

# **The CCOS Emergency Access Code**

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# 1. DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Code, unless the context otherwise requires:

- "Access Agreement"** (a) in respect of the CCOS, has the meaning ascribed to it in Part A of the CCOS Network Code; and
- (b) in respect of a CCOS Facility other than the CCOS, means an agreement by which the Facility Owner for that CCOS Facility grants to a Beneficiary permission to use the CCOS Facility;
- "Act"** means the Railways Act 1993;
- "Affected Person"** means a party who sustains loss (including any liability to make a payment to any other person pursuant to this Code) as a result of or during the exercise of any permission to use pursuant to this Code;
- "Beneficiary"** means, in respect of the CCOS Facility in question:
- (a) the party who is the operator of the trains which uses the applicable CCOS Facility; or
- (b) the party who is the person permitted to use the CCOS Facility and whose rights in that respect are exercised by another person;
- "CCOS"** has the meaning ascribed to it in Part A of the CCOS Network Code;
- "CCOS ADRR"** means the CCOS Access Dispute Resolution Rules appended to the CCOS Network Code;
- "CCOS Facility"** means a railway facility relating to the CCOS, being:
- (a) the CCOS;
- (b) a LUL Station; and
- (c) a Concessionaire Station,
- but excluding:
- (i) any location at which railway vehicles used for providing services on the CCOS are stabled or maintained; and

- (ii) any other railway network upon which railway vehicles providing services on the CCOS also operate,

and **"CCOS Facilities"** shall be construed accordingly;

<b>"CCOS Network Code"</b>	<b>Network</b>	means the document entitled "CCOS Network Code" as may be amended from time to time;
<b>"CCOS Network Statement"</b>	<b>Network</b>	means the network statement published by RfL(I) in accordance with regulation 13 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;
<b>"CCOS Standards"</b>		has the meaning ascribed to it in Part A of the CCOS Network Code;
<b>"Code"</b>		means this CCOS Emergency Access Code, as may be amended from time to time;
<b>"Concessionaire Stations"</b>		means each of Canary Wharf, Custom House, Paddington (Crossrail) and Woolwich stations operated by the Crossrail Concessionaire;
<b>"Crossrail Concessionaire"</b>		means the entity appointed by Transport for London (or a subsidiary of Transport for London) to operate the Crossrail services from time to time;
<b>"Excepted Provision"</b>		means in relation to an Access Agreement: <ul style="list-style-type: none"><li>(a) any provision of the Access Agreement which requires the Beneficiary to give the Facility Owner or any other person notice of its requirement to enter the CCOS Facility;</li><li>(b) any provision of the Access Agreement which provides for either party to pay any amount to the other party, whether in consideration of the permission to use conferred by the Access Agreement or as a consequence of the failure of any party to do or not to do any act or thing or in any other respect whatsoever; and</li><li>(c) any other provision of the Access Agreement which shall be inconsistent with the terms of this Code;</li></ul>
<b>"Facility Owner"</b>		means the facility owner in respect of the CCOS Facility in question;
<b>"Infrastructure"</b>		has the meaning ascribed to it in ROGS;

**Manager"**

**"Liable Person"**

means:

- (a) the party operating the railway asset the failure or condition of which is the direct and reasonably proximate cause of the need to exercise the rights under this Code, as a result of an emergency affecting the railway (whether or not that emergency occurred through any fault of that party), other than a Facility Owner not falling within subparagraph (b) below which is requiring Railway Vehicles to move from a CCOS Facility as a result of or in connection with an emergency which is the direct and reasonably proximate result of the failure or condition of a railway asset operated by another party; or
- (b) a party who acts in breach of its obligations under this Code;

**"LUL Station"**

means each of Bond Street, Farringdon, Liverpool Street (LUL), Tottenham Court Road and Whitechapel stations operated by London Underground Limited;

**"party"**

means RfL(I) or any other person which is obliged to comply with this Code and "parties" shall be construed accordingly;

**"Railway Vehicle"**

includes any other thing or person brought or allowed onto or into a CCOS Facility in the exercise of the permission to use conferred by this Code;

**"RfL(I)"**

has the meaning ascribed to it in Part A of the CCOS Network Code;

**"ROGS"**

means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**"Safety Authorisation"**

has the meaning ascribed to it in ROGS; and

**"Safety Management System"**

has the meaning ascribed to it in ROGS.

