Indemnity.

Condition M3 – The Depot Facility Owner's remedial action

- 3.1 If in the Depot Facility Owner's reasonable opinion, urgent action is necessary in order to prevent, mitigate or remedy an Environmental Condition or to comply with a Direction of a Competent Authority the Depot Facility Owner may take (without the need to comply with Part C) reasonable steps to prevent, mitigate or remedy that Environmental Condition or to comply with that Direction.
- 3.2 Subject to Condition M3.1, the Depot Facility Owner may, if action is in its reasonable opinion necessary in order to prevent, mitigate or remedy an Environmental Condition at the Depot for which a User is not responsible, take such action upon at least six months' notice to the Users.
- 3.3 Where any action is taken pursuant to Conditions M3.1 or M3.2 to prevent, remedy or mitigate an Environmental Condition which is not the result of the activities of any User or its Associates or of the condition of the Depot prior to the Environmental Liability Commencement Date, the cost of such action shall be borne between the Depot Facility Owner and the Users on a fair and equitable basis.

Condition M4 – Environmental indemnities

- 4.1 Each User shall indemnify the Depot Facility Owner and keep it indemnified from and against all reasonable and proper expenses, costs and liabilities reasonably and properly incurred by the Depot Facility Owner as a result of any Environmental Condition at the Depot or the Adjacent Property which exists as a result of activities by that User or its employees, agents, contractors, subtenants or licensees since the Environmental Liability Commencement Date, or the proper undertaking by the Depot Facility Owner in accordance with this Part M of any steps to prevent, mitigate or remedy such an Environmental Condition.
- 4.2 The Depot Facility Owner shall indemnify each User from and against all Environmental Liability incurred by each User to the extent that such liability is due to the condition of the Depot prior to the Environmental Liability Commencement Date, provided that the Depot Facility Owner shall not be liable under this Condition M4.2 for

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

4.3 If any payment is made by:

- (A) the Depot Facility Owner to a User under Conditions M3.3 or M4.2; or
- (B) a User to the Depot Facility Owner under Condition M4.1,

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

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

Condition M5 – Conduct of claims

- 5.1 A User shall on a timely basis keep the Depot Facility Owner informed of the conduct and progress of all claims of the kind referred to in Condition M2.5. The User shall provide promptly to the Depot Facility Owner copies of all relevant data, reports, records, pleadings, statements, correspondence, advice and opinions concerning any claim, judgment, order, notice, direction or injunction or the circumstances, events, conditions or activities which could give rise to any liability of the Depot Facility Owner to indemnify the User under the Depot Facility Owner's Environmental Indemnity.
- 5.2 The User shall not settle any claim of the kind referred to in Condition M2.5 without the Depot Facility Owner's written consent (such consent not to be unreasonably withheld or delayed).
- 5.3 Where any Environmental Damage arising at the Depot since the Environmental Liability Commencement Date results in any Competent Authority or other person taking proceedings under Environmental Law against the Depot Facility Owner, each User shall have the right to be joined as a party (at its own cost) to any proceedings where permissible as a matter of law.

Condition M6 – Confidentiality

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

PART N

OTHER POSITIVE OBLIGATIONS

Condition N1 - Depot Facility Owner's obligations

The Depot Facility Owner shall (or shall procure that another person on its behalf shall):

- 1.1 not used;
- 1.2 provide the Depot Services in accordance with Good Industry Practice;
- 1.3 use all reasonable endeavours either to obtain ISO 9002 certification for Depot procedures or to ensure that the Depot procedures retain ISO 9002 certification or such other equivalent certification as may be available from time to time and that such certification is renewed periodically and ensure that its employees are competent to carry out the Depot Services;
- 1.4 in providing the Depot Services use goods and materials which comply with Railway Group Standards, any relevant British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or such other equivalent specifications or codes of practice as may replace such specifications or codes of practice or as may be agreed from time to time;
- 1.5 promptly notify the User if:
 - 1.5.1 it is unable to or, having had due regard to the Decision Criteria it has determined that it should not, perform any of the Depot Services; or
 - 1.5.2 it becomes aware that it is likely to present Fleet Vehicles at the relevant Hand-Over Time in a Notifiable Condition, giving accurate particulars as to the condition of those Fleet Vehicles sufficient to enable the User to make a determination in respect of them pursuant to Condition N3.14.

