

Dated

24th January 2019

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

RAIL NETWORKS CONNECTION AGREEMENT

**in respect of a connection between the Network Rail Network and the Crossrail Central
Operating Section at Pudding Mill Lane Junction**

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THIS CONNECTION AGREEMENT is made **AS A DEED** on the 24th day of January 2019

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN ("**Network Rail**"); and
- (2) **RAIL FOR LONDON (INFRASTRUCTURE) LIMITED** a company registered in England under number 09366341 having its registered office at 55 Broadway, London SW1H 0BD ("**RfL(I)**").

WHEREAS:

- (A) The construction of the Central Operating Section and associated works was authorised pursuant to the Crossrail Act 2008. TfL is a joint sponsor of the Crossrail project, together with the Department for Transport.
- (B) TfL, through its wholly owned subsidiary Crossrail Limited, is responsible for the delivery of the Crossrail project. The Crossrail project forms part of the Mayor of London's transport strategy.
- (C) Following the implementation of the Crossrail project, Crossrail services will operate on the Central Operating Section and then are expected to run onto the NR Network to Reading, Heathrow Airport (via the Heathrow spur connected to the NR Network) and Shenfield.
- (D) As part of the delivery of the Crossrail services on the Central Operating Section, TfL has appointed its wholly owned subsidiary, RfL(I) to be the facility owner and infrastructure manager of the Central Operating Section for the purposes of the Railways Regulations with effect from the Effective Date. The CCOS Infrastructure Manager is therefore interested in securing and preserving connections between the Central Operating Section and the NR Network.
- (E) Network Rail is the owner of the NR Network and, with effect from the Effective Date, the CCOS Infrastructure Manager will be the owner or controller of the Central Operating Section, relevant parts of which are shown on the Pudding Mill Lane Plan.
- (F) Network Rail and the Secretary of State for Transport entered into the Crossrail Track Access Option, which was subsequently novated to TfL. Clause 7 of the Crossrail Track Access Option envisages that Network Rail and the facility owner of the Central Operating Section, being the CCOS Infrastructure Manager (with effect from the Effective Date), will use reasonable endeavours to agree the terms of certain connection agreements between the Central Operating Section and the NR Network.
- (G) Network Rail has been directed by the Office of Rail and Road to grant to the CCOS Infrastructure Manager permission to connect the Central Operating Section to the NR Network on the terms and conditions of this Agreement.
- (H) RfL(I) has been directed by the Office of Rail and Road to grant to Network Rail permission to connect the NR Network to the Central Operating Section on the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement unless the context otherwise requires:

“**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 “CCOS Access Dispute Resolution Rules” and annexed to the CCOS Network Code;

“**Act**” means the Railways Act 1993;

“**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 TfL;

“**Agreement**” means this rail networks connection agreement, including all Schedules and annexes to it;

“**Agreement Year**” means each yearly period commencing on the Commencement Date and subsequently on each anniversary of such date;

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

“**Applicable Procedures**” means:

- (a) any applicable procedures, timescales or arrangements which have been or are formally agreed in writing by Network Rail and the CCOS Infrastructure Manager from time to time; but
- (b) to the extent any of the matters referred to in sub-paragraph (a) include standards in respect of the NR Network set by Network Rail or standards in respect of the Central Operating Section set by the CCOS Infrastructure Manager then they shall be notified by the relevant standard-setting infrastructure manager to the other party rather than being formally agreed in writing;

“**CCOS Infrastructure Manager**” means RfL(I);

“**CCOS Infrastructure Manager Connection Point Assets**” means those assets of the CCOS Infrastructure Manager which are located in the vicinity of the Pudding Mill

Lane Junction Connection Point as more particularly described in Part A of Schedule 1 and/or the Applicable Procedures;

“**CCOS Network Code**” means the document known as the CCOS Network Code published by the CCOS Infrastructure Manager in respect of the Central Operating Section;

“**Central Operating Section**” means the Crossrail central operating section, being the railway infrastructure and network between the boundary of the Central Operating Section and the NR Network:

- (a) to the west of Royal Oak portal;
- (b) to the east of Pudding Mill Lane portal;
- (c) to the east of Abbey Wood sidings,

of which RfL(I) is the facility owner, certain parts of the railway lines of which are coloured blue on the Pudding Mill Lane Plan;

“**Commencement Date**” means the date written on the front page of this Agreement;

“**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 Agreement, jurisdiction over either Network Rail and/or the CCOS Infrastructure Manager and/or the subject matter of this Agreement;

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

“**Connection Point Assets**” means the CCOS Infrastructure Manager Connection Point Assets and the Network Rail Connection Point Assets;

