

Draft: 4 July 2011

..... 2011

NETWORK RAIL INFRASTRUCTURE LIMITED

and

RAIL FOR LONDON LIMITED

CONNECTION CONTRACT

in respect of

NEW CROSS GATE

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THIS CONNECTION CONTRACT is made the day of 2011

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London N1 9AG ("**Network Rail**"); and
- (2) **RAIL FOR LONDON LIMITED**, a company registered in England under number 05965930 having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**RfL**").

WHEREAS:

- (A) RfL holds orders under the Transport and Works Act 1992 authorising a northern and southern extension of the East London Line (as described in the London Underground (East London Line) Extension Order 1997 and the London Underground (East London Line) (No. 2) Extension Order 2001, respectively).
- (B) As part of the Mayor of London's transport strategy, Transport for London is sponsoring a project to extend the East London Line and enhance the level of passenger services operating on it (the "**Project**"). Transport for London is funding the Project through its own prudential borrowing. The Project will result in the existing East London Line being closed and its infrastructure converted to national rail standards.
- (C) Phase 1 of the Project will see the existing East London Line extended north to Dalston Junction and use made of the existing Network to extend the East London Line passenger services south to Crystal Palace and West Croydon. It is proposed that the Core ELR Network will connect to the NR Network at certain points near New Cross Gate station. RfL, as facility owner of the Core ELR Network, wishes to obtain the permission of Network Rail to connect the Core ELR Network to the NR Network at the relevant Connection Points.
- (D) Network Rail has been directed by the Office of Rail Regulation to grant to the Core ELR Facility Owner permission to connect to the NR Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this contract unless the context otherwise requires:

"access charges review" has the meaning ascribed to it in paragraph 1 of Schedule 4A of the Act;

"access contract" has the meaning ascribed to it in section 17(6) of the Act;

"Access Dispute Resolution Rules" and **"ADRR"** means the rules regulating the resolution of disputes between parties to access agreements entitled "The Access Dispute Resolution Rules" and annexed to the Network Code;

"Act" means the Railways Act 1993;

"Adjusted Amount" means the increase or decrease to the Amount payable by the Core ELR Facility Owner to Network Rail determined in accordance with Clause 16.4;

"Adjustment" means an increase or decrease to the Amount payable by the Core ELR Facility Owner to Network Rail;

"Adjustment Factor Formula" means the formula for calculating the variations to the Amount set out in Schedule 3;

"Affected Party" means, in relation to a Force Majeure Event, the party claiming relief under Clause 17 by virtue of that Force Majeure Event, and **"Non-affected Party"** shall be construed accordingly;

"Affiliate" means, in relation to any company:

- (A) a company which is either a holding company or a subsidiary of such company;
or
- (B) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes **"holding company"** and **"subsidiary"** have the meanings ascribed to them in section 1159 of the Companies Act 2006 and **"company"** shall include Transport for London;

"Amount" means the sum specified in Clause 15.1.1;

"Applicable Procedures" means any applicable procedures, timescales or arrangements which have been or are agreed in writing by the parties from time to time;

"Authorised Representatives" has the meaning ascribed to it in Clause 12.1.3;

"Backstop Date" has the meaning ascribed to it in Clause 16.2;

"Commencement Date" means the date of signature of this contract;

"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), whether of the United Kingdom or of the European Union, which has, in respect of this contract, jurisdiction over either of the parties or the subject matter of this contract;

"Confidential Information" means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

"Connecting Network" means those parts of the NR Network between a Connection Point and an Interface Point which is used solely for the support, guidance and operation of rolling stock to and from the Core ELR Network including those items identified in Schedule 1;

"Connection Point" means a point at which the railway lines of the NR Network and the Core ELR Network connect as shown marked "CP" on the Plan;

"contract" means this document including all Schedules and annexes to it;

"Contract Year" means each yearly period commencing on the Commencement Date and subsequently on each anniversary of such date;

"Core ELR Facility Owner" means RfL or any subsequent person who becomes the facility owner of the Core ELR Network;

"Core ELR Network" means the network situated on the Premises of which, as at the date of this contract, RfL is the facility owner, the railway lines of which are shown coloured green on the Plan;

"Criteria" means the criteria set out in Clause 16.3.2;

"Default Interest Rate" is two percent above the base lending rate of Barclays Bank PLC, as varied from time to time;

"Direction" means any direction, requirement, instruction or rule legally binding on either of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force, but shall not include:

- (a) the exercise of a discretion under any contract or other obligation binding on the party in question or the enforcement of any such contract or obligation; or
- (b) any direction issued by the Office of Rail Regulation pursuant to section 16A of the Act;

"Disruptive Event" means any event or circumstance which materially prevents or materially disrupts the operation of trains or any part of the NR Network (including the Connecting Network) and/or the Core ELR Network;

"ELR Track Access Option" means the Track Access Option relating to the East London Railway between Network Rail and Transport for London dated 6 March 2008 (as amended from time to time);

"Emergency" means an unforeseen event or circumstance beyond a party's control affecting: (i) a Connection Point; (ii) the Core ELR Network; or (iii) the Connecting Network and giving rise to an immediate likelihood of injury to persons and/or substantial and/or serious Environmental Damage or damage to property;

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

"facility owner" has the meaning ascribed to it in section 17(6) of the Act;

"FOI Legislation" has the meaning ascribed to it in Clause 13.8.3;

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

- (A) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (B) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (C) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (D) nuclear, chemical or biological contamination;
- (E) pressure waves caused by devices travelling at supersonic speeds;
- (F) discovery of fossils, antiquities or unexploded bombs; and
- (G) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry or where the Core ELR Facility Owner is not an industry party, that sector of the economy in which the Core ELR Facility Owner operates;

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

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

"Information" has the meaning ascribed to it in Clause 13.8.4;

"Information Request" has the meaning ascribed to it in Clause 13.8.5;

"Initial Condition Statement" means the statement describing the agreed physical condition of, and the work required to, the Connecting Network, and each Connection Point as set out in Schedule 1;

"Innocent Party" means, in relation to a breach of an obligation under this contract, the party who is not in breach of that obligation;

"Insolvency Event" means in relation to either of the parties where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£50,000" or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the

Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;

- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or served out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above unless:
 - (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the concurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
 - (ii) in the cases of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Interface Point" means a point (other than a Connection Point) at which the railway lines comprising a Connecting Network commences and as marked "IP" on the Plan;

"Internal Resolution Procedure" has the meaning ascribed to it in Clause 12.1;

"Liability Cap" has the meaning ascribed to it in paragraph 1 of Schedule 4;

"network" has the meaning ascribed to it under section 83(1) of the Act;

"Network Code" means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995, as amended from time to time;

"Notice of Consent" means a notice given by the Office of Rail Regulation to the parties under Clause 16.4.6;

"Notice of Determined Adjusted Amount" means a notice given by the Office of Rail Regulation to the parties under Clause 16.4.8(B);

"Notification" has the meaning ascribed to it in Clause 12.1.1;

"NR Network" means the part of the network of which Network Rail is the owner and which is comprised in the Routes;

"NR Property" means the land shown on the Plan which is or will be prior to the commencement of the Services in the ownership or control of Network Rail or one of its Affiliates;

"Operational Control" means the safe management and direction of rolling stock;

"Passenger Change Date" means the Principal Change Date, or as the case may be, the Subsidiary Change Date;

"Performance Order" has the meaning ascribed to it in Clause 12.5.2;

"Plan" means the plan annexed to this contract;

"Premises" means the land shown edged brown and shaded grey on the Plan which is or will be prior to the commencement of the Services in the ownership or control of the Core ELR Facility Owner or an Affiliate of Transport for London;

"Position Paper" has the meaning ascribed to it in Clause 12.1.2;

"Project" has the meaning ascribed to it in recital (B);

"Railway Group Standards" means:

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

in each case as issued by the Rail Safety and Standards Board Limited and authorised pursuant to the Railway Group Standards Code (and reference to any Railway Group Standard shall be construed accordingly);

"Relevant Dispute" means any difference between the parties arising out of or in connection with this contract;

"Relevant Disputes Panel" means the relevant panel established under Part E of the ADRR which is to determine a Relevant Dispute in accordance with the principles and procedures set out in Part A of the ADRR;

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which an Affected Party is claiming relief under Clause 17;

"Relevant Losses" means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 9, any of the matters specified in Clause 9.3.1, 9.3.2 or 9.3.3 or Clause 9.4.1, 9.4.2 or 9.4.3 (each a **"breach"** for the purpose of this definition),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

"Relevant Obligation" means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under Clause 17;

"Request to Change Forum" has the meaning ascribed to it in Clause 12.4.1(A);

"Retail Prices Index" or "RPI" means the General Index of Retail Prices All Items as published in Economic Trends issued by the Office for National Statistics. If RPI shall cease to be published, or there is a material change in the base composition of RPI, then the parties may agree to such other index as they deem appropriate with the object of placing both parties in the position in which they would have been had the RPI continued to be published and there been no change in the base composition of RPI;

"rolling stock" has the meaning ascribed to it in section 83(1) of the Act;

"Routes" means the routes on the Network between each of the following:

- (a) the Connection Points and West Croydon (direct);
- (b) Sydenham and Crystal Palace (direct); and
- (c) West Croydon station and the West Croydon turn back facility south of the station.