- 1.6 keep records in accordance with Railway Group Standards, on an appropriate System, of Depot Services carried out in respect of each Fleet Vehicle and, as far as is practicable, ensure that such records are made available within a reasonable period of time on an Applicable Systems Interface to the relevant User and any other operator of a light maintenance depot nominated by the relevant User;
- 1.7 allow the User's nominated and appropriately qualified representatives reasonable access, at all reasonable times and upon reasonable prior notice, to the Depot in order to permit such representatives to carry out any work to any Fleet Vehicle which is necessary or expedient to prepare that vehicle for service provided that such representatives shall not have permission to carry out Depot Services;
- 1.8 notwithstanding its obligations under its licence, comply with any reasonable request of any User which is necessary to enable that User to:
 - 1.8.1 deal with an Emergency;
 - 1.8.2 comply with its Safety Obligations;
 - 1.8.3 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the 1993 Act; or
 - 1.8.4 maintain security in relation to their respective interests in the Depot or the Adjacent Property;
- 1.9 in respect of any Depot Services for which a fixed charge is not specified in the relevant Depot Access Agreement use all reasonable endeavours to minimise the costs of the operation of the Depot:
 - 1.9.1 by paying the best effective price reasonably obtainable for or in respect of any goods or services having regard to the efficient and economic operation of the Depot for the benefit of each Relevant Operator in order to provide such Depot Services; and
 - 1.9.2 if:

- (a) the Depot Facility Owner intends to procure that any person other than the Depot Facility Owner or its agents shall provide such Depot Services or any part thereof, or that any such person shall provide to the Depot Facility Owner or any person acting on his behalf any goods or services in connection with the provision of such Depot Services; and
- (b) the amount which shall be payable in respect thereof shall reasonably be expected to be greater than £50,000 in any period of 52 weeks,

then the Depot Facility Owner shall, unless the User whose Depot Services are concerned shall otherwise consent, obtain competitive tenders in respect of the provision of the relevant Depot Services or part thereof, or any goods or services in connection therewith by such other person (the "Supplier"), and in seeking such competitive tenders shall:

- (c) exercise reasonable skill and care;
- (d) as soon as the Depot Facility Owner shall be aware, or ought with the exercise of reasonable diligence to have become aware, of its having any interest (whether direct or indirect) in the relevant proposed contract or any of the tenderers or any supplier or sub-contractor of a tenderer, give notice of that interest to each User;
- (e) give notice to each User of every bid received, and any rebids, amendments to bids and subsequent negotiations, and the name and address of the person to whom the Depot Facility Owner proposes to award the relevant contract, together with a statement of the Depot Facility Owner's reasons for the selection; and
- (f) have due regard before entering into the contract in question to any representations or objections made by any User within 5 Business Days after the giving of such notice, and promptly thereafter enter into the contract in question;

1.10 procure that each User is provided with a copy of the Depot Facility Owner's licence (to the extent that it shall not already have been provided to the User) and any modification thereof and any notices given under or in respect thereof [(including any

notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the 1993 Act)] which in any case affect, or are likely to affect, the rights or obligations of the User under or in respect of its Depot Access Agreement;

- 1.11 without prejudice to clause 14.2 of the Depot Access Agreement, promptly pay to the relevant authority or person all rates, payments in lieu of rates, taxes, charges, duties, impositions, assessments and other outgoings relating to the Depot, and a fair proportion of all such sums which are not separately assessed or payable, but excluding:
 - 1.11.1 tax assessable on the Depot Facility Owner in respect of payments under any Relevant Agreement;
 - 1.11.2 tax assessable on the Depot Facility Owner in respect of consideration paid to the Depot Facility Owner in connection with any dealing with its interest in the Depot; or
 - 1.11.3 interest or penalties payable by the Depot Facility Owner in consequence of its delay or default;
- 1.12 promptly pay the relevant person for all Services consumed on the Depot or a fair proportion of the cost to the Depot Facility Owner in respect of the supply of such services to the Depot, the Adjacent Property and any other premises;
- 1.13 observe and perform all present and future regulations and requirements of any utility supplying Services to the Depot, insofar as such regulations and requirements relate to the Depot or its use;
- 1.14 not used;
- 1.15 not used;
- 1.16 take all reasonable steps to prevent, and not knowingly to allow, any encroachment on the Depot or the acquisition of any right or easement against the Depot (save for the rights granted in accordance with this Depot Code);