“**Crossrail Track Access Option**” means the track access option entered into between Secretary of State for Transport and Network Rail on 22 September 2008, as subsequently amended and restated on 2 September 2014 and as novated to TfL on 2 September 2014;

“**Crossrail Umbrella Property Agreement**” means the agreement dated on or after the date of this Agreement between (1) TfL and (2) Network Rail pursuant to which Network Rail is (amongst other things) to lease or transfer to TfL certain land comprising parts of the Central Operating Section as provided therein;

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

“**Dispute Resolution Procedure**” is the procedure for determining disputes set out in Clause 12;

“**Effective Date**” has the meaning ascribed to it in Clause 2;

“**Emergency**” means:

(a) an event or circumstance affecting the NR Network or the Central Operating Section at or in the vicinity of the Pudding Mill Lane Junction Connection Point 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 or the Central Operating Section, the alleviation of which would entail the use or non-use of the Pudding Mill Lane Junction Connection Point;

“**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;

“**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;

“**Information**” has the meaning ascribed to it in Clause 13.8.3;

“**Information Request**” has the meaning ascribed to it in Clause 13.8.5;

"Infrastructure Manager" has the meaning ascribed to it in the Railway Regulations;

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

"Liability Cap" has the meaning ascribed to it in paragraph 1 of Schedule 3;

"Longstop Date" has the meaning given to the term "Condition Subsequent Deadline" in the First Crossrail Access Agreement (as defined in the Crossrail Track Access Option) and as such date may be modified by the ORR in accordance with clause 3.5A of the First Crossrail Access Agreement;

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

"Network Rail Connection Point Assets" means those assets of Network Rail which are located in the vicinity of the Pudding Mill Lane Junction Connection Point as more particularly described in Part B of Schedule 1 and/or the Applicable Procedures;

"Network Rail Network Code" means the document now known as the Network Code published by Network Rail in respect of the NR Network and formerly known as the Railtrack Track Access Conditions 1995;

"NR Network" means the network of which Network Rail is the owner and which is situated in England, Wales and Scotland, certain parts of the railway lines of which are coloured red on the Pudding Mill Lane Plan;

"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;

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

"Pudding Mill Lane Junction Connection Point" means the points at which the railway lines of the NR Network and the Central Operating Section connect at or around the boundary of the Central Operating Section and the NR Network to the east of Pudding Mill Lane portal, as marked "Connection Point A" and "Connection Point B" on the Pudding Mill Lane Plan;

"Pudding Mill Lane Plan" means the plan set out in Schedule 4 to this Agreement;

"Railway Group Standards" means:

- (a) technical standards to which railway assets or equipment used on or as part of the NR Network or the Central Operating Section (as the case may be) 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 references to Railway Group Standard shall be construed accordingly);

“Railways Regulations” means The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this Agreement;

“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 Agreement; 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 Agreement in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under Clause 17;

“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;

“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;

“Services” means any train services operated over Pudding Mill Lane Junction Connection Point;

“TfL” means Transport for London, the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

“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 Agreement, 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 Agreement;
- (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 Agreement, 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 Agreement; 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 “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;
- (l) words and expressions defined in the Act shall, unless otherwise defined in this Agreement, have the same meanings in this Agreement;
- (m) if a period of time is specified in this Agreement as being from a given day, or from the day of an act or event, it shall be calculated exclusive of that day; and
- (n) references to writing in this Agreement shall include any mode of reproducing words in any legible form.

1.3 Indemnities

Indemnities provided for in this Agreement 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 CONDITION PRECEDENT

2.1 Commencement

The provisions of this Agreement, other than Clauses 4 – 7 shall come into force on the Commencement Date and shall continue in force thereafter.

2.2 Condition precedent to Clauses 4 – 7

Clauses 4- 7 shall take effect upon the CCOS Infrastructure Manager becoming the facility owner of the Central Operating Section (and accordingly subject to regulation by the ORR in accordance with sections 17 to 22C of the Act) and shall continue in force thereafter.

2.3 Obligation to satisfy condition precedent to Clauses 4 – 7

2.3.1 The parties acknowledge that the CCOS Infrastructure Manager shall not be able to satisfy the Condition Precedent in Clause 2.2 unless and until:

- (a) the Crossrail Umbrella Property Agreement between Network Rail and TfL is executed and delivered by all the parties to such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this Agreement becoming unconditional); and
- (b) the CCOS Infrastructure Manager is granted an estate or interest in, or right over the Central Operating Section.