"Safety Obligations" means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

"Secretary of State" means the Secretary of State for Transport for the purposes of the Act;

"Services" has the meaning ascribed to that term in the ELR Track Access Option;

"Subsidiary Change Date" has the meaning ascribed to it in Part D of the Network Code;

"Timetable Period" means a period beginning at the start of a Passenger Change Date and ending immediately before the start of the subsequent Passenger Change date;

"Train Operator" means an operator of trains who has permission to use track under an access contract;

"Train Operator Variation Request" has the meaning ascribed to it in Part D of the Network Code;

"Transport for London" means the body corporate, established by section 154 of the Greater London Authority Act 1999 and any successor bodies; and

"Value Added Tax" means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and **"VAT"** shall be construed accordingly.

1.2 Interpretation

In this contract, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 any one gender includes the other;
- 1.2.3 all headings are for convenience of reference only and shall not be used in the construction of this contract;
- 1.2.4 reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- 1.2.5 reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- 1.2.6 reference to a party is to a party to this contract, its successors and permitted assigns;
- 1.2.7 reference to a recital, Clause, annex or Schedule is to a recital, Clause, annex or Schedule of or to this contract; reference in an annex or a Schedule to a Part of an annex or a Schedule is to a part of the annex or Schedule in which the reference appears; reference in a Part of an annex or a Schedule to a paragraph is to a paragraph of that part;
- 1.2.8 where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- 1.2.9 references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- 1.2.10 "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;
- 1.2.11 the words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- 1.2.12 words and expressions defined in the Act shall, unless otherwise defined in this contract, have the same meanings in this contract;
- 1.2.13 words and expressions defined in the Network Code shall have the same meanings in this contract;
- 1.2.14 if a period of time is specified in this contract as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day; and
- 1.2.15 references to writing in this contract shall include any modes of reproducing words in any legible form.

1.3 Indemnities

Indemnities provided for in this contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2. COMMENCEMENT AND EXPIRY

2.1 Commencement

This contract shall come into force on the Commencement Date.

2.2 Expiry

This contract shall continue in force until termination under Clause 8.

3. STANDARD OF PERFORMANCE

3.1 General standard

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

3.1.1 network owner and operator (in the case of Network Rail); and

3.1.2 owner of a facility adjacent to the NR Network (in the case of the Core ELR Facility Owner).

3.2 Good faith

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

4. PERMISSION TO USE

Network Rail grants the Core ELR Facility Owner permission to connect the Core ELR Network to the NR Network at each Connection Point.

5. OBLIGATIONS IN RESPECT OF THE CONNECTION OF THE CORE ELR NETWORK TO THE NR NETWORK

5.1 Obligations of Core ELR Facility Owner

5.1.1 The Core ELR Facility Owner shall not:

(A) physically sever (except in accordance with clause 8) any connection of the NR Network to the Core ELR Network; or

- (B) take any action or omit to take any action which impedes and/or interferes with access to/from the NR Network at a Connection Point,

unless it has, except in an Emergency, given prior notice of such severance, interference, impediment, action or omission to Network Rail and acted in accordance with any Applicable Procedures in relation to the undertaking of any inspection, maintenance, repair or renewal of the Core ELR Network.

5.1.2 In an Emergency, the Core ELR Facility Owner shall, within a reasonable time of the occurrence of the Emergency and in accordance with any Applicable Procedures, give notice to Network Rail:

- (A) of the circumstances giving rise to the Emergency;
- (B) the action taken by the Core ELR Facility Owner to deal with the Emergency;
- (C) the impact of its actions on each of the Connection Points; and
- (D) where applicable, an indication of when it will be able to accept rolling stock off the NR Network on to the Core ELR Network.

5.1.3 The Core ELR Facility Owner shall:

- (A) ensure at its own cost that the interface between the Core ELR Network and the NR Network in respect of each element of Railway Infrastructure shown on the Plan is and continues to be:
 - (1) compatible with the NR Network save in respect of traction power and network communications systems (including SCADA) and any other aspect as the parties may agree in writing from time to time; and
 - (2) compliant with applicable Railway Group Standards save to the extent that Core ELR Facility Owner has been granted any derogations from such Railway Group Standards;
- (B) be responsible for the Operational Control of all rolling stock movements on the Core ELR Network;
- (C) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the NR Network arising from:
 - (1) the operation of the Core ELR Network; or
 - (2) any person authorised by the Core ELR Facility Owner to be at or on the Premises, the NR Property and/or the Connecting Network.

Without prejudice to the foregoing, where a matter described in sub-clause 5.1.3(C)(1) or (2) above gives rise to disruption on the NR Network, the Core ELR Facility Owner shall:

- (a) use reasonable endeavours to minimise the extent of such disruption; and

- (b) act in accordance with good industry practice and any Applicable Procedures in relation to the management and remediation of the consequences of operational disruptions;
- (D) ensure that all persons authorised by the Core ELR Facility Owner to be on the Connecting Network (for any duration) observe Network Rail's safety and security requirements in relation to the NR Property and the NR Network (including the Connecting Network) as may be amended and notified to the Core ELR Facility Owner under Clause 5.2.3(H) and ensure that, where the presence of such persons causes disruption to the operation of the NR Network, the Core ELR Facility Owner shall use reasonable endeavours to minimise the effects of such disruption; and
- (E) promptly provide Network Rail with any amendments to the Core ELR Facility Owner's safety and security requirements in relation to the Premises and the Core ELR Network; and
- (F) establish and maintain or procure the establishment and maintenance of adequate security at the Premises.

5.2 **Obligations of Network Rail**

5.2.1 Network Rail shall not:

- (A) physically sever (except in accordance with Clause 8) any connection of the NR Network to the Core ELR Network; or
- (B) take any action or omit to take any action which impedes and/or interferes with access to/from the NR Network at a Connection Point,

unless it has, except in an Emergency, obtained the prior consent of the Core ELR Facility Owner (whose consent shall not be unreasonably withheld) in respect of such severance, interference, impediment, action or omission and, where applicable, acted in accordance with any Applicable Procedures in relation to the undertaking of any inspection, maintenance, repair or renewal of the NR Network.

5.2.2 In an Emergency, Network Rail shall, within a reasonable time of the occurrence of the Emergency and in accordance with any Applicable Procedures, give notice to the Core ELR Facility Owner:

- (A) of the circumstances giving rise to the Emergency;
- (B) the action taken by Network Rail to deal with the Emergency;
- (C) the impact of its actions on the Connecting Network and each of the Connection Points; and
- (D) an indication of the timescale for reinstating the connection and allowing rolling stock access to the Core ELR Network.

5.2.3 Network Rail shall:

- (A) re-instate, at its own cost, the connection of the NR Network to the Core ELR Network, where such connection has been severed by Network Rail other than in accordance with Clause 8:
 - (1) as soon as reasonably practicable after the date of severance; and
 - (2) in accordance with applicable Railway Group Standards;
- (B) inspect, test, maintain, repair and renew the Connecting Network in accordance with the Initial Condition Statement and any Applicable Procedures;
- (C) consult with the Core ELR Facility Owner in respect of all planned inspections, maintenance, renewals or enhancements on the NR Network (including the Connecting Network) which may impede access to and/or from the Core ELR Network in accordance with any Applicable Procedures, and have due regard to any comments and representations reasonably made by the Core ELR Facility Owner in relation to the same;
- (D) be responsible for the Operational Control of all rolling stock on the NR Network;
- (E) ensure that all persons authorised by Network Rail to be on the Connecting Network on or in the vicinity of the Premises or on the Premises (for any duration) observe the safety and security requirements in relation to the Premises as may be amended and notified to Network Rail by the Core ELR Facility Owner under Clause 5.1.3(E) and that the presence of such persons does not cause any disruption to the operation of the Core ELR Network and the Premises;
- (F) place and maintain suitable markers at each of the Connection Points which define the maintenance boundaries between the parties;
- (G) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the Core ELR Network arising from:
 - (1) the operation of the NR Network; or
 - (2) any person authorised by the Network Rail to be at or on the Premises, the NR Property and/or the Connecting Network.

Without prejudice to the foregoing, where a matter described in sub-clause 5.2.3(G)(1) or (2) above give rise to disruption on the Core ELR Network, Network Rail shall:

- (a) use reasonable endeavours to minimise the extent of such disruption; and
- (b) act in accordance with any Applicable Procedures in relation to the management and remediation of the consequences of operational disruptions; and

- (H) promptly provide the Core ELR Facility Owner with any amendments to Network Rail's safety and security requirements in relation to the NR Property and the NR Network (including the Connecting Network).