- 1.17 not used;
- 1.18 maintain at the Depot a notice substantially in the same form as a notice required to be displayed at stations under section 55 British Transport Commission Act 1949;
- 1.19 not used;
- 1.20 provide and keep in working order at the Depot such fire extinguishers and/or other fire safety equipment and maintain such fire precaution arrangements as shall ensure satisfactory safety from the risks of fire or explosion;
- 1.21 be responsible for obtaining and/or maintaining any necessary fire certificate for the Depot
- 1.22 not used;
- 1.23 keep the Railway Substructure and the Railway Superstructure in a safe condition to the extent that it is not the responsibility of any third party;
- 1.24 having performed any Depot Services in accordance with any Depot Access Agreement, present the relevant Fleet Vehicles for collection by or on behalf of the User at the relevant Hand-Over Time unless the User shall determine pursuant to Condition N3.14 that those Fleet Vehicles should not leave the Depot and enter service at that time;
- 1.25 not used; and
- 1.26 subject to the User having complied with Condition N3.13, use all reasonable endeavours to accommodate Fleet Vehicles which are delivered to the Depot other than in accordance with Condition N3.13 at the actual time of delivery of such vehicles.

Condition N2 - Not used

Condition N3 - Users' obligations

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

- 3.1 comply with any reasonable request of the Depot Facility Owner which is necessary to enable the Depot Facility Owner to:
 - 3.1.1 deal with an Emergency or Network Emergency;
 - 3.1.2 comply with its Safety Obligations;
 - 3.1.3 maintain the security in relation to their respective interests in relation to the Depot or the Adjacent Property; or
 - 3.1.4 comply with any directions, instructions or enforcement notices given by the Secretary of State under sections 118 to 120 inclusive of the 1993 Act;
- 3.2 take all reasonable steps to procure that its Associates comply with the directions and requirements referred to in this Condition N3 insofar as they are applicable to them;
- 3.3 timeously provide to the Depot Facility Owner any notices which:
 - 3.3.1 are required to be displayed at the Depot;
 - 3.3.2 contain or specify obligations binding on the User; and
 - 3.3.3 are required to be provided by the User, by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the User is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- 3.4 procure that the Depot Facility Owner is provided with a copy of the User's passenger licence (if any) and the safety case referred to in such licence (to the extent that the same shall not already have been provided to the Depot Facility Owner) and any modification thereof and any notices given under or in respect thereof (including any notice of revocation or termination, howsoever expressed and any provisional or final order given under section 55 of the 1993 Act) which in any case affect, or are likely to affect, the rights or obligations of the Depot Facility Owner under or in respect of the Depot Access Agreement;
- 3.5 without prejudice to the provisions of Condition A1.1.15, timeously notify the Depot Facility Owner if the User or any of its Associates wishes to:

- 3.5.1 carry out any material maintenance (with the exception of light maintenance) of, or work to, any thing kept on the Depot;
- 3.5.2 bring things onto the Depot which may affect the proper operation of the Depot;
or
- 3.5.3 enter upon the Depot with vehicles;
- 3.6 use all reasonable endeavours to liaise and co-operate with other Users and the Depot Facility Owner in relation to the exercise of their permission to use the Depot and the provision of the Depot Services in order to secure the efficient and economic use of the Depot for the benefit of Users and their Associates;
- 3.7 observe and perform all present and future regulations and requirements of any utility supplying Services to the Depot;
- 3.8 [observe and perform the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Depot and bind the Depot Facility Owner, except:
 - 3.8.1 the covenants for payment of rent and (to the extent that the Depot Facility Owner is not required to pay them under any other Relevant Agreement) any other money payable by the Depot Facility Owner to the Superior Estate Owner under any Superior Estate Grant; and
 - 3.8.2 any obligations assumed by the Depot Facility Owner under this Depot Code;]
- 3.9 in respect of vehicles which have received Depot Services or otherwise entered the Depot, notify the Depot Facility Owner of any defect in the Depot Services or their provision or any damage suffered by such vehicles while such vehicles were under the control of the Depot Facility Owner as soon as is reasonably practicable after becoming aware of the defect or damage;
- 3.10 supply to the Depot Facility Owner up to date details of Diagrams for each Fleet Vehicle at the Commencement Date and otherwise as soon as reasonably practicable before that Diagram is scheduled to take effect and, in the case of a Diagram which has

resulted from the acceptance of a Spot Bid, as soon as reasonably practicable after such acceptance;

3.11 consult the Depot Facility Owner throughout each Timetable Development Period in respect of any changes to the timing, level or nature of Depot Services which the User may require as a result of a change to the Working Timetable;

