CONNECTION CONTRACT

Dated

22nd October 2026

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

GEMINI RAIL SERVICES UK LIMITED

at

WOLVERTON WORKS

STRATFORD ROAD, WOLVERTON, MK12 5NT

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THIS CONNECTION CONTRACT is made the 22nd day of October 2026

BETWEEN:

(1) Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at Waterloo General Office, London, SE1 8SW ("Network Rail"); and

(2) Gemini Rail Services UK Limited, a company registered in England under number 08656105 having its registered office at Wolverton Works, Stratford Road, Wolverton, MK12 5NT (the "Adjacent Facility Owner").

WHEREAS:

(A) Network Rail is the owner of the NR Network and the Adjacent Facility Owner is the owner or controller of the Premises and the Adjacent Facility, relevant parts of which are shown on the Plan annexed to this contract;

(B) this contract relates to an existing physical connection of the Adjacent Facility to the NR Network and the operational interface between the Adjacent Facility Owner and Network Rail; and

(C) the Office of Rail and Road has issued a General Approval permitting Network Rail to grant to the Adjacent Facility Owner permission to connect to the Connecting 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, as amended from time to time;

"**Act**" means the Railways Act 1993;

"**Adjacent Facility**" means network situated on the Premises of which the Adjacent Facility Owner is the facility owner, the railway lines of which are shown coloured purple and/or yellow on the Plan;

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

"**Adjustment**" means an increase or decrease to the Amount payable by the Adjacent 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;

"**Allocation Chair**" has the meaning ascribed to it in the ADRR;

"**Amount**" means the sum specified in Clause 15.1.1;

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

"**Commencement Date**" means the date of signature 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 that part of the NR Network (the railway lines of which are shown coloured orange on the Plan), which is used solely for the support, guidance and operation of rolling stock to and from the Adjacent Facility including those items identified in Schedule 1 to this contract and, where applicable, any part of the NR Network located on the Premises;

"**Connection Point**" means the point(s) at which the railway lines of the NR Network and the Adjacent Facility connect as shown marked "C.P." 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;

"**CPI**" means the Consumer Prices Index (all items) whose value is published each month by the Office for National Statistics (or any successor) in its statistical bulletin on consumer price inflation, or: a) if the Consumer Prices Index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; b) if there is a material change in the basis of the Consumer Prices Index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances.

"**Criteria**" means the criteria set out in Clause 16.3;

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

"**Directly Connected**" means that part of the Adjacent Facility shown on the Plan in yellow;

"**Emergency**" means:

(a) an event or circumstance affecting the Connection Point or the Connecting Network giving rise to an immediate apprehension of damage to property, injury to persons or Environmental Damage, or

(b) an event or circumstance which materially prevents or materially disrupts the operation of trains on the NR Network, the alleviation of which would entail the use or non-use of the Connection Point or the Connecting Network;

"**Environmental Damage**" has the meaning ascribed to it in Part E of the Network Code;

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

"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 Adjacent Facility Owner is not an industry party, that sector of the economy in which the Adjacent 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;

"**Forum**" has the meaning ascribed to it in the ADRR;

"**Initial Condition Statement**" means the statement describing the agreed physical condition of, and the work required to, the Connecting Network, and the 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;

"**Liability Cap**" has the meaning ascribed to it in paragraph 1 of Schedule 5;

"**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;

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

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

"**NR Network**" means the network of which Network Rail is the owner and which is situated in England, Wales and Scotland;

"**Office of Rail and Road**" has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and "ORR" shall be construed accordingly;

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

"**Performance Order**" has the meaning ascribed to it in Clause 12.3.2;

"**Plan**" means the plan number 09052022 annexed to this contract;

"**Premises**" means the land shown edged red on the Plan which is in the ownership or control of the Adjacent Facility Owner but excluding the Connecting Network;

"**Procedure Agreement**" has the meaning ascribed to it in the ADRR;

"**Railway Group Standards**" means all Railway Group Standards authorised by the Railway Group Standards Code prepared by the Rail Safety and Standards Board Ltd;

"**Relevant ADRR Forum**" means the Forum to which a Relevant Dispute is allocated in accordance with the ADRR;

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

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which an Affected Party is claiming relief under this 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(a), (b) or (c) or Clause 9.4(a), (b) or (c) (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 this Clause 17;

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

"**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;

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

(a) the singular includes the plural and vice versa;

(b) any one gender includes the other;

(c) all headings are for convenience of reference only and shall not be used in the construction of this contract;

(d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;

(e) 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;

(f) reference to a party is to a party to this contract, its successors and permitted assigns;

(g) 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;

(h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;

(i) 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;

(j) "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;

(k) the words "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; and

(l) words and expressions defined in the Act shall, unless otherwise defined in this contract, have the same meanings in this contract.

