

THIS AGREEMENT is dated

2014

BETWEEN

- (1) **RAIL FOR LONDON LIMITED**, whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL (*RfL*) and registered number is 05965930; and
- (2) **MTR CORPORATION (CROSSRAIL) LIMITED**, whose registered office is at Providence House, Providence Place, Islington, London, N1 0NT and registered number is 08754715 (the *Operator*).

WHEREAS

(A) RfL wishes to appoint an operator, and the Operator wishes to be appointed, to provide railway passenger services on the Crossrail Route and RfL expects its operator and the Operator is willing, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Concession Term from its employees, its Train Fleet and other assets, and from the Infrastructure Managers and its other suppliers and the resources that are available to it.

(B) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recital (A).

1. INTERPRETATION

1.1 This Agreement and the Conditions Precedent Agreement together constitute a single agreement.

1.2 In this Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) the words “subsidiary”, “wholly owned subsidiary” and “parent undertaking” have the same meaning in this Agreement as in Sections 1159 and 1162 of the Companies Act 2006;
- (f) references to documents “in the agreed terms” are references to documents initialled by or on behalf of RfL and the Operator;
- (g) references in any of the agreements comprising this Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;

- (h) references in any Schedule in any of the agreements comprising this Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which RfL reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “notify”, “endorse”, “consent”, “approve”, “waive”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Operator bidding for Train Slots or a Timetable shall mean the final action incumbent on the Operator under the Relevant Network Code to confirm to the relevant Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and “bid” shall be construed accordingly;
- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under TfL’s Customer Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to “railway passenger services” are to be construed subject to Section 40 of the Railways Act 2005;

- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with the relevant Infrastructure Manager or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 2 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Operator shall be to such sums exclusive of Value Added Tax;
- (x) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (y) wherever provision is made for the Operator to “procure” or “ensure” the delivery of an obligation under this Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Operator to deliver that obligation;
- (z) the words “shall not be liable” are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate; and
- (aa) references to a “contravention of this Agreement” (and cognate expressions) are to be construed as meaning a breach of this Agreement.

2. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

13-Period Crossrail Performance Level has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the Heathrow Access Option in relation to the Heathrow Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section Access Option Rights;

1954 Act means the Landlord and Tenant 1954 Act;

1954 Act Notice has the meaning given to it in paragraph 5.2(a) of Schedule 4.1 (*Property Leasing and Access*);

Acceptable Bank means a Bank located in London and which RfL has given its prior written consent to;

Acceptance has the meaning given to it in the RSPA;

Accepted has the meaning given to it in the RSPA;

Accepted Unit has the meaning given to it in the RSPA;

Access Agreement has the meaning given to the term “access agreement” in Section 83(1) of the Act;

Access Charge Adjustment means the adjustment to any Concession Payment to be made as a component of any Pass Through Adjustment in accordance with paragraph 3.4 of Schedule 11.1 (*Concession Payments*);

Account Charge means a charge over the funds held in the Revenue Account from time to time, created by the Operator over the Revenue Account in favour of RfL as security for the Operator’s obligations under Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Act means the Railways Act 1993;

Actual Passenger Demand means information relating to the number of passengers travelling:

- (a) on each Passenger Service;
- (b) on each Service Group; and/or
- (c) at any Crossrail Station or between any Crossrail Stations,

in each case by reference to particular times of the day, week or year;

Actual Profit means:

$$AP = EBIT + MC + IA$$

where:

AP is the Actual Profit in relation to any Concession Year;

EBIT is the Operator’s earnings before interest and tax as identified in the Annual Audited Accounts for that Concession Year and before any adjustment in recognition of profit share under Schedule 11.4 (*Profit Share*);

MC is the charge, if any, paid by the Operator to any Parent or any Affiliate of the Operator in that Concession Year for the supervision of the Operator’s performance of its obligations under this Agreement; and

IA is the inter-group company adjustment, if any in relation to that Concession Year, which is the sum of the amounts by which the price of relevant contracts or arrangements with the Parent or any Affiliate exceeds the price of those contracts or arrangements, had they been concluded on arm’s length terms in accordance with paragraph 10.1 of Schedule 20 (*Other Provisions*) where it has been determined that those contracts are not on such terms, plus 10 per cent.;

Actuarial Dispute has the meaning given to it in paragraph 11 (*Independent Actuary*) of Schedule 15.5 (*Pensions*);

Actuarial Effective Dates has the meaning given to it in paragraph 4.1 of Schedule 15.5 (*Pensions*);

Additional Services has the meaning given to it in the RSPA, which shall include the Rolling Stock Provider carrying out rectification work under the RSPA in relation to damage to the

exterior of a Class 345 Unit caused by overhanging vegetation or to grab poles caused by passenger usage;

Additional Services Adjustment has the meaning given to it in paragraph 5.4 of Schedule 5.2 (*Operation, Maintenance and Refresh*);

Advertising Area means any area within an Operator Station the subject of an agreement entitling a third party to place advertisements within the area, or such other area as may be nominated by the Advertising Concessionaire pursuant to paragraph 14.3 of Schedule 2.2 (*List of Concession Services*);

Advertising Concession Agreement means an advertising concession agreement granted in favour of RfL in the agreed form marked **ACA** in respect of all Advertising Areas;

Advertising Concessionaire has the meaning given to it in paragraph 14.2 of Schedule 2.2 (*List of Concession Services*);

Affected Customer Satisfaction Survey has the meaning given to it in paragraph 6.2 of Schedule 8.3 (*Customer Satisfaction Regime*);

Affiliate means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person, including in the case of the Operator, the Parent;

Alternative Timetable Adjustment means any adjustment to be made to any Concession Payment pursuant to paragraph 1.1 of Schedule 11.1 (*Concession Payments*), calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Alternative Timetable Guidance means the guidance in relation to the preparation and implementation of alternative timetables in the agreed terms marked **ATG**;

Alternative Timetable Shortfall Payment has the meaning given to it in paragraph 6.7 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Alternative Scheme has the meaning given to it in paragraph 17.1(a) of Schedule 15.3 (*Responsible Procurement*);

Annual Audited Accounts means the accounts of the Operator which:

- (a) comply with paragraph 5.8 of Schedule 16.1 (*Records, plans and reports*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 5.6 of Schedule 16.1 and certified by the Operator's auditors as true and fair;

Annual Average CSS MAA Score has the meaning given to it in paragraph 4.1 of Schedule 8.3 (*Customer Satisfaction Regime*);

Annual Concession Payment means, in relation to any Concession Year, or where an extension is required pursuant to paragraph 1.3 of Schedule 19 (*Continuation of Crossrail Concession*), the amount determined in accordance with Schedule 11.2 (*Annual Concession Payments and Indexation*);

Annual Environmental Improvement Plan has the meaning given to it in paragraph 5.1 of Schedule 15.4 (*Environment*);

Annual Management Accounts means the management accounts of the Operator which:

- (a) comply with paragraph 5.7 of Schedule 16.1 (*Records, plans and reports*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 5.5 of Schedule 16.1;

Applicable Requirements means, depending on the context, all or any Laws and standards at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement, the other Transaction Documents, any agreement or document referred to in this Agreement or the other Transaction Documents or the carrying out of the Concession Services, including Railway Industry Standards, the requirements of the ORR, Health and Safety at Work etc. Act 1974 and the Safety Regulations;

Approved Code of Practice means the document titled “Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2007” issued by ATOC and as amended from time to time;

Approved Driver Training means the ‘Safe Urban Driving’ course as accredited by the Joint Approvals Unit for Periodic Training, details of which can be found at: www.fors-online.org.uk;

ATOC means the Association of Train Operating Companies;

ATOC Staff Travel Scheme means the staff travel scheme dated 23 July 1995 between the participants named therein;

Availability Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 2.1 or 2.2 of Schedule 7.1 (*Operating Performance Regime*) and made in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*);

Available has the meaning given to it in the RSPA in respect of a Class 345 Unit;

BAME means a black, Asian and minority ethnic owned business which is 51 per cent. or more owned by members of one or more black, Asian or minority ethnic groups;

Bank means a person which has a permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder;

Bank Holiday means any day other than a Saturday or Sunday on which Banks in the City of London are not open for business;

Base Station Value means, in relation to any Missed Station Stop or Station Stop made by a Short Formation:

- (a) for all westbound Diagram Legs on any Weekday, Saturday or Sunday, the value for the station that constituted that Missed Station Stop or Station Stop, as appropriate, in the relevant Time Band, set out in Tables A, B and C respectively in Appendix 1 (*Base Station Values Tables*) to Schedule 7.1 (*Operating Performance Regime*); and
- (b) for all eastbound Diagram Legs on any Weekday, Saturday or Sunday, the value for the station that constituted that Missed Station Stop or Station Stop, as appropriate, in the relevant Time Band, set out in Tables D, E and F respectively in Appendix 1 to Schedule 7.1;

Base Station Value Tables means all of the Tables A to F inclusive in Appendix 1 (*Base Station Value Tables*) to Schedule 7.1 (*Operating Performance Regime*);

Bond Provider means any person or persons who may provide or be an obligor under a Performance Bond from time to time who shall be an Acceptable Bank that has the Required Rating;

Brand Licence means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Operator or between TfL (or any company wholly owned by TfL) and the Operator in respect of any registered or unregistered trade marks;

British Transport Police Agreement means the agreement between the British Railways Board and the Operator in respect of the provision of police services by BTP;

Bronze Accreditation means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

BTP means the British Transport Police Authority established by Section 18(1) of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in that act;

Business Action Plan means an action plan produced by the Operator in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraph 3.8 of Schedule 16.1 (*Records, plans and reports*);

Business Day means a day (other than a Saturday or Sunday) on which Banks in the City of London are open for business;

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 3.1 to 3.5 (inclusive) of Schedule 16.1 (*Records, plans and reports*);

Cancellation means in relation to a Unit that is to operate a Diagram Leg set out in the Train Plan, that such Unit Misses One or More Station Stops on that Diagram Leg;

Cancellation Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 2.7 or 2.8 of Schedule 7.1 (*Operating Performance Regime*) and made in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*);

Capacity Deduction means a deduction comprising part of any Availability Adjustment or Cancellation Adjustment that is to be made to any Concession Payment in respect of the Operator's performance in calling at stations, calculated in accordance with paragraph 2.3 and 2.9 respectively of Schedule 7.1 (*Operating Performance Regime*);

Capital Expenditure has the meaning given to it in paragraph 2.4 of Schedule 13.4 (*Variations*);

Car Park Area means that part of an Operator Station which:

- (a) at the date of grant of the relevant Station Lease is used for car parking; or
- (b) is otherwise allocated for use as a car park by the Subleases Tenant in accordance with paragraph 5.3 of Schedule 4.1 (*Property Leasing and Access*);

Carbon Reduction Commitment means a mandatory scheme for public and private sector organisations using more than 6,000 megawatt-hours (MWh) per year of non-transport electricity for the purpose of improving energy efficiency and cutting emissions;

Car-derived van means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

Carriage of Bicycles Policy has the meaning given to it in paragraph 17.1 of Schedule 2.2 (*List of Concession Services*);

CBTC means communication based train control;

CEDR has the meaning given to it in paragraph 2.4 of Schedule 20 (*Other Provisions*);

Central Operating Section means that part of the Crossrail Route between Portobello Junction (exclusive) to Abbey Wood Sidings (including Plumstead Sidings) and Pudding Mill Lane Junction (exclusive);

Central Operating Section Access Option means the access option to be between RfL (IM) and TfL, reserving an option for TfL or its nominee to access the Central Operating Section to operate railway passenger services on the Central Operating Section;

Central Operating Section Access Option Rights has the meaning given to it in paragraph 4.2(c) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Central Operating Section Operator Stations means the Crossrail Stations specified in paragraph 3.3 of Schedule 4.1 (*Property Leasing and Access*);

Central Operating Section Stations means the Crossrail Stations specified in paragraph 2.3 of Schedule 4.1 (*Property Leasing and Access*);

Central Operating Section Testing has the meaning given to Central Section Testing in schedule B4 (*Testing (Units)*) of the RSPA and includes Dynamic Testing, Trial Running and Trial Operations;

Certificate of Commencement means the certificate to be issued by RfL pursuant to the Conditions Precedent Agreement;

Change means if and whenever any of the following occurs:

- (a) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Concession Payments pursuant to Schedule 11.3 (*Pass Through Access Charge Adjustments*));
- (b) a Charge Variation;
- (c) a change to the Service Level Commitment previously in force by the issue of a new Service Level Commitment in accordance with paragraph 9 (*Service Level Commitment*) of Schedule 1.1 (*Timetable and Service Development*), but excluding the issue of SLC1, SLC2, SLC3, SLC4 and SLC5 in each case in accordance with the Staged Opening Programme;
- (d) the Operator is required to take any action pursuant to paragraph 14.1(a) and/or (b) of Schedule 1.1;

- (e) the Operator operates less distance (measured in kilometres) than the distance (measured in kilometres) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more;
- (f) a change effected pursuant to paragraph 5 (*RfL Proposal to Change the Plan of the Day*) of Schedule 1.3 (*Managing Changes to the Passenger Services*) that requires the Operator to run additional distance (measured in kilometres) that is in excess of either of the thresholds specified in that paragraph;
- (g) RfL changes the Alternative Timetable Guidance which requires the Operator to take action pursuant to paragraph 1.2 of Schedule 1.3 that would not have been required by the form of Alternative Timetable Guidance published at the date of this Agreement with the effect that the Operator incurs additional costs;
- (h) the imposition, subject to paragraph 2.5 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*), of any increased access charges in respect of Equality Act Requirements at Operator Access Stations;
- (i) LUL changes its Disabled Persons' Policy which requires the Operator to take action pursuant to paragraph 4.2 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*) that would not have been required by the form of Disabled Person's Policy published at the date of this Agreement with the effect that the Operator incurs additional costs;
- (j) TfL approves an amendment or proposed amendment to an Inter-Operator Scheme, to the extent (and only to the extent) that the Operator makes a saving as a consequence of such amendment or proposed amendment;
- (k) the New Sidings Access Charge (as defined in the Ilford Regulated Depot Access Agreement) is agreed by the parties thereto or, in the absence of agreement, determined pursuant to the Access Dispute Resolution Rules (as defined in the Ilford Regulated Depot Access Agreement);
- (l) RfL (IM) agrees with Network Rail to enter into long-term leases as contemplated by paragraph 11.1 of Schedule 4.1 (*Property Leasing and Access*) and this has a material impact on the Operator's rights and obligations under any Station Lease and/or the Operator is no longer obliged under the terms of any replacement Station Lease to pay any Long Term Charge (as defined in any such Station Lease);
- (m) RfL requires the Operator to procure any of the station enhancement and modernisation works contemplated by paragraph 5 (*Future Station Enhancements and Modernisations*) of Schedule 4.2 (*Station and Depot Refresh, Refurbishments and Enhancements*);
- (n) the Rolling Stock Provider is to make changes under the terms of the RSPA to the CTOC Area and the walkways to and from the CTOC Area, such that it has a material adverse impact on the safety, walking times and/or welfare of the Concession Employees that utilise the CTOC Area and those walkways;
- (o) Old Oak Common Depot is not completed on the date scheduled for completion pursuant to the RSPA and this has a material adverse impact on the Operator's ability to comply with its obligations under this Agreement;
- (p) if, as a result of the late Acceptance of any Class 345 Unit (other than late Acceptance resulting from any act or omission of the Operator or the Operator failing to perform

its obligations under Schedule 5.3 (*Introduction of the Class 345 Fleet*), the Operator is required to continue leasing any Class 315 Unit (that is to be replaced by a Class 345 Unit) after the latest possible relevant lease expiry date specified in Table 1 of the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*), or is required to lease any other unit beyond such date by way of replacement for such Class 315 Unit;

- (q) RfL elects under the terms of the RSPA to Accept:
- (i) a Class 345 Unit with Acceptance qualifications or waive any Provisional Acceptance Criteria (as defined in the RSPA), which in each case have a material adverse effect on the ability of such Unit to operate in passenger revenue earning service;
 - (ii) a Class 345 FLU with an Actual Mass that exceeds the Contracted Design Mass (in each case as defined in the RSPA) which has a material adverse effect on the ability of such Class 345 FLU to operate in passenger revenue earning service, provided that any adjustments to Concession Payments in relation to that Acceptance shall be not exceed the lesser of:
 - (A) the liquidated damages that are payable by the RSP to RfL under the terms of the RSPA in relation to that excess mass; and
 - (B) the aggregate of those costs in the Record of Assumptions which are variable according to the weight of Class 345 FLUs; or
 - (iii) the Simulator with Acceptance qualifications or waive any Equipment Acceptance Criteria (as defined in the RSPA) which in each case have a material adverse effect on the ability of the Simulator to perform as contemplated under the RSPA;
- (r) a Variation (as defined therein) is made to the Class 345 Lease, provided that, if that Variation has the effect of changing the amount of rental that is payable thereunder, it shall be a Qualifying Change;
- (s) RfL agrees to the implementation of a Modification that has a material adverse or material beneficial effect on the cost to the Operator of operating the Class 345 Units;
- (t) the RSPA is terminated;
- (u) there is a change in the scope of the agency that RfL determines or RfL and the Operator agree, in each case under the terms of the RSPA Agency Agreement, that either increases or decreases the costs that the Operator will incur in exercising the rights and performing the obligations under the RSPA that RfL has appointed the Operator to act as agent in respect of;
- (v) any of Stage 2, Stage 3, Stage 4 or Stage 5 is not achieved by the date that occurs 12 weeks after the relevant Scheduled Stage Start Date;
- (w) RfL (IM) enters into a Track Access Agreement with a Train Operator (other than the Operator) for access to run railway services on the Central Operating Section;
- (x) any of the Network Rail TAA, the RfL (IM) TAA or the HAL TAA is granted on terms which are substantially different from the terms of track access agreements entered into on model terms published by the ORR;

- (y) unless and until there is a Charge Variation in relation to the amount the Operator is to be charged for access to the On-Network or the Heathrow Spur under the terms of, respectively, the Network Rail TAA or the HAL TAA, the amount that the Operator is so charged is different from the relevant amount assumed in the Record of Assumptions, and where this is the case, the parties shall, as part of a Run of the Model Suite, agree, or failing agreement RfL shall reasonably determine, the Revised Inputs in relation to the kilometrage adjustment rates specified in the Appendix (*Kilometrage Adjustment Rates*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);
- (z) a performance benchmark is subsequently calibrated and included within:
 - (i) the Network Rail TAA which recognises the potential impact of RfL (IM)'s performance under the RfL (IM) TAA; and/or
 - (ii) the HAL TAA which recognises the potential impact of RfL (IM)'s performance under the RfL (IM) TAA;
- (aa) RfL notifies the Operator pursuant to paragraph 9.1 of Schedule 8.1 (*KPI Regime*) of its intention to amend the requirements of any Key Performance Indicator;
- (bb) RfL changes any of:
 - (i) the MSS Methodology and/or MSS Questionnaire;
 - (ii) the CSS Methodology and/or CSS Questionnaire;
 - (iii) the QPR Methodology and/or Station & Staff Information Survey; and/or
 - (iv) the Ticket Queuing Time Methodology,

such that in any such case, that change has a material adverse impact on the Operator's ability to comply with the terms of (as appropriate) the MSS Regime, the Customer Satisfaction Regime, the Quality Performance Regime or the Ticket Queuing Time Regime;
- (cc) RfL changes the Ticketless Travel Survey Methodology which has a material adverse impact on the Operator's ability to comply with the Revenue Protection Incentive Regime;
- (dd) RfL and the Operator agree or RfL serves written notice on the Operator, exercising RfL's right to call any Priced Option:
 - (i) on different terms from those specified in respect of that Priced Option in Schedule 12.1 (*List of Priced Options*); and/or
 - (ii) at any time after the last date for exercise of such Priced Option,

in each case, only to the extent specified in paragraph 1.1(b)(ii) of Schedule 12.2 (*Calling and implementing Priced Options*);
- (ee) a Variation to the terms of this Agreement pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*);
- (ff) either:

- (i) RfL, in its absolute discretion, elects at any time within two months of the occurrence of a Force Majeure Event that such event shall be treated as a Change; or
 - (ii) a Force Majeure Event that continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than two consecutive months; or
- (gg) any two or more of the foregoing that RfL groups together in accordance with any procedures issued by it pursuant to paragraph 1.4 of Schedule 13.4;

Change of Law means the coming into effect after the date of this Agreement of Legislation or any applicable judgment of a court of Law which changes a binding precedent, in each case the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry (including such Legislation made under the Health and Safety at Work etc. Act 1974) and not to other transport modes or to industries other than the railway industry, and without limitation excluding:

- (a) any changes in Taxation;
- (b) any changes which were foreseeable at the date of this Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of this Agreement has been published:
 - (i) in a draft parliamentary bill as part of a government departmental consultation paper;
 - (ii) in a parliamentary bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this paragraph (b), each TSI shall be considered separately; and
- (c) any Legislation which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

Charge Variation means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected either:
 - (i) as a result of a Charging Review (including any variation effected in connection with an Incremental Output Statement Charge); or
 - (ii) as a result of the remapping of service groups and recalibration of performance regime benchmarks and payment rates, amongst other things,

due to the transfer of responsibility for railway passenger service operation from any Train Operator to the Operator;

Charging Review means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Operator is a party with Network Rail on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term; or
 - (ii) Condition F11.4 of the Station Access Conditions and Condition 42.4 of the Independent Station Access Conditions;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in RfL's reasonable opinion has an equivalent effect to or is intended to fulfil the same function as any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into of a new Relevant Agreement which is approved by the ORR to the extent that that amendment or new Relevant Agreement relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

CID means the Card Interface Device which enables passengers to top-up Oystercards with cash, permitting further journeys on the Passenger Services and other railway passenger services;

CIS means customer information system;

Class 315 Fleet means the rolling stock units specified in Table 1 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

Class 315 Unit means a rolling stock unit comprising part of the Class 315 Fleet;

Class 345 Fleet means the rolling stock units specified in Table 2 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

Class 345 FLU has the meaning given to FLU in the RSPA;

Class 345 GE Residual Services RLU has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Lease means the rolling stock lease between RfL as lessor and the Operator as lessee pursuant to which RfL leases the Class 345 Fleet to the Operator;

Class 345 Operating Date means the date on which the first Class 345 Unit achieves Qualified Provisional Acceptance or Provisional Acceptance (in each case as defined in the RSPA) in accordance with the terms of the RSPA;

Class 345 RLU has the meaning given to RLU in the RSPA;

Class 345 Stage 1a RLUs has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Stage 2 FLUs has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Stage 3 FLUs has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Stage 4 FLUs has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Training Units has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Trial Operations Units has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Trial Running Units has the meaning given to it in Table 2 of the Appendix (*Trains comprising the Train Fleet*) of Schedule 5.1 (*The Train Fleet*);

Class 345 Unit means a rolling stock unit comprising part of the Class 345 Fleet;

Class VI Mirror means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;

Close Proximity Sensor means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged;

Closure means a closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Crossrail Stations or of any part of such network or Crossrail Station;

Collateral Agreement means an agreement which is required to be entered into by the Operator with any Infrastructure Manager or any other Train Operator as a condition to any Access Agreement or Usage Agreement of which the Operator is the beneficiary;

Collision Investigation means the investigation of a collision in order to ascertain its cause and to ascertain what procedures may be implemented to prevent recurrence of the collision;

Collision Report means a report detailing the results of the Collision Investigation and those procedures, which have been put in place in order to prevent recurrence of the collisions;

Commitment Notice has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the HAL Access Option in relation to the HAL Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section;

Committed Obligation means any of the Operator's obligations listed in Schedule 10.1 (*List of Committed Obligations*);

Committed Obligation Payment means a payment to be made by the Operator to RfL pursuant to Schedule 10.3 (*Late/Non Completion of Committed Obligations*);

Committed Obligation Payment Adjustment means the adjustment to any Concession Payment to be made as part of a Performance Adjustment and calculated in accordance with paragraph 4 (*Committed Obligation Payment Adjustments*) of Schedule 10.3 (*Late/Non-Completion of Committed Obligations*);

Common Station Amenities has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

Common Station Services has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

Competent Authority has the meaning given to it in the RSPA;

Computer System means computer hardware and computer software, including licensed third party software and data protocols;

Concession Agreement Information means:

- (a) this Agreement in its entirety (including from time to time agreed changes to this Agreement);
- (b) any TfL's Customer Charter Statistics;
- (c) the results, on a Service Group, Crossrail Station or other comparable basis, of any calculation of passenger numbers under paragraph 6 (*Passenger Numbers Information*) of Schedule 1.1 (*Passenger Service Obligations*);
- (d) such information as RfL may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (e) the results of any Customer Satisfaction Survey or National Passenger Survey;
- (f) the amount of any Concession Payments payable under this Agreement and the aggregate amount of Concession Payments paid in each year under this Agreement;
- (g) data extracted from the invoices submitted pursuant to paragraph 4.6 of Schedule 11.1 (*Concession Payments*) which shall consist of the Operator's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;
- (h) such information as RfL may reasonably require to publish in connection with any Priced Option;
- (i) the results of any assessment or inspection under Schedule 15 (*Concession Management Provisions*);
- (j) the results of any monitoring or measurement of the performance of the Operator in the provision of the Concession Services (including any environmental, sustainability, responsible procurement or other information provided under Schedule 15);
- (k) details of the Operator's plans and performance in respect of safety;
- (l) any reports and accounts delivered to it under Schedule 16.1 (*Records, plans and reports*);

- (m) such information as RfL may reasonably require to include in its annual report in respect of the Operator, provided that, in preparing that report, RfL shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to RfL;
- (n) such information as RfL may reasonably require to publish at or around the expiry or possible termination of the Concession Period in order to secure continuity of the provision and operation of the Concession Services; and
- (o) such information as may reasonably be required in connection with the retendering or re-letting of Crossrail train operating concession or any part thereof or the retendering or re-letting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or re-letting;

Concession Assets means the property, rights and liabilities designated as such pursuant to paragraph 1 (*Concession Assets*) of Schedule 18.2 (*Restrictions on dealings*) but excluding such property, rights or liabilities as shall, in accordance with the terms of this Agreement, cease to be so designated;

Concession Employee means:

- (a) any employee of the Operator from time to time including any person whose contract of employment may be transferred to the Operator prior to the commencement of the Concession Period or during its term by virtue of the operation of Law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred; and
- (b) any other person employed by the Operator or any of its Affiliates or any subcontractor or delegate of any of the Concession Services whose contract of employment may be transferred to a Successor Operator following the expiry of the Concession Period by virtue of the operation of Law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

Concession Manager means a person appointed by RfL to undertake the responsibilities of such person set out in paragraph 3.1 of Schedule 15.1 (*Personnel, Communication and Access*);

Concession Payment means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 11.1 (*Concession Payments*);

Concession Performance Meeting means a meeting between RfL and the Operator to be held in each Reporting Period in accordance with paragraph 5 (*Concession Performance Meetings*) of Schedule 15.1 (*Personnel, Communication and Access*);

Concession Period means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement pursuant to the Conditions Precedent Agreement or Schedule 17 (*Remedies, Termination and Expiry*);

Concession Section means the single-employer section of the Railways Pension Scheme to be established and administered by the Operator on a Shared Costs Arrangement basis in accordance with the provisions of the Protection Order and Schedule 15.5 (*Pensions*);

Concession Services means the services listed in Schedule 2.2 (*List of Concession Services*) as the Operator may provide or operate from time to time, including any of such services as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

Concession Term means the period commencing on the Start Date and ending on the Expiry Date;

Concession Year means any period of 12 months during the Concession Period, beginning on 1 April and ending on 31 March, except that the first and last Concession Years may be for a period of less than 12 months and the first Concession Year shall begin on the Start Date and the last Concession Year shall end on the last day of the Concession Period and, where appropriate, shall include any extension pursuant to paragraph 1.4 of Schedule 19 (*Continuation of Crossrail Concession*), upon notice of which pursuant to that paragraph 1.4, the parties shall allocate the Reporting Periods that are the subject of that extension to, as appropriate, the last Concession Year scheduled to occur before the extension and the next Concession Year;

Conditions Precedent Agreement means the agreement between RfL and the Operator dated the date of this Agreement, specifying the conditions to be satisfied or waived by RfL prior to the issue of a Certificate of Commencement;

Connection means a connection (however described) between any of the Passenger Services provided by the Operator and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

Contingency Plan has the meaning given to it in paragraph 1.1(a)(iv) of Schedule 17.6 (*Force Majeure*);

Contract Manager means a person appointed by the Operator to undertake the responsibilities of such person set out in paragraph 1.1 of Schedule 15.1 (*Personnel, Communication and Access*);

Control means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (b) is the parent undertaking of that person or of any other person which Controls that person; or
- (c) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle it to receive 30 per cent. or more of the amount so distributed; or

- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle it to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

Corrective Action Notice means a notice issued by RfL to the Operator pursuant to Schedule 17.3 (*Other RfL Remedies*), specifying:

- (a) which circumstance, set out in paragraph 1.1 of Schedule 17.3, the notice has been issued in response to;
- (b) the steps RfL requires the Operator to take to secure or facilitate compliance with the Relevant Term; and
- (c) the time period within which RfL requires the Operator to implement those steps;

CPA has the meaning given to it in row 61 of the table in Schedule 10.1 (*List of Committed Obligations*);

CPAY Agreement means the agreement to be entered into between the parties named therein governing the use of contactless technology to allow passengers to pay directly for the journeys they make, including on the Passenger Services;

Creating has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

CRL means Crossrail Limited, a company registered in England (No. 04212657) whose registered office is at 25 Canada Square, Canary Wharf, London E14 5LQ;

Crossrail means the rights granted by RfL to the Operator under this Agreement to operate railway passenger services on the Routes specified in this Agreement during the Concession Period;

Crossrail Operating Brand means the branding specified by RfL for the purpose of signalling the commencement of Passenger Services using Class 345 Units;

Crossrail Project means the project for the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Reading in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements;

Crossrail Route means the railway route from Reading station and Heathrow Airport through central London to Shenfield station and Abbey Wood station;

Crossrail Stations has the meaning given to it in paragraph 1 (*Crossrail Stations*) of Schedule 4.1 (*Property Leasing and Access*);

Crossrail Website means the website to be operated by RfL to provide passengers with an electronic means of obtaining information relating to Crossrail and the Passenger Services, amongst other things;

CSS Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 3.8 of Schedule 8.3 (*Customer Satisfaction Regime*) and made in accordance with paragraph 2.4 of Schedule 11.1 (*Concession Payments*);

CSS Default Benchmark means any of the Relevant CSS Headline Default Benchmark, the Relevant CSS Information Default Benchmark or the Relevant CSS Security Default Benchmark;

CSS Headline Default Benchmark means any of the benchmarks in relation to the CSS Headline Measure set out in column 4 of table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Headline Measure means the level of overall customer satisfaction with the journeys provided by the Operator, as measured during the carrying out of any Customer Satisfaction Survey;

CSS Headline Remedial Plan Benchmark means any of the benchmarks in relation to the CSS Headline Measure set out in column 3 of the table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Headline Target Benchmark means any of the benchmarks in relation to the CSS Headline Measure set out in column 2 of the table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Information Default Benchmark means any of the benchmarks in relation to the CSS Information Measure set out in column 7 of the table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Information Measure means the level of customer satisfaction with the Operator's provision of service information, as measured during the carrying out of any Customer Satisfaction Survey;

CSS Information Remedial Plan Benchmark means any of the benchmarks in relation to the CSS Information Measure set out in column 6 of the table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Information Target Benchmark means any of the benchmarks in relation to the CSS Information Measure set out in column 5 of the table in the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS MAA Score has the meaning given to it in paragraph 3.2 of Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Methodology means, as at the date of this Agreement, the Customer Satisfaction Survey methodology in the agreed terms marked **CSSM**;

CSS Questionnaire means, as at the date of this Agreement, the Customer Satisfaction Survey questionnaire in the agreed terms marked **CSSQ**;

CSS Remedial Plan Benchmark means any of the Relevant CSS Headline Remedial Plan Benchmark, the Relevant CSS Information Remedial Plan Benchmark or the Relevant CSS Security Remedial Plan Benchmark;

CSS Score has the meaning given to it in paragraph 3.1 of Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Security Default Benchmark means any of the benchmarks in relation to the CSS Security Measure set out in column 10 of the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Security Measure means the level of customer satisfaction with personal safety at stations at which the Passenger Services call and on trains providing the Passenger Services, as measured during the carrying out of any Customer Satisfaction Survey;

CSS Security Remedial Plan Benchmark means any of the benchmarks in relation to the CSS Security Measure set out in column 9 of the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Security Target Benchmark means any of the benchmarks in relation to the CSS Security Measure set out in column 8 of the Appendix (*CSS Benchmarks*) to Schedule 8.3 (*Customer Satisfaction Regime*);

CSS Stage Factor means:

- (a) 0.2 during the period between, and including, the Start Date and, but excluding, the Stage 2 Start Date;
- (b) 0.44 during the period between, and including, the Stage 2 Start Date and, but excluding, the Stage 3 Start Date;
- (c) 0.87 during the period between, and including, the Stage 3 Start Date and, but excluding, the Stage 4 Start Date;
- (d) 0.95 during the period between, and including, the Stage 4 Start Date and, but excluding, the Stage 5 Start Date; and
- (e) 1.0 during the period from, and including, the Stage 5 Start Date;

CSS Target Benchmark means any of the Relevant CSS Headline Target Benchmark, Relevant CSS Information Target Benchmark or the Relevant CSS Security Target Benchmark;