**1.2 Interpretation**

1.2.1 Unless the context otherwise requires:

- (a) terms and expressions used in the Act shall have the

same meanings in this Code;

- (b) references to a Beneficiary include its associates; and
- (c) where an obligation is expressed to be dischargeable by a Beneficiary, the Beneficiary in question shall be obliged also to procure that its associates discharge the obligation in question.

1.2.2 The rules of interpretation in the CCOS Network Code shall have effect in this Code.

## **2. CAPACITIES**

2.1 Each party complies with this Code:

2.1.1 in relation to the CCOS Facilities in respect of which it is the Facility Owner, in its capacity as such Facility Owner; and

2.1.2 in relation to every other CCOS Facility, as a Beneficiary.

## **3. PERMISSION TO USE**

3.1 Each Facility Owner hereby grants to each Beneficiary permission to use its CCOS Facility:

3.1.1 in the case of any emergency affecting:

- (a) a CCOS Facility; or
- (b) a railway facility connected to the CCOS (provided such emergency affects the operation of such railway facility at or around the connection with the CCOS);

3.1.2 for the duration of the emergency and for as long after the cessation of the emergency as shall be reasonably necessary to remove from the relevant CCOS Facility the Railway Vehicles in question and any other thing or person brought or allowed onto or into the CCOS Facility in the exercise of the said permission to use; and

3.2.1 in accordance with the terms of this Code and the Safety Authorisation relating to the CCOS Facility in question.

## **4. GENERAL OBLIGATIONS**

In relation to the use of any CCOS Facility pursuant to this Code, each Facility Owner and each Beneficiary shall at all times act reasonably and in good faith with the objective of ensuring the health and safety and security of persons and property and:

4.1.1 the removal of the cause and the alleviation of the effects of the emergency; and

4.1.2 the removal of each Railway Vehicle from the CCOS Facility which

it has been permitted to use pursuant to this Code,  
as soon as reasonably practicable.

## **5. CHANGES TO THE CODE**

This Code may be amended in the same manner as the CCOS Network Code, and Part C of the CCOS Network Code shall apply in respect of any proposed amendments to this Code.

## **6. ENTITLEMENT OF FACILITY OWNER TO GIVE DIRECTIONS**

### **6.1 General**

6.1.1 Each Beneficiary shall comply with:

- (a) any directions given by a Facility Owner in relation to the movement and stabling on or within the CCOS Facility in question of Railway Vehicles using the CCOS Facility pursuant to this Code; and
- (b) any reasonable request by an Infrastructure Manager in relation to any aspect of the Beneficiary's operations which affects or is likely to affect the performance of that Infrastructure Manager's health and safety duties relating to a CCOS Facility which is being used by the Beneficiary pursuant to this Code.

### **6.2 Facility owner entitlement to move railway vehicles**

A Facility Owner shall be entitled to move any Railway Vehicle on or within the applicable CCOS Facility, and shall take reasonable care when doing so.

## **7. PRIORITY - GOODS AND SERVICES**

Subject to the entitlement of the Beneficiary to have its Railway Vehicles and any persons use or be accommodated on or at a CCOS Facility under this Code, the right of the Beneficiary to any goods or services at the CCOS Facility shall rank after the rights of the Beneficiaries at the CCOS Facility in question under Access Agreements between them and the relevant Facility Owner.

## **8. APPLICATION OF EXISTING DOCUMENTATION - STATIONS AND DEPOTS**

### **8.1 Existing Access Contract**

If the CCOS Facility in question is a LUL Station or a Concessionaire Station which the Beneficiary has permission to use under an Access Agreement other than this Code, the provisions of that Access Agreement, other than any Excepted Provisions, shall apply to the permission to use granted under this Code.

## **8.2 No Existing Access Contract**

If the CCOS Facility in question is a LUL Station or a Concessionaire Station which the Beneficiary does not have permission to use under an Access Agreement other than this Code, its permission to use under this Code shall be on terms and conditions which are the same as, or as near as is reasonably practicable to, those of the Access Agreement most recently entered into in respect of that CCOS Facility by the Facility Owner, other than any Excepted Provisions.

## **8.3 Reasonable terms**

If there is no Access Agreement in respect of a CCOS Facility of the kind to which clause 8.1 applies, the terms and conditions of the permission to use shall be ones which are reasonable.