5.3 Timetabling Integration

Network Rail and the Core ELR Facility Owner shall, for each Timetable Period from the Passenger Change Date immediately subsequent to the Commencement Date, cooperate to produce in accordance with any Applicable Procedures an integrated timetable which shows every train movement between the Core ELR Network and the NR Network during that Timetable Period and in connection with any changes to such timetable whether arising from a Train Operator Variation Request made by a train operator or otherwise.

6. JOINT OBLIGATIONS

6.1 Continuing Joint Obligations

Network Rail and the Core ELR Facility Owner shall:

- 6.1.1 review as necessary and in accordance with Railway Group Standards arrangements for the safe transfer of Operational Control of rolling stock from one party to the other, in consultation with Train Operators who have permission to use the Core ELR Network;
- 6.1.2 review the validity of the Plan and Schedule 1 as necessary and as may reasonably be required by either of the parties and make such amendments to either or both of them as are appropriate in the event that:
 - (A) the NR Network identified on the Plan or in Schedule 1 as Connecting Network is not used solely for the support, guidance and operation of rolling stock to and from the Core ELR Network; or
 - (B) a part of the NR Network, not previously identified as being used solely for the support, guidance and operation of rolling stock to and from the Core ELR Network, fulfils that condition at the time of the review;
- 6.1.3 inspect the condition of the Connecting Network and each Connection Point as necessary and as may reasonably be required by either of the parties and, if necessary, audit Network Rail's records of the maintenance, repair and renewal carried out to the Connecting Network and the Connection Points annually or at other intervals as may be agreed between the parties; and
- 6.1.4 act in accordance with good industry practice and any Applicable Procedures so as to enable the safe and efficient transfer of the Operational Control of all rolling stock movements from the Core ELR Network to the NR Network and from the NR Network to the Core ELR Network.

7. RIGHT OF ENTRY

- 7.1 Subject to Clause 7.2, Network Rail shall be entitled to maintain, modify and renew any part of the Connecting Network on the Premises to enable the movement of rolling stock to and from the Core ELR Network.

7.2 Each party shall act in accordance with good industry practice and any Applicable Procedures (both in an Emergency and otherwise) in relation to entering upon the Premises, the NR Property or the NR Network (as applicable) for the following purposes:

- 7.2.1 to inspect, test, maintain, repair and renew the connection of the NR Network to the Core ELR Network; and
- 7.2.2 to inspect, test, maintain, repair and renew any part of the Connecting Network on or in the vicinity of the Premises and/or the Core ELR Network; and
- 7.2.3 to carry out remedial procedures in the event of an Emergency.

7.3 **Restrictions on Access**

Save as expressly set out in this contract and save for any rights of access which a party may have granted to the other party by way of easement, under contract, wayleave and/or other right or as otherwise provided under law:

- 7.3.1 the Core ELR Facility Owner shall not be entitled, for itself or on behalf of any other person, to any right of access to the NR Network or the NR Property; and
- 7.3.2 Network Rail shall not be entitled, for itself or on behalf of any other person to any right of access to the Core ELR Network or the Premises

8. **TERMINATION**

8.1 **Termination Events**

Without prejudice to any other rights of the parties under this contract, Network Rail or the Core ELR Facility Owner may terminate this contract by notice served in accordance with Clause 18.4 if:

- 8.1.1 an Insolvency Event occurs in relation to the other party;
- 8.1.2 any undisputed amount due by the other party under this contract remains unpaid following the expiry of the payment period specified in Clause 15.1.5 or 15.1.8(B) (as the case may be) and that party then fails to remedy such non-payment within a reasonable time specified by the other party after receipt of written notice from Network Rail or the Core ELR Facility Owner (as the case may be) demanding payment of such amount; or
- 8.1.3 the Connecting Network is not used at all during a Timetable Period and there is no proposal by RfL or Transport for London to re-instate any services within a reasonable period.

8.2 **Voluntary Termination**

- 8.2.1 Either party may at any time submit to the other party a notice served in accordance with Clause 18.4 which proposes to terminate this contract (a "**Termination Notice**").
- 8.2.2 A Termination Notice served by a party pursuant to Clause 8.2.1 shall state:
 - (A) the reasons for the proposed termination of this contract; and

- (B) the proposed termination date (being a date which is not earlier than the first Passenger Change Date which is at least 12 months from the date of the Termination Notice.
- 8.2.3 Where the Core ELR Facility Owner serves a Termination Notice on Network Rail pursuant to Clause 8.2.1, this contract shall terminate on the date specified in such notice and Clause 8.3 shall apply.
- 8.2.4 Where Network Rail serves a Termination Notice on the Core ELR Facility Owner pursuant to Clause 8.2.1, the following shall apply:
 - (A) the Core ELR Facility Owner shall, within 28 days of the date of the relevant Termination Notice give written notice to Network Rail, as to whether it consents or objects to the proposed termination of the contract. If the Core ELR Facility Owner objects to the proposed termination it shall set out in reasonable detail the grounds for such objection;
 - (B) in the event that the Core ELR Facility Owner fails to respond to Network Rail within the period specified in Clause 8.2.4(A), then without prejudice to the right of the Core ELR Facility Owner to make an application pursuant to section 17 of the Act for the continued connection of the Core ELR Network to the NR Network, the Core ELR Facility Owner shall be deemed to have consented to the termination of this contract as set out in the relevant Termination Notice and Clause 8.3 shall apply;
 - (C) in the event that the Core ELR Facility Owner notifies Network Rail that it consents to the termination of this contract, as set out in the relevant Termination Notice, this contract shall terminate in accordance with such terms and Clause 8.3 shall apply;
 - (D) in the event that the Core ELR Facility Owner notifies Network Rail that it objects to the proposed termination of this contract as set out in the relevant Termination Notice the parties shall meet and in good faith negotiate and attempt to agree whether this contract should terminate and if so, the proposed termination date (and each party shall ensure that such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice); and
 - (E) if the parties fail to agree whether this contract should terminate and/or the proposed termination date within 28 days of first meeting pursuant to Clause 8.2.4 (D) either party may refer the matters in dispute to the Internal Resolution Procedure for resolution. If the Internal Resolution Procedure fails to resolve the matters in dispute to the satisfaction of each party, either party may refer the matters in dispute to the ORR and the ORR may determine whether this contract should terminate and/or the proposed termination date (as applicable) itself, provided that the ORR:
 - (1) has consulted with each party regarding such termination;

- (2) has taken into account any representations which have been made to it by each party within such period as it has specified for the purpose; and
- (3) has regard to its duties under section 4 of the Act.

8.3 Effect of Termination

Upon the termination of this contract, Network Rail:

8.3.1 may:

- (A) disconnect the NR Network from the Core ELR Network;
- (B) subject to Clause 8.3.2, remove the Connecting Network; and
- (C) make good the NR Network, the Core ELR Network and any damage to the Premises; and

8.3.2 shall, if requested by the Core ELR Facility Owner, remove any part of the Connecting Network located on the Premises,

and the reasonable costs of any action under Clause 8.3.1 or 8.3.2 shall be paid by the Core ELR Facility Owner to Network Rail except where this contract is terminated by the Core ELR Facility Owner in accordance with Clause 8.3.1 or 8.3.2 in which case Network Rail shall carry out any action under Clauses 8.3.1 and 8.3.2 at its own cost.

8.4 Mitigation

In complying with the provisions of Clause 8.3 Network Rail shall use all reasonable efforts to mitigate the cost of carrying out such actions.

8.5 Notification of Termination to the Office of Rail Regulation

As soon as reasonably practicable and in any case not later than 14 days after termination, Network Rail shall notify the Office of Rail Regulation if this contract has been terminated:

8.5.1 pursuant to clause 8.1;

8.5.2 by the Core ELR Facility Owner pursuant to clause 8.2.3; or

8.5.3 with the consent or deemed consent of the Core ELR Facility Owner pursuant to clause 8.2.4(B) or (C).

9. LIABILITY

9.1 Performance Orders in relation to breach

In relation to any breach of this contract:

9.1.1 the Innocent Party shall be entitled to apply under Clause 12.5 for a Performance Order against the party in breach; and

9.1.2 if a Performance Order is made, the party against whom it has been made shall comply with it.

9.2 Compensation in relation to breach

In relation to any breach of this contract the party in breach shall indemnify the Innocent Party against all Relevant Losses.

9.3 Core ELR Facility Owner indemnity

The Core ELR Facility Owner shall indemnify Network Rail against all Relevant Losses resulting from:

- 9.3.1 a failure by the Core ELR Facility Owner to comply with its Safety Obligations;
- 9.3.2 any Environmental Damage arising directly from the acts or omissions of the Core ELR Facility Owner; and
- 9.3.3 any damage to the NR Network arising directly from the Core ELR Facility Owner's negligence.

9.4 Network Rail indemnity

Network Rail shall indemnify the Core ELR Facility Owner against all Relevant Losses resulting from:

- 9.4.1 a failure by Network Rail to comply with its Safety Obligations;
- 9.4.2 any Environmental Damage arising directly from any acts or omissions of Network Rail; and
- 9.4.3 any damage to the Core ELR Network arising directly from Network Rail's negligence.