CTOC Area has the meaning given to it in the RSPA;

Cumulative Profit Share Amount has the meaning given to it in paragraph 3 (*Cumulative Profit Share Amount Calculation*) of Schedule 11.4 (*Profit Share*);

Current Assets means the current assets of the Operator, calculated in accordance with international accounting standards;

Current Liabilities means the current liabilities of the Operator, calculated in accordance with international accounting standards;

Customer Satisfaction Regime means the regime set out in Schedule 8.3 (*Customer Satisfaction Regime*) pursuant to which customer perception of the services provided by the Operator is monitored and incentivised;

Customer Satisfaction Survey means a passenger satisfaction survey in respect of the Concession Services, which may be carried out by RfL or its nominee in accordance with the CSS Methodology and CSS Questionnaire;

Customer Service Director has the meaning given to it in paragraph 2.1(f) of Schedule 15.1 (*Personnel, Communication and Access*);

Deed of Subleases means a deed of subleases in favour of the Subleases Tenant in respect of the Station Areas and in the agreed terms marked **DoS**;

Default KPI Benchmark has the meaning given to it in paragraph 7 (*Performance against Default KPI Benchmarks*) of Schedule 8.1 (*KPI Regime*);

Default Operating Performance Threshold means in relation to the relevant Stage, the number set out in:

- (a) the column relating to that Default Operating Performance Threshold; and
- (b) the row for that Stage,

in the Operating Performance Thresholds Table;

Delay Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 5.1 of Schedule 7.1 (*Operating Performance Regime*) and made in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*);

Delay Deduction means a deduction comprising part of any Delay Adjustment that is to be made to any Concession Payment in respect of the Operator's performance in delivering timely Passenger Services, calculated in accordance with paragraph 5.2 of Schedule 7.1 (*Operating Performance Regime*);

Delay Incident means a planned or unplanned incident that has given rise to Minutes Lateness;

Depot means a depot in respect of which the Operator has entered into and remains a party to a Depot Lease;

Depot Access Agreement means, in relation to any depot, an Access Agreement between the Facility Owner and an access beneficiary, incorporating by reference the Depot Access Conditions, which permits that access beneficiary to use the maintenance and/or cleaning facilities at that depot;

Depot Access Charges means the payments and fees payable to the Facility Owner under the Ilford Regulated Depot Access Agreement and the Ilford Unregulated Depot Usage Agreement including the Access Charge, the New Sidings Access Charge and the Investment Reimbursement Payment (each as defined therein);

Depot Access Conditions means the document known as the National Depot Access Conditions and the depot annexes as each is modified in respect of the relevant train depot from time to time with the approval of the ORR;

Depot Lease means:

- (a) any lease of a depot to which the Operator is a party as at the Start Date; or
- (b) any other lease of a depot in relation to which the Operator becomes the Facility Owner at any time during the Concession Period;

Depot Usage Agreement means an agreement between a Facility Owner and an access beneficiary in relation to a train depot that is outside the scope of the Act and which permits that access beneficiary to use the maintenance and/or cleaning facilities at that depot;

Designated Employer has the meaning given to it in the Pension Trust;

Diagram means the description of each railway service to be operated by the Operator, as specified in the Train Plan;

Diagram Leg means that element of a Diagram that relates to a single journey between and originating point and a terminating point as identified in the Train Plan;

Direct Agreement means any agreement made, or to be made, from time to time between RfL and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by RfL under Schedule 18.1 (*Continuity of Services*);

Direct Subcontractor means any contractor or supplier (whether a third party or Affiliate) appointed by the Operator to provide goods or services in connection with the Operator's rights and/or obligations under this Agreement;

Disabled Person is a reference to a person who has a disability in the Equality Act;

Disabled Person's Policy means LUL's policy in relation to Disabled Persons entitled 'Assistance for Disabled Customers on London Underground' as such policy published from time to time;

Discount Card has the meaning given to it in the Ticketing and Settlement Agreement;

Discount Fare Scheme means:

- (a) the ATOC Disabled Person's Railcard Scheme dated 23 July 1995 between the participants named therein;
- (b) the ATOC Young Person's Railcard Scheme dated 23 July 1995 between the participants named therein;
- (c) the ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (d) the Network Railcard Scheme dated 23 July 1995 between the participants named therein;
- (e) the Family Railcard Scheme dated 23 July 1995 between the participants named therein;
- (f) the Armed Forces Scheme dated 23 July 1995 between the participants named therein; and
- (g) any other discount fare scheme designated as such by RfL in accordance with paragraph 4.2 of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*),

in each case until such time as RfL may de-designate any such scheme in accordance with paragraph 4.3 of Schedule 3.5;

Dispute has the meaning given to it in paragraph 2.1 of Schedule 20 (*Other Provisions*);

Dispute Notice has the meaning given to it in paragraph 2.3 of Schedule 20 (*Other Provisions*);

Dispute Resolution Rules means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof;

Disputes Secretary means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;

Diversity Infraction means any breach by the Operator of its obligations specified in paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Monitoring and Reporting*) (inclusive) of Schedule 15.3 (*Responsible Procurement*) and/or any failure by a Direct Subcontractor to adopt and implement a Strategic Equality and Diversity Plan, an Equality and Diversity Training Plan and/or a Supplier Diversity Plan as described in paragraphs 4 to 6 (inclusive) of Schedule 15.3;

DOO CCTV System has the meaning given to it in the RSPA;

Driver means any employee of the Operator and its Direct Subcontractors (including an agency driver), who operates Freight Vehicles on behalf of the Operator;

DVLA means the Driver and Vehicle Licensing Agency;

Dynamic Testing means the testing of Class 345 Units that requires their movement in order to demonstrate functions that cannot be fully demonstrated by static testing alone;

Dynamic Testing Period means, subject to paragraph 6.3 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*), the period scheduled between 11 April 2018 and 5 July 2018 during which Dynamic Testing is to be carried out;

Eastern Section means that part of the Crossrail Route between:

- (a) Pudding Mill Lane Junction and Stratford;
- (b) Pudding Mill Junction to Liverpool Street (Main Line) (via the “Electric” Lines);
- (c) Stratford and Shenfield (via the “Electric” Lines);
- (d) Ilford and Ilford Depot;
- (e) Ilford Depot and Seven Kings;
- (f) Ilford Stabling Sidings and Seven Kings;
- (g) Gidea Park Country End Junction and Gidea Park Stabling Sidings;
- (h) Gidea Park and Gidea Park Stabling Sidings;
- (i) Gidea Park and Gidea Park Turnback Siding;
- (j) Shenfield and the Shenfield Eastern Sidings; and
- (k) Liverpool Street (Main Line) and Shenfield (via the Main Lines);

Eastern Section Operator Stations means the Crossrail Stations specified in paragraph 3.2 of Schedule 4.1 (*Property Leasing and Access*);

Eastern Section Stations means the Crossrail Stations specified in paragraph 2.2 of Schedule 4.1 (*Property Leasing and Access*);

Electronic Library has the meaning given to it in paragraph 10.4 of Schedule 16.1 (*Records, plans and reports*);

Environmental Management System has the meaning given to it in paragraph 3 (*Environmental Management System*) of Schedule 15.4 (*Environment*);

Environmental Report has the meaning given to it in paragraph 6 (*Annual Environmental Reporting*) of Schedule 15.4 (*Environment*);

EPMG means the Equipment Performance Monitoring Group to be established by the Operator and led by its engineering director to ensure that train performance and maintenance data is captured and processed for reliability analysis and improvement implementation;

Equality Act means the Equality Act 2010;

Equality Act Claim has the meaning given to it in paragraph 3.1 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Equality Act Requirements means the duties of a provider of services under sections 20(3), 20(5) and sections 20(9)(a) and (b) in relation to section 20(4), in each case of the Equality Act;

Equality and Diversity Framework means the framework in the agreed terms marked **EDF**;

Equality and Diversity Training Plan means the diversity training plan to be settled in accordance with paragraph 5.4(b) of Schedule 15.3 (*Responsible Procurement*);

Escrow Documents has the meaning given to it in paragraph 1.1 of Schedule 13.2 (*Identity of the Suite of Models*);

Estimated Revisions has the meaning given to it in paragraph 2.1 of Schedule 13.1 (*Financial Consequences of Change*);

ESUB means an electronic status update board that provides information in relation to the Passenger Services and other information;

Ethical Sourcing Action Plan has the meaning given to it in paragraph 16.3 of Schedule 15.3 (*Responsible Procurement*);

Ethical Sourcing Principles has the meaning given to it in paragraph 16.1 of Schedule 15.3 (*Responsible Procurement*);

ETI Base Code means the code of labour practice specified by the Ethical Trading Initiative and as at the date of this Agreement, as set out in the agreed terms marked **ETIBC**;

Evening Peak means, in relation to any Passenger Service, the period between 1600 and 1859 during a Weekday or such other continuous evening three hour period as RfL may specify from time to time;

Event of Default means any of the events set out in paragraph 2 (*Events of Default*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*);

Event of Default Step-in Date means the date specified in any Event of Default Step-in Notice on which RfL or its nominee will step-in and assume the Operator's role in performing the Concession Services and/or the Operator's obligations under this Agreement;

Event of Default Step-in Notice means a notice issued by RfL pursuant to paragraph 4.1 of Schedule 17.3 (*Other RfL Remedies*) in relation to the occurrence of an Event of Default in the form set out in Appendix 1 (*Form of Event of Default Step-in Notice*) to Schedule 17.3;

Event of Default Step-in Period means the period between the Event of Default Step-in Date and the related Event of Default Step-out Date;

Event of Default Step-out Date means the date specified in any Event of Default Step-out Notice on which RfL or its nominee will step-out and no longer assume the Operator's role in performing the Concession Services and/or the Operator's obligations under this Agreement;

Event of Default Step-out Notice means a notice issued by RfL pursuant to paragraph 4.10 of Schedule 17.3 (*Other RfL Remedies*) in the form set out in Appendix 2 (*Form of Event of Default Step-out Notice*) to Schedule 17.3;

Excess Headway means, in relation to a Class 345 Unit on a Diagram Leg, the Minutes Headway in excess of the Scheduled Headway that are recorded by the Relevant Headway Recording Point and reported by the Network Monitoring System;

Exclusive Station Services has the meaning given to it, as appropriate, in the Station Access Conditions or the Independent Station Access Conditions;

Exempt Diagram Leg means the eastbound and westbound Diagram Leg of any Diagram Leg scheduled to operate only between Abbey Wood station and Paddington (Crossrail) station (and not beyond);

Expiry Date means the later of:

- (a) the Initial Expiry Date;
- (b) any date occurring up to two years after the Initial Expiry Date if RfL exercises its discretion to continue this Agreement pursuant to paragraph 1.1 of Schedule 19 (*Continuation of Crossrail Concession*); or
- (c) the date to which this Agreement is continued in accordance with paragraph 1.4 of Schedule 19;

Exterior Cleaning Standard has the meaning given to it in, as the context admits, paragraph 3.5 or 5.9 of Schedule 5.2 (*Operation, Maintenance and Refresh*);

Facility Owner means, in relation to a facility:

- (a) regulated under the Act, the meaning given to that term in Section 17(6) of the Act; and
- (b) not regulated under the Act:
 - (i) any person who has an interest in, or right over, that railway facility; and

- (ii) whose permission to use that railway facility is needed by another before that other may use it;

Fare means the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person;

Fares Document means the document issued by RfL to the Operator from time to time, setting out all TSA Fares that the Operator is required to Create and all Fares that the Operator is required to sell, together with the terms under which those obligations must be fulfilled, as the same may be amended from time to time in accordance with paragraph 2 (*Monitoring*) of Schedule 3.4 (*Fares Information and Monitoring*);

Fares Setting Round has the meaning given to it in the Ticketing and Settlement Agreement;

Fault Management System means a fault management system that allows for the electronic and manual reporting of faults in respect of certain facilities that are the subject of the KPI Regime and that has, as a minimum, the characteristics set out in paragraph 20.2 of Schedule 2.2 (*List of Concession Services*);

Fault Tracking Database has the meaning given to it in paragraph 20.4 of Schedule 8.1 (*KPI Regime*);

Finance Director has the meaning given to it in paragraph 2.1(e) of Schedule 15.1 (*Personnel, Communication and Access*);

Final Actuarial Effective Date has the meaning given to it in paragraph 6.1 of Schedule 15.5 (*Pensions*);

Final Valuation means either the triennial valuation which is due to take place in 2021 if this Agreement terminates on the Initial Expiry Date, or the valuation which is due to take place in 2024 if RfL exercises its discretion to continue this Agreement for a further two years in accordance with paragraph 1.1 of Schedule 19 (*Continuation of Crossrail Concession*);

Financial Action Plan means any action plan produced by the Operator pursuant to paragraph 5.3(d) of Schedule 16.1 (*Records, plans and reports*), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan;

Financial Conduct Authority means the independent, non-governmental body given statutory powers by the Financial Services Act 2012;

Financial Model means the Operator's financial model deposited with RfL on the date of this Agreement in the agreed terms marked **FM** and as subsequently revised in each case in accordance with Schedule 13.2 (*Identity of the Suite of Models*);

Financial Performance Measurement Period has the meaning given to it in paragraph Schedule 143.2(b) of Schedule 14 (*Financial Obligations and Credit Support*);

First Tranche has the meaning given to it in the cell in row 1 and column 2 of Table 1 in the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

First Valuation has the meaning given to it in paragraph 4.1 of Schedule 15.5 (*Pensions*);

Flow has the meaning given to it in the Ticketing and Settlement Agreement;

FOI Legislation means:

- (a) the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and
- (b) any guidance issued by the Information Commissioner's Office (including its successors and assigns) in relation to such legislation;

Force Majeure Event means any of the events described as such in paragraph 1 (*Force Majeure Event*) of Schedule 17.6 (*Force Majeure*) where the conditions specified in paragraph 2 (*Conditions to Force Majeure Events*) of Schedule 17.6 are satisfied;

Forecast East Ticket Revenue means, in relation to any Survey Period, the Ticket Revenue forecast to be generated in that Survey Period on Passenger Services on the Eastern Section, as specified in column 3 of the Appendix (*Notional Forecast Ticket Revenue*) to Schedule 9 (*Revenue Protection Incentive Regime*), divided by four;

Forecast West Ticket Revenue means, in relation to any Survey Period, the Ticket Revenue forecast to be generated in that Survey Period on Passenger Services on the Western Section, as specified in column 4 of the Appendix (*Notional Forecast Ticket Revenue*) to Schedule 9 (*Revenue Protection Incentive Regime*), divided by four;

FORS means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating van and lorry fleets, which is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

FORS Standard means the standard setting out the accreditation requirements for the FORS, a copy of which can be found at: www.fors-online.org.uk;

Freedom Pass Scheme means the scheme that is the subject of the Freedom Pass Agreement, the terms of which offer free travel on Weekdays to elderly and disabled residents of the GLA Area (as defined in GLA Act) on the Passenger Services, amongst other transport services;

Freight Vehicle means a Lorry, a Van or a Car-derived van which moves any commodity, including raw and processed materials, goods, waste, servicing and construction equipment, money and valuables, post and parcels;

Fresnel Lens means a clear thin plastic lens that is press fitted to a lorry window on the passenger side and allows the driver to see that which is in the vehicle's blind spot;

GLA Act means the Greater London Authority Act 1999;

Gold Accreditation means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the railway industry;

Great Western means First Great Western Limited whose registered address is at Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL and whose registered number is 05113733;

Great Western Services and Stations means:

- (a) the Paddington (Main Line) station to the Heathrow Stations railway passenger services, responsibility for the operation of which will transfer from Great Western to the Operator on the Stage 2 Start Date;
- (b) the Reading to Paddington (Crossrail) railway passenger services, responsibility for the operation of which will transfer from Great Western to the Operator on the Stage 5 Start Date; and
- (c) the Western Section Operator Stations listed in paragraph 3.5 of Schedule 4.1 (*Property Leasing and Access*), responsibility for the operation of which will transfer from Great Western to the Operator on 10 December 2017;

Great Western Transfer Agreement means the agreement to be between the Operator and Great Western substantially in the same form as the Greater Anglia Transfer Agreement setting out the terms applicable to the transfer by Great Western to the Operator of certain property, rights and liabilities;

Greater Anglia means Abellio Greater Anglia Limited whose registered address is at 5 Fleet Place, London, EC4M 7RD and whose registered number is 06428369;

Greater Anglia Services and Stations means the Liverpool Street (Main Line) station to Shenfield railway passenger services and the Eastern Section Operator Stations, responsibility for the operation of which is to transfer from Greater Anglia to the Operator on the Start Date;

Greater Anglia Transfer Agreement means the agreement entered into on or before the Start Date between the Operator and Greater Anglia in the agreed terms marked **GATA** setting out the terms applicable to the transfer by Greater Anglia to the Operator of certain property, rights and liabilities;

Greater London Area has the meaning given to it in the GLA Act;

Greater London Authority means the Greater London Authority, a body corporate established under the GLA Act;

Guarantee means the guarantee to be provided to RfL in the form set out in Appendix 2 (*Form of Guarantee*) to Schedule 14 (*Financial Obligations and Credit Support*);

Guarantor means any person who may provide or be an obligor under the Guarantee from time to time;

HAL means Heathrow Airport Limited;

HAL (Schedule 8) Payment means any payment made pursuant to any Track Access Agreement between the Operator and HAL:

- (a) by HAL to the Operator to compensate the Operator for HAL's performance of its rights and/or obligations under any such agreement; or
- (b) by the Operator to HAL to reward HAL for HAL's performance of its rights and/or obligations under any such agreement;

HAL TAA means the Track Access Agreement between the Operator as train operator and HAL as infrastructure manager in respect of the Operator's access to the Heathrow Spur;

HAL TAA Performance Regime has the meaning given to it in paragraph 2.3 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

Handover Package means a package containing the information and objects specified in Appendix 1 (*Form of Handover Package*) to Schedule 18.1 (*Continuity of Services*) and such other information and objects as RfL may reasonably specify from time to time;

Headway Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 4.1 of Schedule 7.1 (*Operating Performance Regime*) and made in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*);

Headway Deduction means a deduction comprising part of any Headway Adjustment that is to be made to any Concession Payment in respect of the Operator's performance in delivering a regular pattern of service in the Central Operating Section, calculated in accordance with paragraph 4.2 of Schedule 7.1 (*Operating Performance Regime*);

Headway Incident means a planned or unplanned incident which has given rise to Excess Headway;

Heathrow Access Option means the access option to be between HAL and TfL, reserving an option for TfL or its nominee to access the Heathrow Spur to operate railway passenger services on the Heathrow Spur;

Heathrow Access Option Rights has the meaning given to it in paragraph 4.2(b) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Heathrow Spur means that part of the Crossrail Route between Heathrow Airport Tunnel Junction (exclusive) and Heathrow Terminal 4 station and Heathrow Terminal 5 station;

Heathrow Station means any of the stations serving Heathrow Terminals 1, 2 & 3, Terminal 4 and Terminal 5;

Help Point means a two-way audio communication device positioned in highly visible locations at railway stations that allows customers to speak to another person to obtain real-time information about all passenger rail services and/or to notify that person of an emergency;

[REDACTED]

ICS Council Letter of Intent means the letter of intent between the ICS Council and MTR Limited dated 4 November 2013 pursuant to which the Operator will become a member of the Institute of Customer Service and the Operator will undertake certain actions to improve customer service;

Ilford Depot means Ilford Light Maintenance Depot;

Ilford Depot Access Charge Adjustment means any adjustment to Concession Payments to be made pursuant to paragraph 4 (*Ilford Depot Access Charges*) of Schedule 11.3 (*Access Charge Adjustments*) to reflect any payment of access charges by the Operator under the terms of the Ilford Regulated Depot Access Agreement;

Ilford Novation Agreement means a novation agreement in the agreed terms marked *INA*;

Ilford Operations Building Underlease means the underlease between Network Rail (as landlord) and TfL (as tenant) relating to part of the accommodation building at Ilford Depot dated 8 May 2013;

Ilford Regulated Depot Access Agreement means the Depot Access Agreement dated 9 August 2013 between Greater Anglia as Facility Owner and, following its novation from RfL pursuant to paragraph 6.5(b) of Schedule 4.1 (*Property Leasing and Access*), the Operator as access beneficiary in relation to the regulated Ilford Depot;

Ilford Unregulated Depot Usage Agreement means the Depot Usage Agreement dated 9 August 2013 between Greater Anglia as Facility Owner and RfL as access beneficiary in relation to the use of the facility at Ilford Depot that is outside the scope of the Act;

IM (Schedule 4) Payment has the meaning given to it in paragraph 8 (*Restriction of Use Payments to and from Infrastructure Managers*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Incremental Output Statement Charge means the charge to which that description is commonly given in Relevant Agreements;

Incumbent Operators means Greater Anglia, Great Western and South Eastern;

Indefeasible Rights Employee means a Transferring Employee who, immediately before the applicable Transfer Date, has a right to continue to participate in the Railways Pension Scheme after the applicable Transfer Date pursuant to Article 11 of the Protection Order and who has not elected to waive that protection under Article 12 of the Protection Order;

Indemnified Parties means RfL, TfL, members of the TfL Group, CRL, any Financier (as defined in the Class 345 Lease) and, in each case, all or any of their Affiliates, servants, agents, officers, employees, contractors and sub-contractors;

Independent Station Access Conditions means the document known as the Independent Station Access Conditions and the station annexes as each is modified in respect of the relevant Crossrail Station from time to time with the approval of the ORR;

Indexation Base Month means February 2015;

Indirect Subcontractor means any contractor or supplier (whether a third party or Affiliate) appointed by a Direct Subcontractor to provide goods or services in connection with the Operator's rights and/or obligations under this Agreement;

Individual Station Charge Adjustment has the meaning given to it in paragraph 2.1 of Schedule 11.3 (*Pass Through Access Charge Adjustments*);

Industrial Action has the meaning given to it in paragraph 1.2 of Schedule 17.6 (*Force Majeure*);

Information means information recorded in any form held by RfL or by the Operator on behalf of RfL;

Information Request means a request for any Information under the FOI Legislation;

Infrastructure Manager means, as the context requires, Network Rail, HAL or RfL (IM);

Initial Business Plan means the business plan in a form acceptable to RfL, including any adjusted version of such plan resubmitted to RfL in accordance with paragraph 2 (*Business Plans*) of Schedule 16.1 (*Records, plans and reports*);

Initial Expiry Date means 0159 on 28 May 2023;

Initial Permanent Fare has the meaning given to it in the Ticketing and Settlement Agreement;

Integrated Transport Schemes means any schemes relating to the integration of any other form of transport with the Concession Services designated as such in accordance with paragraph 1.1 of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*);

Inter-company Loan Facility means the loan facility under which the Parent makes available a facility of no less than £[REDACTED] million to the Operator from the date of this Agreement and for the duration of the Concession Period in accordance with the terms of the Support Letter;

Interest Rate means a rate equivalent to one per cent. per annum above the base lending rate published by the Bank of England (or such other bank as RfL may, after consultation with the Operator, determine from time to time) during any period in which an amount payable under this Agreement remains unpaid;

Interim Control Facility means the facility based at Network Rail's Rail Operating Control Centre at Romford and within the same building as the RCC, until the RCC is available for operational use;

Interim Performance Bond Expiry Date has the meaning given to it in paragraph 2.3(b) of Schedule 14 (*Financial Obligations and Credit Support*);

Interim Simulator Location has the meaning given to it in paragraph 7.4 of Schedule 5.3 (*Introduction of the Class 345 Fleet*);

Interior Cleaning Standard has the meaning given to it in, as the context admits, paragraph 3.3 or 5.7 of Schedule 5.2 (*Operation, Maintenance and Refresh*);

Inter-Operator Schemes means:

- (a) the ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) the Ticketing and Settlement Agreement;
- (c) the ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) the Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) the Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein as amended by a letter agreement dated 1 December 2000;
- (f) the National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;

- (g) the Train Information Services Scheme between the participants named therein;
- (h) the Amended and Restated (Sundry Travelcards) Agreement dated 31 October 2005 between the participants named therein;
- (i) the Retail Agents Scheme between the participants named therein;
- (j) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Concession Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (k) any Discount Fare Scheme;

Joint Performance Improvement Plan has the meaning given to it in the Relevant Network Code;

Journey Time Metric has the meaning given to it in paragraph 1.1 of Schedule 8.6 (*Information about Journeys*);

Key Contract means any agreement, contract, licence or other arrangement to which the Operator is a party or under which the Operator is the beneficiary from time to time which is designated as such pursuant to Schedule 18.1 (*Continuity of Services*) but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Agreement, to be designated as a Key Contract;

Key Driver Milestone means any of the train driver recruitment milestones specified in paragraph 6.1 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Key Performance Indicator means, as the context requires, a qualitative or compliance measure of the Operator's service quality performance, specified in the Appendix (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*);

Key Personnel has the meaning given to it in paragraph 2.1 of Schedule 15.1 (*Personnel, Communication and Access*);

Key Stage Milestone means any Key Driver Milestone or Key Test Driver Milestone;

Key Test Driver Milestone means either of the train driver recruitment milestones specified in paragraph 6.2 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Kilometrage Reduction Amount means the amount calculated in accordance with factor $KRA_{(-)}$ in the definition of **ROUP** in paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*), in relation to a decrease in the distance (measured in kilometres) operated by the Operator from that specified in the relevant Train Plan;

KPI Adjustment means, for any Reporting Period, any adjustment so named and calculated in accordance with paragraph 5.1 of Schedule 8.1 (*KPI Regime*);

KPI Audit Programme has the meaning given to it in paragraph 2.1 of Schedule 8.1 (*KPI Regime*);

KPI Contingency Plan means a contingency plan agreed between the Operator and RfL pursuant to paragraph 4.2 of Schedule 8.1 (*KPI Regime*);

KPI Incentive Payment means, for any Reporting Period, any payment so named and calculated in accordance with paragraph 4.4 of Schedule 8.1 (*KPI Regime*);

KPI Measured Station means an Operator Station to which the KPI Regime applies from the date that the Operator becomes Facility Owner;

KPI Regime means the regime set out in Schedule 8.1 (*KPI Regime*) pursuant to which the Operator's performance against certain Key Performance Indicators is monitored and incentivised;

KPI Remedial Plan Benchmark has the meaning given to it in paragraph 6.1(a) of Schedule 8.1 (*KPI Regime*);

Last Train means for each destination Crossrail Station, the last scheduled Passenger Service to depart from any Crossrail Station on any day to that destination Crossrail Station;

Late Stage 3 to 5 Concession Years has the meaning given to it in paragraph 1.4(f) of Schedule 12.1 (*List of Priced Options*);

Late Stage Daily Rate means any of the daily rates specified in the table in paragraph 15.2 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

Lead Operator has the meaning given to it in the Ticketing and Settlement Agreement;

Legislation means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

LENNON means the railway industry fares Computer System known as 'LENNON' (or any successor thereto);

Licences means such licences granted or to be granted under applicable law as the Operator may be required from time to time to hold under the Act in order to provide or operate the Concession Services;

Local Authority means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;

- (d) any other body or council replacing any of the above from time to time; and
- (e) any other body or instrument of local or regional government specified by RfL from time to time;

Local Community means those areas of London affected by Crossrail from time to time;

Lock-up Period means the relevant period referred to in paragraph 3.2 of Schedule 14 (*Financial Obligations and Credit Support*) during which the restrictions referred to in paragraph 3.1 of Schedule 14 apply;

London Borough means any of administrative areas of Greater London (plus the City of London), comprising one of 33 boroughs;

London Boroughs Concessionary Travel Scheme means the agreements (Annual and Framework) dated 22 December 2004 between TfL and the Association of London Government Transport and Environment Committee relating to the provision of concessionary travel for elderly and disabled London residents, including any modifications, renewals or replacements thereto from time to time;

London Living Wage means the basic hourly wage determined by the Greater London Authority for employees working full time in connection with Crossrail within one of the London Boroughs;

Lorry means a vehicle with an MAM exceeding 3,500 kilograms;

Loss means any claims, demands, damages, proceedings, losses, liabilities, suits, judgments, actions, costs, charges, expenses, taxes, penalties or fines howsoever arising (including arising under statute, contract or at common law);

LUL means London Underground Limited;

Maintenance Contract means any contract or arrangement to which the Operator is a party, which includes the carrying out for the Operator of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Operator in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

Maintenance Plan has the meaning given to it in the RSPA;

Major Flow Operator has the meaning given to it in the Ticketing and Settlement Agreement;

MAM means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

Managed Station means Paddington (Main Line) and Liverpool Street (Main Line) or any other station used in connection with the provision of the Concession Services where Network Rail becomes the Facility Owner during the Concession Period;

Managed Station Area means the premises comprising part or parts of a Managed Station to be occupied by the Operator on or after the Start Date and to be used for or in connection with the provision of the Concession Services;

Management Accounts has the meaning given to it in paragraph 5.1 of Schedule 16.1 (*Records, plans and reports*);

Managing Director means a person appointed by the Operator with executive powers to manage the day-to-day operations of the Operator's business and the Operator's performance of its obligations under the Transaction Documents;

Mandatory Modification means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board Limited or any government authority;

Marketing Plan means a marketing plan delivered by RfL to the Operator prior to the start of each Concession Year in accordance with paragraph 4 (*Marketing Plan*) of Schedule 16.1 (*Records, plans and reports*) setting out the marketing obligations of the Operator for that Concession Year;

Metropolitan and City Police Agreement means the agreement between ATOC and the Metropolitan Police and the City of London Police in relation to free travel (for any purpose) by the officers of those constabularies on, amongst others, the Passenger Services;

Minimum Records means all information relating to the Operator's performance of and compliance with paragraphs 4 (*Equality and diversity statutory duties*) and 5 (*Equality and Diversity Plans*) of Schedule 15.3 (*Responsible Procurement*) and the adoption and implementation of an equality and diversity plan, a strategic equality and diversity plan, an equality and diversity training plan and a supplier diversity plan by each Direct Subcontractor and, where applicable, Indirect Subcontractor of the Operator;

Minutes Headway means, for a Unit operating a Diagram Leg of a Passenger Service, as measured at the Relevant Headway Recording Point, the minutes and seconds between that Unit and the immediately preceding Unit operating a Passenger Service and passing the same Relevant Headway Recording Point in the same direction;

Minutes Lateness means, in relation to a Unit that is operating a Diagram Leg, the number of minutes and seconds that that Unit is recorded at a Relevant Delay Recording Point for that Unit on that Diagram Leg, later than its scheduled time for that Relevant Delay Recording Point in the Working Timetable (adjusted with the relevant timing offset where the Relevant Delay Recording Point is not exactly located at the relevant terminating point) as a result of a planned or unplanned incident and which are reported by the Network Monitoring System;

Missed Station Stop means:

- (a) a Station Stop which a Unit is scheduled to make on a Diagram Leg which is not made by that Unit, except where that Station Stop is made by a Replacement Unit; and
- (b) a Unit departs more than 30 seconds before its scheduled departure time (as specified in the Train Plan), other than a Unit that operates any Passenger Service solely between Abbey Wood station and Paddington (Crossrail) station,

and **Missed a Station Stop**, and **Misses One or More Station Stops** shall be construed accordingly;

Model Changes has the meaning given to it in paragraph 2.2 of Schedule 13.3 (*Runs of the Model Suite*);

Model Suite Run Auditor means an independent auditor appointed by RfL pursuant to paragraph 1.3(b) of Schedule 13.3 (*Runs of the Model Suite*) with the approval (not to be

unreasonably withheld) of the Operator for the purpose of auditing any Run of the Model Suite and its results;

Modification has the meaning given to it in the RSPA;

Morning Peak means, in relation to any Passenger Service, the period between 0700 and 0959 during a Weekday or such other continuous morning three hour period as RfL may specify from time to time;

MSS MAA Score has the meaning given to it in paragraph 3.2 of Schedule 8.2 (*MSS Regime*);

MSS Methodology means, as at the date of this Agreement, the Mystery Shopper Survey methodology in the agreed terms marked **MSSM**;

MSS Questionnaire means, as at the date of this Agreement, the Mystery Shopper Survey questionnaire in the agreed terms marked **MSSQ**;

MSS Regime means the regime set out in Schedule 8.2 (*MSS Regime*) pursuant to which the Operator's performance in relation to the customer environment at Operator Stations and on Passenger Services is monitored and incentivised;

MSS Remedial Plan Benchmark means, in respect of the relevant Concession Year, the benchmark set out in column 3 of the table in the Appendix (*MSS Benchmarks*) to Schedule 8.2 (*MSS Regime*) in the row corresponding to that Concession Year;

MSS Score has the meaning given to it in paragraph 3.1 of Schedule 8.2 (*MSS Regime*);

MSS Target Benchmark means, in respect of the relevant Concession Year, the benchmark set out in column 2 of the table in the Appendix (*MSS Benchmarks*) to Schedule 8.2 (*MSS Regime*) in the row corresponding to that Concession Year;

Mystery Shopper Survey means a mystery shopper survey in respect of the passenger experience of the Concession Services, which may be carried out by RfL or its nominee in accordance with the MSS Regime and the MSS Methodology;

National Passenger Survey means a passenger satisfaction survey in respect of the Concession Services which may be carried out by the Rail Passengers' Council as described in paragraph 1.2 (*National Passenger Surveys*) of Schedule 8.6 (*Information about Journeys*);

National Rail Enquiry Scheme means the rail information scheme run by ATOC, providing information to enquirers regarding rail journeys throughout the country;

National Rail Timetable means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all railway passenger services in Great Britain;