## **9. CCOS**

### **9.1 CCOS Network Code**

Insofar as this Code confers permission to use any part of the CCOS, the CCOS Network Code is hereby incorporated in and forms part of this Code.

### **9.2 Application of pre-existing Access Agreement**

If the Beneficiary is a party to an Access Agreement with RfL(I) which confers permission to use part of the CCOS other than the part to which the Beneficiary requires access pursuant to this Code, the provisions of that Access Agreement (other than any Excepted Provisions) shall apply as nearly as practicable to the permission to use granted under this Code.

### **9.3 No existing Access Agreement**

If the Beneficiary does not have permission to use the CCOS under an Access Agreement other than this Code, its permission to use under this Code shall be on terms and conditions which are the same as, or as near as is reasonable practicable to, those of the Access Agreement most recently entered into in respect of that part of the CCOS.

## **10. PRIORITY - CONFLICT WITH OTHER ACCESS AGREEMENTS**

### **10.1 Precedence over other Access Agreements**

Subject to clause 7 above, the permission to use conferred by this Code shall prevail over the permission to use any CCOS Facility granted by any party to this Code to any other such party, and each relevant Access Agreement shall be construed in all respects subject to this clause 10.

### **10.2 Definition**

In this clause 10 "**relevant Access Agreement**" means an Access Agreement other than this Code between any two or more parties to this Code.



## **11. PAYMENT FOR EMERGENCY ACCESS**

### **11.1 Additional Costs**

Subject to clause 13 below, the Liable Person shall reimburse: (i) each Affected Person for all losses, costs and expenses suffered by that Affected Person in respect of any breach of this Code (or any equivalent code incorporated into an Access Agreement) by the Liable Person; and (ii) the Facility Owner and/or the Beneficiary (as the case may be) for all reasonable costs and expenses they incur as a result of the exercise of any permission to use pursuant to this Code (or any equivalent code incorporated into an Access Agreement) which they would not have incurred had the permission not been exercised.

### **11.2 Stabling charge**

11.2.1 The Beneficiary shall pay to the Facility Owner a stabling charge which shall be calculated for each successive period of 24 hours during which any Railway Vehicle is stabled on the CCOS or at a relevant CCOS Facility pursuant to this Code at the rates set out in the CCOS Network Statement.

11.2.2 No payment shall be due under clause 11.2.1 in respect of stabling if the operator of the Railway Vehicle as Beneficiary or as associate of the Beneficiary had permission to use that part of the relevant CCOS Facility for stabling under an Access Agreement other than this Code without any additional payment.

## **12. NON-CONFORMING RAILWAY VEHICLES**

### **12.1 General permission to use**

Notwithstanding anything to the contrary in any Access Agreement but subject to clause 4 hereof, this Code confers on each Beneficiary the right to have its Railway Vehicles enter or move onto a CCOS Facility in respect of which another person is the Facility Owner notwithstanding that the CCOS Facility in question may be unsuitable for the admission or accommodation of the Railway Vehicles in question.

### **12.2 Safety**

A party shall be deemed to have acted reasonably and in good faith for the purpose of clause 4 above where the action taken to prevent serious prejudice to the health and safety of any person or property was that which a reasonable and prudent person, who was the sole owner and beneficiary of the relevant CCOS Facility and Railway Vehicle affected by the emergency, could be expected to have taken, with the aim of reducing the overall level of risk of the locality in which the emergency and any subsequent movement of Railway Vehicles occurred, whether or not such action would constitute a breach of the Safety Management System of the actual Facility Owner or Beneficiary, any CCOS Standards, any licence granted under section 8 of the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005, or any other applicable law.

### **12.3 Liability for damage and economic loss**

Clause 13 has effect in relation to physical damage and economic loss caused by the exercise of any right granted under this clause 12.

## **13. LIABILITY**

### **13.1 Liable person**

The Liable Person shall be liable to each Affected Person in respect of any breach of this Code.

### **13.2 Responsibility for persons**

In relation to any persons who are permitted to enter or remain upon any CCOS Facility pursuant to this Code, each of the Beneficiary and the Facility Owner shall take reasonable care to avoid acts or omissions which it can reasonably foresee would be likely to injure persons who are so closely and directly affected by its act or omission that it ought reasonably to have them in contemplation as being so affected when it is directing its mind to the acts and omissions which are in question.