10. RESTRICTIONS ON CLAIMS

10.1 Notification and mitigation

A party wishing to claim under any indemnity provided for in this contract:

- 10.1.1 shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- 10.1.2 subject to Clause 10.1.3, shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- 10.1.3 shall not be required to exercise any specific remedy available to it under this contract.

10.2 Restrictions on claims by Network Rail

Any claim by Network Rail against the Core ELR Facility Owner for indemnity for Relevant Losses:

- 10.2.1 shall exclude payments to any person under or in accordance with the provisions of any access contract;

10.2.2 shall exclude loss of revenue in respect of permission to use any part of the NR Network under or in accordance with any access contract with any person; and

10.2.3 shall:

- (A) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach or negligence; and
- (B) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

10.3 Restrictions on claims by the Core ELR Facility Owner

Any claim by the Core ELR Facility Owner against Network Rail for indemnity for Relevant Losses shall:

- 10.3.1 include Relevant Losses only to the extent that these constitute amounts which the Core ELR Facility Owner would not have incurred as owner of a facility adjacent to the NR Network but for the relevant breach or negligence; and
- 10.3.2 give credit for any savings to the Core ELR Facility Owner which result or are likely to result from the incurring of such amounts.

10.4 Restriction on claims by both parties

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

- 10.4.1 do not arise naturally from the breach; and
- 10.4.2 were not, or may not reasonably be supposed to have been, within the contemplation of the parties:
 - (A) at the time of the making of this contract; or
 - (B) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

10.5 Limitation on liability

Schedule 4 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clause 9 and subject to Clause 18.3.3.

11. GOVERNING LAW

This contract and any non-contractual obligations connected with it shall be governed by and construed in accordance with the laws of England and Wales.

12. DISPUTE RESOLUTION

12.1 Internal Resolution Procedure

Except in relation to a matter arising from Clauses 12.3 or 16.4.2(A) or as otherwise provided for in this contract, a Relevant Dispute shall first be referred for determination in accordance with the following internal resolution procedure (the "**Internal Resolution Procedure**");

- 12.1.1 in the event of any Relevant Dispute arising, representatives of the parties shall seek to resolve the Relevant Dispute at a meeting to be convened within three (3) Working Days of written notification by one party to the other party of the Relevant Dispute (a "**Notification**");
- 12.1.2 further meetings may follow the meeting referred to in Clause 12.1.1 but, in any event, if the Relevant Dispute is not resolved within seven (7) Working Days of the Notification, each party shall, before the expiry of a period of ten (10) Working Days from the Notification, serve a written position paper (a "**Position Paper**") upon the other party. Each party's Position Paper shall state in reasonable detail that party's position and objectives in relation to the Relevant Dispute, any required redress and, where possible, comment on what is understood to be the position of the other party;
- 12.1.3 upon each party serving a Position Paper, senior representatives of the Core ELR Facility Owner and of Network Rail (the "**Authorised Representatives**") shall seek to resolve the Relevant Dispute by meeting in good faith and without recourse to legal or other proceedings;
- 12.1.4 in the event that resolution of the Relevant Dispute is achieved in accordance with Clauses 12.1.1 or 12.1.3, the terms of such resolution shall be recorded in writing and, once such record is signed by each of the Authorised Representatives, it shall be binding on the parties; and
- 12.1.5 unless and until the terms of the resolution of the Relevant Dispute are signed by each of the Authorised Representatives in accordance with Clause 12.1.4, all discussions and negotiations connected with the Relevant Dispute during the Internal Resolution Procedure shall be conducted in confidence and without prejudice to the rights of the parties in any future legal or other proceedings, nor may such matters be produced or relied upon in evidence in any such proceedings.

12.2 Arbitration

If any Relevant Dispute is not resolved by the Internal Resolution Procedure, such relevant Dispute shall be referred to arbitration in England in accordance with the Access Dispute Resolution Rules in force at the time of the reference as modified by this Clause 12, unless:

- 12.2.1 Clause 12.3 applies;
- 12.2.2 Clause 16.4.2(A) applies (which already requires such referral);
- 12.2.3 the Relevant Dispute relates to a failure to agree under paragraph 3.2 of Schedule 6;

- 12.2.4 the Relevant Dispute is referred to the Relevant Disputes Panel or the High Court of England and Wales under Clause 12.4;
- 12.2.5 the parties otherwise agree in writing including an agreement to refer the Relevant Dispute for expert determination under Part D of the ADRR;
- 12.2.6 the parties agree in writing to refer the Relevant Dispute for mediation under Part B of the ADRR and the Relevant Dispute is finally settled by such mediation;
- 12.2.7 the Relevant Dispute relates to the issue of a Termination Notice under clause 8.2.4.

12.3 Unpaid sums

- 12.3.1 Subject to Clause 12.3.2, if either party fails to pay:
 - (A) any invoice issued to it under this contract; or
 - (B) any sum which has fallen due in accordance with the provisions of this contract then:
 - (1) the amount invoiced or sum due, as referred to in Clause 12.3.1(A) or this Clause 12.3.1(B) shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any other sum due);
 - (2) such debt shall be recoverable by any means available under the laws of England and Wales; and
 - (3) the dispute resolution procedures in Clauses 12.1, 12.2 and 12.4 to 12.8 shall not apply to proceedings commenced under this Clause 12.3.
- 12.3.2 If either party withholds payment of the whole of or any part of an invoice or other statement of amounts payable under Clause 15.1.8, the procedure for resolving such dispute shall be as follows:
 - (A) within 7 days of service of any notice under Clause 15.1.7, the parties shall meet to discuss the disputed aspects of the invoice or statement with a view to resolving the dispute;
 - (B) if, within 7 days of that meeting (the "**first meeting**"), the parties are for any reason still unable to agree the disputed aspects of the invoice or statement, each party shall promptly (and in any event within 7 days) prepare a written summary of the disputed aspects of the invoice or statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
 - (C) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
 - (D) if no resolution results within 14 days of that meeting, either party may require that the matter be resolved by the Relevant Disputes Panel; and

- (E) if either party is dissatisfied with the determination of Relevant Disputes Panel such party shall be entitled to refer the matter for arbitration pursuant to Part C of the ADRR (except that paragraphs C1.26 – 1.30 inclusive of those rules shall not apply).

12.4 Request to Change Forum

12.4.1 *Request to Change Forum*

Within 5 days of service of the notice of arbitration, either party:

- (A) may notify the other party and the Office of Rail Regulation in writing that it wishes the Relevant Dispute to be referred to the Relevant Disputes Panel or to the High Court of England and Wales instead of arbitration, as the case may be (a "**Request to Change Forum**"); and
- (B) shall, in such Request to Change Forum, specify its preferred forum and the reasons for that preference.

12.4.2 *Response to Request to Change Forum*

Within 7 days of receipt of a notice under Clause 12.4.1, the receiving party shall notify the other party and the Office of Rail Regulation in writing that:

- (A) it agrees to the specified reference, in which case the Relevant Dispute shall be referred to the specified forum; or
- (B) it objects to the specified reference and wishes the Relevant Dispute to be dealt with by arbitration, by the Relevant Disputes Panel or by the High Court of England and Wales, as the case may be,

and every response under Clause 12.4.2(B) shall specify the preferred forum and the reasons for that preference.

12.4.3 *Decision by the Office of Rail Regulation*

If a Request to Change Forum is not agreed between the parties or the other party fails timeously to give a valid notice of objection under Clause 12.4.2(B), the Relevant Dispute shall be referred, following such consultation with the parties as the Office of Rail Regulation may determine is appropriate, in accordance with the final decision of the Office of Rail Regulation in its absolute discretion, namely whether the Relevant Dispute:

- (A) is still to be referred to arbitration;
- (B) is to be referred instead to the Relevant Disputes Panel, and the arbitration reference and any pending arbitration proceedings accordingly terminated or suspended; or
- (C) is to be referred instead to the High Court of England and Wales, and the arbitration reference and any pending arbitration proceedings accordingly terminated.

12.5 Performance Orders

12.5.1 *Power to order provisional relief*

For the purposes of section 39 of the Arbitration Act 1996, the arbitral tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award including Performance Orders.

12.5.2 *Performance Orders*

A Performance Order:

- (A) is an order made under Clause 12.5.3(B), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (B) may be applied for by Network Rail or the Core ELR Facility Owner in the circumstances set out in Clause 9.1, subject to the qualifications in Clause 17.7,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim or by way of appeal).

12.5.3 *Duties of arbitral tribunal in relation to Performance Orders*

Without prejudice to any additional remedies that may be ordered by the arbitral tribunal under Clause 12.6, where a party has applied for a Performance Order:

- (A) the arbitral tribunal shall decide as soon as possible whether the application is well founded or not; and
- (B) if the arbitral tribunal decides that the application is well founded, it shall be required to make an interim or final declaration to that effect and, in that event, the arbitral tribunal may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which it considers just and reasonable in all the circumstances.