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:

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

(b) owner of a facility adjacent to the NR Network (in the case of the Adjacent 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 CONNECT

Network Rail grants the Adjacent Facility Owner permission to connect, or, in the case of an existing connection, permission to retain the connection of, the Adjacent Facility to the NR Network.

5 OBLIGATIONS IN RESPECT OF THE CONNECTION OF THE ADJACENT FACILITY TO THE NR NETWORK

5.1 Obligations of the Adjacent Facility Owner

5.1.1 The Adjacent Facility Owner shall not:

(a) sever the connection of the NR Network to the Adjacent Facility; or

(b) take any action or omit to take any action which impedes access to/from the NR Network at the Connection Point, unless it has, except in an Emergency, given prior notice of such severance, action or omission to Network Rail.

5.1.2 In an Emergency, the Adjacent Facility Owner shall, within a reasonable time of the occurrence of the Emergency, give notice to Network Rail:

(a) of the circumstances giving rise to the Emergency;

(b) the action taken by the Adjacent Facility Owner to deal with the Emergency;

(c) the impact of its actions on the Connection Point; and

(d) an indication of when it will be able to accept rolling stock off the NR Network to the Adjacent Facility.

5.1.3 The Adjacent Facility Owner shall:

(a) 5.1.3(a) not used.

(b) be responsible for the Operational Control of all rolling stock movements on the Adjacent Facility;

(c) ensure that:

(i) the operation of the Adjacent Facility; and

(ii) any person authorised by the Adjacent Facility Owner to be at or on the Premises,

does not cause any disruption to the NR Network;

(d) promptly provide Network Rail with any amendments to the Adjacent Facility Owner's safety and security requirements, as listed in Schedule 4, in relation to the Premises and the Adjacent Facility; and

(e) establish and maintain adequate security at the Premises.

5.2 Obligations of Network Rail

5.2.1 Network Rail shall not:

(a) sever (except in accordance with Clause 8) the connection of the NR Network to the Adjacent Facility at the Connection Point other than as required by an Emergency; or

(b) take any action or omit to take any action which impedes access to/from the Connection Point unless it has, except in an Emergency, obtained the prior consent of the Adjacent Facility Owner (whose consent shall not be unreasonably withheld).

5.2.2 In an Emergency, Network Rail shall, within a reasonable time of the occurrence of the Emergency, give notice to the Adjacent 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 the Connection Point; and

(d) an indication of the timescale for reinstating the connection and allowing rolling stock access to the Adjacent Facility.

5.2.3 Network Rail shall:

(a) re-instate, at its own cost, the connection of the NR Network to the Adjacent Facility, where such connection has been severed by Network Rail other than in accordance with Clause 8:

(i) as soon as reasonably practicable after the date of severance; and

(ii) in accordance with applicable Railway Group Standards;

(b) inspect, test, maintain, repair and renew the Connecting Network in accordance with:

(i) the Initial Condition Statement; and

(ii) applicable Railway Group Standards;

(c) consult the Adjacent Facility Owner as regards all planned maintenance, renewals or enhancements on the NR Network which may impede access at the Connection Point at least 12 weeks before it is due to take place;

(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 observe the safety and security requirements in relation to the Premises, as listed in Schedule 4 and as may be notified to Network Rail by the Adjacent Facility Owner under Clause 5.1.3(d) and that the presence of such persons does not cause any disruption to the operation of the Adjacent Facility and the Premises; and

(f) place and maintain suitable markers at the Connection Point which define the maintenance boundaries between the parties.

6 JOINT OBLIGATIONS

Network Rail and the Adjacent Facility Owner shall:

(a) 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 Adjacent Facility;

(b) 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:

(i) 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 Adjacent Facility; or

(ii) 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 Adjacent Facility, fulfils that condition at the time of the review; and

(c) inspect the condition of the Connecting Network and the 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 Point annually or at other intervals as may be agreed between the parties.