2.3.2 In relation to:

- (a) Clause 2.3.1(a), each party shall use all reasonable endeavours to ensure that the Crossrail Umbrella Property Agreement is executed and delivered by all the parties to such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this Agreement becoming unconditional); and
- (b) Clause 2.3.1(b), the CCOS Infrastructure Manager shall use all reasonable endeavours to ensure that it is granted an estate or interest in, or right over the Central Operating Section,

in each case as soon as practicable and in any event not later than the Longstop Date. In relation to Clause 2.3.1(b), the CCOS Infrastructure Manager shall notify Network Rail as soon as practicable once the matters set out in that Clause have been satisfied.

2.4 Consequences of non-fulfilment of condition precedent to Clauses 4- 7

If the condition precedent set out in Clause 2.2 has not been satisfied in full on or before the Longstop Date:

- (a) this Agreement shall lapse save for the obligations of confidence contained in Clause 13 which shall continue in force; and
- (b) neither party shall have any liability to the other under this Agreement except in respect of any breach of its obligations under this Agreement.

3 STANDARD OF PERFORMANCE

3.1 General standard

Without prejudice to all other obligations of the parties under this Agreement, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this Agreement, 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; and
- (b) owner of a facility adjacent to the NR Network or the Central Operating Section (as the case may be).

3.2 Good faith

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

4 PERMISSION TO CONNECT

- 4.1 Network Rail grants the CCOS Infrastructure Manager permission to connect the Central Operating Section to the NR Network at the Pudding Mill Lane Junction Connection Point.
- 4.2 The CCOS Infrastructure Manager grants Network Rail permission to connect the NR Network to the Central Operating Section at Pudding Mill Lane Junction Connection Point.

5 OBLIGATIONS IN RESPECT OF THE CONNECTION OF THE CENTRAL OPERATING SECTION TO THE NR NETWORK

5.1 Obligations of the CCOS Infrastructure Manager

- 5.1.1 The CCOS Infrastructure Manager shall not:
 - (a) sever the connection of the NR Network to the Central Operating Section at the Pudding Mill Lane Junction Connection Point; or
 - (b) take any action or omit to take any action at or in the vicinity of the Pudding Mill Lane Junction Connection Point which impedes and/or interferes with access to/from the Central Operating Section at or around the Pudding Mill Lane Junction Connection Point,

unless it has, except in an Emergency, obtained the prior written consent of Network Rail (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 Central Operating Section.

5.1.2 In an Emergency, the CCOS Infrastructure Manager 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) describing the action taken by the CCOS Infrastructure Manager to deal with the Emergency;
- (c) describing the impact of its actions on the Pudding Mill Lane Junction Connection Point; and
- (d) giving an indication of the timescale for reinstating the connection and allowing rolling stock access to the NR Network.

5.1.3 The CCOS Infrastructure Manager shall:

- (a) re-instate, at its own cost, the connection of the Central Operating Section to the NR Network, where such connection has been severed by the CCOS Infrastructure Manager:
 - (i) as soon as reasonably practicable after the date of severance; and
 - (ii) in accordance with applicable Railway Group Standards;
- (b) consult with Network Rail in respect of all planned inspections, maintenance, renewals or enhancements on the Central Operating Section which may impede access to and/or from the NR Network in accordance with any Applicable Procedures, and have due regard to any comments and representations reasonably made by Network Rail in relation thereto;
- (c) be responsible for the Operational Control of all rolling stock movements on the Central Operating Section;
- (d) ensure that:
 - (i) all persons authorised by the CCOS Infrastructure Manager to be on Network Rail's land and/or premises at or in the vicinity of the Pudding Mill Lane Junction Connection Point (for any duration) observe the safety and security requirements of Network Rail relating to the Pudding Mill Lane Junction Connection Point as set out in the Applicable Procedures; and
 - (ii) where the presence of such persons causes disruption to the operation of the NR Network, the CCOS Infrastructure Manager shall use reasonable endeavours to minimise the effects of such disruption;

- (e) not used;
- (f) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the NR Network arising from:
 - (i) the exercise of its rights or performance of its obligations under this Agreement; or
 - (ii) any person authorised by the CCOS Infrastructure Manager to be at or in the vicinity of the Pudding Mill Lane Junction Connection Point.

Without prejudice to the foregoing, where a matter described in sub-clause 5.1.3(f)(i) or 5.1.3(f)(ii) above gives rise to disruption on the NR Network, the CCOS Infrastructure Manager 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 disruption;
- (g) promptly provide, in accordance with the Applicable Procedures, Network Rail with any amendments to the CCOS Infrastructure Manager's safety and security requirements that relate to the Pudding Mill Lane Junction Connection Point; and
- (h) establish and maintain or procure the establishment and maintenance of adequate security at the Pudding Mill Lane Junction Connection Point.