### **13.3 Limitations - exclusion of consequential etc. losses**

No party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable under this Code to any other party for:

13.3.1 any loss of revenue, loss of use, loss of contract or loss of goodwill;  
or

13.3.2 any indirect or consequential loss.

### **13.4 Remedies not cumulative**

The rights and remedies provided by this Code are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies, express or implied and provided by common law or statute in respect of the subject matter of this Code and which are exercisable by one party against another party.

### **13.5 Exclusion of claims in tort**

Without prejudice to the generality of clause 13.4, the rights excluded pursuant to that clause include any rights which any party may possess in tort which shall include actions which may be brought in negligence and/or nuisance.

### **13.6 Waiver of rights of action**

Each of the parties hereby waives to the fullest extent possible all rights and remedies of the kind excluded pursuant to clause 13.4 and releases each other party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Code and undertakes not to enforce any of them except as expressly provided in this

Code.

### **13.7 Trust**

Each party shall hold the benefit of clauses 13.3, 13.4, 13.5 and 13.6 for itself and as trustee and agent for its officers, employees and agents.

### **13.8 Relationship with other Access Agreements**

This Code is without prejudice to the provisions of other Access Agreements relating to the payment of compensation, the payment reduction or other adjustment of charges or the grant of any indemnity in each case in connection with the cancellation, delay, interruption, diversion or other performance of trains or the provision of stabling or the provision of maintenance or other goods and/or services in connection with trains.

## **14. FAULT ATTRIBUTION**

RfL(I) shall in respect of the CCOS determine and record the persons and causes which are responsible for any emergency, whether or not a delay or cancellation of any train is caused as a result of the emergency, in the manner and in accordance with the procedures specified in Part B of the CCOS Network Code. RfL(I) shall, if so requested by any Affected Person and so far as reasonably practicable, in like manner make such a determination and record in respect of an emergency on a CCOS Facility other than the CCOS.

## **15. CCOS FACILITIES**

15.1 Each party shall, if so requested by RfL(I), provide to RfL(I), a statement specifying each CCOS Facility of which it is Facility Owner for the purposes of this Code.

15.2 When a party becomes the Facility Owner of a CCOS Facility of which it was not previously the Facility Owner it shall forthwith notify RfL(I) in writing of the applicable CCOS Facility and the date on which it has become the Facility Owner of such CCOS Facility.

## **16. NOTICES**

16.1 For the purposes of this Code:

16.1.1 notifications may be given orally or in writing; and

16.1.2 the notices provisions of any other Access Agreement shall not apply.

If an oral notification has been given, it shall be confirmed in writing as soon as reasonably practicable thereafter.

## **17. DISPUTE RESOLUTION**

Any dispute (including non-contractual disputes) arising out of or in relation to this Code or anything done or omitted to have been done under it shall be resolved in accordance with the CCOS ADRR.

## **18. VALUE ADDED TAX**

- 18.1 Where any taxable supply for VAT purposes is made under or in connection with this Code by one party to another, the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.
- 18.2 Where under this Code one party has agreed to reimburse another in respect of any payment made or cost incurred by that other in respect of any payment made or cost incurred by that other, the first party shall also reimburse the other party for any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the reimbursed or indemnified party is treated as a member of a group for VAT purposes under sections 25 and 26 of the Value Added Tax Act 1994.
- 18.3 Where under this Code any rebate or repayment of any amount is payable by one party to another, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.
- 18.4 In this clause 18, "VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modifying or consolidating such legislation and any reference to "VAT" shall be construed accordingly.

## **19. DEDUCTION OR WITHHOLDING FROM PAYMENTS**

- 19.1 All sums due under this Code shall be paid without deduction or withholding in respect of duties, taxes or charges otherwise of a taxation nature unless the deduction or withholding is required by law in which event the payer shall:
- 19.1.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
- 19.1.2 account to the relevant taxation or other authorities within the period for payment permitted by the applicable law the full amount of the deduction or withholding; and
- 19.1.3 furnish to the payee within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

## **20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Each party shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights against any other party as have

been expressly granted to it under this Code, whether in the capacity of Beneficiary, Facility Owner or an Affected Person.