Net Asset Statement has the meaning given to it in, as the context requires, the Greater Anglia Transfer Agreement, the Great Western Transfer Agreement or the South Eastern Transfer Agreement;

Network Agreements has the meaning given to it in paragraph 3.1(a)(i) of the Appendix (*Conditions Precedent*) to the Conditions Precedent Agreement;

Network Change has the meaning given to it in the Network Code in relation to any Network Rail TAA and the meaning given to that definition in the equivalent of the Network Code in relation to any other Track Access Agreement;

Network Code means the document known as the Network Code (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

Network Monitoring System means TRUST in relation to the On-Network (excluding the Heathrow Spur) and TRUST or a similar or equivalent network monitoring system operated by the relevant infrastructure controller for the Crossrail Route in respect of each of the Central Operating Section and the Heathrow Spur;

Network Rail means in respect of:

- (a) the network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 40 Melton Street, London NW1 2EE; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

Network Rail (Schedule 8) Payment means any payment made pursuant to the Track Access Agreement between the Operator and Network Rail:

- (a) by Network Rail to the Operator to compensate the Operator for Network Rail's performance of its rights and/or obligations under that agreement; or
- (b) by the Operator to Network Rail to reward Network Rail for Network Rail's performance of its rights and/or obligations under that agreement;

Network Rail Partnering Letter means the letter and its attachment from MTR Limited and Network Rail to RfL entitled 'Crossrail Partnering' dated 7 February 2014 which records the joint performance initiatives for the On-Network identified by MTR Limited and Network Rail;

Network Rail TAA means any Track Access Agreement between the Operator as train operator and Network Rail as infrastructure manager in respect of the Operator's access to the On-Network, other than the Heathrow Spur;

New Insurance Arrangements shall have the meaning given to it in paragraph 6.2(b) of Schedule 18.1 (*Continuity of Services*);

New Results means, following a Run of the Model Suite in relation to any Change, the restated values of FXD, VCRPI and PRPI to be specified for each Reporting Period and Concession Year in the Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2;

New Station Areas has the meaning given to it in paragraph 5.3 of Schedule 4.1 (*Property Leasing and Access*);

New Trains Director has the meaning given to it in paragraph 2.1(h) of Schedule 15.1 (*Personnel, Communications and Access*);

New TVM Maintenance Agreement has the meaning given to it in paragraph 3.4 of Schedule 3.6 (*Ticket Equipment*);

New TVMs has the meaning given to it in paragraph 1.2(b) of Schedule 3.6 (*Ticket Equipment*);

Non-Operational Area means an area at an Operator Station not required by the Operator for the safe provision of the Passenger Services including a retail area, unused ticket office, core facility area, any area proximate to any vending machine or automated teller machine or any other area identified by the Subleases Tenant in accordance with paragraph 5.3 of Schedule 4.1 (*Property Leasing and Access*);

Non-Protected Employee means any Operator Employee who is not a Protected Employee;

Non-Ticket Revenue means any non-Ticket Revenue derived from services or activities associated with Crossrail, including revenue derived from the operation of any car park or revenue payable from access beneficiaries due to the presence of any ticket gate, in each case at any Operator Station that in each case accrues to the Operator, toilet facilities and marketing, letting and other commercial revenue generated at Operator Stations, but excluding revenue received by the Operator from other Train Operators in respect of access granted to Operator Stations;

NRTAA Performance Regime has the meaning given to it in paragraph 1.2 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

Occupational Agreement means a licence to occupy, concession agreement or other temporary use agreement to be made between the Operator and a third party nominated by the Subleases Tenant pursuant to paragraph 5.3(b) of Schedule 4.1 (*Property Leasing and Access*) which:

- (a) does not purport to create any relationship of landlord and tenant between the parties to it;
- (b) is personal to the nominated third party and its group companies;
- (c) entitles the Operator or its agent to relocate or otherwise alter the area of occupation allowed to the nominated third party pursuant to the Occupational Agreement; and
- (d) entitles the nominated third party to such rights of access and egress over and through the relevant Operator Station together with such rights to services and facilities as may be reasonably required by the nominated third party in order to properly use the area of occupation allowed to it by the Occupational Agreement;

Off-Peak means, in relation to any Passenger Service, the period of time outside of the Peak;

Off-Peak Passenger Services means Passenger Services other than Peak Passenger Services;

Old Oak Common Depot means the depot located at Old Oak Common at which the Rolling Stock Provider maintains the Class 345 Fleet;

Old Results means the following:

- (a) as produced by a Run of the Model Suite in respect of the immediately preceding Change; or
- (b) as at the date of this Agreement in respect of the first Change only,

the values of FXD, VCRPI and PRPI to be specified for each Reporting Period and Concession Year in the Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2;

On-Network means that part of the network comprising the Eastern Section and the Western Section (other than the Heathrow Spur);

On-Network Access Option means the access option between Network Rail and TfL, reserving an option for TfL or its nominee to access certain parts of the Eastern Section and the Western Section to operate railway passenger services on those parts of the On-Network;

On-Network Access Option Rights has the meaning given to it in paragraph 4.2(a) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

On-Network Stations means the Eastern Section Stations and the Western Section Stations;

ONFR Station Change Letters means the series of letters from Network Rail dated on or about June 2013 to the various access beneficiaries at the On-Network Stations at which the ONFR Works will be carried out;

ONFR Works has the meaning given to it in paragraph 3.1 of Schedule 4.2 (*Station and Depot Refurbishments and Enhancements*);

Operating Assets has the meaning given to it in paragraph 4.1 of Schedule 2.1 (*Obligations in relation to Concession Services*);

Operating Concepts means the suite of documents which describe how all new assets which will be manufactured pursuant to the Crossrail Project and how those assets will be utilised in a railway passenger service operational context, including relevant technical specifications, emerging designs, derogations and updates in respect of, amongst other things, each of the Class 345 Fleet and the signalling and communication systems;

Operating Performance Adjustment means the adjustment to any Concession Payment to be made pursuant to paragraph 1.1 of Schedule 11.1 (*Concession Payments*) and in accordance with paragraph 2.1 of Schedule 11.1;

Operating Performance Overall Cap means the aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Thirteen Period Measurement Period;

Operating Performance Reporting Period Cap means the aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Reporting Period;

Operating Performance Thresholds means the Remedial Plan Operating Performance Thresholds and the Default Operating Performance Thresholds;

Operating Performance Thresholds Table means the table set out in Appendix 2 (*Operating Performance Thresholds Table*) to Schedule 7.1 (*Operating Performance Regime*);

Operational Model means the operational model of any of:

- (a) the performance model;
- (b) the cost models; and
- (c) any other relevant models that have generated input to the Financial Model,

in the agreed terms marked **OM**;

Operational Spare Unit means, where that Operational Spare Unit:

- (a) is a Class 315 Unit, means a Unit of that class specified in the Train Plan which:
 - (i) is operationally ready to provide the Passenger Services in the Timetable;
 - (ii) is not already assigned to the delivery of any Passenger Service in the Timetable; and
 - (iii) will only be used to deliver such Passenger Services if:
 - (A) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and/or
 - (B) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle; and
- (b) is a Class 345 Unit, has the meaning given to it in the RSPA;

Operations Director has the meaning given to it in paragraph 2.1(c) of Schedule 15.1 (*Personnel, Communication and Access*);

Operator Access Stations has the meaning given to it in paragraph 4.1 of Schedule 4.1 (*Property Leasing and Access*);

Operator Control Room means the primary location staffed by Concession Employees or RfL (IM) from where service delivery decisions for the Passenger Services are made and communicated;

Operator Daily Performance Record means a daily report detailing the Operator's performance in delivering the Passenger Services, including all Performance Failures, the reason for each such Performance Failure and an allocation of responsibility for each Performance Failure in the form prescribed by RfL from time to time;

Operator Employee means:

- (a) any employee of the Operator from time to time including any person whose contract of employment may be transferred to the Operator prior to the commencement of the Concession Period or during its term by virtue of the operation of Law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred; and

- (b) any other person engaged by the Operator (for a period of at least six months) in connection with the provision of Concession Services but employed by an agency or self employed to fulfil an executive, managerial or customer-facing role in the Operator's organisation;

Operator Stations has the meaning given to it in paragraph 3.1 of Schedule 4.1 (*Property Leasing and Access*);

Operator Stations Power of Attorney means the power of attorney granted by the Operator in favour of RfL in the agreed terms marked **OSPOA**;

Operator's Executive means the senior executive team of the Operator from time to time, which at the date of this Agreement comprises the Managing Director, the finance director the project director, the mobilisation director, the engineering director, the customer experience director, the head of safety, quality and environment, the human resources director, the Contract Manager and the train service delivery director (each as appointed from time to time);

Operator's Ticketing and Scheme Liabilities has the meaning given to it in paragraph 4.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

ORR means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

Other Adjustment means, in relation to any Reporting Period, an adjustment to the Concession Payment that is to be made on the Payment Date for that Reporting Period by one party to the other that is equal to the net of payments that are expressly contemplated to be made between the parties in that Reporting Period under the terms of this Agreement and which is not the subject of any other adjustment to that Concession Payment specified in paragraph 1.1 of Schedule 11.1 (*Concession Payments*);

Other Cancellation means a Passenger Service which is scheduled to be provided under the Plan of the Day and which:

- (a) commences its journey beyond its scheduled departure point in the Plan of the Day or terminates its journey prior to its scheduled destination point in the Plan of the Day;
- (b) does not call at one or more stations at which it is scheduled to call in the Plan of the Day; or
- (c) arrives at its final destination scheduled in the Plan of the Day more than 120 minutes late;

Outline Staged Opening Plan means the Operator's plan to facilitate the timely delivery of each Stage in the Staged Opening Programme in outline form to be provided by the Operator to RfL in accordance with paragraph 2.5 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Outline Station Deep Clean Programme means the programme in a form acceptable to RfL for the purpose of cleaning the Operator Stations and Operator Access Stations on the On-Network;

Overall Liability Cap means £[REDACTED];

Oyster means the contactless smartcard ticketing system used by RfL, comprising, amongst other things, Oystercards, smartcard readers at access-control ticket gates, bus boarding areas, passenger-operated retail machines, ticket office machines and elsewhere, the communications network, data storage and other systems that connect them together to form an integrated ticketing system;

Oystercard means the contactless smartcard issued by TfL to its customers onto which customers can load travel products for use on TfL-funded transport services, and variants of that card issued by TfL or other organisations that have this capability, including variants that are not in card-shaped form;

Parent means MTR Corporation Limited, whose registered office is MTR Headquarters Building, Telford Plaza, Kowloon Bay, Kowloon, Hong Kong and registered number is FC024806;

Parent's Executive Directorate means the senior executive team of the Parent, from time to time, which at the date of this Agreement, comprises the chief executive, deputy chief executive, finance director, legal director, operations director, property director, projects director, commercial director, human resources director and the general manager, corporate relations (each as appointed from time to time);

Pass Through Adjustment means in relation to any Reporting Period, an adjustment to the Concession Payment that is calculated in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*) to be made on the Payment Date for that Reporting Period and payable by one party to the other;

Passenger Change Date means a date upon which significant changes may be made to the relevant part of the Timetable in accordance with or by virtue of the Relevant Network Code;

Passenger Contact Centre has the meaning given to it in paragraph 19.1 of Schedule 2.2 (*List of Concession Services*);

Passenger Count Methodology means the methodology in the agreed terms marked **PCM**;

Passenger Services means the Operator's railway passenger services specified in any Timetable and/or in any Plan of the Day, including those railway passenger services which the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

Payment Date means the date for the payment of Concession Payments in accordance with paragraph 4.3 of Schedule 11.1 (*Concession Payments*);

PCI DSS means the payment card industry data security standard as stipulated by the PCI Security Standards Council from time to time;

PCI Security Standards Council means the forum responsible for the development, management, education and awareness of the certain payment card industry security standards;

Peak means the Morning Peak and the Evening Peak;

Peak Passenger Service means any Passenger Service operated in the Peak;

Penalty Fares Provisions has the meaning given to it in paragraph 7.2 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Pension Trust means the pension trust governing the Railways Pension Scheme;

Pensionable Service has the meaning given to it in clause 1 of the pensions trust which governs the Railways Pension Scheme and which is set out in the schedule to the Protection Order;

Percentage Allocation has the meaning given to it in the TSA;

Performance Adjustment means in relation to any Reporting Period, an adjustment to the Concession Payment that is calculated in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*) to be made on the Payment Date for that Reporting Period and payable by one party to the other;

Performance Bond means the on-demand bond issued by a Bond Provider with the Required Rating in the form set out in Appendix 1 (*Form of Performance Bond*) to Schedule 14 (*Financial Obligations and Credit Support*),

Performance Bond Longstop Date has the meaning given to it in paragraph 2.2(b) of Schedule 14 (*Financial Obligations and Credit Support*);

Performance Data has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the Heathrow Access Option in relation to the Heathrow Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section Access Option Rights;

Performance Failure means the occurrence of a Unit that is Unavailable, a Cancellation, a Short Formation, Relevant Excess Headway or Relevant Minutes Lateness;

Periodic Concession Report means the report produced by the Operator each Reporting Period pursuant to paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*) in relation to the Operator's operating and financial performance in the form of report specified by RfL from time to time;

Periodic SLNT Report means the report in the agreed terms marked *SLNTR*;

Permitted Service Level means up to £[REDACTED] in value per Reporting Period (such amount to be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*) of services to be provided by the Facility Owner under the Ilford Unregulated Depot Access Agreement;

Placed in Escrow means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of this Agreement;
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) audited following a Run of the Model Suite and updated with any Revised Inputs; and
- (b) in respect of the Operational Models, delivery of:

- (i) the Operational Models dated the date of this Agreement;
 - (ii) the Operational Models adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) the inputs to the Financial Model derived therefrom following an audit of a Run of the Model Suite; and
- (c) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 13.2 (*Identity of the Suite of Models*);

Plan of the Day means, in relation to each day during the Concession Period, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Operator by any Infrastructure Manager from time to time prior to 2200 on the previous day;

Possessions Strategy Notice means a notice issued by any Infrastructure Manager which details that Infrastructure Manager's strategy in relation to a programme of Restrictions of Use extending over:

- (a) a period of more than one calendar year; or
- (b) a period which contains two or more Passenger Change Dates;

Power of Attorney means the power of attorney granted by the Operator in favour of RfL dated the date of this Agreement;

PPM means the public performance measure of the number of Passenger Services (expressed as a percentage of the number of Passenger Services and including after the Stage 3 Start Date, PPM in relation to services operating between Abbey Wood station and Paddington (Crossrail) station (and not beyond)) which are scheduled to be provided under the Plan of the Day) which arrive punctually at their final scheduled destination in the Plan of the Day, as measured in accordance with paragraph 2 (*Measuring punctuality*) of Schedule 7.3 (*PPM Regime*);

PPM Failure has the meaning given to it in paragraph 4.1 of Schedule 7.3 (*PPM Regime*);

PPM MAA has the meaning given to it in paragraph 3.1(b) of Schedule 7.3 (*PPM Regime*);

PPM Target means, in relation to a Stage, the target identified as such in the Appendix (*PPM Targets*) to Schedule 7.3 (*PPM Regime*);

Preceding Concession Year has the meaning given to it in paragraph 4.2 of Schedule 8.3 (*Customer Satisfaction Regime*);

Previous Franchise Agreement means, as the context requires, any franchise agreement which terminates on or about:

- (a) the day prior to the Start Date in relation to the franchise agreement to which Greater Anglia is a party;
- (b) 20 September 2015 in relation to the franchise agreement to which Great Western is a party; or

(c) June 2018 in relation to which Southeastern is a party,

under which, in each case, services equivalent to the Concession Services (or a proportion thereof) are provided by a Train Operator;

Priced Option means any of the options set out in Schedule 12.1 (*List of Priced Options*);

Priced Option 1 means the Priced Option specified in paragraph 1 (*Priced Option 1: Programme Flexibility – Delayed Stages 3 to 5*) of Schedule 12.1 (*List of Priced Options*);

Priced Option 2 means the Priced Option specified in paragraph 2 (*Priced Option 2: Programme Flexibility – Advanced Stage 5*) of Schedule 12.1 (*List of Priced Options*);

Priced Option 3 means the Priced Option specified in paragraph 3 (*Priced Option 3: Proportion of Class 315 Fleet Retained*) of Schedule 12.1 (*List of Priced Options*);

Primary Concession Assets means any property, rights and liabilities of the Operator listed in the Schedule 18.2 (*Restrictions on dealings*) but excluding such property, rights or liabilities as may, in accordance with the terms of this Agreement, cease to be so designated;

Principal Change Date has the meaning given to it in the Relevant Network Code;

Profit Share Payment means an annual payment calculated in accordance with paragraph 4.2 of Schedule 11.4 (*Profit Share*) and made by the Operator to RfL or vice versa in accordance with paragraph 4.3 of that schedule;

Project Director has the meaning given to it in paragraph 2.1(f) of Schedule 15.1 (*Personnel, Communication and Access*);

Project Steering Group has the meaning given to it in paragraph 9.2 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

promise to vary has the meaning given to it in paragraph 3.6 of Schedule 18.3 (*Transfer*);

Property Lease means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Operator may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Concession Services;

Proposal for Change has the meaning given to it, as the context admits, in the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions;

Protected Employee means any Transferring Employee who is designated as an Indefeasible Rights Employee and/or Protected Person under the Protection Order but only for so long as he continues to be a Protected Employee;

Protected Pension Rights in respect of a Protected Person, has the meaning given to ‘relevant pension rights’ in Part 1 (*General*) of the Protection Order and in respect of an Indefeasible Rights Employee means the pension rights he had under the relevant Transferring Employers’ section of the Railways Pension Scheme immediately before the applicable Transfer Date but only for so long as he continues to be an Indefeasible Rights Employee;

Protected Person means a Transferring Employee who, immediately before the applicable Transfer Date, is a ‘protected employee’ as defined in the Protection Order where that

protection has not ceased to have effect under Article 8 of the Protection Order and where such Transferring Employee has not elected to waive that protection under Article 12 of the Protection Order;

Protected Proposal has the meaning given to it in paragraph 1.9 of Schedule 13.4 (*Variations*);

Protection Order means the Railway Pensions (Protection and Designation of Schemes) Order 1994 (SI No. 1433), as amended from time to time;

Prudential Regulation Authority means the independent, non-governmental body given statutory powers by the Financial Services Act 2012;

Public Sector Operator means any person (other than a franchisee or franchise operator or concession operator in relation to the services provided or operated under its franchise agreement or concession agreement to which TfL or any member of the TfL Group is a party (as the case may be)) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005 or who is appointed by TfL or any member of the TfL Group to provide such services or operate such facilities otherwise than pursuant to a concession agreement to which TfL or a member of the TfL Group is a party;

QPR Methodology means, as at the date of this Agreement, the Quality Performance Regime survey methodology in the agreed terms marked **QPRM**;

QPR Performance Adjustment means, in respect of any Reporting Period, any adjustment so named and calculated in accordance with paragraph 3.3 of Schedule 8.4 (*Quality Performance Regime*);

QPR Remedial Plan Benchmark means, in respect of relevant Concession Year, the benchmark set out in column 3 of the table in the Appendix (*Quality Performance Regime Benchmarks*) to Schedule 8.4 (*Quality Performance Regime*) in the row corresponding to that Concession Year;

QPR Score has the meaning given to it in paragraph 3.1 of Schedule 8.4 (*Quality Performance Regime*);

QPR Stage Factor means:

- (a) 0.2 during the period between, and including, the Start Date and, but excluding, the Stage 2 Start Date;
- (b) 0.44 during the period between, and including, the Stage 2 Stage Date and, but excluding, the Stage 3 Start Date;
- (c) 0.87 during the period between, and including, the Stage 3 Stage Date and, but excluding, the Stage 4 Start Date;
- (d) 0.95 during the period between, and including, the Stage 4 Stage Date and, but excluding, the Stage 5 Start Date; and
- (e) 1.0 during the period from, and including, the Stage 5 Start Date;

QPR Target Benchmark means, in respect of relevant Concession Year, the benchmark set out in column 2 of the table in the Appendix (*Quality Performance Regime Benchmarks*) to

Schedule 8.4 (*Quality Performance Regime*) in the row corresponding to that Concession Year;

Qualifying Change means:

- (a) any Change specified in any of the following paragraphs of that definition:
 - (i) paragraph (e) (*extended Restrictions of Use*) to (g) (*RfL changes to Alternative Timetable Guidance*) inclusive;
 - (ii) paragraph (i) (*LUL change to Disabled Persons' Policy*);
 - (iii) paragraph (j) (*TfL approval of amendment to any Inter-Operator Scheme*);
 - (iv) paragraph (m) (*Station enhancement works*) to paragraph (q) (*Acceptance of a Class 345 Unit with qualifications*) inclusive;
 - (v) paragraph (r) (*variation of the Class 345 Lease*) where a Variation (as defined thereunder) of the Class 345 Lease has the effect of changing the amount of rental that is payable thereunder;
 - (vi) paragraphs (s) to (dd) (*Priced Options*) inclusive; and
 - (vii) paragraph (ff) (*Force Majeure Event*); and
- (b) any other Change or, subject to paragraph 3.3 of Schedule 13.1 (*Financial Consequences of Change*), two or more Sub-Threshold Changes, which would (if it or they were subject to a Run of the Model Suite in accordance with Schedule 13 (*Changes and Variations*)) result in adjustments in Concession Payments over the remaining life of this Agreement that have a net present value as at the date of, as appropriate, that Change or the last in time of those Sub-Threshold Changes, in each case in excess of the Threshold Amount, and for the purposes of ascertaining a net present value of the amount of any adjustment in any Concession Payment, it shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate as at the date of this Agreement being 3.5 per cent. per annum (in real terms)) from the date of receipt of that adjusted Concession Payment to the date of, as appropriate, that Change or last in time of those Sub-Threshold Changes;

Quality Performance Adjustment means the adjustment to any Concession Payment for any Reporting Period to be calculated in accordance with paragraph 3.3 of Schedule 8.4 (*Quality Performance Regime*) and made in accordance with paragraph 2.4 of Schedule 11.1 (*Concession Payments*);

Quality Performance Regime means the regime set out in Schedule 8.4 (*Quality Performance Regime*) pursuant to which the Operator's performance in respect of the provision of customer service at Crossrail Stations, on trains and on replacement bus services is monitored and incentivised;

Rail Passengers' Council means the passengers' council established under Section 19 of the Railways Act 2005;

Railtrack Change Proposal has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

Railway Group Standards has the meaning given to it in the Relevant Network Code;

Railway Industry Standards has the meaning given to it in paragraph 6.1 of Schedule 15.1 (*Personnel, Communication and Access*);

Railways Pension Scheme means the Railways Pension Scheme established by the Protection Order;

RCC means Route Control Centre;

Recalibration Phase Performance Regime has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the Heathrow Access Option in relation to the Heathrow Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section Access Option Rights;

Reconciliation Amount has the meaning given to it in paragraph 7.3 of Schedule 13.3 (*Runs of the Model Suite*);

Record of Assumptions means a document prepared by the Operator in the agreed terms marked **ROA**, or as may be revised in accordance with Schedule 13 (*Changes and Variations*) and Placed in Escrow providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the Suite of Models;
- (b) details of how Concession Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Suite of Models; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Suite of Models;

Recurrent Performance Failure means two or more Performance Failures:

- (a) that occur at the same time of day or on the same day of the week;
- (b) that occur on the same (or reasonably proximate) part of the Crossrail Route;
- (c) that occur in relation to the same Passenger Service or a similar group of Passenger Services; or
- (d) of the same kind that occur for the same reason,

in each case for reasons attributable to the Operator and which, having regard to the nature of those Performance Failures and the period of time between their occurrence, could reasonably be said to be recurrent;

Reference Concession Year has the meaning given to it in paragraph 4.3 of Schedule 8.3 (*Customer Satisfaction Regime*);

Relevant Agreement means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Operator in connection with the Concession Services, as replaced or amended from time to time. If and to the extent that:

- (a) following the effective date of any Charge Variation, the Operator enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) RfL has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

Relevant Approvals has the meaning given to it in the RSPA;

Relevant Approvals Management Plan (Train Works) has the meaning given to it in the RSPA;

Relevant CSS Headline Default Benchmark means in relation to any Survey Period, the CSS Headline Default Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Headline Remedial Plan Benchmark means in relation to any Survey Period, the CSS Headline Remedial Plan Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Headline Target Benchmark means in relation to any Survey Period, the CSS Headline Target Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Information Default Benchmark means in relation to any Survey Period, the CSS Information Default Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Information Remedial Plan Benchmark means in relation to any Survey Period, the CSS Information Remedial Plan Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Information Target Benchmark means in relation to any Survey Period, the CSS Information Target Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Security Default Benchmark means in relation to any Survey Period, the CSS Security Default Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Security Remedial Plan Benchmark means in relation to any Survey Period, the CSS Security Remedial Plan Benchmark for the Concession Year in which that Survey Period falls;

Relevant CSS Security Target Benchmark means in relation to any Survey Period, the CSS Security Target Benchmark for the Concession Year in which that Survey Period falls;

Relevant Customer Satisfaction Survey has the meaning given to it in paragraph 3.2 of Schedule 8.3 (*Customer Satisfaction Regime*);

Relevant Debits and Credits has the meaning given to it in, as the context requires, the Greater Anglia Transfer Agreement, the Great Western Transfer Agreement and the South Eastern Transfer Agreement;

Relevant Delay Recording Point means the recording point (as defined in the relevant Track Access Agreement) which monitors the timing of trains, located at or most proximate to the terminating point or station (including any early termination point or station where a Unit is taken out of service early or the Diagram Leg is terminated early) for the relevant Diagram Leg;

Relevant Excess Headway means in relation to a Class 345 Unit operating a Diagram Leg where the Minutes Headway exceeds the Threshold Headway, all of the Excess Headway (that is, all of the Minutes Headway in excess of the Scheduled Headway) that arises as a result of a Headway Incident;

Relevant Forecast Ticket Revenue means, as appropriate, the Forecast East Ticket Revenue or the Forecast West Ticket Revenue;

Relevant Headway Recording Point means:

- (a) for all railway services operated by a Unit on any eastbound Diagram Leg, the Recording Point (as defined in the relevant Track Access Agreement) which monitors the arrival time of train at Whitechapel station; and
- (b) for all railway services delivered by a Unit on any westbound Diagram Leg, the Recording Point (as defined in the relevant Track Access Agreement) which monitors the arrival time of trains at Paddington (Crossrail) station;

Relevant Minutes Lateness means in relation to a Unit delivering a Passenger Service, three or more Minutes Lateness at the Relevant Delay Recording Point;

Relevant MSS Benchmark means, as the context requires, the Relevant MSS Target Benchmark or the Relevant MSS Remedial Plan Benchmark;

Relevant MSS Remedial Plan Benchmark means, in relation to any Survey Period, the MSS Remedial Plan Benchmark for the Concession Year in which that Survey Period falls;

Relevant MSS Target Benchmark means, in relation to any Survey Period, the MSS Target Benchmark for the Concession Year in which that Survey Period falls;

Relevant Mystery Shopper Survey has the meaning given to it in paragraph 3.2 of Schedule 8.2 (*MSS Regime*);

Relevant Network Code means, in the case of:

- (a) the Network Rail TAA, the Network Code;
- (b) the HAL TAA, the set of rules incorporated by reference into the HAL TAA which govern the procedures for managing changes to the working timetable, establishes a performance monitoring system and procedures in the event of operational disruption, in each case insofar as it relates to the Heathrow Spur, and
- (c) the RfL (IM) TAA, the set of rules incorporated by reference into the RfL (IM) TAA which govern the procedures for managing changes to the working timetable, establishes a performance monitoring system and procedures in the event of operational disruption, in each case insofar as it relates to the Central Operating Section;

Relevant Protected Characteristic has the meaning given to it in paragraph 4.2(a) of Schedule 15.3 (*Responsible Procurement*);

Relevant Protected Employee means a Protected Employee who transfers from a Transferring Employer to the Operator by operation of TUPE either prior to Actuarial Effective Date of the First Valuation or after the First Valuation but prior to the Actuarial Effective Date of the Second Valuation, as applicable;

Relevant QPR Remedial Plan Benchmark means, in relation to any Survey Period, the QPR Remedial Plan Benchmark for that Survey Period;

Relevant QPR Target Benchmark means, in relation to any Survey Period, the QPR Target Benchmark for that Survey Period;

Relevant Term has the meaning given to it in paragraph 1.2(a) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

Relevant Ticketless Travel Default Benchmark means, as appropriate, the Ticketless Travel East Default Benchmark or the Ticketless Travel West Default Benchmark;

Relevant Ticketless Travel Rate means, as appropriate, the Ticketless Travel East Rate or the Ticketless Travel West Rate;

Relevant Ticketless Travel Remedial Plan Benchmark means, as appropriate, the Ticketless Travel East Remedial Plan Benchmark or the Ticketless Travel West Remedial Plan Benchmark;

Relevant Ticketless Travel Survey has the meaning given to it in paragraph 3 (*Performance against the Relevant Ticketless Travel Rate*) of Schedule 9 (*Revenue Protection Incentive Regime*);

Relevant Ticketless Travel Target means, as appropriate, the Ticketless Travel East Target or the Ticketless Travel West Target;

Relevant Day has the meaning given to it in paragraph 5.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Remedial Agreement has the meaning given to it in paragraph 2.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan has the meaning given to it in paragraph 1.2(b) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan Notice has the meaning given to it in paragraph 1.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan Annual Operating Performance Threshold means in relation to the relevant Stage, the number set out in:

- (a) column relating to that Remedial Plan Annual Operating Performance Threshold; and
- (b) the row for that Stage,

in the Operating Performance Thresholds Table;

Remedial Plan Operating Performance Threshold means, as the context requires, the Remedial Plan Reporting Period Operating Performance Threshold or the Remedial Plan Annual Operating Performance Threshold;

Remedial Plan Quality Benchmark means any of the KPI Remedial Plan Benchmark, the Relevant MSS Remedial Plan Benchmark, the Relevant CSS Headline Remedial Plan Benchmark, the Relevant CSS Information Remedial Plan Benchmark, the Relevant CSS Security Remedial Plan Benchmark or the Relevant QPR Remedial Plan Benchmark;

Remedial Plan Reporting Period Operating Performance Threshold means in relation to the relevant Stage, the number set out in:

- (a) column relating to that Remedial Plan Reporting Period Operating Performance Threshold; and
- (b) the row for that Stage,

in the Operating Performance Thresholds Table;

Replacement Agreement means an agreement entered into as a replacement for any Relevant Agreement;

Replacement Copy has the meaning given to it in paragraph 2.2(b) of Schedule 13.2 (*Identity of the Suite of Models*);

Replacement Unit means a Unit that the Operator makes available on any day in a Reporting Period to replace any Unit that is Unavailable or suffers a Cancellation;

Reporting Period means a period of 28 days, provided that:

- (a) the first such period during the Concession Period shall exclude any days up to but not including the Start Date;
- (b) the first and last such period in any Concession Year may be varied by up to seven days by notice from RfL to the Operator;
- (c) each such period shall start on the day following the last day of the preceding such period; and
- (d) the last such period during the Concession Period shall end at the end of the Concession Period;

Required Rating means a long-term credit rating of:

- (a) in relation to the Performance Bond as at the date of this Agreement and upon the replacement of any Performance Bond (including where any Performance Bond is replaced pursuant to paragraph 2.3 of Schedule 14 (*Financial Obligations and Credit Support*), A+ or better from Standard & Poor's or A1 or better from Moody's; and
- (b) no less than A or better from Standard & Poor's or A2 or better from Moody's during the term of any Performance Bond;

Required Stage Step-in Action has the meaning given to it in paragraph 13.3(a) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Responsibility Factor means:

- (a) 1.1x in relation to:
 - (i) any Unit that is Unavailable for reasons attributable to the Operator;
 - (ii) any Cancellation that occurs for reasons attributable to the Operator (including where caused by the temporary closure of a Crossrail Station and where the Operator is jointly responsible with the relevant Infrastructure Manager);
 - (iii) any Relevant Excess Headway that occur for reasons attributable to the Operator; and
 - (iv) any Relevant Minutes Lateness that occur for reasons attributable to the Operator;
- (b) 0.1x in relation to:
 - (i) any Unit that is Unavailable for reasons attributable to the Rolling Stock Provider;
 - (ii) any Cancellation that occurs for reasons attributable to the Rolling Stock Provider;
 - (iii) any Relevant Excess Headway that occur for reasons attributable to the Rolling Stock Provider; and
 - (iv) any Relevant Minutes Lateness that occur for reasons attributable to the Rolling Stock Provider;
- (c) 0.1x in relation to:
 - (i) any Cancellation that occurs for reasons attributable to Network Rail (including where Network Rail is jointly responsible with the Operator);
 - (ii) any Relevant Excess Headway that occur for reasons attributable to Network Rail; and
 - (iii) any Relevant Minutes Lateness that occur for reasons attributable to Network Rail; and
- (d) 0.1x in relation to:
 - (i) any Cancellation that occurs for reasons attributable to HAL (including where HAL is jointly responsible with the Operator);
 - (ii) any Relevant Excess Headway that occur for reasons attributable to HAL; and
 - (iii) any Relevant Minutes Lateness that occur for reasons attributable to HAL; and
- (e) 0.1x in relation to any Cancellation that occurs because of a temporary closure of an Operator Station for reasons that are not attributable to the Operator that prevents a

Passenger Service calling at that Operator Station and so gives rise to a Missed Station Stop;

Restriction of Use has the meaning given to it in the Track Access Agreements to which the Operator is a party on the Start Date;