3.12 in connection with any Depot Service,

3.12.1 deliver Fleet Vehicles to the Depot at the times set out in the relevant Diagram;

3.12.2 collect Fleet Vehicles from the Depot at the relevant Hand-Over Time;

3.12.3 carry out or procure Beneficiary Train Preparation to any train which requires it within the time specified for such Beneficiary Train Preparation in respect of that type of train as specified in paragraph 9 of Schedule 1 of the Depot Access Agreement; and

3.12.4 ensure, insofar as it lies within its power to do so, that Fleet Vehicles depart from the Depot at the relevant Diagram Departure Time;

3.13 if it becomes aware that it is likely to fail to:

3.13.1 deliver any Fleet Vehicles at the times set out in the relevant Diagram;

3.13.2 collect any Fleet Vehicles at the relevant Hand-Over Time;

3.13.3 carry out any Beneficiary Train Preparation within the time permitted; or

3.13.4 ensure that any Fleet Vehicles depart from the Depot at the relevant Diagram Departure Time,

promptly notify the Depot Facility Owner of its best estimate of the time at which it will do so; and

- 3.14 on receipt of a notification from the Depot Facility Owner pursuant to Condition N1.5, acting reasonably, promptly determine whether the Fleet Vehicles the subject of such notification should leave the Depot and enter service and, if so when.

Condition N4 - Standard of Works

- 4.1 The Depot Facility Owner shall procure that:
- 4.1.1 works referred to in Part D and any other works to any part of the Depot or Adjacent Property permitted by this Depot Code which are carried out by it or on its behalf are conducted in a proper and workmanlike manner in accordance with Safety Obligations and methods and practices customarily used in good and prudent building practice (including, where applicable, Railway Group Standards);
 - 4.1.2 such works are conducted with that degree of skill, care, diligence and prudence reasonably and ordinarily exercised by experienced and competent building or engineering contractors engaged in a similar activity under similar circumstances and conditions; and
 - 4.1.3 any physical damage to the Depot or the Adjacent Property arising as a result of such works is made good as soon as reasonably practicable.

PART O
OTHER NEGATIVE OBLIGATIONS

Condition O1 - Planning

- 1.1 No User shall make any application for planning permission or for a determination that planning permission is not required in respect of the Depot or in respect of any change of use of the Depot without the prior written consent of the Depot Facility Owner (such consent not to be unreasonably withheld or delayed).
- 1.2 No User shall make any alteration or addition to or change of use of the Depot (notwithstanding any other consent which may be granted by the Depot Facility Owner) before all necessary planning and other requisite permissions have been obtained.

Condition O2 - Encroachments

- 2.1 No User shall stop up or obstruct any window or other opening at the Depot except so far as such action shall be necessary to preserve the safety or security of persons or property at the Depot and, if so necessary, the User in question shall notify the Depot Facility Owner of the action taken if the window or opening opens onto land other than Adjacent Property.
- 2.2 No User shall knowingly give to any third party any acknowledgement that such User or any other person enjoys the access of light or air to any of the windows or openings in the Depot by the consent of that third party, nor pay any money to or enter into any agreement with that third party for the purpose of inducing or binding him not to obstruct the access or light or air to any such windows or openings.

Condition O3 - Excavations/Excluded Equipment and Excepted Equipment

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

Condition O4 - Use

- 4.1 No User shall use the Depot otherwise than for any of the purposes contemplated by Condition A1.1.14 (and for the purpose of construing this Condition O4.1, the Depot Facility Owner shall be treated as though it were also a User).

- 4.2 Not used.
- 4.3 No User shall do or, to the extent reasonably within its control, permit to be done on the Depot anything which may be dangerous, illegal, immoral or offensive, or which would cause damage or nuisance to any other User or to the Depot Facility Owner or its other tenants or the occupiers of any neighbouring property or the public, provided that:
- 4.3.1 without prejudice to Part M, the proper use of the Depot for any of the purposes set out in Condition O4.1, conducted in accordance with every relevant Statute, shall not constitute a breach of this Condition O4.3; and
- 4.3.2 nothing in Condition O4.3.1 shall operate to sanction anything which shall constitute a nuisance actionable by any third party.
- 4.4 Neither the Depot Facility Owner nor any User shall bring or, to the extent reasonably within its control, permit to be brought onto the Depot anything which is or may become noxious, dangerous, offensive, combustible, inflammable, radioactive or explosive.
- 4.5 Without prejudice to Part M, nothing in this Condition O4 shall prevent the lawful bringing onto the Depot of anything which may reasonably be required for or in connection with use of the Depot for the purposes permitted by Condition O4.1.