5.2 Obligations of Network Rail

5.2.1 Network Rail shall not:

- (a) sever the connection of the Central Operating Section to the NR Network at the Pudding Mill Lane Junction Connection Point; or
- (b) take any action or omit to take any action at or in the vicinity of the Pudding Mill Lane Junction Connection Point which impedes and/or interferes with access to/from the NR Network at or around the Pudding Mill Lane Junction Connection Point,

unless it has, except in an Emergency, obtained the prior written consent of the CCOS Infrastructure Manager (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 CCOS Infrastructure Manager:

- (a) of the circumstances giving rise to the Emergency;
- (b) describing the action taken by Network Rail to deal with the Emergency;

- (c) describing the impact of its actions on the Pudding Mill Lane Junction Connection Point; and
- (d) giving an indication of the timescale for reinstating the connection and allowing rolling stock access to the Central Operating Section.

5.2.3 Network Rail shall:

- (a) re-instate, at its own cost, the connection of the NR Network to the Central Operating Section, where such connection has been severed by Network Rail:
 - (i) as soon as reasonably practicable after the date of severance; and
 - (ii) in accordance with applicable Railway Group Standards;
- (b) consult with the CCOS Infrastructure Manager in respect of all planned inspections, maintenance, renewals or enhancements on the NR Network which may impede access to and/or from the Central Operating Section in accordance with any Applicable Procedures, and have due regard to any comments and representations reasonably made by the CCOS Infrastructure Manager in relation thereto;
- (c) be responsible for the Operational Control of all rolling stock movements on the NR Network;
- (d) ensure that:
 - (i) all persons authorised by Network Rail to be on the CCOS Infrastructure Manager's land and/or premises at or in the vicinity of Pudding Mill Lane Junction Connection Point (for any duration) observe the safety and security requirements of the CCOS Infrastructure Manager relating to the Pudding Mill Lane Junction Connection Point as set out in the Applicable Procedures; and
 - (ii) where the presence of such persons causes disruption to the operation of the Central Operating Section, Network Rail shall use reasonable endeavours to minimise the effects of such disruption;
- (e) not used;
- (f) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the Central Operating Section arising from:
 - (i) the exercise of its rights or performance of its obligations under this Agreement; or
 - (ii) any person authorised by Network Rail to be at or in the vicinity of the Pudding Mill Lane Junction Connection Point.

Without prejudice to the foregoing, where a matter described in sub-clause 5.2.3(f)(i) or 5.2.3(f)(ii) above gives rise to disruption on the Central Operating Section, Network Rail 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 disruption;
- (g) promptly provide, in accordance with the Applicable Procedures, the CCOS Infrastructure Manager with any amendments to Network Rail's safety and security requirements relating to the Pudding Mill Lane Junction Connection Point; and
- (h) establish and maintain or procure the establishment and maintenance of adequate security at the Pudding Mill Lane Junction Connection Point.

6 JOINT OBLIGATIONS AND INTERFACE

6.1 Network Rail and the CCOS Infrastructure Manager shall:

- (a) review as necessary and in accordance with Railway Group Standards, arrangements for the safe transfer of Operational Control of rolling stock movements from one party to the other, in consultation with Train Operators who have permission to use the Central Operating Section;
- (b) work together to ensure that the interface between the Central Operating Section and the NR Network is and continues to be:
 - (i) compatible, to the extent reasonably necessary to ensure the operation of railway passenger services across the Pudding Mill Lane Junction Connection Point; and
 - (ii) compliant with applicable Railway Group Standards, save to the extent that the CCOS Infrastructure Manager or Network Rail has been granted any derogations from such Railway Group Standards;
- (c) inspect the condition of the Connection Point Assets in accordance with the Applicable Procedures; and
- (d) in accordance with the Applicable Procedures, place and maintain suitable markers at the Pudding Mill Lane Junction Connection Point which define the maintenance boundaries between the parties.

7 RIGHT OF ENTRY

7.1 The CCOS Infrastructure Manager shall be entitled to enter onto the land and/or premises of Network Rail in the vicinity of the Pudding Mill Lane Junction Connection Point for the following purposes:

- (a) to inspect, test, maintain, repair and renew those of the CCOS Infrastructure Manager Connection Point Assets that are located on Network Rail's land and/or premises;
- (b) not used;
- (c) to carry out remedial procedures in the event of an Emergency,

provided that at all times (including in an Emergency) in entering and while upon such land and/or premises the CCOS Infrastructure Manager shall act in accordance with good industry practice and any Applicable Procedures.