Restriction of Use Payment means any payment relating to any Restriction of Use imposed in any Reporting Period that comprises part of an Alternative Timetable Adjustment, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Revenue Account means the bank account held with a Bank to be notified to the Operator by the Start Date in the name of the Operator or such other bank account as the Operator may notify RfL of from time to time, into which the Operator is required to:

- (a) pay Ticket Revenue, other revenue from the sale of tickets and other amounts; and
- (b) to make payments to permitted third parties,

in each case, pursuant to paragraph 1 (*Acknowledgement*) of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Revenue Inspection Device means a mobile ticket inspection device, together with associated equipment;

Revenue Protection Incentive Adjustment means in respect of any Survey Period, any payment to be made to the Operator, or vice versa, pursuant to paragraph 4.2 of Schedule 9 (*Revenue Protection Incentive Regime*);

Revenue Protection Policy has the meaning given to it in paragraph 6.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Revenue Sweep has the meaning given to it in paragraph 5.2 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Review Date means:

- (a) as the context requires, 2 February 2015 or 30 April 2015; or
- (b) such later date as may be notified to the Operator by RfL pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement;

Revised Inputs has the meaning given to it in paragraph 2.1 of Schedule 13.3 (*Runs of the Model Suite*);

RfL Accommodation has the meaning given to it in paragraph 1.1 of Schedule 15.2 (*Co-location*);

RfL Agreed Recovery Plan has the meaning given to it in paragraph 5.4(a) of Schedule 7.4 (*General Operating Performance Provisions*);

RfL Crossrail Station Works has the meaning given to it in paragraph 4.1 of Schedule 4.2 (*Station and Depot Refurbishments and Enhancements*);

RfL Failure means a Performance Failure that is caused solely by:

- (a) the wilful misconduct of RfL in relation to the RSPA;
- (b) the breach by RfL of clause 25.5(c) or 30.7 of the RSPA, except in each case where that breach is caused by the Operator; or
- (c) RfL (IM)'s performance in operating the Central Operating Section;

RfL (IM) means a wholly-owned subsidiary of TfL that will act as the Infrastructure Manager of the Central Operating Section;

RfL (IM) HAL TOC-on-TOC Payment has the meaning given to it in paragraph 4.4 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

RfL (IM) NR TOC-on-TOC Payment has the meaning given to it in paragraph 4.1 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

RfL (IM) (Schedule 8) Payment means any payment made pursuant to any Track Access Agreement between the Operator and RfL (IM):

- (a) by RfL (IM) to the Operator to compensate the Operator for RfL (IM)'s performance of its rights and/or obligations under any such agreement; or
- (b) by the Operator to RfL (IM) to reward RfL (IM) for RfL (IM)'s performance of its rights and/or obligations under any such agreement;

RfL (IM) TAA means any Track Access Agreement between the Operator as train operator and RfL (IM) as infrastructure manager in respect of the Operator's access to the Central Operating Section;

RfL (IM) TAA Performance Regime has the meaning given to it in paragraph 3.2 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

RIDDOR means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

Rolling Stock Lease means any agreement for the leasing of rolling stock vehicles to which the Operator is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Operator is a party from time to time during the Concession Period whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

Rolling Stock Provider means Bombardier Transportation UK Ltd (No. 02235994) whose registered office is at Litchurch Lane, Derby DE24 8UD;

Rolling Stock Related Contract means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

Rolling Stock Unit means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Operator in the provision of the Passenger Services;

Route means any route specified in the Service Level Commitment which the Operator has permission to operate the Passenger Services over pursuant to any Track Access Agreement;

Route Utilisation Strategy means any route utilisation strategy or any document of a similar or equivalent nature notified to the Operator by the Network Rail on or before the Start Date

or as developed by Network Rail from time to time and notified to the Operator for the purposes of this Agreement;

RPI Index means:

- (a) the RPO2 Retail Prices Index (RPI All Items) published by the Office for National Statistics; or
- (b) on modification, cessation of or failure to publish the index referred to in paragraph (a), an appropriate equivalent index agreed by the parties at the time, or failing agreement, determined in accordance with paragraph 2 (*Disputes under this Agreement*) of Schedule 20 (*Other Provisions*), which in each case, puts the parties in no better or worse position than they would have been in had the index not been modified, ceased or unpublished;

RSP means Rail Settlement Plan Ltd;

RSPA means the Rolling Stock and Depot Service Provision Agreement between RfL and the Rolling Stock Provider in relation to the Class 345 Fleet and Old Oak Common Depot;

RSPA Agency Agreement means the agreement entered or (as the context may require) to be entered between the Operator, the Rolling Stock Provider and RfL pursuant to which RfL appoints the Operator as its agent for the purpose of performing certain of RfL's obligations, and exercising certain of RfL's rights, under the RSPA;

Rules means the timetable planning rules and rules governing the location, number and timing of Restrictions of Use and alternative train routes in the Relevant Network Code;

Run of the Model Suite means an operation of the Suite of Models with the Revised Inputs and which complies with the requirements of Schedule 13.3 (*Runs of the Model Suite*);

Safety Authorisation means the authorisation issued by the ORR under the Safety Regulations, authorising the Operator's safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Crossrail Route;

Safety Certificate means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Operator's safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Crossrail Route;

Safety Director has the meaning given to it in paragraph 2.1(d) of Schedule 15.1 (*Personnel, Communication and Access*);

Safety, Licensing and Training Report has the meaning given to it in paragraph 22.1 of Schedule 15.3 (*Responsible Procurement*);

Safety Management System has the meaning given to it in the Safety Regulations;

Safety Regulations means The Railways and Other Guided Transport Systems (Safety) Regulations 2006 as amended by the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006 and the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011;

Schedule 8 Recalibration Phase has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the Heathrow Access Option in relation to the Heathrow Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section Access Option Rights;

Schedule 8 Recalibration Phase Event has the meaning given to it in the On-Network Access Option in relation to the On-Network Access Option Rights and will have the same meaning given to it in the Heathrow Access Option in relation to the Heathrow Access Option Rights and the Central Operating Section Access Option in relation to the Central Operating Section Access Option Rights;

Schedule of Contributions has the meaning given to it in Part 3 of the Pensions Act 2004;

Scheduled Headway means the relevant Minutes Headway as scheduled in the Working Timetable at the Relevant Headway Recording Point (or if a working time is not included in the Working Timetable for the Relevant Headway Recording Point, the nearest appropriate proximate location to the Relevant Headway Recording Point with a working time included in the Working Timetable) for the relevant Passenger Service;

Scheduled Stage 1 Start Date means the Subsidiary Change Date occurring in May 2017;

Scheduled Stage 1a Start Date means 19 September 2017;

Scheduled Stage 2 Start Date means the Subsidiary Change Date occurring in May 2018;

Scheduled Stage 3 Start Date means the Principal Change Date occurring in December 2018;

Scheduled Stage 4 Start Date means the Subsidiary Change Date occurring in May 2019;

Scheduled Stage 5 Start Date means the Principal Change Date occurring in December 2019;

Scheduled Stage Start Date means any of the Scheduled Stage 1 Start Date, Scheduled Stage 1a Start Date, Scheduled Stage 2 Start Date, Scheduled Stage 3 Start Date, Scheduled Stage 4 Start Date or Scheduled Stage 5 Start Date;

Scheduled Station Stop Times means the scheduled times for each Station Stop to occur on any Diagram Leg as specified in the Working Timetable;

Scheduled Trial Operations Start Date means 4 August 2018;

Scheduled Trial Running Start Date means 6 July 2018;

Scope Book means the record maintained by CRL which describes the infrastructure works that are to be carried out in relation to the Crossrail Project;

Season Ticket Fare means a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Second Tranche has the meaning given to it in the cell in row 2 and column 2 of Table 1 in the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

Second Valuation has the meaning given to it in paragraph 4.1 of Schedule 15.5 (*Pensions*);

Secretary of State means the Secretary of State for Transport;

Secure Station means a station granted secure station accreditation under the Secure Station Scheme administered by the Department for Transport and BTP;

Security Interest means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

Senior Personnel has the meaning given to it in paragraph 2.2 of Schedule 20 (*Other Provisions*);

Service Group has the meaning given to it in TfL's Customer Charter when used in relation to TfL's Customer Charter, and when otherwise used in this Agreement it has the meaning given to it in any Track Access Agreement, or as specified by RfL from time to time;

Service Level Commitment means the service level commitment more particularly described in paragraph 1 (*Service Level Commitment – Purpose and Responsibility*) of Schedule 1.1 (*Timetable and Service Development*), including the following service level commitments:

- (a) the service level commitment to apply as at the Start Date, in the agreed terms marked **SLC0**;
- (b) the service level commitment to apply as at the Stage 1 Start Date, in the agreed terms marked **SLC1**;
- (c) the service level commitment to apply as at the Stage 2 Start Date, in the agreed terms marked **SLC2**;
- (d) the service level commitment to apply as at the Stage 3 Start Date, in the agreed terms marked **SLC3**;
- (e) the service level commitment to apply as at the Stage 4 Start Date, in the agreed terms marked **SLC4**;
- (f) the service level commitment to apply as at the Stage 5 Start Date, in the agreed terms marked **SLC5**; and
- (g) any other service level commitment developed in accordance with Schedule 1.1 or issued pursuant to Schedule 12.1 (*List of Priced Options*);

Service Quality Review has the meaning given to it in row 96 of the table in Schedule 10.1 (*List of Committed Obligations*);

Service Recovery Plan means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation and/or Short Formation, a plan implemented by the Operator:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and

- (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with the relevant Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the Approved Code of Practice or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Operator, the relevant Infrastructure Manager and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant region control manager or equivalent officer of the relevant Infrastructure Manager,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 17.6 (*Force Majeure*);

Settlement Proposal has the meaning given to it in paragraph 3.4 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Shared Costs Arrangement has the meaning given to it in the Protection Order;

Shared Facilities means those facilities in respect of which the Operator and any Infrastructure Manager carry out their respective activities concurrently;

Short Formation means a Class 315 Unit operates in 4-car formation when delivering a Diagram Leg that the Train Plan specified was to be operated in 8-car formation or by a Class 345 Unit, and **Short Formed** shall be construed accordingly;

Short Formation Adjustment means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 3.1 of Schedule 7.1 (*Operating Performance Regime*) and made in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*);

Short Formation Deduction means a deduction comprising part of any Short Formation Adjustment that is to be made to any Concession Payment in respect of the Operator's performance in delivering sufficient rolling stock capacity, calculated in accordance with paragraph 3.2 of Schedule 7.1 (*Operating Performance Regime*);

Side Guards means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

Silver Accreditation means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk;

Simulator means the train simulator to be procured under the terms of the RSPA;

Simulator Acceptance Date has the meaning given to it in the RSPA;

SME means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total,

those three categories being:

Company size	Employees	Turnover	Balance sheet
Micro	Less than 10	Less than or equal to €2m	Less than or equal to €2m
Small	Less than 50	Less than or equal to €10m	Less than or equal to €10
Medium	Less than 250	Less than or equal to €50m	Less than or equal to €43m

South Eastern means London & Southeastern Railway Limited whose registered address is 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne, NE1 6EE and whose registered number is 03860660;

South Eastern Station means Abbey Wood station, responsibility for the operation of which will transfer from South Eastern to the Operator on 10 December 2017;

South Eastern Transfer Agreement means the agreement to be between the Operator and South Eastern substantially in the same form as the Greater Anglia Transfer Agreement setting out the terms applicable to the transfer by South Eastern to the Operator of certain property, rights and liabilities;

Spares means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

Special Event means an event that occurs once, in a specified period or on an irregular basis in a calendar year in respect of which altered or additional Passenger Services and Station Services are in each case to be provided in accordance with either paragraph 9 (*Service Level Commitment*) of Schedule 1.1 (*Timetable and Service Development*) or paragraph 5 (*RfL Proposals to Change the Plan of the Day*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Special Event Amount means the amount calculated in accordance with factor *SEA* in the definition of *SEP* in paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*) in relation to an increase in the distance (measured in kilometres) operated by the Operator from that specified in the relevant Train Plan;

Special Event Payment means any payment that comprises part of an Alternative Timetable Adjustment, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

Special Tools Acceptance Date has the meaning given to it in the RSPA;

Sponsors' Requirements means the specification and requirements for the Crossrail Project specified in the project development agreement dated on or about 3 October 2008 between TfL and the Secretary of State (as sponsors) and CRL (as project delivery vehicle);

[REDACTED]

Stage means any of Stage 0, Stage 1, Stage 1a, Stage 2, Stage 3, Stage 4 or Stage 5;

Stage 0 has the meaning given to it in paragraph 2.3(a) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 1 has the meaning given to it in paragraph 2.3(b) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 1 Start Date means the date on which Class 345 RLUs are first operated by the Operator in passenger revenue earning service between Liverpool Street (Crossrail) station and Shenfield station;

Stage 1a has the meaning given to it in paragraph 2.3(c) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 1a Start Date means the date on which sufficient Class 345 RLUs have been made available to the Operator in order that the Operator may operate 11 passenger Diagrams in revenue earning service between Liverpool Street (Main Line) station and Shenfield station;

Stage 2 has the meaning given to it in paragraph 2.3(g) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 2 Start Date means the date on which Class 345 Units are first operated by the Operator in passenger revenue earning service between Paddington (Main Line) station and the Heathrow Stations;

Stage 3 has the meaning given to it in paragraph 2.3(h) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 3 Start Date means the date on which Class 345 Units are first operated by the Operator in passenger revenue earning service between Paddington (Crossrail) station and Abbey Wood station through the Central Operating Section;

Stage 4 has the meaning given to it in paragraph 2.3(i) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 4 Start Date means the date on which Class 345 Units are first operated by the Operator in passenger revenue earning service between Shenfield station and Paddington (Crossrail) station and between Paddington (Crossrail) station and Abbey Wood station, in each case through the Central Operating Section;

Stage 5 has the meaning given to it in paragraph 2.3(j) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage 5 Start Date means the date on which Passenger Services are first operated between Reading station and the Heathrow Stations in the west and Abbey Wood station and Shenfield station in the east, in each case through the Central Operating Section;

Stage Milestone has the meaning given to it in paragraph 2.5(b) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stage Start Date means any of the Stage 1 Start Date, Stage 1a Start Date, Stage 2 Start Date, Stage 3 Start Date, Stage 4 Start Date or Stage 5 Date;

Stage Step-in Date means the date specified in any Stage Step-in Notice on which RfL will step-in and assume the Operator's role in carrying out the remaining actions under the Staged Opening Plan;

Stage Step-in Notice means a notice issued by RfL pursuant to paragraph 13.1 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*) in relation to the staged opening of Crossrail in the form set out in the Appendix 1 (*Form of Stage Step-in Notice*) to Schedule 6;

Stage Step-in Period means the period between the Stage Step-in Date and the related Stage Step-out Date;

Stage Step-out Date means the date specified in any Stage Step-out Notice on which RfL will step-out and no longer assume the Operator's role in carrying out the remaining actions under the Staged Opening Plan;

Stage Step-out Notice means a notice issued by RfL pursuant to paragraph 13.6 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Staged Opening Infrastructure Works means those works to the infrastructure comprising the Crossrail Route that are specified in the Scope Book and which are to be completed in accordance with the Work Programme;

Staged Opening Plan has the meaning given to it in paragraph 2.6 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Staged Opening Programme means the activities to be completed by the dates comprising each of Stage 1 to Stage 5 inclusive, specified in paragraph 2.3 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);

Stakeholder means the Rail Passenger's Council, London Travel Watch and any relevant Local Authority;

Start Date means the time and date stated in the Certificate of Commencement as being the time at and date on which the Operator is to commence operating the Concession Services, which shall either be:

- (a) 0200 on 31 May 2015; or
- (b) such later time and date as may be notified to the Operator by RfL pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement;

Statement of Funding Principles has the meaning given to it in Part 3 of the Pensions Act 2004;

Station & Staff Information Survey means a survey in respect of the passenger experience at Crossrail Stations, on trains and on replacement bus services, which may be carried out by RfL or its nominee pursuant to the Quality Performance Regime and in accordance with the QPR Methodology in the agreed terms marked *SIS*;

Station Access Agreement means in relation to any Crossrail Station, an Access Agreement between the Facility Owner and that access beneficiary, incorporating by reference, as appropriate, the Station Access Conditions or the Independent Station Access Conditions, which permits that access beneficiary to use that Crossrail Station and specified amenities and receive certain services;

Station Access Conditions means the document known as the National Station Access Conditions and the station annexes as each is modified in respect of the relevant Crossrail Station from time to time with the approval of the ORR;

Station Areas means those Car Park Areas and Non-Operational Areas specified in the Deed of Subleases, including any such areas following its re-statement pursuant to paragraph 5.4(b) of Schedule 4.1 (*Property Leasing and Access*);

Station Call means the stopping of a Passenger Service at a station to allow passengers to board or alight that service, which shall include the originating station of that service;

Station Charge Adjustment means any adjustment to Concession Payments to reflect any adjustment to payments under an Access Agreement, determined in accordance with paragraph 2 (*Station Charge Adjustment*) of Schedule 11.3 (*Access Charge Adjustments*);

Station Deep Clean Programme has the meaning given to it in paragraph 1.4 of Schedule 4.2 (*Station and Depot Refresh, Refurbishments and Enhancements*);

Station Lease means:

- (a) any lease of a station that the Operator is a party to as at the Start Date; or
- (b) a lease of any other station in relation to which the Operator becomes the Facility Owner at any time during the Concession Period,

in each case in the agreed terms marked *SL*;

Station Lease Confirmation means confirmation provided by the Operator to RfL in a form satisfactory to RfL that the Operator has entered into Station Leases with Network Rail in respect of the Eastern Section Operator Stations and any leases in relation to Shared Facilities and Managed Station Areas, in each case connected with the Eastern Section, which will be used for or in connection with the provision of the Concession Services and contracted out of Part II of the Landlord and Tenant Act 1954;

Station Operating Day means, in relation to any Crossrail Station on any day, the period between 15 minutes prior to the first Station Call at that Crossrail Station and 15 minutes after the last Station Call at that Crossrail Station;

Station Service means any service specified in paragraph 2 (*Station Services*) of Schedule 2 (*Concession Services*) which may be provided by the Operator at the Operator Stations;

Station Stop means:

- (a) in relation to a Class 315 Unit, that a train door release command followed by a train door close command has, in each case, been properly registered either by the train management system on the requisite side of that Class 315 Unit or by any alternative means of accurately recording that those commands occurred, in each case at a relevant station on the Crossrail Route; or
- (b) in relation to a Class 345 Unit, that a train door release command followed by a train door close command has, in each case, been properly registered by the TMS on the requisite side of that Class 345 Unit at a relevant station on the Crossrail Route;

Station Stop Factors means:

- (a) in the case of a Unit that is Unavailable or a Cancellation, the factors to be applied in accordance with the following to the Base Station Values of the Missed Station Stops that occur during the relevant Diagram Leg as a result of that Unit being Unavailable or that Cancellation:
 - (i) if there is one Missed Station Stop, a factor of 35x to the Base Station Value of that Missed Station Stop;
 - (ii) if there are two Missed Station Stops, whichever of the following factors would, when applied, produce the highest Total Station Value:
 - (A) a factor of 35x and 15x to the lowest and second lowest Base Station Values respectively of those Missed Station Stops; or
 - (B) assuming only the first Missed Station Stop occurred, a factor of 35x to the Base Station Value of the first Missed Station Stop; and
 - (iii) if there are more than two Missed Station Stops, whichever of the following factors would, when applied, produce the highest Total Station Value:
 - (A) a factor of 35x, 15x and 1x to the lowest, second lowest and all subsequent Base Station Values respectively of those Missed Station Stops;
 - (B) assuming only the first Missed Station Stop occurred, a factor of 35x to the Base Station Value of the first Missed Station Stop; or
 - (C) assuming only the first two Missed Station Stops occurred, a factor of 35x and 15x to the lowest and second lowest Base Station Values respectively of those Missed Station Stops; and
- (b) in the case of a Short Formation, the factors to be applied in accordance with the following to the Base Station Values of the Station Stops that are made during the relevant Diagram Leg:
 - (i) in the case of the Station Stop with the lowest Base Station Value, a factor of 35x;
 - (ii) in the case of the Station Stop with the next lowest Base Station Value, a factor of 15x; and

- (iii) in the case of all other Station Stops, a factor of 1x;

Station Sublease means a lease or sublease of premises comprising part or parts of an Operator Station exclusively occupied by another Train Operator;

Station Usage Agreement means an agreement in the agreed terms *SUA* between a Facility Owner and an access beneficiary in relation to a Crossrail Station that is outside the scope of the Act and which permits that access beneficiary to use that Crossrail Station and specified amenities and receive certain services;

Strategic Equality and Diversity Plan means the strategic equality and diversity plan to be settled in accordance with paragraph 5.4(a) of Schedule 15.3 of (*Responsible Procurement*);

Strategic Labour Needs and Training Co-ordinator has the meaning given to it in paragraph 10.1 of Schedule 15.3 (*Responsible Procurement*);

Strategic Labour Needs and Training Plan means the strategic labour needs plan to be approved by RfL in accordance with 9.3 of Schedule 15.3 of (*Responsible Procurement*);

Subcontractor means a Direct Subcontractor or Indirect Subcontractor;

Subleases Tenant has the meaning given to it in paragraph 5.2 of Schedule 4.1 (*Property Leasing and Access*);

Subsidiary Change Date has the meaning given to it in the Relevant Network Code;

Sub-Threshold Change has the meaning given to it in paragraph 3.1 of Schedule 13.1 (*Financial Consequences of Change*);

Successive Station Stop Factor means in relation to any calculation made pursuant to paragraph 2.3 or 2.9 of Schedule 7.1 (*Operating Performance Regime*), a factor of 5x to be applied to the Base Station Value (in addition to any Station Stop Factor applied) of any Missed Station Stop if the same prior scheduled Station Stop was also a Missed Station Stop, provided that the Successive Station Stop Factor shall be 1x where the temporary closure of any Crossrail Station causes a Missed Station Stop and the same prior scheduled Station Stop to also be a Missed Station Stop;

Successor Operator means a Train Operator succeeding or intended by RfL to succeed (and whose identity is notified to the Operator by RfL) the Operator in the provision or operation of all or any of the Concession Services including, where the context so admits, the Operator where it is to continue to provide or operate the Concession Services following termination of this Agreement;

Successor Operator Timetable has the meaning given to it in paragraph 1.2(a) of Schedule 18.1 (*Continuity of Services*);

Suite of Models means the Financial Model and the Operational Models;

Supplemental Agreement means a supplemental agreement between the Operator and a Successor Operator to be entered into pursuant to a Transfer Notice, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 18.3 (*Transfer*), but subject to such amendments as RfL may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of this Agreement and the date on which the relevant Transfer Notice is given and subject further to paragraph 6.2 of Schedule 18.3;

Supplier Diversity Plan means the supplier diversity plan to be approved by RfL in accordance with paragraph 5.4(c) of Schedule 15.3 (*Responsible Procurement*);

Support Letter means the letter from the Parent to the Operator and RfL dated 29 July 2014 under which the Parent agrees to make available to the Operator the Inter-company Loan Facility on the terms set out in that Support Letter for the duration of the Concession Period;

Survey Period means any of the following periods:

- (a) the first to the third Reporting Period (inclusive) of any Concession Year, where the first Reporting Period shall commence on the first day of that Concession Year;
- (b) the fourth to the sixth Reporting Period (inclusive) of any Concession Year;
- (c) the seventh to the tenth Reporting Period (inclusive) of any Concession Year; and
- (d) the eleventh to the thirteenth Reporting Period (inclusive) of any Concession Year, where the thirteenth Reporting Period shall end on the last day of that Concession Year;

System Interface Committee means any committee of representatives of the railway industry (or elements thereof) established to consider system interface issues across the railway industry or the Crossrail Project and which is designated as such by RfL;

Taxation means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of this Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere and **Taxes** shall be construed accordingly;

TDO means total depot operation;

Technical Support Contract means a contract for technical support to which the Operator is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;

Termination Event has the meaning given to it in paragraph 3 (*Termination Event*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*);

Termination Notice means a notice from RfL to the Operator terminating this Agreement following an Event of Default or a Termination Event in accordance with Schedule 17.4 (*Termination and Expiry*);

TfL means Transport for London, a statutory corporation established under the GLA Act;

TfL Group means TfL and all its subsidiaries from time to time;

TfL Penalty Fares Scheme means the penalty fares scheme applying to the Passenger Services, introduced or, as the context may require, to be introduced by TfL on or before the Start Date pursuant to Schedule 17 of the GLA Act as such scheme may be amended from time to time and notified to the Operator;

TfL Rail Operating Brand means the branding specified by RfL for the purpose of signalling the commencement of Passenger Services between Shenfield station and Liverpool Street (Main Line) station;

TfL Revenue Enforcement and Prosecutions Policy means the TfL policy in respect of the carrying out by TfL's agents of revenue protection enforcement measures, as such policy may be approved by TfL's board from time to time;

TfL Staff Travel Scheme means the scheme, the terms of which are notified to the Operator by TfL from time to time, operated by TfL for the purpose of offering free or concessionary travel on various transport services, including the Passenger Services, to employees of TfL, other nominated persons and the employees and other nominated persons of organisations nominated by TfL;

TfL's Customer Charter means TfL's service commitments to its passengers in relation to Crossrail, other rail services and other transport modes sponsored or funded by the TfL Group, as amended or replaced from time to time;

TfL's Customer Charter Statistics means the record of the Operator's performance against the standards specified in the TfL's Charter for each Reporting Period as published in accordance with paragraphs 7.7 and 7.8 of Schedule 2.2 (*List of Concession Services*);

Thirteen Period Measurement Period means any period of thirteen consecutive Reporting Periods, ending with the Reporting Period in which the Operator's performance is measured against any of the Operating Performance Thresholds;

Threshold Amount means, in relation to a Change, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = T \times RPI$$

where:

TA is the Threshold Amount;

T is £[REDACTED]; and

RPI is ascertained in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Periodic and Annual Concession Payments and Indexation*);

Threshold Headway means Minutes Headway equal to 140 per cent. of the relevant Scheduled Headway, rounded down to the nearest second of Minutes Headway;

Through Ticketing (Non-Travelcard) Agreement means the agreement of that name referred to in paragraph (e) of the definition of Inter-Operator Scheme;

Ticket Equipment means ticket gatelines, passenger validators, remote ticketing devices, CIDs, Revenue Inspection Devices, TOMs, TVMs, contactless payment devices and all associated electrical equipment, telephone and data communication lines and equipment;

Ticket Queuing Time Methodology means, as at the date of this Agreement, the Ticket Queuing Time Survey methodology in the agreed terms marked ***TQTM***;

Ticket Queuing Time Regime means the regime set out in Schedule 8.5 (*Ticket Queuing Time Regime*);

Ticket Queuing Time Score has the meaning given to it in paragraph 3.1 of Schedule 8.5 (*Ticket Queuing Time Regime*);

Ticket Queuing Time Survey means a survey of ticket queuing times at ticket offices and TVMs at any Crossrail Station, which will be carried out by RfL or its nominee over a Survey Period in accordance with the Ticket Queuing Time Methodology;

Ticket Queuing Time Target Benchmark means 95 per cent. of all queuing times at ticket offices and TVMs at any Crossrail Station are no more than three minutes;

Ticket Revenue means any revenue:

- (a) owed to the Operator under the terms of the Ticketing and Settlement Agreement, excluding commission owed in respect of sales of TSA Fares for travel on railway passenger services other than the Passenger Services; and
- (b) owed to RfL in respect of journeys made by the passengers travelling on the Passenger Services, including revenue derived from use of Oyster products (to the extent not already forming part of the revenue referred to in paragraph (a));

Ticketing and Settlement Agreement means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Operator and the other Train Operators named therein, as amended from time to time with the approval of the Secretary for State;

Ticketing and Account Liabilities Adjustment has the meaning given to it in paragraph 5.4 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

Ticketless Travel East Default Benchmark means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the Eastern Section, a Relevant Ticketless Travel Rate of seven per cent. until 31 March 2017 and six per cent. thereafter, measured in each case by any Ticketless Travel Surveys carried out during any consecutive period of 13 Reporting Periods during the Concession Period (measured as a moving annual average across all such surveys);

Ticketless Travel East Rate means the proportion (expressed as a percentage) of passenger journeys on Passenger Services on the Eastern Section that are undertaken without the correct ticket, determined following the carrying out of a Ticketless Travel Survey;

Ticketless Travel East Remedial Plan Benchmark means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the Eastern Section, a Relevant Ticketless Travel Rate of five per cent. until 31 March 2017 and four per cent. thereafter, measured in each case by any Ticketless Travel Survey;

Ticketless Travel East Target means, as a consequence of passengers travelling without the correct ticket on Passenger Services on the Eastern Section, a Relevant Ticketless Travel Rate of three per cent. until 31 March 2017 and two per cent. thereafter, measured in each case by any Ticketless Travel Surveys carried out during any consecutive period of 13 Reporting Periods during the Concession Period (measured as a moving annual average across all such surveys);

Ticketless Travel MAA Rate has the meaning given to in paragraph 3 (*Performance against the Relevant Ticketless Travel Rate*) of Schedule 9 (*Revenue Protection Incentive Regime*);

Ticketless Travel Survey means the survey carried out by RfL or its nominee in any Survey Period to determine the proportion of passengers travelling without a correct ticket and so the Relevant Ticketless Travel Rate for such period;

Ticketless Travel Survey Methodology means, as at the date of this Agreement, the agreed methodology for carrying out Ticketless Travel Surveys and calculating the Relevant Ticketless Travel Rate in the agreed terms marked ***TTSM***;

Ticketless Travel West Default Benchmark means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the Western Section, a Relevant Ticketless Travel Rate of seven per cent. until 31 March 2017 and six per cent. thereafter, measured in each case measured by any Ticketless Travel Surveys carried out during any consecutive period of 13 Reporting Periods during the Concession Period (measured as a moving annual average across all such surveys);

Ticketless Travel West Rate means the proportion (expressed as a percentage) of passenger journeys on Passenger Services on the Western Section that are undertaken without the correct ticket, determined following the carrying out of a Ticketless Travel Survey;

Ticketless Travel West Remedial Plan Benchmark means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the Western Section, a Relevant Ticketless Travel Rate of five per cent. until 31 March 2017 and four per cent. thereafter, measured in each case by any Ticketless Travel Survey;

Ticketless Travel West Target means, as a consequence of passengers travelling without the correct ticket on Passenger Services on the Western Section, a Relevant Ticketless Travel Rate of three per cent. until 31 March 2017 and two per cent. thereafter, measured in each case by any Ticketless Travel Surveys carried out during any consecutive period of 13 Reporting Periods during the Concession Period (measured as a moving annual average across all such surveys);

Time Band means any of the time bands set out in the relevant rows of Tables A to F inclusive of Appendix 1 (*Base Station Values*) to Schedule 7.1 (*Operating Performance Regime*) and all Station Stops on a particular Diagram Leg will be allocated to a particular Time Band according to that Diagram Leg's Scheduled Station Stop Time at Tottenham Court Road station or, where the relevant Diagram Leg was not due to stop at Tottenham Court Road station, at its final scheduled Station Stop Time;

Timetable means the passenger timetable which reflects the aggregate of the working timetables issued by each Infrastructure Manager at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at Crossrail Stations; and
- (b) principal Connections at those stations and other stations;

Timetable Change means:

- (a) any change to the Timetable which come into effect on a Passenger Change Date; or
- (b) any significant alteration to the Passenger Services between any two Passenger Change Dates, including weekend engineering works;

Timetable Development Rights means all or any of the rights of the Operator under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;

- (b) deliver any required notification and/or declaration to any Infrastructure Manager in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Relevant Network Code where relevant;
- (d) surrender any Train Slots allocated to the Operator by any Infrastructure Manager in accordance with that Track Access Agreement;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by any Infrastructure Manager; and
- (f) seek from any Infrastructure Manager additional benefits as a condition to granting any consent to any actual or proposed act or omission by that Infrastructure Manager;

Timetable Planning Period means the bi-annual period prescribed in the Relevant Network Code, during which the relevant Infrastructure Manager establishes that part of the working timetable which specifies the Passenger Services that are to operate on the part of the Crossrail Route that that Infrastructure Manager operates or procures the operation of;

Timetable Requirements means the requirements to deliver the Timetable with the passenger carrying capacity stipulated in the relevant Train Plan which satisfies the requirements of paragraph 5.4 of Schedule 1.1 (*Timetable and Service Development*);

TMS has the meaning given to it in the RSPA;

TOM means a ticket office ticket vending machine;

Total Cancellation means a Passenger Service which is scheduled to be provided under the Plan of the Day and which is cancelled or does not otherwise operate for more than half its scheduled mileage under the Plan of the Day;

Total Station Value means:

- (a) in relation to a Unit that Misses a Station Stop, the value for that Missed Station Stop calculated in accordance with the following:

$$TSV = BSV \times SSF \times SSSF$$

where:

TSV means the Total Station Value for any such Missed Station Stop;

BSV means the Base Station Value for any such Missed Station Stop;

SSF means the Station Stop Factor applicable to that Missed Station Stop; and

SSSF means the Successive Station Stop Factor applicable to that Missed Station Stop; and

- (b) in relation to a Class 315 Unit that is Short Formed and calls at a Station Stop, the value for that Station Stop calculated in accordance with the following:

$$TSV = BSV \times SSF$$

where:

TSV means the Total Station Value for any such Station Stop;

BSV means the Base Station Value for any such Station Stop; and

SSF means the Station Stop Factor applicable to that Station Stop;

Track Access Adjustment means any adjustment to Concession Payments to reflect any adjustment to payments under a Track Access Agreement, determined in accordance with paragraph 1 (*Track Access Adjustments*) of Schedule 11.3 (*Pass Through Access Charge Adjustments*);

Track Access Agreement means each Access Agreement between any Infrastructure Manager and the Operator which permits the Operator to provide the Passenger Services on track operated by that Infrastructure Manager, incorporating by reference where relevant, the Relevant Network Code;

Track Access Agreement Performance Adjustment means the adjustment to any Concession Payment to be made as part of a Pass Through Adjustment pursuant to paragraph 3.1 of Schedule 11.1 (*Concession Payments*) and calculated in accordance with paragraph 3.3 of Schedule 11.1;

Traction Electricity Charge Adjustment means the adjustment to any Concession Payment for any Reporting Period to be calculated in accordance with paragraph 3.5 of Schedule 11.1 (*Concession Payments*) and made in accordance with 3.1 of Schedule 11.1;

Traction Electricity Consumption Saving Adjustment means the adjustment to any Concession Payment for any Reporting Period to be calculated in accordance with paragraph 3.6 of Schedule 11.1 (*Concession Payments*) and made in accordance with 3.1 of Schedule 11.1;

Train Fleet means the rolling stock vehicles specified in or required by the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*) and any other rolling stock vehicles RfL consents to in accordance with paragraph 2 (*Changes to the Train Fleet*) of Schedule 5.1 from time to time;

Train Operator means any of:

- (a) a franchisee or franchise operator either of which operate railway passenger services pursuant to a franchise agreement;
- (b) a concession operator which operates railway passenger services pursuant to a concession agreement to which RfL (or any other member of the TfL Group) is a party; or
- (c) a Public Sector Operator;

Train Plan means the plan of the Operator for the operation of trains and train formations under the Timetable developed in accordance with Schedule 1.1 (*Timetable and Service Development*) and in a form approved by RfL, except that when used in Schedule 7.1 (*Operating Performance Regime*), it shall have the meaning given to it in paragraph 3.4 of that Schedule;

Train Plan Parameters has the meaning given to it in the RSPA;

Train Slots shall have the meaning given to it in the Relevant Network Code;

Train Technical Requirements has the meaning given to it in the RSPA;

Transaction Documents means this Agreement, the Conditions Precedent Agreement, the RSPA Agency Agreement, the Class 345 Lease and the Support Letter;

Transfer Date means the date on which the employment of any Transferring Employee transfers to the Operator by operation of TUPE;

Transfer Notice means a transfer notice given by RfL pursuant to paragraph 6 (*Transfer of Primary Concession Assets*) of Schedule 18.3 (*Transfer*) requiring the Operator to transfer to a Successor Operator the Primary Concession Assets specified in such Transfer Notice on the expiry of the Concession Period, such notice being substantially in the form of Appendix 1 (*Form of Transfer Notice*) to Schedule 18.3 (*Transfer*), but subject to such amendments as RfL may make thereto as a result of any change of circumstances between the date of this Agreement and the date on which such notice is given;

Transferring Employee means each Concession Employee who was employed by a Transferring Employer and whose contract of employment is transferred to the Operator by virtue of the operation of TUPE as a result of the events contemplated by this Agreement;

Transferring Employers means Greater Anglia, Great Western and South Eastern;

Transferring Services and Stations means the Greater Anglia Services and Stations, the Great Western Services and Stations and the South Eastern Station;

Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received;

Transport Act means the Transport Act 2000;

Travel Safe Officer means a customer-facing Operator Employee whose primary functions are to protect RfL's revenue and offer security and assistance to customers, including when Passenger Services are disrupted and in connection with Special Events;

Travelcard Agreement means the agreement of that name referred to in paragraph (d) of the definition of Inter-Operator Scheme;

Trial Operations means the operation by the Operator of a 15 train-per-hour service between Paddington (Crossrail) station and Abbey Wood station in order to develop familiarisation with the Central Operating Section's infrastructure, control equipment systems, operational rules and procedures;

Trial Operations Period means, subject to 6.3 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*), the period scheduled between 4 August 2018 and 8 December 2018 during which Trial Operations is to be carried out;

Trial Running means the operation by the Operator of a 15 train-per-hour service between Paddington (Crossrail) station and Abbey Wood station in order to demonstrate the capacity and reliability of the Central Operating Section;

Trial Running Period means, subject to paragraph 6.3 of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*), the period scheduled between 6 July 2018 and 3 August 2018 during which Trial Running is to be carried out;

TRUST means the operating system owned by Network Rail for recording train running performance;

Trustee means the trustee of the Railways Pension Scheme from time to time.