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 Adjacent Facility.

7.2 Network Rail shall seek permission from the Adjacent Facility Owner (which permission shall not be unreasonably withheld) to enter upon the Premises at all reasonable times upon giving notice and at any time in an Emergency for the following purposes:

(a) to inspect, test, maintain, repair and renew the connection of the NR Network to the Adjacent Facility;

(b) to inspect test, maintain, repair and renew any part of the Connecting Network on or in the vicinity of the Premises; and

(c) to carry out remedial procedures in the event of an Emergency.

7.3 The Adjacent Facility Owner shall ensure that Schedule 4 sets out the access arrangements by Network Rail in the event of an Emergency in order that Network Rail can incorporate these requirements into the emergency plans which it is required to prepare for the NR Network.

7.4 The Adjacent Facility Owner is not entitled, for itself or on behalf of any other person, to any right of access to the NR Network located on Network Rail's property save as expressly set out in this contract.

8 TERMINATION

8.1 Termination Events

Without prejudice to:

(a) the other rights of the parties under this contract; or

(b) Clauses 8.2 or 8.3,

Network Rail or the Adjacent Facility Owner may terminate this contract with immediate effect by written notice served in accordance with Clause 18.4, if:

(i) an Insolvency Event occurs in relation to the other party; or

(ii) the other party defaults in the due performance or observance of any material obligation under this contract and (in case of a remediable breach) fails to remedy the breach within a reasonable time specified by the other party.

8.2 Notice to terminate

Subject to Clause 8.3, either party may terminate this contract on three months' written notice served in accordance with Clause 18.4.

8.3 Network Rail Notice to Terminate

8.3.1 Any notice of termination served by Network Rail under Clause 8.2 shall not take effect if the Adjacent Facility Owner has , after the date of service of any notice of termination and before the date of that notice taking effect, applied to the Office of Rail and Road under section 17 of the Act for directions to be given to Network Rail to enter into an access contract which provides for the continued connection of the Adjacent Facility to the NR Network and for so long as that application shall not have been refused.

8.3.2 Where the Office of Rail and Road gives directions that a new access contract (whether on the same or different terms as this contract) should be entered into between the parties under section 17 of the Act (the "**New Contract**"), this contract shall automatically expire on the commencement date of the New Contract, or the latest date specified in such directions by when the parties must enter into the New Contract, whichever is the sooner.

8.3.3 Where a notice has been served by Network Rail in accordance with Clause 8.2 and the Adjacent Facility Owner does not apply to the Office of Rail and Road for directions under section 17 of the Act, the notice will apply in accordance with clause 8.2.

8.4 Effect of Termination

Upon the termination of this contract, Network Rail:

(a) may:

(i) disconnect the NR Network from the Adjacent Facility; and

(ii) remove the Connecting Network; and

(iii) make good the NR Network, and

(b) shall, if requested by the Adjacent Facility Owner, remove any part of the Connecting Network located on the Premises,

and the reasonable costs of any action under Clause 8.4(a) or (b) shall be paid by the Adjacent Facility Owner to Network Rail except where this contract is terminated:

(i) by the Adjacent Facility Owner in accordance with Clause 8.1; or

(ii) by Network Rail in accordance with Clause 8.2,

in which case Network Rail shall carry out any action under Clause 8.4(a) or (b) at its own cost.

8.5 Mitigation

In complying with the provisions of Clause 8.4(a) Network Rail shall use all reasonable efforts to mitigate the cost of carrying out such actions.

9 LIABILITY

9.1 Performance Orders in relation to breach

In relation to any breach of this contract:

(a) the Innocent Party shall be entitled to apply under Clause 12.4 for a Performance Order against the party in breach; and

(b) 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 Adjacent Facility Owner indemnity

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

(a) a failure by the Adjacent Facility Owner to comply with its Safety Obligations;

(b) any Environmental Damage arising directly from the acts or omissions of the Adjacent Facility Owner; and

(c) any damage to the NR Network arising directly from the Adjacent Facility Owner's negligence.