7.2 Network Rail shall be entitled to enter onto the land and/or premises of the CCOS Infrastructure Manager in the vicinity of the Pudding Mill Lane Junction Connection Point for the following purposes:

- (a) to inspect, test, maintain, repair and renew those of the Network Rail Connection Point Assets that are located on the CCOS Infrastructure Manager's land and/or premises;
- (b) not used;
- (c) to carry out remedial procedures in the event of an Emergency,

provided that at all times (including in an Emergency) in entering and while upon such land and/or premises Network Rail shall act in accordance with good industry practice and any Applicable Procedures.

7.3 Save as expressly set out in this Agreement 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:

- (a) the CCOS Infrastructure Manager shall not be entitled, for itself or on behalf of any other person, to any right of access to the NR Network; and
- (b) Network Rail shall not be entitled, for itself or on behalf of any other person, to any right of access to the Central Operating Section.

8 TERMINATION – INTENTIONALLY DELETED

9 LIABILITY

9.1 Performance Orders in relation to breach

In relation to any breach of this Agreement:

- (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 Agreement the party in breach shall indemnify the Innocent Party against all Relevant Losses.

9.3 CCOS Infrastructure Manager indemnity

The CCOS Infrastructure Manager shall indemnify Network Rail against all Relevant Losses resulting from:

- (a) a failure by the CCOS Infrastructure Manager to comply with its Safety Obligations but only insofar as they relate to the exercise of its rights or performance of its obligations under this Agreement;

- (b) any Environmental Damage arising in the vicinity of the Pudding Mill Lane Junction Connection Point and arising directly from the acts or omissions of the CCOS Infrastructure Manager; and
- (c) any damage to the NR Network in the vicinity of the Pudding Mill Lane Junction Connection Point and arising directly from the CCOS Infrastructure Manager's negligence.

9.4 Network Rail indemnity

Network Rail shall indemnify the CCOS Infrastructure Manager against all Relevant Losses resulting from:

- (a) a failure by Network Rail to comply with its Safety Obligations but only insofar as they relate to the exercise of its rights or performance of its obligations under this Agreement;
- (b) any Environmental Damage in the vicinity of the Pudding Mill Lane Junction Connection Point and arising directly from any acts or omissions of Network Rail; and
- (c) any damage to the Central Operating Section in the vicinity of the Pudding Mill Lane Junction Connection Point and 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 Agreement:

- (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 Agreement.

10.2 Restrictions on claims by Network Rail

Any claim by Network Rail against the CCOS Infrastructure Manager 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 or negligence; 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 CCOS Infrastructure Manager

Any claim by the Adjacent Facility Owner against Network Rail 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 Central Operating Section 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 the CCOS Infrastructure Manager would not have incurred as network owner and operator but for the relevant breach or negligence; and
 - (ii) give credit for any savings to the CCOS Infrastructure Manager 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 Agreement; or
 - (ii) where the breach relates to a modification or amendment to this Agreement, at the time of the making of such modification or amendment, as the probable result of the breach.

10.5 Limitation on liability

Schedule 3 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clause 9 of this Agreement and subject to Clause 18.3.3 of this Agreement.

11 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement 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.

12.2 Not used.

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 CCOS Infrastructure Manager 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 Agreement (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 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). If Network Rail requests (giving reasons for such request in sufficient detail for the CCOS Infrastructure Manager to be able to properly consider the request) that any information and/or data should be kept confidential and not disclosed (other than permitted under this Clause 13):

- (a) the CCOS Infrastructure Manager shall duly consider Network Rail's request; and
- (b) if the CCOS Infrastructure Manager considers that any such information should not be kept confidential, the CCOS Infrastructure Manager shall notify Network Rail,

whereupon, within 14 days of such notification, either party shall be entitled to refer the matter to the dispute resolution procedure under Clause 12. Pending the outcome of such resolution, the relevant information and/or data shall be deemed to be Confidential Information and shall not be disclosed other than as permitted under 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 Agreement, 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 Allocation Chair of any relevant forum specified in the ADRR);
- 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 the CCOS Infrastructure Manager, 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 the Central Operating Section 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 Agreement 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 Agreement otherwise than for the purposes of this Agreement, 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 ORR, 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 Agreement 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 Agreement,

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 Agreement 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 Agreement, 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, having regard to its statutory duties, 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 Agreement, 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

14.1 Prohibition on Assignment, Novation and Transfer

Subject to Clause 14.2, neither party may assign its rights or novate or otherwise transfer any of its rights or obligations under this Agreement:

14.1.1 without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed); and

14.1.2 without the approval of the ORR in accordance with Clause 14.3.