TSA Fare means a Fare that may be Created under the terms of the Ticketing and Settlement Agreement;

TSI means any Technical Standard for Interoperability with which the Operator is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Turnaround Period means the period specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Operator from the carrying out of the Concession Services and the receipt of Concession Payments during such period;

TVM means ticket vending machine;

Unavailable means in respect of an Accepted Unit, that such Unit is not Available and ***Unavailability*** shall be construed accordingly;

Unit means a Class 345 Unit or a Class 315 Unit;

Updated Business Plan means the revised business plan to be provided prior to the start of each Concession Year (other than the first Concession Year) in accordance with paragraph 3.4 of Schedule 16.1 (*Records, plans and reports*);

Usage Agreement means a Depot Usage Agreement or a Station Usage Agreement;

User has the meaning given to it in the Ilford Unregulated Depot Usage Agreement;

Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994;

Van means a vehicle with a MAM not exceeding 3,500 kilograms including a van, a Car-derived van or other vehicle designed for carrying freight (excludes passenger cars, motorcycles, mopeds and bicycles);

Variation means a variation to the terms of this Agreement pursuant to paragraph 1 of Schedule 13.4 (*Variations*);

WEE Equipment means any equipment which falls within the scope of the WEEE Regulations;

WEEE Regulations means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007);

Weekday means any day other than a Saturday, a Sunday or a Bank Holiday;

Western Section means that part of the Crossrail Route between:

- (a) Reading and Heathrow Airport Junction (via the Relief Lines);
- (b) Heathrow Tunnel Junction and Heathrow Airport Junction (via the Airport Line and Crossrail Airport Line);
- (c) Heathrow Airport Junction and Ladbroke Grove (via the Relief Lines);
- (d) Ladbroke Grove and Paddington (Main Line) (via Lines 1 to 6);
- (e) Ladbroke Grove and Portobello Junction;
- (f) Maidenhead and the Maidenhead Turnback Siding;
- (g) Maidenhead and the Maidenhead Stabling Siding;
- (h) Old Oak Common Depot and either Ladbroke Grove or Portobello Junction (via Depot Lines 1 and 2, the Engine and Carriage Road, the Washer By-pass road or the Back Line);
- (i) Reading and Heathrow Airport Junction (via the Main Lines); and
- (j) Heathrow Airport Junction and Ladbroke Grove (via the Main Lines);

Western Section Operator Stations means the Crossrail Stations specified in paragraph 3.5 of Schedule 4.1 (*Property Leasing and Access*);

Western Section Stations means the stations specified in paragraph 2.4 of Schedule 4.1 (*Property Leasing and Access*);

Work Programme means the programme for the completion of the infrastructure works that are set out in the Scope Book;

Working Timetable has the meaning given to it in the Relevant Network Code;

Young Person's Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (b) of the definition of Discount Fare Scheme; and

Zone means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect.

3. COMMENCEMENT

3.1 The provisions listed in clauses 3.1(a) and (b) together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be binding upon the parties immediately upon signature of this Agreement (or as otherwise indicated):

- (a) clauses 1 (*Interpretation*) to 10 (*Governing Law and Jurisdiction*) inclusive;
- (b) Schedule 1.1 (*Timetable and Service Development*);
- (c) paragraph 14.1 of Schedule 2.2 (*List of Concession Services*);

- (d) Schedule 3.1 (*Specification and Creation of Fares*):
 - (i) paragraph 1 (*RfL Specification of Fares*) provided that the relevant aspects of paragraph 1 shall only be operative from the date the Operator accedes to the Ticketing and Settlement Agreement in accordance with its terms; and
 - (ii) paragraph 3 (*Changes to the Fares Document*);
- (e) Schedule 3.3 (*Ticket and Non-Ticket Revenue*):
 - (i) paragraph 2 (*Revenue Account*);
 - (ii) paragraph 6 (*Revenue Protection Enforcement*) in relation to the development of the Revenue Protection Policy and the co-operation referred to therein;
 - (iii) paragraph 7.2; and
 - (iv) paragraph 9 (*Indemnity*);
- (f) paragraph 1 (*Integrated Transport Schemes*) of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*);
- (g) Schedule 4.1 (*Property Leasing and Access*):
 - (i) paragraph 5 (*Operator to sublease Station Areas*);
 - (ii) paragraph 6 (*Ilford Depot*); and
 - (iii) paragraph 8 (*General Property Lease Provisions*) to 11 (*Long Term station leases let by RfL (IM) or RfL's nominee*) inclusive;
- (h) paragraphs 1 (*Manufacture And Supply of The Class 345 Fleet*) to 4 (*Training*) inclusive of Schedule 5.3 (*Introduction of the Class 345 Fleet*);
- (i) Schedule 6 (*Crossrail Train Operating Concession Staged Opening*);
- (j) paragraph 1.2 of Schedule 7.1 (*Operating Performance Regime*);
- (k) paragraph 9 (*Changing the Key Performance Indicators*) of Schedule 8.1 (*KPI Regime*);
- (l) those Committed Obligations listed in Schedule 10.1 (*List of Committed Obligations*) which are to be delivered or partially delivered on or before the Start Date;
- (m) Schedule 10.2 (*Miscellaneous Provisions*) insofar as that Schedule relates to the delivery of those Committed Obligations referred to in clause 3.1(l);
- (n) Schedule 10.3 (*Late/Non Completion of Committed Obligations*), including the Appendix (*Committed Obligations to which Committed Obligation Payments apply*) thereto, but only insofar as that Schedule and Appendix relate to the delivery of those Committed Obligations referred to in clause 3.1(l);
- (o) paragraph 6.2(b) of Schedule 11.1 (*Concession Payments*);
- (p) Schedule 12 (*Priced Options*);

- (q) Schedule 13 (*Changes and Variations*);
- (r) Schedule 14 (*Financial Obligations and Credit Support*);
- (s) Schedule 15 (*Concession Management Provisions*);
- (t) Schedule 16.1 (*Records, plans and reporting*):
 - (i) paragraph 1 (*Corporate Information*);
 - (ii) paragraph 3 (*Business Plans*), provided that in relation to any Business Plan, insofar as that paragraph relates to the Initial Business Plan;
 - (iii) paragraph 4 (*Marketing Plan*); and
 - (iv) paragraphs 6 (*Safety Information*) to 10 (*Maintenance and standard of information*) inclusive;
- (u) Schedule 17 (*Remedies, Termination and Expiry*);
- (v) Schedule 18 (*Continuity, Restrictions on Dealings and Transfer*);
- (w) Schedule 20 (*Other Provisions*); and
- (x) Schedule 21 (*List of Documents in the Agreed Terms*).

3.2 The other provisions of this Agreement shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

4. TERM

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 4.2(a) or 4.3(a) of the Conditions Precedent Agreement or pursuant to Schedule 17 (*Remedies, Termination and Expiry*).

5. GENERAL OBLIGATIONS

5.1 The Operator shall perform its obligations under this Agreement in accordance with their terms and with that degree of skill, diligence, efficiency, prudence and foresight which would be exercised by a skilled and experienced Train Operator of Crossrail.

5.2 Any obligation on the part of the Operator to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

5.3 The Operator shall co-operate with RfL and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

5.4 RfL shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

6. COMPLIANCE WITH LAWS

The Operator shall at all times during the Concession Period perform the Concession Services and all its other obligations under this Agreement in accordance with all applicable Laws.

7. SCHEDULES

The provisions of Schedule 1 (*Passenger Service Obligations*) to Schedule 20 (*Other Provisions*) inclusive shall apply.

8. DOCUMENTS IN THE AGREED TERMS

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Schedule 21 (*List of Documents in the Agreed Terms*).

9. ENTIRE AGREEMENT

9.1 This Agreement and the other Transaction Documents contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Operator may have entered into with TfL in connection with its proposal to secure the provision of the Passenger Services under this Agreement.

9.2 The Operator hereby acknowledges that it is not entering into this Agreement or the other Transaction Documents in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in this Agreement or any other Transaction Document.

9.3 The Operator hereby acknowledges and agrees with RfL (for itself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled “Important Notice” contained in any document supplied by or on behalf of TfL in connection with this Agreement or any other Transaction Document, the process leading to the entering into of this Agreement or any other Transaction Document, or the Concession Services (including any “Invitation to Tender” issued in connection therewith).

9.4 The Operator irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the other Transaction Documents) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

10. GOVERNING LAW AND JURISDICTION

10.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by English Law.

10.2 Save as expressly provided otherwise in this Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement, including disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or legal relationships established by, this Agreement; and
- (b) any non-contractual obligations arising out of or in connection with this Agreement,

and each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF **RAIL FOR LONDON
LIMITED**

DIRECTOR:



.....

DIRECTOR:

.....

SIGNED FOR AND ON
BEHALF OF **MTR CORPORATION
(CROSSRAIL) LIMITED**

DIRECTOR:



.....

ATTORNEY:

.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

.....

NAME OF WITNESS:

.....

ADDRESS OF WITNESS:

.....

SCHEDULE 1

PASSENGER SERVICE OBLIGATIONS

- Schedule 1.1:** **Timetable and Service Development**
 Appendix: Passenger Service Development Additional Factors
- Schedule 1.2:** **Passenger Service Operating Obligations**
- Schedule 1.3:** **Managing Changes to the Passenger Services**
 Appendix: Kilometrage Adjustment Rates
- Schedule 1.4:** **Persons with Disabilities and Disability Discrimination**

SCHEDULE 1.1

Timetable and Service Development

1. SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

1.1 A Service Level Commitment is the means by which RfL specifies the level, frequency, maximum journey times, stopping patterns, rolling stock class and formation of the railway passenger services that the Operator is to:

- (a) seek Train Slots for from each Infrastructure Manager; and
- (b) operate pursuant to the working timetable issued by the relevant Infrastructure Manager at the end of that Infrastructure Manager's timetable development process.

1.2 RfL shall issue to the Operator a Service Level Commitment for, and prior to the start of, each timetable development process of the Infrastructure Managers during the Concession Period.

1.3 The Service Level Commitment as at the date of this Agreement is in the agreed terms marked *SLC0*, attached to this Agreement.

1.4 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail RfL considers appropriate.

2. TRAIN PLAN – PURPOSE AND RESPONSIBILITY

2.1 A Train Plan is the means by which the Operator expresses its proposed allocation of the passenger carrying capacity of the Train Fleet to meet passenger demand for the railway passenger services it is to operate.

2.2 The Operator shall submit to RfL a Train Plan in respect of:

- (a) each Service Level Commitment; and
- (b) subsequently, each Timetable, in each case in accordance with this Schedule 1.1.

2.3 In preparing any Train Plan, the Operator shall do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment to which it relates and, in the case of the deployment of the Class 345 Fleet, the Train Plan Parameters.

2.4 The Train Plan for the Timetable as at the Start Date shall be submitted by the Operator to RfL no less than three months before the Start Date in a form acceptable to RfL.

2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the class of rolling stock vehicles that the allocated train is to have;
- (d) the Unit configuration that the allocated train is to have; and

- (e) its Actual Passenger Demand most recently determined and notified pursuant to paragraph 6.3.
- 2.6 A Train Plan shall be in any format that RfL may reasonably specify for this purpose.

3. SERVICE LEVEL DEVELOPMENT

The Operator agrees to co-operate with RfL to develop the Service Level Commitment in accordance with this Schedule 1.1.

4. PROCEDURE

4.1 The Operator agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other concession agreements for the provision of railway passenger services and other agreements for the procurement of public transport services, in each case to which RfL may be a party, or franchise agreements entered into by the Secretary of State, will require certain procedural arrangements and timescales to be followed to a common timescale by RfL, the Operator and others.

4.2 The Operator agrees that RfL may stipulate any reasonable procedural arrangements and timescales that are to be followed by RfL and the Operator for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that RfL may amend any such stipulation.

4.3 RfL agrees to consult the Operator as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 4.2.

4.4 Any stipulation by RfL pursuant to paragraph 4.2:

- (a) shall be at the reasonable discretion of RfL;
- (b) may contain procedural arrangements and timescales to be followed by the Operator in relation to other changes to the Concession Services (pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*)) in conjunction with a Service Level Commitment; and
- (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Model Suite in relation thereto.

5. OPERATOR'S PASSENGER SERVICE DEVELOPMENT OPINIONS

Requirements of opinion

5.1 As and when required by RfL pursuant to paragraph 4.2, the Operator shall provide to RfL:

- (a) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Actual Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Concession Payments;

- (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 5.1(a)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Concession Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (c) its informed opinion as to any changes that RfL ought to make to the Operating Performance Thresholds in order to hold constant the risk of the Operator performing worse than the Operating Performance Thresholds, provided that no such opinion shall be required in relation to the issue of SLC1, SLC2, SLC3, SLC4 or SLC5; and
- (d) a draft of the Train Plan that it considers that each set of proposed changes would require.

Considerations

5.2 The Operator shall:

- (a) provide its opinion as to Service Level Commitment changes; and
- (b) prepare its draft Train Plan,

each with due regard to:

- (i) any Route Utilisation Strategy published by RfL;
- (ii) the additional factors set out in the Appendix; and
- (iii) any other constraints or considerations (including affordability constraints and value for money considerations) that RfL has notified to it.

Planning to Operate the Train Plan in the Peak

5.3 The Operator shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for any reasonable planning requirements for:

- (a) the allocation of Operational Spare Units; and
- (b) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with RfL (such agreement not to be unreasonably withheld).

Allocation of rolling stock if unable to meet capacity requirements

5.4 If at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Operator is unable to prepare a Train Plan having the passenger carrying capacity to meet

Actual Passenger Demand, then the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible, the amount by which Actual Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services; and
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular part of the Crossrail Route or Passenger Service.

Proposals to address shortfalls in capacity

5.5 Where paragraph 5.4 applies, the Operator shall propose to RfL:

- (a) such changes to the Service Level Commitment; and/or
- (b) any other actions,

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Actual Passenger Demand.

6. PASSENGER NUMBERS INFORMATION

6.1 The Operator shall, as and when reasonably requested by RfL, assist RfL to determine Actual Passenger Demand by

- (a) carrying out manual passenger counts in relation to the Class 315 Units in accordance with the passenger count methodology in the agreed terms marked *PCM*; and
- (b) cooperating with RfL and the RSP in the carrying out of automatic passenger counts in relation to the Class 345 Units by making those Class 345 Units accessible to RfL and the RSP on reasonable notice in order that those automatic passenger counts may be carried out and assisting them in the collation of data.

6.2 The information specified in paragraph 6.1(a) shall be provided by the Operator:

- (a) in such format and to such level of disaggregation as RfL may reasonably require in order to assist RfL's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding; and
- (b) within 14 days of any request by RfL pursuant to paragraph 6.1.

6.3 RfL shall promptly notify the Operator of Actual Passenger Demand following its most recent determination.

7. RfL'S PASSENGER SERVICE DEVELOPMENT OPINIONS

As and when required pursuant to paragraph 4.2, RfL shall provide to the Operator:

- (a) its draft Service Level Commitment;
- (b) its requirements for the operation of any Passenger Services in relation to Special Events;

- (c) its opinion on any changes that it reasonably considers are required to the Train Plan to optimise the deployment of the Train Fleet to best meet Actual Passenger Demand; and
- (d) its opinion of any changes that are required to the Operating Performance Thresholds in order to hold constant the risk of the Operator performing worse than the Operating Performance Thresholds, provided that in relation to the issue of SLC1, SLC2, SLC3, SLC4 and SLC5, as the Operating Performance Thresholds shall not change, there shall be no requirement to provide such an opinion.

8. TIMETABLE, TRAIN PLAN AND PERFORMANCE THRESHOLDS CONSULTATION

8.1 If and to the extent that the Operator reasonably considers that any Service Level Commitment issued by RfL pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify RfL and RfL shall provide such further information as is reasonably required.

8.2 The Operator shall, as and when required pursuant to paragraph 4.2, provide RfL with:

- (a) a summary (in such form as RfL may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if RfL's draft Service Level Commitment and proposed Train Plan were implemented; and
- (b) its opinion of any changes that are required to the Operating Performance Thresholds in order to hold constant the risk of the Operator performing worse than the Operating Performance Thresholds.

8.3 The Operator shall provide all reasonable assistance to RfL in consulting Stakeholders in relation to any draft Service Level Commitment issued by RfL pursuant to paragraph 7(a), including:

- (a) as and when required by RfL, attending any consultation meetings with Stakeholders;
- (b) promptly forwarding any correspondence the Operator has received from those Stakeholders in relation to that draft;
- (c) as and when required by RfL, assisting RfL in relation to any enquiries made by Stakeholders in relation to that draft by providing information in order that RfL may respond to those enquiries; and
- (d) as and when required by RfL, informing RfL of any material changes that the Operator would expect to make to such draft if the views of those Stakeholders were accommodated.

9. SERVICE LEVEL COMMITMENT

RfL shall, in accordance with paragraph 4.2, issue to the Operator the Service Level Commitment that it requires the Operator to operate and inform the Operator of the changes (if any) to the Operating Performance Thresholds that are to be made in order to hold constant the risk of the Operator performing worse than the Operating Performance Thresholds, in which case:

- (a) a Change shall occur; and

- (b) the parties shall make those changes to the Operating Performance Thresholds,

provided that no such Change shall occur or changes be made in relation to the Operating Performance Thresholds, in each case in relation to the issue of SLC1, SLC2, SLC3, SLC4 and SLC5 in accordance with the Staged Opening Programme.

10. TIMETABLE DEVELOPMENT RIGHTS DURING A TIMETABLE PLANNING PERIOD

Securing Timetable Development Rights

10.1 The Operator shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment.

Exercising Timetable Development Rights

10.2 The Operator shall exercise its Timetable Development Rights during any Timetable Planning Period so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 12 (*Obligations in relation to Other Train Operators*).

Notice of Infrastructure Manager proposals

10.3 The Operator shall notify RfL soon as reasonably practicable after receiving any notification from any Infrastructure Manager (including pursuant to Part D or Part G of the Network Code or their equivalents in any other Relevant Network Code) during any Timetable Planning Period of any proposal to implement works during the term of the next Timetable which would require a Restriction of Use, or a programme of co-ordinated Restrictions of Use (including as a result of a Network Change and an extended programme of Restrictions of Use that is the subject of a Possessions Strategy Notice) or to change the Rules which would, in each case:

- (a) prevent any Passenger Service specified in the Service Level Commitment to be included in that Timetable; or
- (b) require the rescheduling of any Passenger Service specified in the Service Level Commitment to be included in that Timetable.

10.4 The Operator shall explain in any notification it provides pursuant to paragraph 10.3, the way in which, in its opinion, any omission or rescheduling of any Passenger Service or change in the Rules will impact its ability to deliver the Timetable Requirements.

10.5 The Operator agrees to promptly supply to RfL upon request:

- (a) such details as RfL may reasonably require in the format required by RfL, of any proposed omission or rescheduling of Passenger Services or any change in the Rules, in each case made by any Infrastructure Manager; and
- (b) copies of any notices, correspondence or other information exchanged between the relevant Infrastructure Manager and the Operator in respect of those matters.

Consultation

10.6 As soon as reasonably practicable after notifying RfL of any proposal to impose any Restriction of Use, a programme of co-ordinated Restrictions of Use or any change to the Rules, the Operator shall consult RfL for a reasonable period of time, providing RfL with its opinion of:

- (a) the likely impacts on the Passenger Services; and
- (b) the basis on which a submission or counter-proposal could be made to the relevant Infrastructure Manager which would, as appropriate, avoid the omission or rescheduling of any Passenger Services that are specified in the Service Level Commitment or otherwise minimise the impacts on the Passenger Services of that Restriction of Use, programme or change in the Rules.

Counter proposals

10.7 At any time during the consultation period referred to in paragraph 10.6, RfL may direct the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal to the relevant Infrastructure Manager with the purpose of seeking to:

- (a) avoid the omission or rescheduling of any Passenger Services that are specified in the Service Level Commitment; or
- (b) where those Timetable Development Rights do not allow for this, minimise the impacts of the relevant Restriction of Use, co-ordinated programme of Restrictions of Use or change in Rules notified pursuant to paragraph 10.3 and securing the optimum level, frequency, maximum journey times and stopping patterns of Passenger Services in the Timetable.

10.8 Where RfL directs the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal pursuant to paragraph 10.7, the Operator shall exercise those Timetable Development Rights to make that submission or counter-proposal to the relevant Infrastructure Manager as soon as reasonably practicable thereafter.

10.9 Where any Infrastructure Manager makes a decision to vary the working timetable, or issue a Possessions Strategy Notice, in each case which requires any Restriction of Use, or to change the Rules, that in each case is inconsistent with any submission or counter-proposal made by the Operator pursuant to paragraph 10.8, then the Operator shall notify RfL, including providing RfL with any written reasons for that rejection received from that Infrastructure Manager, as soon as reasonably practicable after such rejection.

Appeals

10.10 Where an Infrastructure Manager's decision to vary the working timetable including by issuing a Possessions Strategy Notice or to change the Rules would, in each case cause the omission or rescheduling of Passenger Services that are included in the Service Level Commitment:

- (a) RfL may, within the timescales permitted under the Relevant Network Code, require the Operator to appeal that variation or change in the Rules in accordance with the terms of the Relevant Network Code (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant); and

- (b) the Operator shall duly appeal that variation in accordance with any such direction and the terms of the Relevant Network Code.

No liability

10.11 Subject to the Operator complying with its obligations under this paragraph 10, it shall not be liable for any failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) the Operator's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Operator has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 10.1;
- (b) any Infrastructure Manager exercising its flexing rights from time to time under the relevant Track Access Agreement including under the Relevant Network Code in respect of such Train Slots;
- (c) any Infrastructure Manager exercising its other rights from time to time under the relevant Track Access Agreement including under the Relevant Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

10.12 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to it concerning the exercise by the Operator of any of its rights referred to in this paragraph 10 before requiring the Operator to take any action referred to in this paragraph 10.

Issuing a revised Service Level Commitment

10.13 If and to the extent that the Operator is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, RfL shall issue to the Operator a Service Level Commitment in the form required by paragraph 10.13(a), which shall operate between the parties only for the purpose referred to in paragraph 10.13(b):

- (a) the Service Level Commitment issued pursuant to this paragraph 10.13 shall be in a form that:
- (i) would enable the Operator to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Operator does have or would have had the Operator properly performed its obligations under this Agreement; and
- (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Operator by RfL; and
- (b) any Service Level Commitment issued pursuant to this paragraph 10.13 shall, for the purpose of Schedule 13 (*Changes and Variations*) only, stand in place of the immediately preceding Service Level Commitment issued to the Operator by RfL.

Proposals made by third parties

10.14 The provisions of this paragraph 10 shall apply to any omission or rescheduling of Passenger Services that originates from any person other than any Infrastructure Manager, as those provisions apply to that person.

11. CERTIFICATION AND NOTIFICATION BY OPERATOR OF TIMETABLE BIDS

11.1 Before exercising any Timetable Development Right to bid for Train Slots, the Operator shall provide a certificate addressed to RfL confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 10.2.

11.2 If requested by RfL, the Operator agrees to demonstrate to the reasonable satisfaction of RfL that the Operator's certificate referred to in paragraph 11.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 10.2. RfL agrees that the certificate will be acceptable if:

- (a) such certificate confirms that the Operator has used timetable assurance processes approved by RfL; and
- (b) the Operator has demonstrated its compliance with the Service Level Commitment by using such assurance processes.

12. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS

Subject to the terms of the Licences and any applicable Law, the Operator shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- (a) the levels of overcrowding over the Crossrail Route or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, particular sections of the Crossrail Route or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Operator; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or Last Trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

13. FINALISING THE TRAIN PLAN

13.1 The Operator shall submit its Train Plan to RfL as soon as reasonably practicable after each Infrastructure Manager has published its working timetable on which the relevant part of the Timetable is to be based.

13.2 RfL may notify the Operator of:

- (a) any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
- (b) any revisions that it requires to address such non-compliance,

and the Operator shall revise the Train Plan in accordance with RfL's requirements.

13.3 If the Operator considers that any of the revisions that RfL requires pursuant to paragraph 13.2(b) are not required for the Train Plan to comply with this Schedule 1.1, then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
- (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

14. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES

14.1 Where RfL considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement, or any other agreement to which RfL may be a party for the procurement of public transport services, or for the better achievement by it of any of its duties, functions and powers in relation to railways, RfL may require the Operator:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as RfL may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

14.2 Except to the extent that RfL otherwise indicates from time to time, the Operator shall notify RfL of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the ORR is required under the Act, not less than 10 Business Days before the submission to the ORR; and
- (b) where no such approval is required, not less than 10 Business Days prior to entering into such amendment or Access Agreement.

14.3 The Operator shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with RfL on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by RfL or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of RfL.

14.4 If and to the extent that:

- (a) RfL exercises its rights pursuant to paragraph 14.1;
- (b) the Operator's compliance with RfL's requirements pursuant to paragraph 14.1 would lead to the unavoidable consequence of the Operator contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Operator duly complies with such requirements,

no such contravention of this Agreement or Event of Default shall have occurred.

15. RfL'S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES

Any requirement for RfL to issue a draft or final Service Level Commitment may be satisfied by it issuing a draft or final statement of how the existing Service Level Commitment is to be changed.

16. THE TIMETABLE AND THE WORKING TIMETABLE

16.1 Any specification of railway passenger services in a Service Level Commitment shall (unless RfL states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetables that the Infrastructure Managers issue to industry parties at the conclusion of their timetable development process.

16.2 Accordingly, the Operator's obligations specified in paragraph 10.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by the relevant Infrastructure Manager at the conclusion of its timetable development process that will permit the Operator to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

16.3 The Operator shall ensure, for each period between two consecutive Passenger Change Dates during the Concession Period, that the Timetable for such period is not materially different from the relevant working timetable issued by the relevant Infrastructure Manager at the conclusion of its timetable development process.

APPENDIX TO SCHEDULE 1.1**PASSENGER SERVICE DEVELOPMENT ADDITIONAL FACTORS**

1. The Operator, in formulating its service development opinion pursuant to paragraph 5.1 of Schedule 1.1 (*Timetable and Service Development*), in addition to having regard to any Route Utilisation Strategy published by TfL and any other constraints or considerations notified to it pursuant to paragraph 5.2(iii) of Schedule 1.1, shall also have regard to:

- (a) Actual Passenger Demand;
- (b) the revenue and cost consequences of operating railway passenger services on the Crossrail Route;
- (c) opportunities to reduce the incidence of disruption caused by the Operator, any Infrastructure Manager, other Train Operators, freight operators and/or other industry parties;
- (d) operating constraints and measures that might be taken to address such constraints;
- (e) service calling patterns and journey times;
- (f) changes in circumstances local to the stations at which the Passenger Services call which may affect Actual Passenger Demand;
- (g) the effect of the Service Level Commitment on the railway passenger services operated by other Train Operators and/or freight operators;
- (h) interchange and inter modal opportunities;
- (i) Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any “Local Transport Plans”);
- (j) the long-term interests of passengers in using railway passenger services on the Crossrail Route, and for the purposes of this paragraph 1(j), the Operator shall have regard to this additional factor as if it operated the Passenger Services in perpetuity, and not for the Concession Term only;
- (k) the likelihood of Special Events generating sufficient passenger demand to support the provision of railway passenger services by the Operator to or from such Special Events;
- (l) the impact of extended Restrictions of Use extending or other Restrictions of Use that may affect Actual Passenger Demand; and
- (m) such other matters as RfL may notify to the Operator from time to time.

SCHEDULE 1.2

Passenger Service Operating Obligations

1. DAILY OPERATING OBLIGATION

Obligation to operate the Plan of the Day

1.1 The Operator agrees to use all reasonable endeavours to operate on each day of the Concession Period those of its Passenger Services as are set out in the Plan of the Day for that day, with at least the passenger carrying capacity specified in the Train Plan.

Obligation to deploy the Train Fleet

1.2 The Operator agrees to use all reasonable endeavours to operate:

- (a) during the Peak, the entire Train Fleet in delivering the Peak Passenger Services; and
- (b) during Stage 1a, to maximise the use of the Class 345 RLUs in delivering the Passenger Services on the Eastern Section,

save in each case, where appropriate, for:

- (i) the deployment of Operational Spare Units; and
- (ii) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with RfL (such agreement not to be unreasonably withheld).

1.3 The Operator shall not remove any rolling stock vehicle from service with a view to distorting the results of any audit carried out pursuant to Schedule 8.1 (*KPI Regime*).

2. MEETING PASSENGER DEMAND

The applicable Train Plan

2.1 References in this Schedule 1.2 to the Train Plan are to the Train Plan as issued by the Operator to RfL pursuant to paragraph 2.2 of Schedule 1.1 (*Timetable and Service Development*), and as amended:

- (a) to comply with any requirements of RfL pursuant to paragraph 13.2 of Schedule 1.1; or
- (b) pursuant to the remainder of this paragraph 2.