12.6 Remedies

The powers exercisable by the arbitral tribunal as regards remedies shall include:

- 12.6.1 the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- 12.6.2 the powers specified in the ADRR;
- 12.6.3 the power to make Performance Orders; and
- 12.6.4 the power to order within the same reference to arbitration any relief specified in Clause 12.6.1, 12.6.2 and 12.6.3 consequent upon, or for the breach of, any interim or final Performance Order previously made.

12.7 Exclusion of applications on preliminary points of law

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

12.8 The Relevant Disputes Panel

12.8.1 Referrals to the Relevant Disputes Panel

Any referral of a Relevant Dispute to, and determination of a Relevant Dispute by, the Relevant Disputes Panel shall be conducted in accordance with Part A of the ADRR.

12.8.2 Appeal to arbitration

If either party is aggrieved with any determination of the Relevant Disputes Panel in relation to a Relevant Dispute referred to it under this Clause 12, such party may refer the Relevant Dispute for resolution by arbitration in accordance with this Clause 12 (excluding Clause 12.4), and shall notify in writing the other party of its intention. Upon such reference the arbitral tribunal is not bound by the findings of the Relevant Disputes Panel.

13. CONFIDENTIALITY

13.1 General Obligation

Subject to Clauses 13.2, 13.5 and 13.8 to 13.11 the parties shall:

13.1.1 at all times keep all Confidential Information confidential to the party receiving it (with the degree of care and the security measures that such party would apply to its own confidential information) and shall not copy or reproduce it in any manner or disclose such Confidential Information to any other person; and

13.1.2 procure that its Affiliates and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information,

except with the disclosing party's prior written consent (not to be unreasonably withheld). Where Network Rail requests, giving reasons for such request in sufficient detail for the Core ELR Facility Owner to be able to consider it properly, that any information and/or data should be kept confidential and not disclosed other than as permitted under, and in accordance with, this Clause 13 and, in such circumstances, the Core ELR Facility Owner shall give all due consideration to Network Rail's request and, if the Core ELR Facility Owner considers that any of such information and/or data should not be kept confidential, the Core ELR Facility Owner shall notify Network Rail in this regard, whereupon (and within 10 Working Days of such notification) either party shall be entitled to refer the matter to be resolved in accordance with the dispute resolution procedure pursuant to Clause 12 and, pending such resolution, the relevant information and/or data shall be deemed to be Confidential Information and shall be kept confidential and not disclosed other than as permitted under, and in accordance with, this Clause 13.

13.2 Permitted Disclosure

Each party receiving Confidential Information shall, without requiring the prior written consent of the disclosing party, but subject to Clause 13.3 below, be entitled to disclose Confidential Information:

- 13.2.1 where, and solely to the extent that, such disclosure is reasonably required by the receiving party in relation to and/or in order to perform its obligations pursuant to this contract, including the disclosure of any Confidential Information to any employee, consultant, agent, officer or subcontractor (of any tier);
- 13.2.2 to its professional advisers who are bound to such party by a duty of confidence which applies to any Confidential Information disclosed;
- 13.2.3 to any Affiliate of either party;
- 13.2.4 which is disclosed to such party by a third party which is not in breach of any undertaking or duty as to confidentiality whether express or implied;
- 13.2.5 to the extent it has become available to the public other than as a result of any breach of an obligation of confidence;
- 13.2.6 to any professional advisers (save as provided for in Clause 13.2.2) or consultants of such party engaged by or on behalf of such party and acting in that capacity;
- 13.2.7 to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance;
- 13.2.8 to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from which such party is seeking a rating in connection with such finance or credit support;
- 13.2.9 to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any governmental or regulatory authority having the force of law;
- 13.2.10 under the order of court or tribunal of competent jurisdiction (including the Access Disputes Panel);
- 13.2.11 to the Health and Safety Executive;
- 13.2.12 for the purpose of the examination and certification of a party's accounts; and
- 13.2.13 in relation to disclosure by Network Rail or LUL, in order, and solely to the extent required, to fulfil its network licence obligations, or, to the extent that the Confidential Information relates to the NR Network or Core ELR Network respectively, to, and solely to the extent required, assist in the planning or execution of other maintenance, renewal or enhancement projects.

13.3 Obligations arising from Disclosure

- 13.3.1 Where disclosure is permitted under Clauses 13.2.1, 13.2.3, 13.2.6, 13.2.7 and/or 13.2.8, the party making such disclosure shall ensure that the recipient of the information is subject to an equivalent obligation of confidentiality as that contained in this contract and shall use reasonable endeavours to ensure that any such recipient complies with such obligations.

- 13.3.2 If a party who has received information becomes required, in circumstances contemplated by Clauses 13.2.9 and 13.2.11, to disclose any information such party shall give to the other party such notice as is practical in the circumstances of such disclosure and shall consult and co-operate with the other party, having due regard to the other party's views, and take such steps as the other party may reasonably require in order to enable it to mitigate the effects of, or limit or avoid the requirements for, any such disclosure.

13.4 **Commercial Exploitation**

Subject to Clauses 13.2.2 to 13.2.11 (other than Clause 13.2.3), no party shall make use of, or exploit commercially for its own purposes, any Confidential Information issued or provided by or on behalf of another party in connection with this contract otherwise than for the purposes of this contract, except with the written consent of the party by whom or on whose behalf the information was provided. A receiving party shall immediately inform the disclosing party of the full circumstances of any breach whatsoever of the obligations in respect of Confidential Information.

13.5 **Disclosure to Public Bodies**

Nothing in this Clause 13 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure of any information by that party to the Office of Rail Regulation, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, the European Commission, Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

13.6 **Register of Confidential Information**

Each party shall keep a record of the Confidential Information disclosed to it and shall keep such Confidential Information (and any copies thereof) securely and so that it is easily locatable and identifiable. If this contract is terminated, each party shall at the other party's option:

- 13.6.1 return forthwith to the other party all Confidential Information (and any copies thereof) then within its possession or control; or
- 13.6.2 destroy forthwith such Confidential Information (and any copies thereof) using a secure and confidential method of destruction; or
- 13.6.3 unless reasonably requested to return or destroy it, retain such Confidential Information (and any copies thereof). If a party retains any such Confidential Information (and any copies thereof), the provisions of this Clause 13 shall remain in full force and effect in relation to such Confidential Information (and any copies thereof) notwithstanding the termination or expiry of this contract,

and, in relation to Clauses 13.6.1 and 13.6.2 shall confirm to the other party, on request, that such action has been taken.

13.7 **Ownership of Confidential Information**

- 13.7.1 All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.
- 13.7.2 Save as required by any unavoidable legal requirement or unavoidable Direction of a Competent Authority, neither party shall issue any press release in relation to the matters contemplated by this contract without the prior written consent of the other party (not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

13.8 **Freedom of Information Act**

For the purposes of Clauses 13.9 to 13.11:

- 13.8.1 **“Assisting Party”** means the party assisting and cooperating with the FOIA Party;
- 13.8.2 **“FOIA Party”** means the party which is subject to the provisions of the FOIA;
- 13.8.3 **"FOI Legislation"** means the Freedom of Information Act 2000 ("**FOIA**"), all regulations made under it and the Environmental Information Regulations 1992 and any amendment or re-enactment of any of them, and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 13.8.4 **" Information"** means information recorded in any form held by the Assisting Party on behalf of the FOIA Party; and
- 13.8.5 **" Information Request"** means a request for any information under the FOI Legislation.

13.9 **Acknowledgement**

Each party (the **“Assisting Party”**) acknowledges that if and for so long as the other party (the **“FOIA Party”**) is subject to the provisions of FOIA:

- 13.9.1 the FOIA Party is subject to the FOI Legislation and the Assisting Party agrees to assist and co-operate with the FOIA Party to enable the FOIA Party to comply with its obligations under the FOI Legislation, including providing to the FOIA Party of all information it may reasonably request; and
- 13.9.2 it may be obliged under the FOI Legislation to disclose the Information without consulting or obtaining consent from the Assisting Party.

13.10 **Freedom of Information Act Obligations**

Without prejudice to the generality of Clause 13.9, the Assisting Party shall:

- 13.10.1 transfer to such person as may be notified by the FOIA Party to the Assisting Party each Information Request relevant to this contract, as soon as practicable and in any event with 2 Working Days of receiving such Information Request; and

13.10.2 in relation to the Information held by the Assisting Party on behalf of the FOIA Party, provide the FOIA Party with details about and/or copies of all such Information that the FOIA Party requests and such details and/or copies shall be provided within 5 Working Days of a request from the FOIA Party (or such other period as the FOIA Party may reasonably specify), and in such form as the FOIA Party may reasonably specify.

13.11 Confidential Information and Information Requests

The FOIA Party shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation, save that, where any Information Request relates to Confidential Information, disclosed by the Assisting Party under this contract, the FOIA Party shall, where practicable, in advance of making any disclosure under the FOI Legislation and shall, acting reasonably, take due account of all reasonable representations by the Assisting Party that such Confidential Information is exempt information. The Assisting Party shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless authorised in writing to do so by the FOIA Party.