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 Agreement 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 Agreement.

14.3 Approval of the ORR

No such novation, assignment or transfer of this Agreement pursuant to Clause 14.1 or Clause 14.2 shall have effect unless approved by the ORR and effected in accordance with the conditions (if any) of its approval.

15 REVIEW OF THE OPERATION OF THIS AGREEMENT

15.1 The following matters shall be reviewed by Network Rail and the CCOS Infrastructure Manager on or before: (1) the fifth anniversary of the Effective Date; and (2) each five year anniversary of the Effective Date thereafter:

- (a) the validity of the Pudding Mill Lane Plan and Schedule 1;
- (b) the operation of this Agreement including:
 - (i) whether it is operating effectively and as anticipated by Network Rail and the CCOS Infrastructure Manager;
 - (ii) the principle that no sums are paid by either party to the other under this Agreement; and
 - (iii) the principle that this Agreement shall not be terminable except by agreement between the parties.

15.2 If as a consequence of any review contemplated by Clause 15.1, Network Rail and the CCOS Infrastructure Manager agree that any amendments should be made to this Agreement, such amendments, Clause 18.2 shall apply.

16 NOT USED

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 Agreement.

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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement unless the relevant provision expressly states that it requires the approval of the Office of Rail and Road;
- (b) not used; and

- (c) modifications effected by virtue of Clause 18.4.2.

Any amendment made to the Pudding Mill Lane Plan under Clause 6.1(b) requires the Office of Rail and Road's approval under section 22 of the Act.

18.2.3 Conformed copy of Agreement

Network Rail shall produce and send to the CCOS Infrastructure Manager and to the Office of Rail and Road a conformed copy of this Agreement within 28 days of the making of any amendment or modification to this Agreement.

18.3 Entire Agreement and exclusive remedies

18.3.1 Entire Agreement

Subject to Clause 18.3.3:

- (a) this Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement;
- (b) each party acknowledges that it has not been induced to enter into this Agreement 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 Agreement 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 Agreement either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Agreement.

18.3.2 Exclusive remedies

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

- (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 Agreement; and
- (b) the remedies provided for in this Agreement 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 Agreement 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 Agreement, in respect of any statement made fraudulently by the other party before the execution of this Agreement;
- (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 Agreement:

- (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 or (in the case of service on Network Rail only) by Email (with, in the case of facsimile transmission or Email, confirmation copy by prepaid first class post) to, the relevant address or Email 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 Email (subject to confirmation of receipt of delivery) before 1700 on a Working Day, on the day of transmission and, in any other case, at 0900 on the next following Working Day.

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

18.6 Survival

Those provisions of this Agreement which by their nature or implication are required to survive expiry or termination of this Agreement 9 (Liability), 10 (Restrictions on Claims); 11 (Governing Law), 13 (Confidentiality), 17 (Force Majeure Events) and Schedule 3 (Limitation on liability) shall so survive and continue in full force and effect, together with any other provisions of this Agreement 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 Agreement, no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

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 Agreement.

SCHEDULE 1: CONNECTION POINT ASSETS

Part A – CCOS Infrastructure Manager Connection Point Assets

- IRJ reference MEE/EBX on the Eastbound Crossrail Line
- IRJ reference MWE/ENE on the Westbound Crossrail Line
- Crossrail Portal both Eastbound and Westbound
- Neutral Section including wiring to the west – Eastbound Pk14+687.0
- Neutral Section including wiring to the west – Westbound Pk14+687.0
- Marsh Gate Lane Bridge – Eastbound and Westbound lines
- Marsh Gate Lane Abutment
- All airlink equipment and balises
- 4 APC magnets at following locations:

Eastbound (EB)	14652.60 (5435.00)
Eastbound (WB)	14700.60 (5483.00)
Westbound (EB)	14824.90 (5435.00)
Westbound (WB)	14872.90 (5483.00)
- Axle Counters MEE and MEW

Part B –Network Rail Connection Point Assets

- Points Up Electric - point number 2129 including associated points motors and heaters
- Points Down Electric - point number 2135 including associated points motors and heaters
- Signal L233 on the Eastbound Crossrail Line
- Signal L243 on the Westbound Crossrail Line (wrong road signal)
- Train detection (reference EBX) on the Eastbound Crossrail Line
- Train detection (reference ENE) on the Westbound Crossrail Line
- TPWS TSS associated with Signal L233 on the Eastbound Crossrail Line
- TPWS TSS associated with Signal L243 on the Westbound Crossrail Line
- Three OLE structures - numbers
 - Electrification assets to the east of the demarcation point E&P 201
 - Wiring and assets to the East - Eastbound Pk14+687.01
 - Wiring to the East - Westbound Pk14+687.0
- Track from 14+666.176 to points number 2135 on the Eastbound Crossrail Line to where this joins line the Down Electric
- Track from points 2129 where the Westbound Crossrail Line leaves the Up Electric to 14+840.754 on the Westbound Crossrail Line
- Signal L256 TSS \ route indicator \ slot on Up Electric
- Signal L238 on Down electric including OSS (wrong road signal) including TPWS
- Signal L236 Down Electric