Condition O5 - Overloading

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

Condition O6 - Improper use of Depot

Except as otherwise permitted by the Relevant Agreement, neither the Depot Facility Owner nor any User shall take or omit to take (nor, to the extent reasonably within its reasonable control, permit to be taken or omitted) any action which would involve improper use of the Depot or increase the risk of damage to the Depot.

Condition O7 - Works to Depot

No User shall:

- 7.1 cut into or injure the brickwork, foundations or any other part of the Railway Substructure or Railway Superstructure or install (without in either case the previous written approval of the Depot Facility Owner) against or within the Railway Substructure or Railway Superstructure any machinery, boiler, flue, chimney or furnace;
- 7.2 carry out any paint spraying (other than water paint spraying) beneath the Railway Substructure or Railway Superstructure without any requisite licence from the local or other appropriate authority and without compliance with any requirements of such authority (including construction of any necessary booth unless formally exempted by the authority) and all Safety Obligations.

Condition O8 - Not causing breach

- 8.1 Neither the Depot Facility Owner nor a User shall do, or permit any of their Associates (other than passengers) or agents to do anything which is likely to result in a breach of any obligation in this Depot Code (other than an obligation under Part M) by any of the Users or the Depot Facility Owner to any other of them.
- 8.2 No User shall do anything in breach of, the covenants, obligations and conditions for the time being contained or referred to in every Superior Estate Grant in existence before 1 April 1994 so far as they affect the Depot and bind the Depot Facility Owner.

Condition O9 - Damage caused through Railway Substructure and Railway Superstructure

- 9.1 No User shall make any claim whatsoever on the Depot Facility Owner or its employees or agents (other than such as arises from a breach of any obligation of, or the negligence of, the Depot Facility Owner or its employees or agents) in respect of any damage, loss or inconvenience which may be suffered by the User in consequence of any percolation of water or other liquids or soil, dust or dirt (however caused) through or from the Railway Substructure or Railway Superstructure.

PART P
ATTRIBUTION OF COSTS

Condition P1 - Compliance with obligations under Conditions

If the Depot Facility Owner or any User shall reasonably incur any costs in complying with their respective obligations under Conditions G5.3 and N1.13, the liability for the payment of those costs as between the Depot Facility Owner and each User shall be determined on a fair and equitable basis, save that:

- 1.1 if the costs arise from a Proposal for Change that has been accepted in accordance with Part C (other than a Proposal for Change made pursuant to Condition C9) the costs shall be attributed in accordance with the terms of such proposal (if applicable);
- 1.2 if the costs arise from the grant, after this Depot Code first become effective, of any underlease for residential purposes (except a grant by way of the compulsory renewal of a residential underletting which subsisted on 1 April 1994), then the costs shall be wholly those of the Depot Facility Owner; and
- 1.3 [if the costs arise from other causes and are such as to constitute Maintenance or Repair of Elements of the Depot or Equipment (other than Excluded Equipment), then such costs shall be attributed to the Depot Facility Owner.]

Condition P2 - Compliance with changes imposed by law

If any User shall reasonably incur any costs in complying with, or in consequence of, any Change of Law or any Direction of any Competent Authority or any body appointed in accordance with Condition H5, or in complying with Condition C9, the liability for the payment of those costs as between the Depot Facility Owner and each User shall be determined on a fair and equitable basis, having regard to:

- 2.1 the expectations which:
 - 2.1.1 the User in question has in respect of its interests in relation to the Depot; and
 - 2.1.2 the Depot Facility Owner has in respect of its interests in relation to the Depot;
- 2.2 the costs and expenses (other than the cost of implementing the change) which will be, or are likely to be, incurred or saved by the Depot Facility Owner and each User upon such change being carried out;

- 2.3 the benefits or disadvantages which have accrued and are likely to accrue to the Depot Facility Owner and each User in consequence of the change;
- 2.4 the scale of disruption to the Depot Facility Owner's and each User's business which is likely to occur in consequence of the change; and
- 2.5 [provided that there shall not for these purposes be taken into account the existence or terms of any contract entered into by the Depot Facility Owner after 1 April 1994 except to the extent that the tribunal shall be satisfied that they ought properly to be taken into account.]