14. ASSIGNMENT AND NOVATION

14.1 Prohibition on Assignment, Novation and Transfer

Subject to Clause 14.3, neither party may assign its rights or novate or otherwise transfer its rights or obligations under this contract without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

14.2 Assignment, Novation and Transfer to Affiliates

Subject to Clause 14.3, either party shall be entitled to assign its rights or novate or otherwise transfer its rights and obligations under this contract to any Affiliate of that party without any further consent required from the other party; provided that if such Affiliate is to cease to be an Affiliate of the assigning party, the assigning party shall procure that the Affiliate shall assign, novate or otherwise transfer back to the assigning party its rights and obligations under this contract.

14.3 Approval of ORR

No such novation, assignment or transfer of this contract in accordance with this Clause 14 shall have effect unless approved by the ORR and effected in accordance with the conditions (if any) of its approval.

15. PAYMENT, INTEREST AND VAT

15.1 Payment

15.1.1 *Payment of Amount*

The Core ELR Facility Owner shall pay to Network Rail the amount of £76,500, as such amount may be adjusted under Schedule 3, in each Contract Year in respect of the costs incurred by Network Rail in discharging its obligations under

Clause 5.2 (other than under Clause 5.2.3(A) which shall be at Network Rail's own cost) and Clause 6 (the "**Amount**").

15.1.2 *No deduction*

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in Clause 15.1.8 below.

15.1.3 *Delivery of invoices*

All invoices issued, or statements of amounts payable, under this contract, shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in Schedule 2 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

15.1.4 *Content of invoices and other statements of amounts payable*

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

15.1.5 *Due date for payment*

The due date for payment of any invoice or other statement of amount payable is 28 days after the receipt of such invoice or other statement of amount payable.

15.1.6 *Method of payment*

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

15.1.7 *Disputed amounts*

Within 28 days after receipt by a party of any invoice or other statement of amounts payable, that party shall notify the other party of any aspects of such invoice or statement which it disputes, giving reasons for each such dispute. Such disputes shall be resolved in accordance with the procedure in Clause 12.3.2. Save to the extent that disputes are so notified, the relevant party shall be deemed to have agreed the contents of each invoice or statement of amounts payable.

15.1.8 *Payments in the event of dispute*

Where any sum which is payable under this Clause 15 is in dispute:

- (A) the undisputed amount shall be paid in accordance with Clause 15.1.5;
- (B) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid 28 days after the date upon which the dispute is resolved or determined; and

- (C) the disputed balance shall carry interest in accordance with the provisions of Clause 15.2 below from the date on which such balance would but for such dispute have been due to be paid until the date of payment.

15.2 Interest

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 15.1.3 or Clause 15.1.4.

15.3 VAT

15.3.1 *Payment of VAT*

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

15.3.2 *Reimbursement of VAT*

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

15.3.3 *VAT credit note to be issued on repayment*

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue & 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.

16. VARIATION OF AMOUNT

16.1 Review of Amount

The Amount payable under Clause 15.1.1 shall be reviewed upon the fifth anniversary of the Commencement Date and at five-yearly intervals thereafter.

16.2 Details of proposed Adjustment

The parties shall, no later than 84 days before the review date under Clause 16.1 (the "**Backstop Date**"), meet to consider whether an Adjustment to the Amount should be made. If either of the parties considers that any such Adjustment should be made:

- 16.2.1 that party shall provide reasonable details of the proposed Adjustment and the reasons for such change based on the Criteria; and

16.2.2 Clause 16.4 shall apply.

16.3 **Criteria**

16.3.1 *Purpose of Criteria*

The Criteria are to be applied in determining the Adjustment, if any, needed so that the Amount payable over the following five year period covers Network Rail's reasonable costs in fulfilling its obligations under Clause 5.2 (other than under Clause 5.2.3(A)) and Clause 6 of the contract.

16.3.2 *List of Criteria*

The Criteria are:

- (A) the actual cost to Network Rail of fulfilling its obligations under Clause 5.2 (other than under Clause 5.2.3(A)) and Clause 6 of the contract in the preceding five years;
- (B) the number of rolling stock movements through the Connection Points, and the physical characteristics of that rolling stock, in the preceding five years;
- (C) the actual services performed by Network Rail in fulfilling its obligations under Clause 5.2 (other than under Clause 5.2.3(A)) and Clause 6 of the contract in the preceding five years;
- (D) any changes to the factors in paragraphs (A) to (C) above that can reasonably be foreseen as likely to occur in the following five years;
- (E) use of the Connecting Network other than for the support, guidance and operation of rolling stock to and from the Core ELR Network, if any;
- (F) use of any part of the NR Network, other than the Connecting Network for the support, guidance and operation of rolling stock to and from the Core ELR Network, if any; and
- (G) the conclusions of any access charges review since the Amount was last reviewed, and in particular the conclusions on Network Rail's rate of return and on efficiency improvements required over the following control period.

16.4 **Procedures governing any proposed Adjustment**

16.4.1 *Negotiation of proposed Adjustment*

In respect of the proposed Adjustment:

- (A) the parties shall meet and negotiate and attempt to agree the proposed Adjustment;
- (B) each party shall ensure that:

- (1) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
- (2) the Criteria are applied in the negotiations; and
- (C) the negotiations shall not continue after the Backstop Date.

16.4.2 *Adjustment of Amount - failure to agree*

If the parties fail to agree the proposed Adjustment on or before the Backstop Date:

- (A) the matter shall be submitted to arbitration in accordance with Part C of the ADRR; and
- (B) Network Rail shall within 5 working days notify the Office of Rail Regulation in writing of such referral.

16.4.3 *Use of Criteria in determination of Relevant Dispute*

If a matter is referred for determination under Clause 16.4.2, the arbitrator shall be required by the parties to:

- (A) determine the proposed Adjustment in accordance with the Criteria and make such orders in his award as he considers necessary to establish the Adjusted Amount;
- (B) provide reasons for his award; and
- (C) state the extent to which and ways in which the Criteria have been applied in determining the Adjusted Amount and, in any case where they have not been applied, give the reasons.

16.4.4 *Adjusted Amount - notice to the Office of Rail Regulation*

Not later than 7 days after the Backstop Date or the arbitral award, as the case may be, details of the Adjusted Amount shall be sent by the parties to the Office of Rail Regulation for its consent, together with a statement, signed by or on behalf of both parties:

- (A) stating the reasons for the Adjusted Amount;
- (B) stating the extent to which and ways in which the Criteria have been applied in determining the Adjusted Amount and, in any case where they have not been applied, the reasons; and
- (C) giving such other information as the Office of Rail Regulation may have requested.

16.4.5 *No Adjusted Amount - notice to the Office of Rail Regulation*

If, following their negotiations in accordance with Clause 16.4.1, the parties agree that the Amount shall not be Adjusted written notice of this fact shall be given to the Office of Rail Regulation not later than 7 days after the Backstop Date together with a statement, signed by or on behalf of both parties:

- (A) stating the reasons why no Adjustment is required;
- (B) stating the extent to which and ways in which the Criteria have been applied in determining that no Adjustment is required and, in any case where they have not been applied, the reasons; and
- (C) giving such other information as the Office of Rail Regulation may have requested.

16.4.6 *Adjusted Amount - Office of Rail Regulation's consent*

If the Office of Rail Regulation is satisfied with the Adjusted Amount submitted to it pursuant to Clause 16.4.4, and it gives a notice to that effect, this contract shall be modified accordingly as provided for in Clause 16.6.

16.4.7 *No Adjusted Amount - Office of Rail Regulation's consent*

If the Office of Rail Regulation is satisfied that there shall be no Adjustment to the Amount under Clause 16.4.5 it shall give notice to that effect.

16.4.8 *Adjusted Amount and no Adjusted Amount - Office of Rail Regulation's refusal of consent*

If the Office of Rail Regulation gives notice to the parties that it is not satisfied with the Adjusted Amount or that there shall be no Adjustment to the Amount, it may:

- (A) require the parties again to follow the procedure or any part of the procedure set out in Clauses 16.4.1 to 16.4.5 for agreeing the Adjusted Amount, in which case they shall do so; or
- (B) following such consultation with the parties as it considers necessary, determine the Adjusted Amount itself and give a notice specifying such Adjusted Amount.

16.5 Procedural matters

16.5.1 *Co-operation and information*

If the Office of Rail Regulation gives notice to either or both of the parties that it requires from either or both of them information in relation to the Adjusted Amount or proposed Adjustment:

- (A) the party of whom the request is made shall provide the requested information promptly and to the standard required by the Office of Rail Regulation; and
- (B) if that party fails timeously to do so, the Office of Rail Regulation shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

16.5.2 *Saving*

Nothing in this Clause affects the right of either party to approach and obtain from the Office of Rail Regulation guidance in relation to the Adjusted Amount.