SCHEDULE 2 CONTACT DETAILS

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

Network Rail Infrastructure Limited
1 Eversholt Street,
London
NW1 2DN

Email: notices@networkrail.co.uk

All written notices to be marked:

“URGENT: FOR THE ATTENTION OF THE COMPANY SECRETARY AND SOLICITOR”

And copied to:

The Route Managing Director

Network Rail Anglia Route
One Stratford Place, 12th Floor
Montfichet Road
West Stratford City
London
E20 1EJ

2A. The CCOS Infrastructure Manager's address for the service of notices is:

Rail for London (Infrastructure) Limited at its registered office from time to time, which on the date of this Agreement is:

55 Broadway
London
SW1H 0BD

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY”

and copied to: Head of Infrastructure, RfL(I) at the same address

2B. The CCOS Infrastructure Manager's address for the service of invoices or other statements of amounts payable is:

Rail for London (Infrastructure) Limited
Accounts Payable, 1st Floor
PO Box 45276
Pier Walk

London
SE10 1AJ

All invoices/statements of amounts payable to be marked:

“URGENT: ATTENTION ACCOUNTS PAYABLE”

and copied to: Head of Infrastructure, RfL(I) at the address set out in 2A above

SCHEDULE 3: LIMITATION ON LIABILITY

1 Definitions

In this Schedule:

“**Liability Cap**” means:

- (a) in relation to the first Agreement Year, the sum of £6,017,220 (six million, seventeen thousand, two hundred and twenty pounds sterling); and
- (b) in relation to any subsequent Agreement 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 £6,017,220 (six million, seventeen thousand, two hundred and twenty pounds sterling);
- (ii) C_n is the Liability Cap in the nth subsequent Agreement Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Agreement Year n; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this Agreement 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 CCOS Infrastructure Manager to which this Schedule 3 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 Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Agreement 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 CCOS Infrastructure Manager’s liability

In relation to any claims for indemnity made by Network Rail to which this Schedule 3 applies:

- (a) the CCOS Infrastructure Manager shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and

- (b) to the extent its liability for such claims exceeds the Liability Cap for such Agreement Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the CCOS Infrastructure Manager 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 provided in accordance with Clauses 5.1.3(g) and 5.2.3(g),

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in this Schedule 3; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in an Agreement Year for the purposes of the limitations of liability in this Schedule 3.

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 Agreement.