Amendments to the Train Plan

2.2 The Operator shall use all reasonable endeavours to propose to RfL from time to time any amendments that it considers should be made to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Actual Passenger Demand, having regard to:

- (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day;

- (b) any material alteration in Actual Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 6 (*Passenger Numbers Information*) of Schedule 1.1 (*Timetable and Service Development*); and/or
 - (ii) attributable to seasonal or exceptional factors; and
- (c) in the case of deployment of the Class 345 Fleet, the Train Plan Parameters.

2.3 The Operator shall amend the Train Plan in accordance with RfL's response to its proposal.

2.4 Where there are unforeseeable short-notice factors or exceptional factors affecting passenger demand to which the Operator reasonably considers that it should respond before it is able to make a proposal to RfL in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify RfL as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with RfL's response to such amendment.

2.5 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Actual Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for passenger carrying capacity on each Passenger Service that is at least equal to the Actual Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Actual Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services; and
 - (ii) ensure, so far as is possible, that the excess of Actual Passenger Demand is not unduly concentrated on any particular part of the Crossrail Route or Passenger Service.

2.6 If RfL does not consider that the Operator has exercised all reasonable endeavours to make proposals as required by paragraph 2.2, RfL may require the Operator to amend the Train Plan in accordance with its requirements.

3. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS

All Reasonable Endeavours

3.1 Any obligation in this Schedule 1.2 on the part of the Operator to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;

- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Concession Services having regard to all the circumstances and the requirements of Schedule 1.3 (*Managing Changes to the Passenger Services*), including the reasonably foreseeable risks arising from the matters referred to in paragraph 3.2; and
- (c) actively manage the performance by the Infrastructure Managers of their respective contractual relationships with the Operator (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from the Infrastructure Managers by these means (including taking the steps referred to in paragraph 3.4), having regard to all the circumstances.

Considerations in the management of disruption

3.2 The matters to which the Operator is to have regard pursuant to paragraph 3.1(b) shall include:

- (a) variations in weather and operating conditions (including any Infrastructure Manager's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Operator;
- (c) shortages of appropriately skilled or qualified Concession Employees;
- (d) disputes with Concession Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) in relation to the deployment of the Class 345 Fleet, the Train Plan Parameters;
- (g) establishing reasonable Turnaround Period allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles consistently with the requirements of the KPI Regime; and
- (h) failures of rolling stock vehicles in service and contingency arrangements (including Operational Spare Units and rescue traction).

3.3 For the purpose of taking measures in respect of any disruption to the Concession Services in accordance with paragraph 3.1(b) and assessing the extent of any risk referred to in paragraph 3.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Concession Services;
 - (ii) similar services both by the Operator and/or its predecessors; and
 - (iii) other services of a type similar to the Concession Services; and
- (b) to potential changes in circumstances which may affect those levels.

Active management of Infrastructure Managers

3.4 The steps to which paragraph 3.1(c) refers include:

- (a) co-operating with Infrastructure Managers in the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) co-operating with any Infrastructure Manager in adopting the principles set out in any Service Recovery Plans agreed between that Infrastructure Manager and the Operator from time to time;
- (c) undertaking a weekly review of:
 - (i) the 10 most common causes of Delay Incidents, Headway Incidents and other disruption to the Passenger Services; and
 - (ii) the 10 causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 3.4(c)(i)),
 which have occurred during that week and which have been caused by the Operator, any other Train Operator or the relevant Infrastructure Manager;
- (d) undertaking with each Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 3.4(c)(i) and (c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with each Infrastructure Manager, evidenced by meeting minutes and the closure of actions agreed between the parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Infrastructure Managers and using reasonable endeavours to specify and develop such local output commitments;
- (g) as and when required by each Infrastructure Manager, co-operating with that Infrastructure Manager in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
- (h) co-operating with each Infrastructure Manager other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where any Infrastructure Manager fails to perform its obligations under the relevant Track Access Agreement, enforcing the Operator's rights under such Track Access Agreement.

3.5 The Operator undertakes to reasonably co-operate with each Infrastructure Manager with regard to each such Infrastructure Manager's management of its own network, including the establishment of up-to-date Rules.

3.6 To the extent not already provided for in this Agreement, the Operator shall use all reasonable endeavours to ensure the performance by each Infrastructure Manager of each such Infrastructure Manager's respective obligations under any relevant agreement including, where appropriate or where requested by RfL, enforcing its rights against any such Infrastructure Manager under any such agreement.

3.7 When and to the extent reasonably requested by RfL, the Operator shall provide to RfL evidence of the steps taken by it in order to comply with its obligations under this paragraph 3.

4. ADDITIONAL RAILWAY PASSENGER SERVICES

The Operator agrees not to operate any railway passenger services other than those:

- (a) required or permitted pursuant to this Schedule 1.2; or
- (b) operated on behalf of any other Train Operator where RfL has approved the sub-contracting of the operation of such railway passenger services to the Operator.

5. OTHER OPERATORS

5.1 If:

- (a) a franchise agreement terminates;
- (b) another concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party terminates; or
- (c) a railway administration order is made in respect of a Train Operator that is a party to either of those agreements,

the Operator shall co-operate with any reasonable request of RfL to ensure that:

- (i) the services provided or operated by the relevant Train Operator may continue to be provided or operated by any successor Train Operator or the railway administrator; and
- (ii) the benefit of any arrangements between the Operator and the relevant Train Operator which were designated as a key contract under such franchise agreement or concession agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

5.2 The benefit of any arrangements of the type referred to in paragraph 5.1(ii) shall be provided on substantially the same terms as previously obtained by the relevant Train Operator, subject to clause 5 (*General Obligations*) and paragraph 5.3, provided that RfL may exclude or modify any terms agreed or amended by such Train Operator in the 12 months preceding the date on which such Train Operator's franchise agreement or concession agreement was terminated or the date on which the relevant railway administration order was made which were, in RfL's reasonable opinion, to the material detriment of such Train Operator's business. The benefit of such arrangements shall be provided for such period as

RfL may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

5.3 The Operator shall notify RfL of its intention to terminate any contract with any other Train Operator which is designated as a “Key Contract” under that Train Operator’s franchise agreement or concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

5.4 If a Train Operator’s franchise agreement or concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party terminates in contemplation of the entry into or entry into effect of a new franchise agreement or concession agreement (as the case may be) with the same Train Operator in respect of all or a material part of the relevant railway passenger services, the Operator shall waive any event of default or other right it may have to terminate any agreement with such Train Operator arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement or concession agreement takes place.

6. ROYAL TRAIN

6.1 The Operator shall, if and to the extent requested by any person (including the operator of the royal train from time to time) and subject to the payment by such person of any reasonable costs of the Operator, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

6.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

- (a) running a “sweeper” train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or

carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Crossrail Route.

SCHEDULE 1.3

Managing Changes to the Passenger Services

1. RESPONSE TO DISRUPTION

1.1 In the event of any planned or unplanned disruption to the Passenger Services operated on the Crossrail Route, or railway passenger services on other parts of the network which are reasonably local to the Crossrail Route, the Operator shall without prejudice to any other provision of this Schedule 1.3, notify RfL promptly of any such disruption where that disruption would prejudice the Operator's ability to deliver the Timetable and the Operator:

- (a) has 10 or more days' advance notice thereof; or
- (b) has less than 10 days' advance notice thereof, but that disruption lasts:
 - (i) for a period in excess of three consecutive hours; or
 - (ii) to the extent not already provided for under paragraph 1.1(b)(i), for a period that begins during one Plan of the Day and continues into the next Plan of the Day.

1.2 The Operator shall use all reasonable endeavours to act in accordance with the Alternative Timetable Guidance in relation to disruption to railway passenger services as it may subsequently be amended by RfL from time to time.

1.3 The Operator shall co-operate with each Infrastructure Manager and other Train Operators to act in the overall interests of passengers using the railway passenger services referred to in paragraph 1.1, including using all reasonable endeavours to ensure that any disruption notified pursuant to paragraph 1.1 is not concentrated on a particular part of the network, except where such concentration either:

- (a) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
- (b) is reasonably necessary as a result of the cause or the location of the disruption.

1.4 The Operator shall make the alternative transport arrangements specified in paragraph 7 (*Alternative Transport Arrangements*) in response to any planned or unplanned disruption which prevents the Operator from meeting the Timetable Requirements.

2. INFRASTRUCTURE MANAGER PROPOSALS TO CHANGE THE PLAN OF THE DAY

Notice of Infrastructure Manager proposals

2.1 The Operator shall notify RfL as soon as reasonably practicable after receiving any notification from any Infrastructure Manager (including pursuant to Part D or Part G of the Network Code or their equivalents in any other Relevant Network Code) outside any Timetable Planning Period of any proposal to implement works during the term of the current Timetable which require a Restriction of Use, or a programme of co-ordinated Restrictions of Use or to change the Rules which would, in each case cause:

- (a) the omission from the Plan of the Day, of Passenger Services that are included in the Plan of the Day; or
- (b) the rescheduling in the Plan of the Day, of Passenger Services from their scheduling in the Plan of the Day.

2.2 The Operator shall explain in any notification it provides pursuant to paragraph 2.1, the way in which, in its opinion, any omission, rescheduling of any Passenger Service or change in the Rules will impact its ability to deliver the Timetable Requirements.

2.3 The Operator agrees to promptly supply to RfL upon request:

- (a) such details as RfL may reasonably require in the format required by RfL, of any actual or proposed omission or rescheduling of Passenger Services or any change in the Rules in each case made by any Infrastructure Manager; and
- (b) copies of any notices, correspondence or other information exchanged between the relevant Infrastructure Manager and the Operator in respect of those matters.

Consultation

2.4 As soon as reasonably practicable after notifying RfL of any proposal to impose any Restriction of Use, a programme of co-ordinated Restrictions of Use or any change to the Rules, the Operator shall consult RfL for a reasonable period of time, providing RfL with its opinion of:

- (a) the likely impacts on the Passenger Services; and
- (b) the basis on which a submission or counter-proposal could be made to the relevant Infrastructure Manager which would, as appropriate, avoid the omission or rescheduling of any Passenger Services that are specified in the Plan of the Day or otherwise minimise the impacts on the Passenger Services of that Restriction of Use, programme or change in the Rules.

Counter proposals

2.5 At any time during the consultation period referred to in paragraph 2.4, RfL may, direct the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal to the relevant Infrastructure Manager with the purpose of seeking to:

- (a) avoid the omission or rescheduling of any Passenger Services that are specified in the Plan of the Day; or
- (b) where those Timetable Development Rights do not allow for this, minimise the impacts of the relevant Restriction of Use, co-ordinated programme of Restrictions of Use or change in the Rules notified pursuant to paragraph 2.1 and securing the optimum number, frequency and service pattern of Passenger Services in the Plan of the Day.

2.6 Where RfL directs the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal pursuant to paragraph 2.5, the Operator shall exercise those Timetable Development Rights to make that submission or counter-proposal to the relevant Infrastructure Manager as soon as reasonably practicable thereafter.

2.7 Where any Infrastructure Manager makes a decision to vary the Plan of the Day which requires any Restriction of Use, or to change the Rules that, in each case, is inconsistent with any submission or counter-proposal made by the Operator pursuant to paragraph 2.5, then the Operator shall notify RfL, including providing RfL with any written reasons for that rejection received from that Infrastructure Manager, as soon as reasonably practicable after such rejection.

Appeals

2.8 Where an Infrastructure Manager's decision to vary the Plan of the Day or to change the Rules would, in each case, cause the omission or rescheduling of Passenger Services that are included in the Plan of the Day:

- (a) RfL may, within the timescales permitted under the Relevant Network Code, require the Operator to appeal that aspect of that variation or change in the Rules in accordance with the terms of the Relevant Network Code (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant); and
- (b) the Operator shall duly appeal that variation in accordance with any such direction and the terms of the Relevant Network Code.

Proposals made by third parties

2.9 The provisions of this paragraph 2 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than any Infrastructure Manager, as those provisions apply to that person.

Extended Restrictions of Use

2.10 It shall be a Qualifying Change where the Operator operates less distance (measured in kilometres) than the distance (measured in kilometres) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more.

3. COOPERATION WITH RESTRICTIONS OF USE

3.1 The Operator shall co-operate with the relevant Infrastructure Manager, RfL and any other relevant party in connection with any Restriction of Use that is not the subject of an appeal by the Operator pursuant to paragraph 2.8 or has been appealed by the Operator pursuant to paragraph 2.8 and that appeal has been unsuccessful.

3.2 The Operator shall co-operate with the relevant Infrastructure Manager in its endeavours to obtain all consents required for the carrying out of each Restriction of Use referred to in paragraph 3.1, including any required consent under the timetable planning section of the Relevant Network Code and under the network change section of the Relevant Network Code in respect of any related Network Change.

3.3 The Operator's obligations under paragraphs 3.1 and 3.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or

- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

4. OPERATOR PROPOSALS TO CHANGE THE PLAN OF THE DAY

4.1 The Operator agrees not to propose to any Infrastructure Manager without RfL's prior consent:

- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

4.2 The Operator shall not propose a Network Change to any Infrastructure Manager or any other third party without RfL's prior written consent.

5. RfL PROPOSALS TO CHANGE THE PLAN OF THE DAY

The Operator agrees, as and when requested by RfL, to use all reasonable endeavours to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable, including in relation to railway passenger services that may be required to support any Special Event;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable, including in relation to railway passenger services that may be required to support any Special Event,

and where the Plan of the Day is amended as a result the Operator shall, in each case operate that amended Plan of the Day provided that, in addition, it shall be a Qualifying Change where RfL requests that the Operator seeks to obtain an addition to the Plan of the Day which would have the effect of requiring the Operator to run an additional 10 per cent. kilometres per day in any Reporting Period or an additional three per cent. kilometres per Reporting Period than, as appropriate, the total kilometres per day or total kilometres per Reporting Period specified in the relevant Train Plan.

6. ALTERNATIVE TIMETABLE ARRANGEMENTS

Operator's proposed alternative timetable proposals

6.1 Where the Operator has 10 or more days' advance notice of any disruption to the Timetable which would prejudice the Operator's ability to deliver the Timetable Requirements, the Operator shall (and where that disruption is caused by a strike or other industrial action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession

Services) may only at the request of RfL) as soon as reasonably practicable after that notice, submit to RfL:

- (a) a statement confirming the Operator's opinion of the impact of that disruption on the Timetable;
- (b) an alternative timetable that:
 - (i) takes account of reasonable alternative routes;
 - (ii) maximises the number of Station Stops, provided that:
 - (A) no one part of the Crossrail Route is preferred over the other; and
 - (B) the relevant minimum alternative service levels specified in the Alternative Timetable Guidance are met; and
 - (iii) provides for the alternative transport arrangements required pursuant to paragraph 7 (*Alternative Transport Arrangements*); and
- (c) a statement confirming whether or not the minimum alternative service levels specified in the Alternative Timetable Guidance have been met, and:
 - (i) where those levels have been exceeded, the extent to which that is the case; and
 - (ii) where those levels have not been exceeded, the extent to which this is the case and the reasons why.

RfL's right to produce its own alternative timetable proposal

6.2 Where the Operator has submitted an alternative timetable pursuant to paragraph 6.1 and RfL is not satisfied that that alternative timetable meets the requirements of paragraph 6.1(b), then RfL may, whether before or after the implementation of the alternative timetable, elect to prepare its own alternative timetable that meets the requirements of paragraph 6.1(b).

Before implementation of Operator's alternative timetable

6.3 As soon as reasonably practicable after receipt of any submission pursuant to paragraph 6.1, but in any event, no less than five days before the date that any alternative timetable proposed by the Operator pursuant to paragraph 6.1 is to be first implemented, RfL shall confirm whether it has or has prepared its own timetable pursuant to paragraph 6.2, and if it has, provide the Operator with a copy of that alternative timetable.

6.4 Where RfL:

- (a) confirms by the date specified in paragraph 6.3:
 - (i) that it is satisfied that an alternative timetable submitted by the Operator pursuant to paragraph 6.1 meets the requirements of paragraph 6.1(b) and so RfL will not prepare its own alternative timetable pursuant to paragraph 6.2; or

- (ii) that it will not prepare its own alternative timetable pursuant to paragraph 6.2 before the implementation of that alternative timetable submitted by the Operator; or
- (b) fails to confirm by the date specified in paragraph 6.3 either of the scenarios specified in paragraph 6.4(a),

then, in each case, the Operator shall implement its alternative timetable in accordance with its terms.

6.5 Where RfL confirms by the date specified in paragraph 6.3 that it is not satisfied that an alternative timetable proposed by the Operator meets the requirements of paragraph 6.1(b) and it has prepared its own alternative timetable pursuant to paragraph 6.2, then:

- (a) RfL may direct the Operator to implement RfL's alternative timetable;
- (b) where RfL directs the Operator pursuant to paragraph 6.5(a), the Operator shall implement RfL's alternative timetable in accordance with its terms; and
- (c) paragraph 6.7 shall apply.

After implementation of the Operator's alternative timetable

6.6 Where RfL does not elect to prepare its own alternative timetable pursuant to paragraph 6.2 before the implementation of the relevant alternative timetable proposed by the Operator pursuant to paragraph 6.1, but instead elects pursuant to paragraph 6.2 to do so after that implementation and notifies the Operator of that fact, then paragraph 6.7 shall apply.

6.7 Where this paragraph 6.7 applies, if the number of Station Stops provided for in the Operator's alternative timetable submitted pursuant to paragraph 6.1 is less than the number of Station Stops provided for in the related alternative timetable prepared by RfL pursuant to paragraph 6.2, then the Operator shall pay RfL by way of an Alternative Timetable Adjustment in accordance with paragraph 9 (*Alternative Timetable Adjustments*) an amount (an *Alternative Timetable Shortfall Payment*) equal to the aggregate of:

- (a) RfL's reasonable and proper costs incurred pursuant to paragraph 6.2; and
- (b) an amount equal to:

$$ATSP = \sum(BSV \times SSF)$$

where:

ATSP means the Alternative Timetable Shortfall Payment;

\sum means the summation of Station Stops provided for in RfL's alternative timetable that is in excess of the number of Station Stops in the Operator's alternative timetable;

BSV means the Base Station Value of a Station Stop that was included in RfL's alternative timetable but not in the Operator's alternative timetable; and

SSF means the Station Stop Factor that applies to that Station Stop.

7. ALTERNATIVE TRANSPORT ARRANGEMENTS

Objectives in providing alternative transport

7.1 Any alternative transport arrangements to be provided or procured by the Operator pursuant to this paragraph 7 which prevents the Operator from meeting the Timetable Requirements shall, unless otherwise agreed by RfL:

- (a) enable passengers affected by any disruption to complete their intended journeys by transporting those passengers to, or as near as reasonably practicable to, the end of their intended journeys on the relevant Passenger Services;
- (b) have particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;
- (c) be:
 - (i) of reasonable quality;
 - (ii) of a reasonably similar frequency to the disrupted Passenger Services; and
 - (iii) reasonably fit for the purpose of the journey to be undertaken;
- (d) comply with any standards issued by TfL from time to time in respect of such alternative transport arrangements;
- (e) include the provision in advance of adequate and prominent publicity of such alternative transport arrangements;
- (f) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services;
- (g) take account of the wider TfL transport network and any restrictions in operation on that network that have been notified to the Operator by RfL; and
- (h) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

Alternative transport to be provided in response to planned disruption

7.2 Where the Operator has 10 or more days' advance notice of any disruption which prevents the Operator from meeting the Timetable Requirements, then:

- (a) the Operator shall as soon as reasonably practicable after that notice, procure via RfL's nominated bus procurement agent (notified by RfL to the Operator from time to time), alternative bus services that meet the requirements of paragraph 7.1, provided that, where that disruption is caused in whole or in part by any strike or other industrial action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services), RfL shall only pay half of the costs of those alternative bus services and the Operator shall be liable for the other half; and

- (b) RfL shall pay the Operator, subject to paragraph 7.2(a), the costs of procuring those alternative bus services by way of an Alternative Timetable Adjustment in accordance with paragraph 9 (*Alternative Timetable Adjustments*).

Alternative transport to be provided in response to unplanned disruption

7.3 Where the Operator has less than 10 days' advance notice of any disruption which prevents the Operator from meeting the Timetable Requirements for more than three consecutive hours or involves the cancellation of the Last Train resulting in any passenger affected by that cancellation having no reasonable expectation of the availability of reasonable alternative transportation to take him to his intended destination Crossrail Station served by that Last Train or as near as reasonably practicable thereto, then:

- (a) the Operator shall as soon as reasonably practicable after that notice, procure alternative bus services at its own cost that meet the requirements of paragraph 7.1, doing so via RfL's nominated bus procurement agent (notified by RfL to the Operator from time to time) where that agent has in place agreements to procure alternative bus services that meet the requirements of paragraph 7.1 on short notice of the kind that is likely to be required as a consequence of the lack of notice of that disruption; and
- (b) RfL shall reimburse the Operator for the reasonable costs it has incurred in procuring those alternative bus services by way of an Alternative Timetable Adjustment in accordance with paragraph 9, provided that, where that disruption is caused in whole or in part by any strike or other industrial action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services), RfL shall only pay half of the costs of those alternative bus services by way of an Alternative Timetable Adjustment and the Operator shall be liable for the other half.

8. RESTRICTION OF USE PAYMENTS TO AND FROM INFRASTRUCTURE MANAGERS

8.1 The Operator shall in each Reporting Period pay to RfL by way of an Alternative Timetable Adjustment for that Reporting Period in accordance with paragraph 9 (*Alternative Timetable Adjustments*):

- (a) any Network Rail (Schedule 4) Payment paid to the Operator under any Network Rail TAA, for any Restriction of Use caused by Network Rail (including any extended Restriction of Use required as part of a Network Change);
- (b) any HAL (Schedule 4) Payment paid to the Operator under the HAL TAA, for any Restriction of Use caused by HAL (including any extended Restriction of Use required as part of a Network Change); and
- (c) any RfL (IM) (Schedule 4) Payment paid to the Operator under the RfL (IM) TAA, for any Restriction of Use caused by RfL (IM) (including any extended Restriction of Use required as part of a Network Change),

(each an *IM (Schedule 4) Payment*) and, in each case, the Operator shall if RfL so directs, exercise its rights under the relevant Track Access Agreement to ensure that that IM (Schedule 4) Payment will, when paid to RfL pursuant to this paragraph 8.1, compensate RfL to the fullest extent possible for any adverse impacts on Ticket Revenue and Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such Restriction of Use, including, where appropriate, seeking compensation for RfL's actual costs incurred.

8.2 Where the Operator operates less distance (measured in kilometres) than the distance (measured in kilometres) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more such that a Change occurs, then any reasonable and proper costs incurred by the Operator in response to that Restriction of Use of the kind compensated for under the relevant Track Access Agreement and paid to RfL pursuant to paragraph 8.1 as part of any IM (Schedule 4) Payment shall be paid by RfL to the Operator under the financial adjustment relating to that Change.

9. ALTERNATIVE TIMETABLE ADJUSTMENTS

9.1 RfL shall calculate the Alternative Timetable Adjustment for any Reporting Period in accordance with the following:

$$\text{ATA} = \text{SEP} - \text{ATSP} + \text{ATC} - \text{ROUP}$$

where:

SEP means the Special Event Payment for that Reporting Period, calculated in accordance with the following:

$$\text{SEP} = \sum \text{SEA}$$

where:

SEP means the Special Event Payment for that Reporting Period;

\sum means the summation of all amounts that are payable by RfL to the Operator in relation to the provision of all Passenger Services and Station Services provided by the Operator in relation to Special Events pursuant to paragraph 5 (*RfL Proposals to Change the Plan of the Day*) that do not require the Operator to run additional distance (measured in kilometres) that is in excess of the thresholds specified in paragraph 5;

SEA means the Special Event Amount to be paid by RfL to the Operator in relation to the Passenger Services and Station Services provided by the Operator as a result of the operation of any Special Event pursuant to paragraph 5 that does not require the Operator to run additional distance (measured in kilometres) that is in excess of the thresholds specified in paragraph 5, calculated in accordance with the following:

$$\text{SEA} = \left(\text{K}_{(+)} \times \text{KR}_{(+)} \right) + \text{OC}$$

where:

SEA means the Special Event Amount payable in relation to those Passenger Services and Station Services;

$\text{K}_{(+)}$ means the additional train distance (measured in kilometres) operated by the Operator as a result of operating those Passenger Services using, as the case may be, a Class 315 Unit or a Class 345 Unit;

$\text{KR}_{(+)}$ means the train distance (measured in kilometres) rate specified in column 3 of the table set out in the Appendix where that additional train distance (measured in kilometres)

is operated by a Class 315 Unit and column 5 of that table where that additional train distance (measured in kilometres) is operated by a Class 345 Unit; and

OC means other additional costs agreed by RfL that are incurred by the Operator in relation to the provision of those Passenger Services and Station Services, calculated by reference to the relevant unit rates specified in the Record of Assumptions;

ATSP means the Alternative Timetable Shortfall Payment for that Reporting Period;

ATC means, where the Operator provides or procures the provision of alternative transport in that Reporting Period pursuant to paragraph 7.2 or 7.3, the reasonable alternative transport costs incurred by the Operator in relation to the provision of that alternative transport;

ROUP means the Restriction of Use Payment for that Reporting Period, calculated in accordance with the following:

$$\text{ROUP} = \sum(\text{IMSch4P} + \text{KRA}_{(-)})$$

where:

ROUP means the Restriction of Use Payment for that Reporting Period;

\sum means the summation of all amounts that are payable by the Operator to RfL in relation to all Restrictions of Use;

IMSch4P means the IM (Schedule 4) Payment to be paid by the Operator to RfL in that Reporting Period pursuant to paragraph 8 (*Restriction of Use Payments to and from Infrastructure Managers*); and

$\text{KRA}_{(-)}$ means the Kilometrage Reduction Amount to be paid to RfL in relation to any Restriction of Use that lasts less than 60 consecutive hours, calculated in accordance with the following:

$$\text{KRA}_{(-)} = \text{K}_{(-)} \times \text{KR}_{(-)}$$

where:

$\text{KRA}_{(-)}$ means the Kilometrage Reduction Amount in relation to that Restriction of Use;

$\text{K}_{(-)}$ means the distance (measured in kilometres) not operated by the Operator as a result of the imposition of that Restriction of Use that would have been run by, as the case may be, a Class 315 Unit or a Class 345 Unit; and

$\text{KR}_{(-)}$ means the distance (measured in kilometres) rate specified in column 2 of the table set out in the Appendix where that distance (measured in kilometres) was originally intended to be operated by a Class 315 Unit and column 4 of that table where that distance (measured in kilometres) was originally intended to be operated by a Class 345 Unit.

9.2 The references to Kilometrage Reduction Amounts and Special Event Amounts, are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Periodic and Annual Concession Payments and Indexation*).

9.3 Any Alternative Timetable Adjustment shall be made as part of a Pass Through Adjustment in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*).

10. DISRUPTION CAUSED BY OPERATOR INDUSTRIAL ACTION

10.1 The Operator shall promptly pay to RfL by way of an Other Adjustment an amount that is equal to the savings that the Operator makes whether because of the failure to operate Passenger Services, the non-payment of wages to Concession Employees or otherwise due to any strike or other industrial action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services).

10.2 Where paragraph 10.1 applies, the Operator shall provide evidence to RfL on a transparent basis which demonstrates to RfL's reasonable satisfaction the amount of savings that the Operator makes as a result of a failure to operate any Passenger Services due to the occurrence of any strike or industrial action of the kind referred to in paragraph 10.1.

11. CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES

11.1 Except to the extent that RfL agrees otherwise, the Operator shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Operator Station (or part of an Operator Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

11.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Operator shall and to the extent so requested by RfL, take such action as RfL may require in order to enable RfL to comply with any duty imposed on it under Part 4 of the Railways Act 2005 in relation to such Closure.

APPENDIX TO SCHEDULE 1.3

KILOMETRAGE ADJUSTMENT RATES

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Class 315 Units (KR(-)) (£)	Class 315 Units (KR(+)) (£)	Class 345 Units (KR(-)) (£)	Class 345 Units (KR(+)) (£)
Year 1 (May 2015 to Mar 2016)	1			
Year 2 (Apr 2016 to Mar 2017)				
Year 3 (Apr 2017 to Mar 2018)				
Year 4 (Apr 2018 to Mar 2019)				
Year 5 (Apr 2019 to Mar 2020)				
Year 6 (Apr 2020 to Mar 2021)				
Year 7 (Apr 2021 to Mar 2022)				
Year 8 (Apr 2022 to Mar 2023)				
Year 9 (1 Apr 2023 to 27 May 2023)				
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)				
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)				

¹ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Class 315 Units (KR(-)) (£)	Class 315 Units (KR(+)) (£)	Class 345 Units (KR(-)) (£)	Class 345 Units (KR(+)) (£)
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)				
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)				
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)				

SCHEDULE 1.4

Persons with Disabilities and Disability Discrimination

1. RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO DISABLED PERSONS

This Schedule 1.4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Operator directed at meeting the needs of persons with disabilities.

2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF OPERATOR STATIONS

Operator's obligations in relation to accessibility

2.1 The Operator shall:

- (a) as and when requested by RfL, provide:
 - (i) information concerning the usage of Operator Stations (including, where and to the extent reasonably practicable, usage of Operator Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Operator's reasonable opinion, be improved at Operator Stations;
- (b) co-operate reasonably with other Train Operators and/or any Infrastructure Manager to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Operator Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Operator Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Operator Stations (in addition to any funding secured through RfL pursuant to paragraph 2.4), including from Local Authorities, local development agencies and the Lottery Commission. The Operator shall notify RfL of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

2.2 In participating in any multi-modal fares scheme, the Operator shall, subject to paragraph 3 (*Multi-Modal Fares Schemes*) of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*), use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.3 If, during the Concession Period:

- (a) the Operator has complied with its obligations in sections 20(4) and 20(9), as varied by paragraph 2(3) of Schedule 2, in each case of the Equality Act (to take such steps as are reasonable to provide a reasonable alternative method of making services at an Operator Station accessible to a Disabled Person); and
- (b) notwithstanding such compliance, the Operator reasonably considers it is still required to carry out or procure physical works of alteration at an Operator Station in order to comply with the Equality Act Requirements in respect of that Operator Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Operator may seek funding from RfL in respect of that expenditure.

2.4 If the Operator seeks funding from RfL under paragraph 2.3, and demonstrates to RfL's satisfaction that the criteria in paragraph 2.3 have been satisfied, then RfL may agree to adjust the amount of Concession Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, RfL will have regard to the availability to it of funding, together with any other available sources of funding described in paragraph 2.1(c). If and to the extent RfL agrees to adjust Concession Payments in accordance with this paragraph 2.4 in any Concession Year:

- (a) RfL shall make such adjustment to the Concession Payments; and
- (b) the Operator shall spend the additional funds that are available as a consequence of that adjustment:
 - (i) in order to comply with the Equality Act Requirements referred to in paragraph 2.3(b); and
 - (ii) in accordance with any conditions RfL may notify the Operator of.

Increased access charges at Operator Access Stations

2.5 If and to the extent the Operator is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the Equality Act Requirements in respect of an Operator Access Station, provided that the Operator:

- (a) notifies RfL within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with RfL's reasonable directions regarding the exercise of any rights the Operator may have in respect thereof,

the imposition of the increased access charges shall be a Change.

3. DEALING WITH CLAIMS RELATING TO OPERATOR STATIONS

Notice of Equality Act Claims

3.1 If during the Concession Period the Operator receives notification of a claim under the Equality Act in respect of any alleged non-compliance by it with the Equality Act Requirements or otherwise in respect of any Operator Station (an *Equality Act Claim*), then the Operator shall notify RfL within seven days of receiving notification of the Equality Act Claim. The Operator shall at the same time notify RfL of any reasonable alternative methods

of making services at the Operator Station accessible to Disabled Persons that it has considered and/or put in place pursuant to sections 20(4) and 20(9), as varied by paragraph 2(3) of Schedule 2 in each case of the Equality Act.

Defending Equality Act Claims

3.2 Promptly following any notice under paragraph 3.1, RfL shall notify the Operator whether it requires the Operator to defend the relevant Equality Act Claim and where it so notifies, the Operator shall act in accordance with the reasonable instructions of RfL to defend the Equality Act Claim (or any aspect of it) as required under paragraph 3.1 and shall not (without the prior consent of RfL) settle or enter into any compromise in relation to the Equality Act Claim (or the relevant aspect of it), including by entering into mediation.

3.3 If RfL requires the Operator to defend an Equality Act Claim or any aspect of the Equality Act Claim (which may include appealing the judgment) pursuant to paragraph 3.2, RfL will, subject to paragraph 3.7, pay by way of Other Adjustment, the Operator's reasonable costs of:

- (a) any defence or appeal required by RfL; and/or
- (b) compliance with RfL's instructions in accordance with paragraph 3.2.

Settling Equality Act Claims

3.4 If, in the reasonable opinion of the Operator, it will be more cost effective to settle the Equality Act Claim rather than act in accordance with RfL's requirement under paragraph 3.2, it shall produce for RfL's approval a settlement proposal, setting out the terms of the Operator's proposals to make an offer to the Disabled Person making the Equality Act Claim and its reasons for making such offer (the *Settlement Proposal*).

3.5 If RfL does not accept the Settlement Proposal and still requires the Operator to defend the Equality Act Claim (or any aspect of it) then the Operator shall defend the Equality Act Claim in accordance with paragraph 3.1.