9.4 Network Rail indemnity

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

(a) a failure by Network Rail to comply with its Safety Obligations;

(b) any Environmental Damage arising directly from any acts or omissions of Network Rail; and

(c) any damage to the Adjacent Facility 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:

(a) 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

(b) subject to Clause 10.1(c), 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

(c) 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 Adjacent Facility Owner for indemnity for Relevant Losses:

(a) shall exclude payments to any person under or in accordance with the provisions of any access contract;

(b) 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

(c) shall:

(i) 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; and

(ii) 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 Adjacent Facility Owner

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

(a) include Relevant Losses only to the extent that these constitute amounts which the Adjacent Facility Owner would not have incurred as owner of a facility adjacent to the NR Network but for the relevant breach; and

(b) give credit for any savings to the Adjacent 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:

(a) do not arise naturally from the breach; and

(b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

(i) at the time of the making of this contract; or

(ii) 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 5 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 shall be governed by and construed in accordance with the laws of England and Wales.

12 DISPUTE RESOLUTION

12.1 Arbitration

12.1.1 A Relevant Dispute shall be referred for resolution in accordance with the ADRR in force at the time of the reference as modified by this Clause 12, unless:

(a) Clause 12.2 applies; or

(b) Clause 16.4.2(a) applies (which already requires such referral).

12.2 Unpaid sums

12.2.1 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:

(i) the amount invoiced or sum due, as referred to in Clause 12.2.1(a) or (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);

(ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

(iii) the dispute resolution procedures in Clauses 12.1 and 12.3 to 12.7 shall not apply to proceedings commenced under this Clause 12.2.

12.2.2 If the Adjacent Facility Owner 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 in good faith;

(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; and

(d) if no resolution results within 14 days of that meeting, either party may refer the dispute for resolution under the ADRR.

12.3 Performance Orders

12.3.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have power to grant in a final award including Performance Orders.

12.3.2 Performance Orders

A Performance Order:

(a) is an order made under Clause 12.3.3(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 Adjacent 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).

12.3.3 Duties of the arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 12.4, where a dispute is allocated in accordance with the ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement that:

(a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and

(b) if the arbitrator 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 arbitrator 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.

12.4 Remedies

The powers exercisable by the arbitrator as regards remedies shall include:

(a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;

(b) the powers specified in the ADRR;

(c) the power to make Performance Orders; and

(d) the power to order within the same reference to arbitration any relief specified in Clause 12.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

12.5 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.

13 CONFIDENTIALITY

13.1 Confidential Information

13.1.1 General obligation

Except as permitted by Clause 13.2, all Confidential Information shall be kept confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

13.1.2 Network Rail - Affiliates

Except as permitted by Clause 13.2, Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

13.1.3 Adjacent Facility Owner - Affiliates

Except as permitted by Clause 13.2, the Adjacent Facility Owner shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

13.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

(a) to the Office of Rail and Road;

(b) to the Secretary of State;

(c) to the Health and Safety Executive;

(d) to any Affiliate of either party;

(e) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;

(f) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

(g) 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 upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

(h) 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 whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

(i) 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 taxation authority;

(j) to the extent that it has become available to the public other than as a result of a breach of confidence; and

(k) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum.

13.3 Return of Confidential Information

Each of Network Rail and the Adjacent Facility Owner shall promptly return to the other party any Confidential Information requested by the other party if such request:

(a) is made within two months after the date on which this contract is terminated;

(b) is reasonable; and

(c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

13.4 Retention or destruction of Confidential Information

If Network Rail or the Adjacent Facility Owner, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 13.3, it may destroy or retain such Confidential Information.

13.5 Ownership of Confidential Information

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

14 ASSIGNMENT

Neither party may assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract except to the extent approved by the Office of Rail and Road following consultation with the other party, and subject to the conditions (if any) of the Office of Rail and Road's approval.

15 PAYMENT, INTEREST AND VAT

15.1 Payment

15.1.1 Payment of Amount

The Adjacent Facility Owner shall pay to Network Rail the amount of [redacted] **annually in arrears**, 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 14 days after receipt by the Adjacent Facility Owner of any invoice or other statement of amounts payable, the Adjacent Facility Owner shall notify Network Rail 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 12.2.2. Save to the extent that disputes are so notified, the Adjacent Facility

Owner 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 and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

15.4 Renewals

15.4.1 Costs of renewals

Network Rail shall inform the Adjacent Facility Owner of the reasonable costs of any renewals as described in Clause 15.4.4 not later than 12 months in advance of the commencement of these works (with the exception of emergency renewals carried out in accordance with Clauses 15.4.2). Where the parties cannot agree such costs, or the scope of works required, the matter shall be considered a Relevant Dispute, and determined in accordance with Clause 12 of this Contract. The Adjacent Facility Owner shall pay to Network Rail the reasonable costs of all renewals so agreed or determined, such costs to be paid over a period of five years commencing six months before the works are carried out.