16.6 **Effect**

16.6.1 *General*

This contract shall have effect:

(A) with the Adjusted Amount; and

(B) from the date,

specified by the Office of Rail Regulation in a Notice of Consent or Notice of Determined Adjusted Amount.

16.6.2 *Retrospective effect*

A Notice of Consent or Notice of Determined Adjusted Amount shall not have retrospective effect.

17. **FORCE MAJEURE EVENTS**

17.1 **Nature and extent of relief for Force Majeure**

Force Majeure relief under this Clause 17:

(A) extinguishes the obligation of the Affected Party to indemnify the other party under Clauses 9.2 to 9.4 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but

(B) is not available in respect of any other obligation to do or refrain from doing any other thing provided for in this contract.

17.2 **Entitlement to Force Majeure relief**

An Affected Party is entitled to Force Majeure relief if and to the extent that:

(A) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;

(B) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):

(1) to avoid the occurrence of the Force Majeure Event; and

(2) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and

- (C) except in the case of paragraph (F) of the definition of Force Majeure Event, none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

17.3 Procedure for claiming relief

Without prejudice to Clause 17.2, an Affected Party is only entitled to claim Force Majeure relief under this Clause 17 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 17.4 and to perform its obligations under Clause 17.5.

17.4 Force Majeure Notices and Reports

17.4.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

- (A) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (B) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.4.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

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

17.4.3 Other information

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the Non-affected Party from time to time.

17.5 Mitigation

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

- (A) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations;
- (B) minimise the duration of such Force Majeure Event; and
- (C) shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.5.

17.6 Duration of relief for force majeure

The right of an Affected Party to relief under Clause 17.1 shall cease on the earlier of:

- (A) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (B) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.5.

17.7 Availability of Performance Order

If and to the extent that a breach of this contract has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance Order except to secure performance by the Affected Party of its obligations under this Clause 17.

18. MISCELLANEOUS

18.1 Non waiver

18.1.1 *No waiver*

No waiver by either party of any failure by the other to perform any obligation under this contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

18.1.2 *Failure or delay in exercising a right or remedy*

The failure to exercise or delay in exercising a right or remedy under this contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.2 Variations

18.2.1 *Amendments to be in writing and to be approved*

No amendment of any provision of this contract shall be effective unless such amendment is in writing and signed by, or on behalf of, the parties and, subject to Clause 18.2.2, has been approved by the Office of Rail Regulation.

18.2.2 *Office of Rail Regulation approval needed*

Modifications of the following do not require the approval of the Office of Rail Regulation under section 22 of the Act:

- (A) modifications effected by virtue of any of the Schedules to this contract unless the relevant provision expressly states that it requires the approval of the Office of Rail Regulation;
- (B) modifications to Schedule 1 pursuant to Clause 6.1.2, save as set out below; and
- (C) modifications effected by virtue of Clause 18.4.2.

Any amendment made to the Plan under Clause 6.1.2 requires the Office of Rail Regulation's approval under section 22 of the Act.

18.2.3 *Conformed copy of contract*

Network Rail shall produce and send to the Core ELR Facility Owner and to the Office of Rail Regulation a conformed copy of this contract within 28 days:

- (A) after the giving of a Notice of Approval or Notice of Determined Adjusted Amount in the case of any Adjustment to the Amount; or
- (B) of the making of any amendment or modification to this contract, in any other case.

18.3 Entire contract and exclusive remedies

18.3.1 *Entire contract*

Subject to Clause 18.3.3:

- (A) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (B) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

- (C) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 *Exclusive remedies*

Subject to Clause 18.3.3 and except as expressly provided in this contract:

- (A) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and
- (B) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 *Fraud, death and personal injury*

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (A) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (B) any right which either party may have in respect of fraudulent concealment by the other party;
- (C) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or
- (D) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 **Notices**

18.4.1 *Giving of notices*

Any notice to be given under this contract:

- (A) shall be in writing; and
- (B) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the relevant address or facsimile number set out in Schedule 2.

For the purposes of this Clause 18.4.1, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 *Right to modify communication details*

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 2 by giving notice of such modification:

- (A) to the other party as soon as reasonably practicable; and
- (B) to the Office of Rail Regulation within 14 days of such modification.

18.4.3 *Deemed receipt*

A notice shall be deemed to have been given and received:

- (A) if sent by hand or recorded delivery, at the time of delivery;
- (B) if sent by prepaid first class post from and to any place within the United Kingdom, three working days after posting unless otherwise proven; and
- (C) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a working day, on the day of transmission and, in any other case, at 0900 hours on the next following working day.

18.4.4 *Copies*

If Schedule 2 specifies any person to whom copies of notices shall also be sent:

- (A) the party giving a notice in the manner required by this Clause 18.4.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 2, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4.4; and
- (B) such copy notice shall be sent immediately after the original notice.

18.5 **Counterparts**

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

18.6 **Survival**

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8.5 (Notification of Termination to the Office of Rail Regulation), 9 (Liability), 10 (Restrictions on Claims); 11 (Governing Law), 12.3 (Unpaid Sums), 13 (Confidentiality), 15 (Payments, Interest and VAT), 17 (Force Majeure Events) and Schedule 4 (Limitation on Liability)) shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 *Application to third parties*

Save as provided in this Clause 18.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

18.7.2 *Application to the Office of Rail Regulation*

The Office of Rail Regulation shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this contract.

19. NETWORK CODE MODIFICATIONS

Schedule 5 shall have effect.

20. CONTRACT MODIFICATIONS

Schedule 6 shall have effect.

This contract was signed by Network Rail and RfL as first dated above.

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

[Name of Authorised Signatory]

.....
Authorised Signatory

THE COMMON SEAL of)
RAIL FOR LONDON)
LIMITED)
was hereunto affixed in the presence)
of:)

[Name of Authorised Signatory]

.....
Authorised Signatory

SCHEDULE 1
INITIAL CONDITION AND MAINTENANCE REQUIREMENTS OF THE
CONNECTING NETWORK

A. List of Items

The Connecting Network comprises the following:

1. 2 turnouts;
2. 403m plain line (upside 89m, downside 314m);
3. 308m conductor rail (403m minus 80m and 15m power gaps);
4. 2 signals = 2 Signal Equivalent Units (SEU);
5. 2 point machines = 2 Signal Equivalent Units (SEU);
6. 2 track circuits;
7. 2 AWS magnets;
8. 2 sets point hearting equipment; and
9. 1 CTS switch for rescue rail.

B. Initial Condition Statement

The condition of each of the items comprising the Connecting Network is "new".

SCHEDULE 2
CONTACT DETAILS

- 1A. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
Kings Place
90 York Way
London
N1 9AG

Tel: 020 3356 9595

Fax: 020 3356 9245

All written notices to be marked:

"URGENT: FOR THE ATTENTION OF THE COMPANY SECRETARY AND SOLICITOR"

and copied to: Customer Relationship Executive - London Overground, Network Rail Infrastructure Limited, Floor 6, East Anglia House, 12-34 Great Eastern Street, London, EC2A 3EH.

- 1B. Network Rail's address for service of invoices or other statements of amounts payable, if different from paragraph 1A above, is:

Maxine Reed
Customer Relationship Manager - London Overground
Network Rail Infrastructure Limited
Floor 6, East Anglia House
12-34 Great Eastern Street
London EC2A 3EH

Tel: 020 3356 9595

Fax: 020 3356 9245

All invoices/statements of amounts payable to be marked:

"URGENT: FOR THE ATTENTION OF CUSTOMER RELATIONSHIP EXECUTIVE - LONDON OVERGROUND"

- 2A. The Core ELR Facility Owner's address for the service of notices is:

Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Tel: 020 7222 5600

All written notices to be marked:

"URGENT: FOR THE ATTENTION OF THE DIRECTOR OF INFRASTRUCTURE"

and copied to: The Communications Manager – Infrastructure Management, Rail for London Limited, Windsor House, 42-50 Victoria Street, London, SW1H 0TL.

- 2B. The Core ELR Facility Owner's address for the service of invoices or other statements of amounts payable, if different from paragraph 2A above, is:

Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Tel: 020 7222 5600

All invoices/statements of amounts payable to be marked:

"URGENT: FOR THE ATTENTION OF THE COMMUNICATIONS MANAGER -
INFRASTRUCTURE MANAGEMENT"

SCHEDULE 3

ADJUSTMENT FACTOR FORMULA

Indexation and variation of the Amount

The Amount shall be subject to variation as follows:

$$A_n = A_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

Where:

A_n is the Amount payable by the Core ELR Facility Owner in a Contract Year (other than the First Contract Year where the Amount shall be the same as A_1).

A_1 is the Amount of £76,500.

RPI_n is the Retail Price Index published or determined with respect to November in the relevant Contract Year (other than the First Contract Year).

RPI_1 is the Retail Price Index published or determined with respect to the first November following the date when this contract became effective.

SCHEDULE 4 LIMITATION ON LIABILITY

1. DEFINITIONS

In this Schedule:

"Liability Cap" means:

- (a) in relation to the first Contract Year, the sum of £5,000,000; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

where:

- (i) C_1 is the sum of £5,000,000;
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this contract became effective under Clause 2.1.