8 Continuing breaches

Nothing in this Schedule 3 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

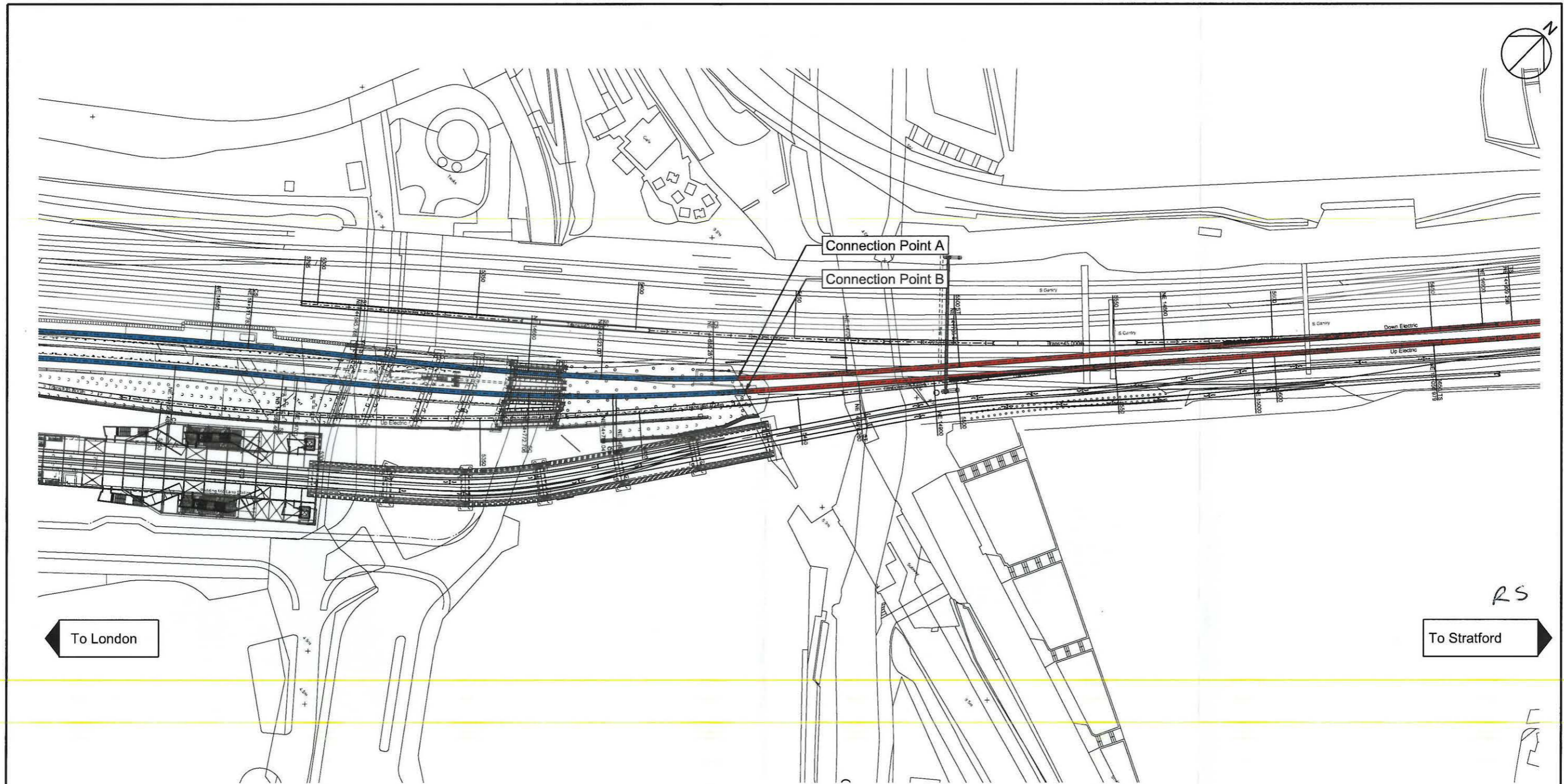
- (a) is a continuing breach of contract which continues for more than 12 months; or
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

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 3, 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.

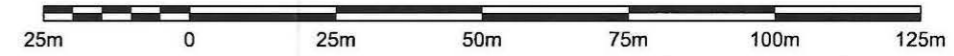
SCHEDULE 4: THE PLAN



Connection Point Location	OS Grid		London Survey Grid		CRL Chainage	NRIL Chainage
	Eastings	Northings	Eastings	Northings		
A	537833.658	183752.0976	88370.9390	38227.2703	14665.806m	5432.6905m
B	537838.22	183750.8774	88375.4701	38225.9353	14842.394m	5435.0256m

Key:

- █ RfL COS Network
- █ NRIL Network



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Rev.	Date	Description	By	Chkd	App	Auth
P01.1	30/11/2017	First Issue	GB	-	-	-

Notes:

Crossrail Limited
 25 Canada Square
 Canary Wharf
 London
 E14 5LQ
 www.crossrail.co.uk

Contract : Crossrail Line 1 Programme	By : G.BEZUIDENHOUT
Originator : Crossrail Ltd	Chk : ---
Location : Whitechapel to Stratford	App : ---
Title : Pudding Mill Lane Station Connecting Infrastructure	Auth : ---
Scale : 1:1250 @ A3	Rev : P01.1 Suit : S0
Drg No : CRL1-XRL-R4-DDA-CR094_1-00001	

PDF Check Plot
RESTRICTED

In witness of which this Agreement is made as a Deed and has been duly executed and delivered by Network Rail and RfL(I) (as CCOS Infrastructure Manager) as a Deed the day and year first before written.

EXECUTED as a **DEED** by affixing

THE COMMON SEAL of

NETWORK RAIL INFRASTRUCTURE LIMITED

in the presence of:

[COMMON SEAL]

R Swain

41986

R SWAIN.....

Print Name:

ASSISTANT COMPANY SECRETARY
Authorised Signatory approved
by a resolution of the board of
Network Rail Infrastructure Limited
on 19 October 2015

EXECUTED as a deed by affixing the common seal of
RAIL FOR LONDON (INFRASTRUCTURE) LIMITED in the presence of:

Gillies

Authorised signatory