15.4.2 Emergency Renewals

Network Rail will notify the Adjacent Facility Owner of any emergency renewal as soon as possible after it becomes aware that such renewal is required. Network Rail will inform the Adjacent Facility Owner of the problem, cause, solution and (where the cost of the emergency renewal is agreed or determined to be the responsibility of the Adjacent Facility Owner in accordance with Clause 15.4.3) the reasonable cost.

15.4.3 Payment for emergency renewals

The responsibility for paying the cost of the emergency renewal works shall be discussed in good faith and agreed between the parties. Where the parties cannot agree who is responsible for funding the emergency renewal works and/or the amount of such costs, the matter shall be considered a Relevant Dispute, and determined in accordance with Clause 12 of this Contract. The Adjacent Facility Owner shall pay to Network Rail the reasonable costs as agreed or determined of such emergency renewals, such costs to be paid over a period of three years, commencing with the next billing date after both the works have been completed and costs agreed or determined.

15.4.4 Meaning of renewal

For the purposes of this clause 15.4, the term “renewal” means any work on the Connection Point or Connecting Network that replaces components incorporated therein without changing the overall performance of the Connection Point or Connecting Network and which is not routine maintenance.

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:

(a) that party shall provide reasonable details of the proposed Adjustment and the reasons for such change based on the Criteria; and

(b) 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, including earning a reasonable rate of return.

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, 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 Adjacent Facility, 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 Adjacent Facility, 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:

(i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

(ii) 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 for determination in accordance with the ADRR; and

(b) Network Rail shall within 5 working days notify the Office of Rail and Road 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 Relevant ADRR Forum which is to resolve the dispute shall:

(a) determine the dispute in accordance with the Criteria and make such orders in its determination as it considers necessary to establish the Adjusted Amount;

(b) provide reasons for its decision; 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 and Road

Not later than 7 days after the Backstop Date or the determination, as the case may be, details of the Adjusted Amount shall be sent by the parties to the Office of Rail and Road 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 and Road may have requested.

16.4.5 No Adjusted Amount - notice to the Office of Rail and Road

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 and Road 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 and Road may have requested.

16.4.6 Adjusted Amount – Office of Rail and Road's consent

If the Office of Rail and Road 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 and Road's consent

If the Office of Rail and Road 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 and Road's refusal of consent

If the Office of Rail and Road 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 and Road 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 and Road; and

(b) if that party fails timeously to do so, the Office of Rail and Road 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 and Road 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 and Road 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 Clause 9.2 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):

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

(ii) 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; and

(b) minimise the duration of such Force Majeure Event,

and 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 and Road.

18.2.2 Office of Rail and Road approval needed

Modifications of the following do not require the approval of the Office of Rail and Road 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 and Road;

(b) modifications to Schedule 1 pursuant to Clause 6(b), save as set out below;

(c) modifications to Schedule 4 pursuant to Clause 5.1.3(d); and

(d) modifications effected by virtue of Clause 18.4.2.

Any amendment made to the Plan under Clause 6(b) requires the Office of Rail and Road's approval under section 22 of the Act.

18.2.3 Conformed copy of contract

Network Rail shall produce and send to the Adjacent Facility Owner and to the Office of Rail and Road 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) or by e-mail 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 and Road 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; or

(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; or

(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; or

(d) if sent by e-mail 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 Copyees

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 9 (Liability), 10 (Restrictions on Claims); 11 (Governing Law), 12.2 (Unpaid Sums), 13 (Confidentiality), 15 (Payments, Interest and VAT), 17 (Force Majeure Events) and Schedule 5 (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 and Road

The Office of Rail and Road 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.