2. APPLICATION

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 10.5.

3. LIMITATION ON NETWORK RAIL'S LIABILITY

In relation to any claim for indemnity made by the Core ELR Facility Owner to which this Schedule 4 applies:

- 3.1 Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- 3.2 to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Network Rail shall have no further liability for it.

4. LIMITATION ON CORE ELR FACILITY OWNER'S LIABILITY

In relation to any claims for indemnity made by Network Rail to which this Schedule 4 applies:

- 4.1 the Core ELR Facility Owner shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the

extent that its liability for such claims exceeds the Liability Cap for such Contract Year;
and

- 4.2 to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Core ELR Facility Owner shall have no further liability for it.

5. DISAPPLICATION OF LIMITATION

To the extent that any Relevant Losses:

- 5.1 result from a conscious and intentional breach by a party; or
- 5.2 are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with the safety and security requirements provided in accordance with Clauses 5.1.3(E) and 5.2.3(H), such Relevant Losses:
- 5.2.1 shall not be subject to the limitation of liability in this Schedule 4; and
- 5.2.2 shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 4.

6. EXCLUSION OF LEGAL AND OTHER COSTS

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7. EXCLUSION OF CERTAIN RELEVANT LOSSES

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

8. CONTINUING BREACHES

Nothing in this Schedule 4 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

- 8.1 is a continuing breach of contract which continues for more than 12 months; or
- 8.2 is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- 8.3 is a breach of a Performance Order in relation to a breach of contract,
- but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3.2 or 4.2.

9. FINAL DETERMINATION OF CLAIMS

For the purpose of this Schedule 4, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 5
NETWORK CODE MODIFICATIONS

1. AUTOMATIC EFFECT

1.1 General

This contract shall have effect:

- (a) with the modifications; and
- (b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2. MODIFICATION NOTICE

2.1 Meaning

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 5) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code (whether such change was implemented before or after the Commencement Date).

2.2 Contents of modification notice

A modification notice shall state:

- (a) the modifications which are to be made to this contract;
- (b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and
- (c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3. ADAPTATION PROCEDURE

3.1 Application

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

3.2 Negotiation of adaptations

In respect of the modifications in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

3.3 Agreed adaptations - notice to the Office of Rail Regulation

If the parties have agreed the requisite adaptations on or before the backstop date, not later than seven days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the agreed requisite adaptations;
- (b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

3.4 Agreed adaptations – Office of Rail Regulation's consent

If ORR is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

3.5 Agreed requisite adaptations – Office of Rail Regulation's refusal of consent

If ORR gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- (a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) determine the requisite adaptations itself.

3.6 Requisite adaptations - failure to agree or submit

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within seven days after the backstop date, the ORR may determine the requisite adaptations itself.

3.7 Notice of determined requisite adaptations

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within seven days of the backstop date requisite adaptations to which it gives its consent; and
- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

3.8 Effect of requisite adaptations

Requisite adaptations established either:

- (a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or
- (b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

4. PROCEDURAL MATTERS

4.1 More than one notice

More than one modification notice may be given.

4.2 Differences etc as to requisite adaptations

Any difference or question as to whether any thing is a requisite adaptation shall be determined by ORR:

- (a) on the application of either party; and
- (b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

4.3 Co-operation and information

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 Office of Rail Regulation's criteria

In relation to the negotiation of any requisite adaptation, ORR shall be entitled to:

- (a) give to the parties any criteria which it requires to be applied in the negotiations; and

- (b) modify the criteria after consultation.

4.5 **Procedural modifications**

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but
- (b) ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both parties.

4.6 **Dates**

In this Schedule 5:

- (a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

4.7 **Requirement for prior consultation**

No relevant notice shall have effect unless:

- (a) ORR has first consulted the parties in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) ORR has given each party the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;
- (d) ORR has notified the parties as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 **Consolidated contract**

Not later than 28 days after the giving of the last of:

- (a) a modification notice; and
- (b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

Network Rail shall prepare and send to RfL and the ORR a copy of this contract as so modified.

4.9 **Saving**

Nothing in this Schedule 5 affects:

- (a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or
- (b) the right of ORR at any time to effect modifications to the Network Code under Condition C8 of that code.

5. **DEFINITIONS**

In this Schedule 5:

"Backstop date" means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);

"Modification notice" has the meaning ascribed to it in paragraph 2.1;

"Notice of consent to requisite adaptations" means a notice given by ORR under paragraph 3.4;

"Notice of determined requisite adaptations" has the meaning ascribed to it in paragraph 3.7;

"Notice of procedural modification" means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;

"ORR's criteria" means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;

"Relevant notice" means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR's criteria;

"Requisite adaptations" in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and "adaptation" shall be construed accordingly; and

"Specified" means specified in a modification notice.

SCHEDULE 6
CONTRACT MODIFICATIONS

1. CONTRACT MODIFICATION NOTICE

1.1 Either party may at any time submit to the other party a notice served in accordance with Clause 18.4 which proposes modifications to this contract (a "**Contract Modification Notice**").

1.2 Each Contract Modification Notice served by a party pursuant to paragraph 1.1 above shall state:

1.2.1 the proposed modifications which are to be made to this contract; and

1.2.2 the date from which such proposed modifications are proposed to have effect; and, if any such proposed modifications are to have effect from different dates, the dates applicable to each proposed modification.

1.3 Negotiation of contract modifications

In respect of the proposed modifications to this contract as set out in each Contract Modification Notice:

1.3.1 within 14 days of the date of service of the relevant Contract Modification Notice, the parties shall meet and in good faith negotiate and attempt to agree the proposed modifications (including any amendments to such proposed modifications);

1.3.2 each party shall ensure that such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

1.3.3 the negotiations shall not continue for more than 3 months after the date of the Contract Modification Notice (the "**Longstop Date**").

2. AGREED CONTRACT MODIFICATIONS – PROCEDURE FOR APPROVAL

2.1 If the parties have agreed the proposed contract modifications on or before the Longstop Date, not later than seven days after the Longstop Date the proposed contract modifications shall be sent by the parties to the ORR for its consent, together with a statement, signed by or on behalf of both parties stating the reasons for the proposed contract modifications and giving such other information as the ORR may have requested.

2.2 If the ORR is satisfied with the proposed contract modifications, and it gives a notice of consent, they shall have effect as provided for in paragraph 4 below.

2.3 If the ORR gives notice to the parties that it is not satisfied with any or all of the proposed contract modifications, it may:

2.3.1 require the parties to re-negotiate the proposed contract modifications (imposing such time limits as it may specify), in which case they shall do so; or

2.3.2 determine the proposed contract modifications to this contract itself.

3. **PROPOSED CONTRACT MODIFICATIONS – FAILURE TO AGREE OR SUBMIT**

3.1 If the parties have failed to agree the proposed contract modifications or otherwise failed to submit agreed contract modifications to the ORR for its consent within seven days of the Longstop Date, either party shall be entitled to refer the matter to be resolved in accordance with the Internal Resolution Procedure. If, following the Internal Resolution Procedure, the parties agree proposed contract modifications, these shall be submitted to ORR for its consent, together with a statement, signed by or on behalf of both parties stating the reasons for the proposed contract modifications. The process in paragraphs 2.2 to 2.3.2 shall then apply as if the parties had agreed the proposed contract modifications notwithstanding the Longstop Date.

3.2 If the parties fail to agree the proposed contract modifications (if any) following referral to the Internal Resolution Procedure, either party may refer the matter to the ORR. The ORR may determine the proposed contract modifications (if any) itself by serving a Notice of Determined Contract Modifications provided it:

3.2.1 has consulted with each party regarding such proposed contract modifications (if any);

3.2.2 has taken into account any representations which have been made to it by each party within such period as it has specified for the purpose;

3.2.3 has regard to its duties under section 4 of the Act.

3.3 A Notice of Determined Contract Modifications is a notice:

3.3.1 given by the ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to the ORR within seven days of the Longstop Date proposed contract modifications to which it gives its consent; and

3.3.2 which states the proposed contract modifications which the ORR has determined should be made using its powers to do so under paragraph 3.2.

4. **EFFECT OF PROPOSED CONTRACT MODIFICATIONS**

Proposed contract modifications established either:

4.1 by agreement of the parties and in respect of which the ORR has given a notice of consent under paragraph 2.2 above; or

4.2 by the determination of the ORR under paragraphs 2.3.2 or 3.2 and stated in a notice of determination,

shall have effect from such date as the ORR states in the relevant notice of consent or (as the case may be) the relevant notice of determination.

5. **PROCEDURAL MATTERS IN RESPECT OF PROPOSED CONTRACT MODIFICATIONS**

5.1 More than one Contract Modification Notice may be given under paragraph 1 above.

5.2 If the ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any proposed contract modifications:

5.2.1 the party of whom the request is made shall provide the requested information promptly and to the standard required by the ORR; and

5.2.2 if that party fails timeously to do so, the ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

ANNEX
Plan