Awards in excess of Settlement Proposals

3.6 If the Operator is required to defend a Equality Act Claim where it has submitted a Settlement Proposal to RfL and an award is made in respect of the Equality Act Claim in favour of the Disabled Person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.7, RfL shall pay to the Operator by way of Other Adjustment:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Operator in defending the Equality Act Claim, to the extent that such costs have not already been paid by RfL under paragraph 3.2.

No obligation to pay

3.7 RfL shall not have any obligation to make the payments described in paragraphs 3.3 or 3.6 where it is determined or, if no declaration or determination by the court on this point has been sought or made, RfL, in its reasonable opinion, considers that the Operator has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to

provide a reasonable alternative method of making services at the Operator Station accessible to Disabled Persons.

4. ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

4.1 The Operator acknowledges that its obligations in this Schedule 1.4 are in addition to and do not limit its obligations to comply with:

- (a) the Equality Act;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

4.2 The Operator shall provide services (including alternative transport services) for Disabled Persons that are consistent with the Disabled Person's Policy.

SCHEDULE 2
CONCESSION SERVICES

Schedule 2.1: Obligations in relation to Concession Services

Schedule 2.2: List of Concession Services

SCHEDULE 2.1

Obligations in relation to Concession Services

1. RESTRICTIONS RELATING TO CONCESSION SERVICES

1.1 The Operator may, and where specified in this Agreement shall, at all times during the Concession Period provide and operate the Concession Services specified in this Schedule 2, save that in providing and operating the Concession Services, the Operator shall not take any action which:

- (a) is detrimental to RfL's or TfL's reputation or the value of Crossrail to Successor Operators;
- (b) prejudices the continuity of the provision of the Concession Services by a Successor Operator at the end of the Concession Period; or
- (c) results in additional liabilities and obligations being assumed by a Successor Operator.

1.2 The Operator shall at all times during the Concession Period:

- (a) operate any Concession Services it provides or operates in a safe manner and in accordance with good industry practice; and
- (b) maintain appropriate and up-to-date safety management systems.

2. PROVIDING ONLY THE CONCESSION SERVICES

2.1 The Operator shall carry out the Concession Services directly and not through an Affiliate, unless RfL otherwise agrees.

2.2 The Operator shall not directly or indirectly, without the prior written consent of RfL, carry out any business or activity other than the provision and operation of the Concession Services.

2.3 RfL may impose such conditions to its consent as it considers appropriate for the purpose of securing the continuity of the provision of the Concession Services at the end of the Concession Period.

2.4 The Operator shall not during the Concession Period, without the consent of RfL:

- (a) provide or operate any railway passenger services other than the Passenger Services;
- (b) operate any stations other than the Operator Stations;
- (c) operate any Depot, or carry out any light maintenance services other than as permitted by this Agreement; or
- (d) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or

- (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Operator's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

2.5 The Operator shall not engage any Concession Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. MAINTENANCE AS GOING CONCERN

3.1 The Operator shall maintain and manage the business of providing the Concession Services so that, to the greatest extent possible and practicable:

- (a) the Operator is able to perform its obligations under this Agreement; and
- (b) a Successor Operator would be able to take over the business of providing the Concession Services immediately at any time.

3.2 The Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Concession Employees and Primary Concession Assets for the purpose of paragraph 3.1.

3.3 The Operator shall maintain and manage the business of providing the Concession Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Concession Period to, and continued immediately thereafter by, a Successor Operator.

3.4 The Operator shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Concession Period.

3.5 The Operator shall comply with all reasonable requirements of RfL to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer in the manner contemplated in this Agreement to any Successor Operator following the expiry of the Concession Period.

4. OPERATING ASSETS

4.1 The Operator shall maintain, protect and preserve the assets (including any intellectual property or intangible assets) employed in the performance of its obligations under this Agreement, excluding Class 345 Units (the *Operating Assets*) in good standing or good working order, subject to fair wear and tear.

4.2 The Operator shall carry out its obligations under paragraph 4.1 so that the Operating Assets may be transferred at the end of the Concession Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Concession Services.

4.3 Where any Operating Asset is lost, destroyed or otherwise damaged beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Operator shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.

4.4 RfL may at any time require the Operator to provide to RfL a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as RfL may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Operator shall comply with RfL's requirements in respect of such schedule of condition.

4.5 The Operator shall keep vested in it at all times during the Concession Period all Concession Assets designated as such pursuant to Schedule 18.2 (*Restrictions on dealings with Concession Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Concession Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that RfL may designate any such assets as Primary Concession Assets.

5. NO RIGHT TO APPLY MARKS

Other than is provided for in paragraph 23 (*Brand Licences*) of Schedule 2.2 (*List of Concession Services*), the Operator may not apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Concession Services without RfL's prior written consent.

SCHEDULE 2.2

List of Concession Services

1. PASSENGER SERVICES

1.1 The Operator is obliged to provide the Passenger Services in accordance with the requirements of Schedule 1 (*Passenger Service Obligations*).

1.2 The Operator shall at all times during the Concession Period provide appropriate staffing on trains so as to ensure that:

- (a) it can efficiently comply with any of its safety, customer service and operating obligations under this Agreement, any Licences and any applicable Law;
- (b) it can provide high levels of passenger reassurance; and
- (c) it meets passenger requirements and customer expectations.

2. STATION SERVICES

The Station Services shall comprise:

- (a) the provision of any services to persons at the Operator Stations or, pursuant to paragraph 2(b), to Train Operators whose trains call at such Operator Stations, provided that such services:
 - (i) are made available only or principally to passengers alighting from or joining trains calling at such Operator Stations and to such Train Operators;
 - (ii) are provided in connection with the calling of trains at such Operator Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Operator Stations, unless RfL otherwise agrees; and
 - (iii) exclude the sale or issue (for a charge) of any items included in the price of a Fare;
- (b) the provision of access or services to any person under:
 - (i) any Station Access Agreement contemplated by this Agreement or as lawfully directed by the ORR from time to time; and
 - (ii) any Station Usage Agreement contemplated by this Agreement;
- (c) the staffing of Operator Stations including platforms, gatelines and ticket offices under paragraphs 3 (*Staffing of Stations*) to 5 (*Staffing of ticket offices and gatelines*) (inclusive);
- (d) the publication of Timetables and the timetables of other Train Operators under paragraph 6 (*Publishing the Timetable*);
- (e) the publication of TfL's Customer Charter, the passenger's charters of other Train Operators and charter-related statistics at Crossrail Stations under paragraph 7 (*TfL's Customer Charter and other charters*);

- (f) the provision of information and services under paragraph 8 (*The Crossrail Website*);
- (g) the publication of information and notices under paragraph 9 (*Provision of Information at Crossrail Stations*);
- (h) the provision of customer service and information in relation to Operator Station car parks under paragraph 10 (*Car Parks at Operator Stations*);
- (i) co-operating with RfL in the identification and provision of Station Areas and commercial opportunities at Operator Stations under paragraph 11 (*Operator's role in relation to Station Areas*);
- (j) supporting the installation and operation of mobile telephone and data services at Operator Stations under paragraph 12 (*Mobile Telephone and Date Services at Operator Stations*);
- (k) supporting newspaper and magazine distribution under paragraph 13 (*Distribution of Media Material at Operator Stations*);
- (l) supporting the provision of advertising at Operator Stations by RfL under paragraph 14 (*Advertising*);
- (m) providing a safe, secure and attractive customer environment under paragraph 15 (*Safe, secure and attractive customer environment*);
- (n) ensuring that relevant Concession Employees at Crossrail Stations are suitably trained in handling lost property and comply with RfL's lost property requirements under paragraph 16 (*Lost Property*); and
- (o) providing facilities for bicycles at Operator Stations under paragraph 17.6.

3. STAFFING OF CROSSRAIL STATIONS

Standard

3.1 The Operator shall at all times during the Concession Period provide appropriate staffing at Crossrail Stations so as to ensure that:

- (a) it can efficiently comply with any of its safety, customer service and operating obligations under this Agreement, any Licences and any applicable Law;
- (b) it can provide high levels of passenger reassurance; and
- (c) it meets passenger requirements and customer expectations.

Period and requirements of staffing

3.2 The Operator shall procure that during the Station Operating Day relating to the relevant Crossrail Station:

- (a) that, in the case of each Operator Station, any such Operator Station is open for passenger access and egress; and
- (b) there is:

- (i) in the case of each Operator Station, at least one suitable Concession Employee on duty at any such Operator Station; and
- (ii) in the case of each Operator Access Station, subject to paragraph 3.3 in the case of each Operator Access Station on the Central Operating Section, at least one suitable Concession Employee or a suitable employee of the relevant Facility Owner on duty at any such Operator Access Station,

in each case to provide a regular and effective staff presence to meet the objectives set out in paragraph 3.1, and that (or where there is more than one, at least one) Concession Employee, or as appropriate, employee of a Facility Owner shall be:

- (A) continuously available and visible to passengers at any such Crossrail Station to provide customer services, including, where, in the case of Operator Stations, not engaged in ticket selling duties as required by this Agreement, present on the station concourse and not in the ticket office; and
- (B) capable of advising customers about the Concession Services, the relevant information specified in paragraph 9 (*Provision of Information at Crossrail Stations*) that customers at any such Crossrail Station are reasonably likely to make.

3.3 The Operator shall from the Scheduled Trial Operations Start Date, procure during the Station Operating Day, that there is at least one Concession Employee which meets the requirements in paragraph 3.2(b) on duty on the platforms of each of the Operator Access Stations on the Central Operating Section that are served by the Passenger Services.

4. STAFF PRESENTATION

The Operator shall procure that its Concession Employees engaged in the provision of passenger-facing activities maintain high standards of presentation throughout the Concession Period, including meeting RfL's branding requirements in accordance with paragraph 8 (*Carrying out Refresh and Rebrand*) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*).

5. STAFFING OF TICKET OFFICES AND GATELINES

Ticket office opening and closing hours

5.1 The Operator shall, subject to paragraph 5.2, ensure that all times during the Station Operating Day relating to any Operator Station, that at least:

- (a) one ticket office is open in accordance with the opening times specified in schedule 17 and other terms of the Ticketing and Settlement Agreement; and
- (b) where available, any excess fares window is open at the same times.

5.2 The Operator may seek to obtain consent from the Secretary of State to amend the Ticketing and Settlement Agreement to provide for alternative ticket office opening and closing hours at each Operator Station from those set out in schedule 17 of the Ticketing and Settlement Agreement. The Operator shall:

- (a) obtain the prior written approval of RfL to any alternative opening and closing hours that it wishes to propose to the Secretary of State; and

- (b) keep RfL advised of the progress of any such application for the Secretary of State's consent and shall provide RfL with such information concerning the application as RfL may reasonably request. The Operator shall not agree any changes to the ticket office opening and closing hours set out in schedule 17 of the Ticketing and Settlement Agreement without RfL's prior consent.

5.3 If the Secretary of State grants consent for any changes to the ticket office opening and closing hours proposed by the Operator pursuant to and agreed by RfL, in each case pursuant to paragraph 5.2, the Operator shall ensure that, during the period commencing on the date when such changes become effective until the end of the Concession Period, the retailing facility at each Operator Station is staffed for no less than the hours specified in accordance with such consent or as otherwise agreed by RfL.

5.4 If the Secretary of State refuses to grant consent for any changes to the ticket office opening and closing hours proposed by the Operator pursuant to and agreed by RfL, in each case pursuant to paragraph 5.2, then the Operator shall ensure that from the date of that refusal until the end of the Concession Period, the ticket office at each Operator Station is staffed for no less than the hours specified in schedule 17 of the Ticketing and Settlement Agreement. Any such refusal shall not prevent the Operator from seeking to make an alternative proposal to the Secretary of State in which case, the provisions of this paragraph 5.2 shall apply.

Staffing of ticket gatelines

5.5 The Operator shall operate and supervise:

- (a) all ticket gatelines installed at the following Crossrail Stations by at least one Concession Employee staffing each such ticket gateline;
- (i) Abbey Wood;
 - (ii) Canary Wharf;
 - (iii) Custom House;
 - (iv) Paddington (Crossrail); and
 - (v) Woolwich;
- (b) the following specified number of ticket gatelines installed at the following Crossrail Stations **[REDACTED]**; and
- (c) the following specified number of tickdet gatelines installed at the following Crossrail Stations **[REDACTED]**,

and in each case, such operation and supervision shall be undertaken:

- (A) in respect of any such Crossrail Station, from the date the Operator becomes Facility Owner at that Crossrail Station; and
- (B) in each case between 0600 (or five minutes before departure of the first train from the station, if later) and 2300 (or five minutes after departure of the Last Train from the station, if earlier) and on all days of operation.

5.6 The Operator shall appropriately manage all ticket gatelines it is responsible for, having regard to the flow of passengers, occurrence of incidents, and other relevant circumstances, in each case in order to ensure the unimpeded flow of passengers through each ticket gate when in operation.

5.7 The Operator shall put in place day-to-day operating arrangements with RfL's nominated maintainer of ticket gates and shall promptly notify that maintainer of any defects that the Operator is aware of to any ticket gate and/or related equipment.

6. PUBLISHING THE TIMETABLE

Publication of the Timetable at Crossrail Stations

6.1 The Operator shall publish at each Crossrail Station in accordance with paragraph 6.2:

- (a) the Timetable on the Start Date; and
- (b) updates and replacements to the Timetable to the extent necessary to reflect any Timetable Change that comes into effect on any Passenger Change Date or between any Passenger Change Date, including in relation to any Timetable Change that occurs between any Passenger Change Dates, details that explain to passengers:
 - (i) the extent to which that Timetable Change will prevent the Operator from operating the Passenger Services in accordance with the Timetable; and
 - (ii) any related alternative services that will operate during the period of that Timetable Change.

6.2 When publishing the Timetable and updates or revisions to the Timetable pursuant to paragraph 6.1, the Operator shall publish:

- (a) at each Operator Station no later than two weeks before the change comes into effect (or where the Operator becomes aware of that change less than four weeks in advance of the effective date of that change, as a soon as reasonably practicable after it becomes aware) by:
 - (i) making the relevant information available upon request and free of charge in the electronic and printable form specified by RfL from time to time; and
 - (ii) clearly and prominently displaying the relevant information on information displays,

in each case, in accordance with, as appropriate, the requirements of the TfL Rail Operating Brand or the Crossrail Operating Brand; and

- (b) at each Operator Access Station in sufficient time for such information to be published by the Facility Owner of each such station within the time limit provided for in paragraph 6.2(a), by providing to those entities the Timetable or any update or revision, including any Timetable Change insofar as each relates to the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms and consistent with the same branding requirements as are specified in paragraph 6.2(a).

Awareness of the Timetable at Crossrail Stations

6.3 The Operator shall:

- (a) ensure that the Concession Employees based at Crossrail Stations are aware of any Timetable Change in order that those employees are capable of advising passengers about how the Timetable will be affected and where they can obtain further information; and
- (b) make regular public address system announcements at each Operator Station and on Passenger Services, informing passengers in the two weeks prior to any Timetable Change, about how the Timetable will be affected and where they can obtain further information.

Publication of the Timetable on the Crossrail Website

6.4 RfL will publish the first Timetable on the Start Date on the Crossrail Website. The Operator shall supply the data that comprises the Timetable to RfL for this purpose in a form specified by RfL a reasonable period in advance of the date occurring 12 weeks prior to the Start Date in order that RfL is able to incorporate that data for publication on the Crossrail Website no later than 12 weeks prior to the Start Date.

6.5 The Operator shall, in order that RfL may update the Crossrail Website, supply to RfL the data relating to any Timetable Change a reasonable period in advance of the date occurring 12 weeks prior to that Timetable Change coming into effect in order that RfL is able to incorporate that data for publication on the Crossrail Website no later than 12 weeks prior that Timetable Change and where this is not practicable due to the short notice given to the Operator of that Timetable Change, as soon as reasonably practicable after the Operator becomes aware of that Timetable Change.

Other Train Operators' timetables

6.6 The Operator shall throughout the Concession Period make available booklets and display information in information displays in respect of any other Train Operator's timetable at each Operator Station where the railway passenger services of such other Train Operator are scheduled to call:

- (a) within the time limits specified in paragraph 6.2 where and to the extent that such other Train Operator delivers to the Operator the relevant information and materials in sufficient time for the Operator to so publish; and
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Operator.

National Rail Timetable and National Rail Enquiry Scheme

6.7 The Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time, incorporates or is consistent with its Timetable from time to time.

6.8 The Operator shall use all reasonable endeavours to procure that information in relation to the Timetable and any Timetable Change is, in each case, available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four weeks prior to coming into effect, or in the case of a Timetable Change where the Operator becomes

aware of that change less than four weeks in advance of its effective date, as a soon as reasonably practicable after it becomes aware.

7. TfL'S CUSTOMER CHARTER AND OTHER CHARTERS

Content

7.1 RfL shall notify the Operator from time to time of any changes to the content of TfL's Customer Charter.

TfL's Customer Charter payments and other obligations

7.2 The Operator acknowledges that RfL will honour all commitments under the terms of the TfL's Customer Charter, including payments which passengers may reasonably expect to be made or provided from time to time in relation to the provision of the Passenger Services.

7.3 The Operator shall use reasonable endeavours:

- (a) without prejudicing any other obligation under this Agreement, to operate the Passenger Services with the purpose of minimising the extent to which RfL is obliged to make payments or other commitments to passengers; and
- (b) to:
 - (i) comply with any other obligations, statements and representations; and
 - (ii) meet any other standards or targets of performance,

in each case as are comprised in TfL's Customer Charter from time to time.

7.4 The Operator shall procure that the Concession Employees based at Crossrail Stations are at all times throughout the Concession Period familiar with the terms of TfL's Customer Charter in order that those Concession Employees are capable of advising passengers of:

- (a) the commitments made by TfL under the TfL's Customer Charter in relation to the Passenger Services, including where any such passenger may be entitled to a payment from TfL; and
- (b) the process (including the contact details) for submitting a claim for payment and contacting TfL in relation to the Operator's performance in providing the Passenger Services.

Publishing TfL's Customer Charter

7.5 RfL may from time to time require the Operator to publish or otherwise make available to passengers TfL's Customer Charter by:

- (a) providing to passengers copies of TfL's Customer Charter supplied by RfL, free of charge, at each Operator Station;
- (b) sending a copy of TfL's Customer Charter supplied by RfL, free of charge, to any person who requests it; and
- (c) providing to the operators of Operator Access Stations copies of TfL's Customer Charter supplied by RfL to enable such operators to publish it.

7.6 The Operator shall also make available at each Operator Station the current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Operator by such other Train Operator.

TfL's Customer Charter Statistics and other statistics

7.7 The Operator shall, as and when RfL requires, promptly publish TfL's Customer Charter Statistics at Operator Stations in the manner, format and level of disaggregation specified and supplied by RfL.

7.8 The Operator shall, as and when RfL requires, promptly provide TfL's Customer Charter Statistics to the Facility Owners of Operator Access Stations in order that those statistics may be displayed by such other operators.

7.9 The Operator shall promptly publish the passenger's charter statistics of other Train Operators whose trains call at any Operator Stations where those statistics are provided to the Operator by such other Train Operators.

8. THE CROSSRAIL WEBSITE

8.1 RfL will establish the Crossrail Website on or prior to the Start Date and maintain it throughout the Concession Period.

8.2 The Operator shall notify RfL promptly upon becoming aware of a Restriction of Use or other occurrence that prevents the Operator from operating the Passenger Services in accordance with the Timetable, in order that RfL can ensure that the content of the Crossrail Website is accurate.

8.3 Where requested by RfL from time to time, the Operator shall promptly assist RfL in validating the accuracy of the content of the Crossrail Website that describes the Timetable and the status of the Operator's provision of the Passenger Services.

8.4 The Operator shall procure that any website it operates in relation to Crossrail maintains an active link to the Crossrail Website.

9. PROVISION OF INFORMATION AT CROSSRAIL STATIONS

Provision of information

9.1 The Operator shall provide timely, accurate and clear information to passengers at Operator Stations, which obligation shall include:

- (a) making public address system announcements at least every 15 minutes during the Station Operating Day, informing passengers about the performance of the Passenger Services and the performance of transport services sponsored or funded by the TfL Group;
- (b) ensuring that all clocks located at any Operator Station are working and accurate throughout the Station Operating Day relating to that Operator Station;
- (c) displaying in prominent locations at Operator Stations, accessibility information in order that disabled passengers are able to make use of the facilities at each such Operator Station and the Passenger Services that call there;

- (d) maintaining adequate stocks of maps of TfL and south east regional rail services, provided that in the case of:
 - (i) maps of TfL rail services supplied by RfL, the Operator shall inform RfL in a timely manner when it is necessary to replenish those stocks; and
 - (ii) maps of south east regional rail services, the Operator shall be responsible for sourcing adequate stocks; and
- (e) providing information to display in information displays and procuring that its Concession Employees based at Operator Stations are informed about the surrounding area in order that passengers may plan their onward journeys.

Responding to Help Point requests

9.2 The Operator shall respond to a passenger pressing a Help Point information call button at any Operator Station within 20 seconds of such button being pressed at any time during the Station Operating Day.

9.3 RfL shall be entitled to audit the Operator's compliance with its obligation under paragraph 9.2 in accordance with paragraph 2.3 of Schedule 8.1 (*KPI Regime*).

Publishing information in respect of other transport operating businesses

9.4 The Operator shall, subject to paragraph 9.5, promptly publish at Operator Stations and procure the publication at Operator Access Stations of such timetable or other information relating to other transport operating businesses sponsored or funded by the TfL Group as RfL may require from time to time.

9.5 As and when RfL requires the Operator to publish the information specified in paragraph 9.4, it will provide the Operator with the required publication material.

RfL notices at Crossrail Stations

9.6 If requested by RfL, the Operator shall promptly publish and display at the Operator Stations (and shall use all reasonable endeavours to procure the publication and display at Operator Access Stations of) such notices not otherwise specified in paragraph 6 (*Publishing the Timetable*) or this paragraph 9 as RfL may wish to publish from time to time.

9.7 The Operator shall promptly procure the production of any notices to be published at Crossrail Stations pursuant to paragraph 9.6 in accordance with, as appropriate, the requirements of the TfL Rail Operating Brand or Crossrail Operating Brand.

Other notices at Crossrail Stations

9.8 The Operator shall not publish any notices at Crossrail Stations other than those required by RfL under this Schedule 2, provided that the Operator may publish ad hoc, specific notices in accordance with any guidance issued by RfL from time to time which inform passengers of the unavailability of facilities at any Crossrail Station and where any ESUB at an Operator Station is unavailable, the status of the Passenger Services, provided that any such notice shall be clearly and professionally written.

Removal of notices

9.9 The Operator shall procure the timely removal of posters at Crossrail Stations in order that no posters continue to be published when they become out-of-date.

10. CAR PARKS AT OPERATOR STATIONS

Management of car parks at Operator Stations

10.1 The Operator shall procure throughout the Concession Period that the Concession Employees based at Operator Stations that have car parks are capable of managing all enquiries from customers in relation to those car parks.

10.2 The Operator shall from the Start Date put in place arrangements and maintain those arrangements throughout the Concession Period with the car park operator appointed by RfL that support RfL's collection of car parking revenue, including:

- (a) notifying that car park operator of any defects that the Operator is aware of to any such car park and/or its equipment; and
- (b) referring any issues arising from the operation and use of any such car park to such car park operator and/or RfL (as RfL directs from time to time) and, where appropriate, the emergency services.

11. OPERATOR'S ROLE IN RELATION TO STATION AREAS

11.1 The Operator shall, having regard to the Station Areas and other space available at Operator Stations:

- (a) be proactive in identifying and at RfL's request assist in the identification of potential Station Areas and other commercial opportunities that may be available to RfL or, if different, the Subleases Tenant at those stations and provide to RfL or, if different, the Subleases Tenant on request its opinion of how those opportunities may be realised, including assisting RfL or, if different, the Subleases Tenant with assessing the practical arrangements required to facilitate the exploitation of such commercial opportunities;
- (b) if requested by RfL or, if different, the Subleases Tenant (but not otherwise) actively market any such Station Areas or other commercial opportunities;
- (c) accept any disruption or works in connection with the Station Areas provided that the disruption is and/or works are carried out outside the Station Operating Day or at any other time by agreement between the Operator, RfL and, if different, the Subleases Tenant (subject to the proviso that, at all times, priority will be given to the safety of the public and the train services which run through the relevant Operator Station);
- (d) use all reasonable endeavours to assist RfL or, if different, the Subleases Tenant with any discussions and/or negotiations with Network Rail or any third party that may be required to obtain Network Rail or any third party consent in relation to the Station Areas and act without delay when seeking to obtain such consent from Network Rail or any third party which is required to run the Station Areas;
- (e) allow RfL, or if different, the Subleases Tenant and any third party tenants or occupiers such rights of access, survey, monitoring and inspection to the relevant Operator Station and any other right as may be reasonably required in order for RfL,

or if different the Subleases Tenant or any third party tenants or occupiers to assess and manage any commercial opportunities that may be present at the relevant Operator Station; and

- (f) not take any action which results in the Operator advertising or the Operator allowing any third party advertising in the Advertising Areas of any Operator Station.

11.2 The Operator authorises and appoints RfL or if different, the Subleases Tenant to act as its agent in respect of the marketing and letting of the Non-Operational Areas and shall:

- (a) when requested by RfL, or if different, the Subleases Tenant co-operate with and provide all reasonable assistance to RfL in negotiating or liaising with third parties and/or Network Rail in connection with the terms of or arrangements relating to any Non-Operational Areas Subleases or Occupational Agreements, the Operator acknowledging that RfL, or if different the Subleases Tenant, shall be entitled to have sole conduct of such negotiations or liaison; and
- (b) promptly on the grant of the Station Leases enter into an Operator Stations Power of Attorney.

12. MOBILE TELEPHONE AND DATA SERVICES AT OPERATOR STATIONS

12.1 The Operator shall support RfL or another member of the TfL Group in the provision of mobile telephone and data services at Operator Stations by:

- (a) providing access at Operator Stations to the telecommunications supplier appointed by RfL in order to install and from time to time maintain telecommunications and wireless equipment;
- (b) providing power at market rates in order that that installation and maintenance can be carried out and those mobile telephone and data services can be provided on an on-going basis; and
- (c) notifying that supplier promptly upon becoming aware of the occurrence of any failures in the provision of those mobile telephone and data services.

12.2 The Operator shall inform customers of the telephone and data services that will be available at the Operator Stations as reasonably directed by RfL from time to time.

13. DISTRIBUTION OF MEDIA MATERIAL AT OPERATOR STATIONS

13.1 The Operator shall throughout the Concession Period permit the newspaper and magazine distributors appointed by RfL to operate from the Operator Stations, including providing the employees of those distributors with access to storage facilities at the Operator Stations and making space available for distribution hoppers to hold copies of related newspapers and magazines.

13.2 The Operator shall throughout the Concession Period permit any other distributors of material notified by RfL from time to time to operate from the Operator Stations.

13.3 The Operator shall be prohibited from distributing or permitting the distribution of any media material whatsoever (including newspapers, magazines, leaflets, coupons and flyers) at any of the Crossrail Stations or on any rolling stock vehicle forming part of the Train Fleet without the prior consent of RfL.

14. ADVERTISING

14.1 No less than three months before the Start Date, RfL shall notify to the Operator those Advertising Areas in respect of which RfL requires an Advertising Concession Agreement.

14.2 On or before the Start Date, the Operator shall grant the Advertising Concession Agreement to RfL (or, at RfL's request, to another member of the TfL Group) (the *Advertising Concessionaire*) in respect of the Advertising Areas within the Operator Stations previously notified by RfL to the Operator.

14.3 If, during the term of any Station Lease, the Advertising Concessionaire acting reasonably identifies any additional areas demised by a Station Lease (not being part of the Station Areas or Advertising Areas) which may be suitable for advertising and are not required in order to secure the safe operation of the Passenger Services, the Advertising Concessionaire shall, or if different, RfL shall procure that the Advertising Concessionaire shall notify the Operator of such fact and shall be entitled to request that the Operator enter into such agreement as the Advertising Concessionaire may reasonably require to ensure that the relevant area falls within the scope of the Advertising Concession Agreement, in which event:

- (a) the Advertising Concessionaire, or if different, RfL shall procure that the Advertising Concessionaire shall provide to the Operator an execution copy (in duplicate) of the required agreement; and
- (b) the Operator shall within 10 Business Days of receipt of the execution copies of that agreement, execute the same and provide the duplicate copies to the Advertising Concessionaire with irrevocable authority to complete the same.

15. SAFE, SECURE AND ATTRACTIVE CUSTOMER ENVIRONMENT

Operator Stations

15.1 In providing relevant Concession Services, the Operator shall use all reasonable endeavours to provide a safe, secure and attractive customer environment at Operator Stations that is commensurate with the level that an experienced, professional and diligent operator of railway passenger services would provide, which such provision shall include:

- (a) responding to a passenger pressing a Help Point emergency call button or lift alarm button, in each case, at an Operator Station within 10 seconds of such button being pressed at any time during the Station Operating Day;
- (b) keeping station platform surfaces and routeways free from trip hazards and vegetation and providing customers with unimpeded access both to and from those platforms;
- (c) maintaining:
 - (i) CCTV and associated recording systems installed at Operator Stations in full working order at all times; and
 - (ii) records on the Fault Management System of inspections of that equipment and systems carried out by the Operator or any third party on its behalf;
- (d) monitoring all cameras installed at Operator Stations in order to achieve an immediate level of effective surveillance;

- (e) removing or procuring the removal of hazardous items and substances from Operator Stations within four hours of becoming aware of such any such items or substances;
- (f) whilst not adversely affecting the Operator Station environment and the provision of relevant Concession Services, taking proactive steps to prevent pest, including rodent and insect, infestation and roosting birds, and taking steps to remove such infestation or roosting and the evidence of such infestation or roosting where it does occur; and
- (g) taking steps to maintain Operator Stations in good condition, which shall include the Operator promptly:
 - (i) repairing damage and defects where the Operator is obliged to do so under the terms of the relevant Station Lease; and
 - (ii) enforcing its rights in accordance with paragraph 8.9 of Schedule 4.1 (*Property Leasing and Access*) where it is not obliged under the terms of that Station Lease to effect those repairs directly.

15.2 RfL shall be entitled:

- (a) to audit the Operator's compliance with its obligation under paragraph 15.1(a) in accordance with paragraph 2.3 of Schedule 8.1 (*KPI Regime*); and
- (b) to request that the Operator provides RfL with the inspection records referred to in paragraph 15.1(c)(ii) upon reasonable notice.

Heathrow Terminal 4

15.3 Promptly after a Passenger Service terminates at Heathrow Terminal 4 station and all of the passengers have disembarked from the Unit that delivered that Passenger Service, the Operator shall:

- (a) procure that that Unit is inspected for suspect packages and other suspicious items; and
- (b) should any such packages or items be found, that they are immediately reported to the appropriate authorities in accordance with any security protocols operating at Heathrow Terminal 4 station.

16. LOST PROPERTY

16.1 The Operator shall procure at all times during the Concession Period, that Concession Employees engaged in the handling of lost property at Crossrail Stations and on trains comprising the Train Fleet:

- (a) are suitably trained in RfL's requirements for handing lost property specified in any procedures issued by RfL from time to time; and
- (b) comply with those procedures.

16.2 The Operator shall put in place and maintain throughout the Concession Period, day-to-day operating arrangements for the transportation and storage of lost property found at Crossrail Stations and on trains comprising the Train Fleet with the TfL Group employees (or the employees of TfL's sub-contractor) based at the office designated by RfL from time to time as the lost property office for Crossrail.

17. BICYCLES

Bicycles on trains

17.1 During each of Stage 0, Stage 1 and Stage 2, the Operator shall, subject to paragraph 1.7 of Schedule 3.2 (*Fares Selling*), comply with the requirements of the carriage of bicycles polices that apply to railway passenger services operated on the Eastern Section and the Western Section as at the date of this Agreement.

17.2 From the Stage 3 Start Date, the Operator shall comply with the requirements for the carriage of bicycles by rail comprised in any policy document issued by RfL from time to time (the *Carriage of Bicycles Policy*).

17.3 The Operator shall not, except to the extent RfL otherwise agrees, impose any restrictions on the carriage of bicycles on any Passenger Services other than those set out in the Carriage of Bicycles Policy.

17.4 Except to the extent that RfL otherwise agrees, having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by the Operator shall include reasonable facilities for the carriage and storage of bicycles.

17.5 Notwithstanding any of the above, the Operator shall not be in contravention of any of its obligations under this paragraph 17 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or wheelchair users and/or those passengers travelling with such wheelchair users.

Bicycles at Operator Stations

17.6 The Operator shall:

- (a) so far as is reasonably practical and subject to the availability of appropriate space at Operator Stations:
 - (i) ensure that reasonable facilities to enable the secure storage of bicycles at Operator Stations are made available, free of charge to passengers using the Passenger Services; and
 - (ii) maintain or procure the maintenance of those facilities; and
- (b) maintain or procure the maintenance of any existing facilities to enable the storage of bicycles which, due to their proximity to any Operator Station, may reasonably be considered to be facilities:
 - (i) that form part of that Operator Station; or
 - (ii) that are for the specific use by passengers of that Operator Station.

18. PROVISION OF INFORMATION ON TRAINS

18.1 The Operator shall procure that each of its train drivers announces:

- (a) within 30 seconds of any train that stops during a journey (other than at a Crossrail Station):

- (i) the reason for the stop, including where the train has stopped because of a red signal, that this is the reason for the stop, and that he is endeavouring to establish the cause (and the Operator shall procure that each such train driver duly endeavours to establish the cause for the stop); and
- (ii) where known, the anticipated length of delay;
- (b) if the train has yet to re-start its journey, every 120 seconds after any announcement made pursuant to paragraph 18.1(a) up to the time period referred to in paragraph 18.1(c), an update of the situation, including any further information relating to the cause of the stop and the anticipated delay; and
- (c) upon any delay lasting for five minutes, a further update of the kind anticipated by paragraph 18.1(b) and further updates of that kind upon each further five minutes of delay.