SCHEDULE 1: LIST OF ITEMS INCLUDED IN THE CONNECTING NETWORK, THEIR INITIAL CONDITION AND MAINTENANCE REQUIREMENTS

The connecting network is identified in the Plan

(1) List of Items

35.30 x 60’ Track Panels – Concrete Sleepers (646.07m)

143.20 x 60’ Track Panels – Timber Sleepers (2620.62m)

Ground Position Light: KR1495
Ground Position Light, with Theatre Indicator: KR1496
Ground Position Light: KR1497
Ground Position Light: KR1498
Ground Position Light, with Theatre Indicator: KR1499

Motorised Point: KR295A (Concrete) + Point Heating
Motorised Point: KR295B (Timber) + Point Heating
Motorised Point: KR296A (Timber) + Point Heating
Motorised Point: KR296B (Concrete) + Point Heating

Track Circuit: KRXA (X)
Track Circuit: KRXS (X)

Handpoint x 9
AWS Magnet: x 2
Buffer Stop: x 5

1065m OHLE maintenance

(2) Initial Condition Statement

All assets are in good, maintainable condition as per the Network Rail track standards and are fit for current traffic levels.

SCHEDULE 2: CONTACT DETAILS

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

Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW
Tel: 020 7557 8000
Fax: 020 3356 9300

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to: Senior Regional Freight Manager

Tel: 020 7557 8000

Fax: 020 3356 9300

Email: FreightConnections@networkrail.co.uk

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

Network Rail Infrastructure Limited Accounts Receivable
PO Box 4150
Square One,
2nd Floor,
4 Travis Street,
Manchester
M1 2NY
Tel: 0161 880 3334

Fax: 0161 880 3989

All invoices/statements of amounts payable to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to: National Receivables Manager

Tel: 0161 228 4477

Fax: 0161 228 4779

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





2B. The Adjacent Facility Owner's address for the service of invoices or other statements of amounts payable is as shown in paragraph 2A.



SCHEDULE 3: ADJUSTMENT FACTOR FORMULA

Indexation and variation of the Amount

The Amount shall be subject to variation as follows:

$$\text{Adjustment factor} = 1 + \left(\frac{(CPI_{(t-1)} - CPI_{(t-2)})}{CPI_{(t-2)}} - X\right)$$

Where:

i) t = the relevant 12 month period in respect of which the annual amount is being calculated.

ii) CPI(t–1) means the general index of CPI (all items) published by the Central Statistics Office for the 12 months up to and including the month of December immediately preceding the relevant 1st April.

iii) CPI(t–2) means the general index of CPI (as defined above) for the 12 months up to and including the month of December which is 12 months before the month of December which immediately precedes the relevant 1st April.

iv) X is the efficiency factor published by ORR for the relevant period.

The value derived from this formula shall be rounded to three decimal places.

SCHEDULE 4: ADJACENT FACILITY OWNER'S SAFETY AND SECURITY REQUIREMENTS



SCHEDULE 5: LIMITATION ON LIABILITY

1 Definitions

In this Schedule:

"Liability Cap" means:

(a) in relation to the first Contract Year, the sum of £1,000,000; and

(b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{CPI_n}{CPI_1} \right)$$

where:

(i) C_1 is the sum of £1,000,000;

(ii) C_n is the Liability Cap in the nth subsequent Contract Year;

(iii) CPI_n is the Consumer Prices Index published or determined with respect to the first month of the subsequent Contract Year n; and

(iv) CPI_1 is the Consumer 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 Adjacent Facility Owner to which this Schedule 5 applies:

(a) 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

(b) 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 Adjacent Facility Owner's liability

In relation to any claims for indemnity made by Network Rail to which this Schedule 5 applies:

(a) the Adjacent 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

(b) 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 Adjacent Facility Owner shall have no further liability for it.

5 Disapplication of limitation

To the extent that any Relevant Losses:

(a) result from a conscious and intentional breach by a party; or

(b) 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 set out in Schedule 4,

such Relevant Losses:

(i) shall not be subject to the limitation of liability in Schedule 5; and

(ii) 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 5.

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 5 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

(a) is a continuing breach of contract which continues for more than 12 months; or

(b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or

(c) 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(b) or 4(b).

9 Final determination of claims

For the purpose of this Schedule 5, 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.

This contract was signed by Network Rail and the Adjacent Facility Owner as first dated above.

SIGNED BY

Print name

Duly authorised on behalf of

NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED BY

Print name

Duly authorised on behalf of

GEMINI RAIL SERVICES UK LIMITED

ANNEX 1: CONNECTION PLAN

Please refer to plans numbered 09052022A and 09052022B.

ANNEX 2: PHOTOGRAPHIC SCHEDULE

Please refer to the attached photographic schedule.