Condition P3 - Basis of accounting and payment

- 3.1 Without prejudice to the obligations of any person under a licence, granted to it under the 1993 Act, any costs incurred by the Depot Facility Owner or any User which are required under this Depot Code to be reimbursed by, or accounted to, any other of them shall be accounted for in accordance with generally accepted accounting principles applicable in the United Kingdom.
- 3.2 The Depot Facility Owner and each User shall promptly make such payments as are necessary to discharge their respective liabilities for the payment of the costs to which Conditions P1 and P2 relate.

Condition P4 - Minimisation of costs

The Depot Facility Owner and any User shall each pay the best effective price reasonably obtainable in respect of any costs and expenses which they are respectively entitled under this Depot Code to recoup, or obtain reimbursement, from each other.

PART Q
NOT USED

PART R

DECISION CRITERIA, UNREGULATED CONTRACTS AND DEFEASIBLE RIGHTS

Condition R1 - Decision Criteria

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

- 1.1 enabling the Depot Facility Owner and any User to operate trains in accordance with the Working Timetable and to comply with any contract to which it is a party, giving priority to any contract for the provision of railway services (unless the giving of due weight to the considerations specified in Conditions R1.2 and R1.4 otherwise requires), in each case to the extent that the Depot Facility Owner is aware or has been informed of such contracts;
- 1.2 sharing the capacity of, providing the services at and securing the development of the Depot in the most efficient and economical manner in the interests of all Relevant Operators having regard, in particular, to safety, the effect on the environment of the provision of services and the proper maintenance, improvement and future use of the Depot;
- 1.3 enabling the Depot Facility Owner to maintain, renew and carry out other necessary work on, or in relation to, the Depot; and
- 1.4 enabling all Relevant Operators to plan their businesses with a reasonable degree of assurance.

Condition R2 - Application of Decision Criteria

- 2.1 The Depot Facility Owner shall have due regard to the Decision Criteria when:
 - (a) Not used;
 - (b) determining whether and to what extent it shall carry out any User's Variable Level of Services and the Depot Facility Owner's Variable Level of Services;
 - (c) determining whether and to what extent it shall carry out any Contingent Services or the Depot Facility Owner's Contingent Services;

- (d) determining whether and to what extent it should not perform services carried forward from one Accounting Period to another pursuant to a Depot Access Agreement;
- (e) determining whether and to what extent it shall carry out any services pursuant to a contract to which Condition R3 applies; and
- (f) determining any other matter in respect of which a Depot Access Agreement or this Depot Code shall so provide.

2.2 Noting in this Part R shall prejudice a User's rights in relation to access to service facilities as set out in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

Condition R3 - Unregulated Contracts

3.1 Unregulated contracts to contain provisions for rationing of capacity according to Decision Criteria

Subject to Condition R3.2, the Depot Facility Owner shall ensure that all contracts which it enters into after this Depot Code first become effective and which:

- (a) Not used;
- (b) require the Depot Facility Owner to provide services at the Depot or the use of any Depot Facilities; and
- (c) if performed in accordance with their terms, would involve the use of any part of the Depot Facilities to an extent which is more than may reasonably be regarded as trivial in relation to the Depot,

contain provisions which entitle the Depot Facility Owner not to perform the services in question to an extent which the Depot Facility Owner shall determine having due regard to the Decision Criteria.

3.2 Exceptions where dedicated facilities acquired or Users consent

Condition R3.1 shall not apply to the extent that:

- (a) the Depot Facility Owner shall have increased the Depot Facilities wholly or mainly for the purpose of performing the contract in question; or
- (b) all Users so consent in writing subject to such (if any) conditions as shall be specified in the consent.

PART S

RAILWAY SUPERSTRUCTURE AND RAILWAY SUBSTRUCTURE

S1 - Railway Superstructure

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

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

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

Table 1

Column 1	Column 2
1. footbridge providing access from one part of the Depot to another	1. raft supporting office building or similar commercial development, together with all leased parts of such building or development
2. any area subject to rights for a third party to occupy (including rights under Existing Agreements)	2. road bridge
	3. rail bridge
	4. footbridge (except one described in item 1 of Column 1)

1.2 The Depot shall:

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

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

S2 - Railway Substructure

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

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

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

Table 2

Column 1	Column 2
1.subway or tunnel connecting parts of the Depot	1.subway or tunnel (except one described in item 1 of Column 1)
2.arch space used as car park or to provide access to the Depot or otherwise integral to the operation of the Depot as a light maintenance depot	2.arch space (except one described in item 2 of Column 1)

2.2 The Depot shall:

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

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