18.2 The Operator shall procure that each of its train drivers announces the information referred to in paragraph 18.1(a):

- (a) after 90 seconds where a train has stopped at a Crossrail Station but cannot re-commence its journey;
- (b) if the train has yet to re-start its journey, every 180 seconds after any announcement made pursuant to paragraph 18.2(a) up to the time period referred to in paragraph 18.2(c), an update of the situation, including any further information relating to the cause of the stop and the anticipated delay; and
- (c) upon a delay lasting six minutes, further updates of the kind anticipated by paragraph 18.2(b) at reasonable periods thereafter.

19. COMPLAINTS, CUSTOMER FEEDBACK AND QUERIES

Passenger Contact Centre

19.1 RfL will establish and resource on or prior to the Start Date and maintain throughout the Concession Period, a centre for passengers to telephone and correspond (including electronically) with RfL in relation to the any aspect of the operation of Crossrail (the *Passenger Contact Centre*). The Passenger Contact Centre shall be responsible for responding to all communication from passengers in relation to the operation of Crossrail.

Assisting RfL in responding to communication

19.2 The Operator shall assist RfL and its customer service employees based at the Passenger Contact Centre in responding to correspondence from passengers and investigating customer feedback and complaints by providing the following information within the following timescales:

- (a) acknowledging receipt to RfL of any request for information from RfL within one Business Day of receipt of such request;
- (b) providing to RfL an interim response and commentary (where a fully detailed response is not yet possible due to the need to collate further information) to any such request for information within five Business Days from receipt of such request; and

- (c) providing to RfL a fully detailed response and commentary to any such request for information within 10 Business Days from receipt of such request.

19.3 The Operator shall promptly redirect to the Passenger Contact Centre, any correspondence or other communication that it receives directly from passengers in relation to the operation of Crossrail.

19.4 The Operator shall procure that its Concession Employees based at Crossrail Stations are capable of informing passengers who request details of how to contact the Passenger Contact Centre.

20. FAULT REPORTING

Fault Management System requirements

20.1 The Operator shall establish on or prior to the Start Date, and throughout the Concession Period implement, a Fault Management System to cover all faults associated with the KPI Regime.

20.2 The Fault Management System shall as a minimum:

- (a) manage automatically and manually reported faults, in each case, in a timely manner;
- (b) provide:
 - (i) where the technology is commercially available, for devices to which Key Performance Indicators relate, to automatically report faults to the system's central monitoring system; and
 - (ii) for manual reporting of faults to which Key Performance Indicators relate, irrespective of the availability of automatic reporting described in paragraph 20.2(b)(i);
- (c) make provision to report faults that may occur on a repeated basis or occur in a number of assets or processes;
- (d) make provision for the inclusion of any faults reported by RfL;
- (e) permit RfL to extract fault resolution reports to such level of disaggregation as is necessary to verify the Operator's performance in respect of the KPI Regime;
- (f) incorporate the Fault Tracking Database;
- (g) incorporate the functionalities specified in paragraph 20.3;
- (h) provide details of the resources allocated by the Operator, including any contractual arrangements in place, to ensure the provision by it of a level of service quality across the Crossrail Route that is consistent with the standards specified in the KPI Regime;
- (i) measure the Operator's compliance with the standards set out in the KPI Regime and calculate KPI Adjustments; and
- (j) set out procedures, including in respect of the auditing requirements specified in paragraph 3 (*Reporting Requirements of the Operator*) of Schedule 8.1 (*KPI Regime*), for identifying and rectifying failures against the Key Performance Indicators.

Fault Management System functionality

20.3 The Operator shall ensure that the Fault Management System:

- (a) has the capabilities to:
 - (i) capture any information relating to faults remotely and on a real-time basis and make available such information from the Fault Tracking Database simultaneously;
 - (ii) capture any information relating to faults from internet-protocol-enabled devices that are or may be available to the Operator and to maximise such capability, the Operator shall maintain and upgrade the Fault Management System to the prevailing technology at the time;
 - (iii) identify any device malfunctions or failures by way of automatic reporting; and
 - (iv) reconcile the data it holds and update its system (including the Fault Tracking Database) automatically and promptly upon receipt of any manual fault report; and
- (b) will conduct system checks to ensure the effective running of the Fault Management System and the devices to which the Key Performance Indicators relate. The system check shall:
 - (i) be conducted on a daily basis;
 - (ii) be an automated process with minimal manual input or monitoring;
 - (iii) be designed to verify the effective performance of the Fault Management System and the relevant devices;
 - (iv) have failure diagnosis, troubleshooting and fault rectification functionalities; and
 - (v) to the extent that manual input or monitoring is required, be designed with the intention that any input or monitoring task is capable of being conducted remotely.

Fault Tracking Database

20.4 The Operator shall implement a real-time facilities management fault tracking database to enable RfL and the Operator to monitor fault resolution (the ***Fault Tracking Database***). The Fault Tracking Database shall have the functionality to be able to specify, as a minimum, information in respect of the following categorisations:

- (a) fault number;
- (b) train, station or other location;
- (c) device reference;
- (d) description of fault;
- (e) time of fault report;

- (f) current status of repair/response;
- (g) name of individual/organisation responsible for the repair;
- (h) estimated repair duration;
- (i) actual duration to repair each fault;
- (j) comments/issues; and
- (k) a programme of any future maintenance activities planned.

20.5 The Fault Tracking Database shall also:

- (a) contain a record of all maintenance activities carried out over time; and
- (b) have the functionality for RfL to:
 - (i) generate reports from that record in order to carry out separate statistical analysis; and
 - (ii) export that record or those reports into separate software packages to be notified by RfL to the Operator from time to time for such purpose.

20.6 The Operator shall ensure that RfL has real-time access to the Fault Tracking Database from a website.

Regular review of Fault Management System and Fault Tracking Database

20.7 For the purpose of ensuring that the Fault Management System continues to meet the requirements of the preceding provisions of this paragraph 20, the Operator shall review the effectiveness of the Fault Management System and, within that, the Fault Tracking Database, at reasonable intervals throughout the Concession Period (each such interval being no more than 12 months) in order that the Operator may identify and propose changes to RfL (and the Operator shall duly make such proposals) to, amongst other things:

- (a) ensure the level of service quality provided across the Crossrail Route is consistent with the level specified in the KPI Regime;
- (b) ensure more effective identification of faults; and
- (c) optimise the manner in which the Operator seeks to meet the standards of the Key Performance Indicators in order to avoid non-compliance with those standards.

20.8 The Operator shall not make any changes to the Fault Management System or the Fault Tracking Database without the prior written consent of RfL.

Service Quality at Operator Access Stations

20.9 The Operator shall:

- (a) use all reasonable endeavours to procure, including by:
 - (i) entering into new agreements with relevant third parties; and/or
 - (ii) varying existing agreements with relevant third parties; and

- (b) enforce any rights it may have under any Access Agreement in respect of any Operator Access Station,

in order that any services equivalent to the Concession Services that are provided by the Facility Owner at any Operator Access Station are provided at a level of service quality that is consistent with the level specified under this KPI Regime.

21. CARRYING OUT FAULT REPAIRS

The Operator shall carry out or procure the carrying out of all fault rectification work identified by the Fault Management System in a timely manner and with that degree of skill and care as would be exercised by a skilled and experienced Train Operator that is incentivised to maximise Ticket Revenue and Non-Ticket Revenue because it is entitled to retain all of that revenue.

22. LIGHT MAINTENANCE SERVICES

The Operator may in relation to the Train Fleet (subject to the terms of the RSPA Agency Agreement in relation to the Class 345 Fleet) carry out the following services:

- (a) the carrying out of inspections of rolling stock vehicles;
- (b) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (c) the replacement of failed components and consumables on rolling stock vehicles;
- (d) the preparation of rolling stock vehicles for service;
- (e) the stabling or other temporary holding of rolling stock vehicles; and
- (f) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself at any Operator Station, Ilford Depot and Old Oak Common Depot (in respect of cleaning in any Turnaround Period only).

23. BRAND LICENCES

The Operator shall comply with its obligations under each of the Brand Licences.

SCHEDULE 3

FARES, TICKETING AND REVENUE

Schedule 3.1:	Specification and Creation of Fares
Schedule 3.2:	Fares Selling
Schedule 3.3:	Ticket and Non-Ticket Revenue
Schedule 3.4:	Fares Information and Monitoring
Schedule 3.5:	Transport, Travel and Other Fares Related Schemes
Schedule 3.6:	Ticket Equipment

SCHEDULE 3.1

Specification and Creation of Fares

1. RfL SPECIFICATION OF FARES

RfL Specification of Fares

1.1 RfL shall make the initial Fares Document available to the Operator at least eight weeks prior to the Fares Setting Round in January 2016.

1.2 RfL shall provide to the Operator by no later than week 12 of each Fares Setting Round, to the extent not already specified in the current Fares Document, a list of the TSA Fares it requires the Operator to Create under the terms of the Ticketing and Settlement Agreement and then sell pursuant to Schedule 3.2 (*Fares Selling*), including details of any price or increases in price and terms and conditions or changes thereto in each case in relation to any TSA Fare.

1.3 RfL shall provide to the Operator from time to time, to the extent not already specified in the current Fares Document, a list of non-TSA Fares it requires the Operator to sell pursuant to Schedule 3.2, including details of any price or increases in price and terms and conditions or changes thereto in each case in relation to any non-TSA Fare.

TSA Fares

1.4 The Operator shall ensure that each TSA Fare notified to it pursuant to paragraph 1.1 or 1.2 has been Created in accordance with RfL's requirements pursuant to paragraph 1.1, or 1.2 (as the case may be) to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

1.5 The Operator shall not Create or agree to Create any TSA Fare or Discount Card except in accordance with RfL's requirements pursuant to this paragraph 1.

Creation of Flows

1.6 The Operator shall ensure that each Flow notified to it by RfL from time to time shall be Created to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

Price and Other Terms and Conditions of Fares

1.7 The Operator shall not vary the terms and conditions, including the price, of any Fare notified to it by RfL pursuant to paragraph 1 without RfL's prior written consent.

2. CHANGE OF LEAD OPERATOR / MAJOR FLOW OPERATOR

2.1 The Operator shall as and when required by RfL, promptly under the terms of the Ticketing and Settlement Agreement:

- (a) make a request to become the Lead Operator of those Flows in respect of which the Incumbent Operators are Lead Operators;
- (b) seek to reach agreement with all relevant Train Operators that the Operator becomes the Lead Operator in respect of those Flows;

- (c) if necessary, seek to resolve any dispute with any relevant Train Operator with a view to the Operator becoming the Lead Operator in respect of the relevant Flow;
- (d) duly inform the RSP where the Operator has become the Lead Operator in respect of any of those Flows; and
- (e) take such other steps as are reasonably necessary to ensure that the Operator becomes the Lead Operator of those Flows.

2.2 The Operator shall not without RfL's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

2.3 The Operator shall inform RfL if it becomes the Lead Operator in respect of any Flow. Upon the Operator becoming the Lead Operator in respect of any Flow, RfL may update the Fares Document in accordance with paragraph 3 (*Change to the Fares Documents*).

2.4 The Operator shall inform RfL if it ceases to be a Major Flow Operator in respect of any Flow.

3. CHANGES TO THE FARES DOCUMENT

3.1 In specifying to the Operator the price or terms and conditions of any Fare pursuant to this Schedule 3.1, RfL shall, subject to paragraph 3.3, issue to the Operator a revised Fares Document.

3.2 Where RfL decides to issue a revised Fares Document pursuant to paragraph 3.1, RfL shall set out in that document all Fares, including their prices and other terms and conditions and, as soon as reasonably practicable thereafter, RfL shall issue that document to the Operator which, in any event, shall be no less than eight weeks prior to the Fares Setting Round to which the changes in that revised Fares Document relate.

3.3 Where the specification referred to in paragraph 3.1 does not, in RfL's reasonable opinion, constitute a material change to any previous specification by it, it shall not be obliged to issue a revised Fares Document, but instead shall provide the Operator with a summary (to such level of detail or generality as RfL may reasonably determine) of the changes to the specification previously in force.

SCHEDULE 3.2

Fares Selling

1. FARES SELLING

Lead Retailer

1.1 The Operator shall as and when required by RfL, promptly under the terms of the Ticketing and Settlement Agreement:

- (a) make a request to become the Lead Retailer in respect of the Eastern Section Operator Stations, the Western Section Operator Stations and Abbey Wood station; and
- (b) take such other steps as are reasonably necessary to ensure that the Operator becomes the Lead Retailer in respect of those Operator Stations.

Obligation to sell

1.2 The Operator shall sell to any person wishing to travel on the Passenger Services, on any other railway passenger services, or both, the Fare he requires and which the Operator:

- (a) is entitled or obliged to sell under the Ticketing and Settlement Agreement; or
- (b) is otherwise directed to sell by RfL from time to time.

Restrictions on sales

1.3 The Operator shall ensure that the purchaser of any Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the price specified by RfL pursuant to paragraph 1 (*RfL Specification of Fares*) of Schedule 3.1 (*Specification and Creation of Fares*) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as RfL may specify from time to time; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Fare on a Passenger Service where such Fare is one which RfL specifies the price of under this Agreement.

1.4 The Operator shall not set a limit on the number of Fares that may be used on any particular train.

1.5 The Operator shall not sell or offer to sell:

- (a) any Fare in respect of which the price has been specified by RfL at an amount that is greater or less than that price; and

- (b) any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

Agents of the Operator

1.6 The Operator shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise) comply with the requirements of paragraphs 1.2 to 1.5 inclusive.

Additional ancillary services

1.7 The Operator shall not without RfL's prior consent charge a purchaser of any Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Fare was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

1.8 RfL shall notify the Operator from time to time of the amount of any charge or the determination of other terms for car parking arrangements that RfL wishes to introduce at any Operator Station.

2. FARES

Reduction in Prices of Fares

2.1 Paragraph 1.5 shall not prevent the Operator from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Operator before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
- (b) presenting a Discount Card issued by another Train Operator;
- (c) the passenger's charter of any other Train Operator; or
- (d) any relevant conditions of carriage.

Percentage Allocations

2.2 The Operator shall co-operate with RfL to develop Percentage Allocations in respect of any Rail Product and shall exercise its rights under the Ticketing and Settlement Agreement to act in accordance with RfL's instructions to both establish and protect those Percentage Allocations.

2.3 Except to the extent that RfL may consent from time to time, the Operator shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.

2.4 The Operator shall notify RfL upon becoming aware of any other person proposing to take any action or step which may have the same effect referred to in paragraph 2.2. The Operator shall take such action as RfL may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

3. INCORRECT SELLING OF FARES

3.1 If the Operator has overcharged any Fare, it shall reduce that price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.5 from such date.

3.2 RfL may adjust Concession Payments by way of making an Other Adjustment by an amount equivalent in its opinion to the sum of:

- (a) any additional gross revenue accruing to any person selling Fares on its behalf as a result of the sale of Fares at prices in excess of the relevant amounts required under this Schedule 3.2 (*Fares Selling*); and
- (b) any costs incurred by RfL in determining the amount of such gross revenue.

3.3 If the Operator has undercharged any Fare, it shall increase the price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.5 from such date.

3.4 RfL may adjust Concession Payments by way of making an Other Adjustment by an amount equivalent in its opinion to the sum of:

- (a) the gross revenue that RfL failed to earn as a result of the sale of Fares at prices for less than the relevant amounts required under this Schedule 3.2; and
- (b) any costs incurred by RfL in determining the amount of such gross revenue.

3.5 Any adjustment to Concession Payments by RfL pursuant to paragraphs 3.2 and 3.4:

- (a) shall not be a Change; and
- (b) shall be without prejudice to any other rights or remedies of RfL under this Agreement in respect of such contravention.

SCHEDULE 3.3

Ticket and Non-Ticket Revenue

1. ACKNOWLEDGEMENT

1.1 The Operator hereby acknowledges that:

- (a) RfL remains on risk for the amount of Ticket Revenue that accrues in respect of passenger journeys made on the Passenger Services and that it therefore has an interest in both maximising Ticket Revenue and ensuring its timely collection; and
- (b) the Operator does not share this risk and it has no commercial incentive to protect Ticket Revenue through the carrying out of regular and effective revenue protection measures.

1.2 The Operator therefore agrees to:

- (a) undertake its obligations set out in the remainder of this Schedule 3.3; and
- (b) co-operate with RfL or its nominee in the carrying out of Ticketless Travel Surveys pursuant to Schedule 9 (*Revenue Protection Incentive Regime*) by granting RfL or its nominee (as the case may be) such access to Crossrail Stations or trains as either reasonably require for that purpose.

2. REVENUE ACCOUNT

The Operator shall on or prior to the Start Date:

- (a) establish the Revenue Account with an Acceptable Bank, which shall, amongst other things, entitle RfL to withdraw from the Revenue Account the Revenue Sweep in accordance with paragraph 5.2; and
- (b) procure that the Account Charge is executed in favour of RfL in form and substance satisfactory to RfL in respect of the sums in the Revenue Account owing to RfL.

3. REVENUE COLLECTION AND PAYMENTS INTO THE REVENUE ACCOUNT

Collecting Revenue

3.1 The Operator shall, in a timely manner, collect or procure the collection of:

- (a) all Ticket Revenue on behalf of RfL and all other revenue from the sale of tickets the Operator is required to collect pursuant to the Ticketing and Settlement Agreement;
- (b) all payments due to the Operator from RSP, including all commission earned in respect of the value of sales by the Operator of the Fares;
- (c) all Non-Ticket Revenue on behalf of RfL;
- (d) the value of penalty fares that is owed to RfL pursuant to paragraph 7.3(a); and
- (e) all amounts payable to the Operator:

- (i) under the London Boroughs Concessionary Travel Scheme until such time as such amounts are received by RfL or another member of the TfL Group directly and RSP is no longer required to pay such amounts into the Revenue Account;
- (ii) under the British Transport Police Agreement;
- (iii) under the ATOC Staff Travel Scheme, specified in paragraph (a) of the definition of Inter-Operator Scheme; and
- (iv) under the Metropolitan and City Police Agreement.

3.2 The Operator shall pay or procure the payment of each of the amounts specified in paragraph 3.1 into the Revenue Account as soon as reasonably practicable after each such amount becomes due.

Disputes as to amounts owing to the Operator

3.3 If there is a dispute between the Operator and RSP, any other Train Operator or any counterparty to the London Boroughs Concessionary Travel Scheme, the British Transport Police Agreement, the ATOC Staff Travel Scheme and the Metropolitan and City Police Agreement, in each case concerning the amount due to the Operator, then for so long as the Operator is, acting in good faith, taking appropriate steps to contest or resolve such dispute, the amount due from the Operator pursuant to paragraph 3.2 shall be regarded as the portion (if any) which is not in dispute.

3.4 The Operator shall keep RfL fully informed as to the progress of any such dispute and of its settlement or adjudication, and shall comply with any reasonable directions (including any directions to the Operator to enforce its respective rights under any such agreement or scheme, which directions may include a direction to challenge any allocation or apportionment under any such agreement or scheme in accordance with that agreement or scheme's respective terms where the Operator has not already done so) from RfL as to the conduct of such dispute and any settlement. When such dispute is settled or adjudicated, the amount due shall be the amount determined as due pursuant to such settlement or adjudication.

4. PAYMENTS FROM THE REVENUE ACCOUNT TO THIRD PARTIES

4.1 The Operator shall procure that the following persons shall receive automatic electronic funds transfers in pounds sterling of the following amounts to such bank account in the United Kingdom as the relevant person has previously specified to the Operator in writing in accordance with the terms of the relevant agreement or scheme:

- (a) RSP, in respect of all ticket revenue accrued during the relevant Reporting Period or Reporting Periods, but owed via RSP to third parties or RfL in accordance with the terms of the Ticketing and Settlement Agreement; and
- (b) ATOC, in respect of the Operator's contribution for the relevant Reporting Period under the terms of any relevant Inter-Operator Scheme for the upkeep of that scheme and/or towards that scheme's administrative costs,

(together, the *Operator's Ticketing and Scheme Liabilities*).

4.2 The Operator shall:

- (a) be entitled to make withdrawals from the Revenue Account to meet the Operator's Ticketing and Scheme Liabilities that duly accrue from time to time;
- (b) not otherwise make withdrawals from the Revenue Account without RfL's prior approval; and
- (c) be liable to RfL for any shortfall in an amount that should have been credited to the Revenue Account and which is owed to RfL, but which is not duly credited (other than any such shortfall caused by RfL).

5. PAYMENTS FROM THE REVENUE ACCOUNT TO RfL

Revenue Sweep

5.1 On each day of the Concession Term (the *Relevant Day*), all monies in the Revenue Account on the Relevant Day relating to:

- (a) all Ticket Revenue that is standing to the credit of the Revenue Account on that date;
- (b) to the extent not covered in paragraph 5.1(a) all cleared payments made to the Operator from RSP, and paid into the Revenue Account, including commission referred to in paragraph 3.1(b) and any amounts under:
 - (i) the London Boroughs Concessionary Travel Scheme;
 - (ii) the British Transport Police Agreement;
 - (iii) the ATOC Staff Travel Scheme, specified in paragraph (a) of the definition of Inter-Operator Scheme; and
 - (iv) the Metropolitan and City Police Agreement;
- (c) an amount equal to the value of any refund vouchers issued by the Operator on behalf of RfL to any passenger as a result of the Operator's performance of the Passenger Services causing that passenger to miss a Connection;
- (d) all Non-Ticket Revenue that is standing to the credit of the Revenue Account on that date;
- (e) the value of penalty fares that is owed to RfL pursuant to paragraph 7.3(a); and
- (f) the amount of interest that has accrued in the Revenue Account on the amounts paid in pursuant to paragraph 3.2,

(together, the *Revenue Sweep*) shall, subject to paragraph 5.3, be due and payable to RfL from the Revenue Account.

5.2 RfL shall have the right, subject to paragraph 5.3, to withdraw the Revenue Sweep from the Revenue Account and the Operator shall procure that RfL is able to duly withdraw each such Revenue Sweep.

5.3 In calculating the Revenue Sweep in respect of the Relevant Day, RfL shall do so having regard to:

- (a) the amount held in the Revenue Account on the Relevant Day the Revenue Sweep is made;

- (b) the amounts paid or that should have been paid into the Revenue Account by the Operator or third parties on the Relevant Day pursuant to this Schedule 3.3, including any commission;
- (c) the payments made on the Relevant Day and to be made in the next week, in either case from the Revenue Account by the Operator to meet the Operator's Ticketing and Scheme Liabilities, provided that, in taking account of such payments in that calculation, RfL shall ensure that the Revenue Sweep on any Relevant Day will not reduce the balance standing to the credit of the Revenue Account on that day below £[REDACTED] (or such higher amount as RfL agrees) in order that the Operator may meet any such liabilities; and
- (d) the amount of interest that should have been earned in the Revenue Account on the Relevant Day on the amounts that should have been paid in pursuant to paragraph 3.2.

Ticketing and Account Liabilities Adjustment

5.4 For each Reporting Period during the Concession Period and within the timescales specified in Schedule 11.1 (*Concession Payments*), RfL shall reasonably determine the adjustment that should be made to the Concession Payment by way of making a Pass Through Adjustment for that Reporting Period in order to make provision:

- (a) to RfL in respect of the Operator's Ticketing and Scheme Liabilities paid in that Reporting Period to the extent those liabilities have not been reimbursed by inclusion in any Revenue Sweep;
- (b) to the Operator in respect of the Revenue Account charges duly levied on it by the Acceptable Bank with whom the account is held;
- (c) to RfL in respect of an amount equal to the amount of any compensation that has been paid to passengers by way of vouchers including for delays to the Passenger Services which cause passengers to miss Connections to the railway passenger services of other Train Operators or any other compensation paid by the Operator, which, in each case, RfL has met in the relevant or any previous Reporting Period; and
- (d) to RfL in respect of any interest that should have accrued in the Revenue Account in that Reporting Period had all amounts owing to RfL pursuant to paragraph 5.1 been duly paid into the Revenue Account,

(together, the *Ticketing and Account Liabilities Adjustment*).

5.5 In reasonably determining the Ticketing and Account Liabilities Adjustment, RfL shall do so having regard to the latest information of the kind described in paragraph 5.2 and any other information available to it at the date that adjustment is to be made.

5.6 In accordance with Schedule 11.1, the Ticketing and Account Liabilities Adjustment for any Reporting Period shall be paid to the party in whose favour RfL determines the adjustment.

Information and Statements

5.7 The Operator shall:

- (a) procure that RfL has the same access to the information that the Operator has relating to the Revenue Account, including procuring regular periodic bank statements, in

order that RfL can separately verify at any time the payments and settlements into and out of that account;

- (b) provide or procure the provision of to RfL a regular periodic report to such frequency as RfL may reasonably specify that reconciles to the bank statements and confirms the type of payments that have been made into and out of the Revenue Account;
- (c) separately keep RfL informed at all material times of the Operator's Ticketing and Scheme Liabilities; and
- (d) provide such assistance as RfL may require from time to time to reconcile the Revenue Account receipts to its earnings recorded in LENNON.

6. REVENUE PROTECTION ENFORCEMENT

6.1 The Operator shall develop and operate a revenue protection policy for use by its revenue protection staff that meets the objectives specified in paragraph 6.3 (the ***Revenue Protection Policy***).

6.2 The Revenue Protection Policy shall be developed in accordance with the following:

- (a) the Operator shall submit the initial Revenue Protection Policy to RfL no less than two months prior to the Start Date;
- (b) thereafter the Operator shall submit an update of the Revenue Protection Policy to RfL on or before each anniversary of the Start Date (but no earlier than 28 days prior to each such anniversary) containing such changes as its considers are necessary to reflect the Operator's performance in implementing the Revenue Protection Policy in the preceding year;
- (c) RfL shall within 28 days of receipt of the initial or any updated Revenue Protection Policy, notify the Operator of any changes it reasonably requires to be made thereto; and
- (d) as soon as reasonably practicable after such notification, the Operator shall make those changes to the initial or any updated Revenue Protection Policy (as the case may be).

6.3 The Revenue Protection Policy is designed to ensure:

- (a) there is awareness of the need to purchase a valid ticket before travel;
- (b) that a Relevant Ticketless Travel Rate is achieved and maintained in the most cost-effective and efficient manner in order to protect the interests of RfL, the fare-paying passengers and the commercial viability of Crossrail;
- (c) an adequate provision of facilities and staff to enable passengers to purchase tickets easily and swiftly, and to check tickets on trains and at stations;
- (d) that relevant staff act in accordance with a detailed code of conduct that mandates a consistent approach to revenue protection activities and encourages discretion and sensitivity in seeking efficiently and effectively to protect Ticket Revenue;

- (e) the relevant staff record Penalty Fares in a manner that enables RfL to manage the Penalty Fares Provisions' appeal procedure including by the use of appropriate equipment that may be provided by RfL from time to time; and
- (f) the enforcement of a zero tolerance approach to fare evasion with offenders being issued with penalty fares.

6.4 The Revenue Protection Policy shall take account of and be consistent with the TfL Revenue Enforcement and Prosecutions Policy notified to the Operator by RfL from time to time.

6.5 The Operator shall, having regard to its experience in implementing the Revenue Protection Policy during the course of any year, keep the Revenue Protection Policy under review and make recommendations for changes pursuant to paragraph 6.2(b) to ensure that:

- (a) its staff continue to be aware and its new staff are made aware of the Revenue Protection Policy; and
- (b) the relevant staff continue to act at all times with discretion and sensitivity in seeking efficiently and effectively to protect Ticket Revenue.

6.6 The Operator shall implement the Revenue Protection Policy in accordance with its terms.

6.7 The Operator shall co-operate with:

- (a) RfL, members of TfL's Group and TfL's businesses; and
- (b) other operators engaged by RfL in connection with the provision to RfL of revenue protection and enforcement services on railway passenger services and other transport modes,

for the purpose of developing a common approach across such organisations to the enforcement of revenue protection measures and implementing best practice principles in carrying out such activity.

6.8 The Operator shall co-operate pursuant to paragraph 6.7 by:

- (a) making appropriately skilled and qualified Concession Employees reasonably available, free of charge to:
 - (i) attend meetings with RfL, members of TfL's Group and/or such other operators to discuss and review such a common approach and best practice principles;
 - (ii) provide the Operator's opinion in the development of such a common approach and best practice principles; and
 - (iii) make recommendations for modifications to any agreed approach or principles from time to time; and
- (b) providing to RfL such information relating to the carrying out of its Revenue Protection Policy as RfL may reasonably require from time to time for the purpose referred to in that paragraph.

7. PENALTY FARES

7.1 The TfL Penalty Fares Scheme shall apply to the Passenger Services from the Start Date.

7.2 RfL hereby appoints the Operator as an “authorised person” pursuant to the provisions of Schedule 17 of the GLA Act (the *Penalty Fares Provisions*).

7.3 The Operator shall from the Start Date and for the remainder of the Concession Period:

- (a) collect on behalf of RfL any penalty fare payable to RfL by any passenger pursuant to the terms of the Penalty Fares Provisions in accordance with the Revenue Protection Policy; and
- (b) provide such assistance as RfL may reasonably require in the administration of appeals in respect of the Penalty Fares Provisions.

7.4 The Operator shall, in addition to the collection of penalty fares, carry out all duties and responsibilities in relation to such collection as may ordinarily and properly be carried out by a penalty fare collector acting in the best interests of RfL and TfL.

7.5 The aggregate of any penalty fares collected by the Operator pursuant to paragraph 7.3(a) shall be paid by the Operator into the Revenue Account in accordance with the timescale specified in paragraph 3.2.

7.6 As and when required by RfL, the Operator shall publish, or procure the publication of, at Crossrail Stations, such information and make such announcements relating to the TfL Penalty Fares Scheme as, in either case, RfL may request from time to time. Without limiting the foregoing, the Operator shall comply with the requirements of this paragraph 7.6 upon:

- (a) the Operator becoming Facility Owner of any Crossrail Station that it is not the Facility Owner of upon the Start Date; and
- (b) the commencement of each Stage in relation to any Crossrail Station at which the Passenger Services are thereafter to call at.

8. PROSECUTIONS

RfL intends to seek the prosecution of (or otherwise settle out of court with) deliberate or persistent fare evaders or those attempting to defraud RfL of Ticket Revenue. The Operator shall provide RfL and/or its nominee with all reasonable support in such prosecutions or settlements, including:

- (a) making available revenue protection officers for the purpose of preparing cases against perceived fare evaders and defrauders and attending hearings; and
- (b) assisting RfL in the identification of persistent fare evaders and defrauders.

9. INDEMNITY

The Operator shall be responsible for, and shall indemnify RfL, its servants, agents, officers and employees from and against all Losses suffered or incurred by such persons arising from any acts or omissions of the Operator acting as agent for RfL pursuant to paragraph 7 (*Penalty Fares*).

10. RELEVANT DEBITS AND CREDITS

10.1 Subject to paragraph 10.2:

- (a) on or before the Payment Date for the second Reporting Period of the Concession Period, the Operator shall pay into the Revenue Account an amount equal to the amount it has received in relation to any Greater Anglia Relevant Debits and Credits;
- (b) on or before the Payment Date for the second Reporting Period after the Great Western Transfer Agreement is effective, the Operator shall pay into the Revenue Account an amount equal to the amount it has received in relation to any Great Western Relevant Debits and Credits; and
- (c) on or before the Payment Date for the second Reporting Period after the South Eastern Transfer Agreement is effective, the Operator shall pay into the Revenue Account an amount equal to the amount it has received in relation to any South Eastern Relevant Debits and Credits.

10.2 The following shall apply in relation to the Greater Anglia Relevant Debits and Credits, Great Western Relevant Debits and Credits and South Eastern Relevant Debits and Credits:

- (a) on the Payment Date next following the date on which the Greater Anglia Net Asset Statement is agreed or completed in accordance with the terms of the Greater Anglia Transfer Agreement, if the value allocated to Greater Anglia Relevant Debits and Credits in such agreed or completed Greater Anglia Net Asset Statement;
- (b) on the Payment Date next following the date on which the Great Western Net Asset Statement is agreed or completed in accordance with the terms of the Great Western Transfer Agreement, if the value allocated to Great Western Relevant Debits and Credits in such agreed or completed Great Western Net Asset Statement; and/or
- (c) on the Payment Date next following the date on which the South Eastern Net Asset Statement is agreed or completed in accordance with the terms of the South Eastern Transfer Agreement, if the value allocated to South Eastern Relevant Debits and Credits in such agreed or completed South Eastern Net Asset Statement,

in the relevant case:

- (i) exceeds the relevant amount paid by the Operator in accordance with paragraph 10.1, then the Operator shall pay an amount equal to such excess to the Revenue Account; or
- (ii) is less than the relevant amount paid by the Operator in accordance with paragraph 10.1, then RfL shall pay an amount equal to such shortfall to the Operator by way of Other Adjustment.

SCHEDULE 3.4

Fares Information and Monitoring

1. INFORMATION

1.1 The Operator shall make available, or procure that RSP makes available, to RfL, for any Fares Setting Round during the Concession Period, such details (including the proposed prices) of the Initial Permanent Fare of any TSA Fare for each such Fares Setting Round as RfL may request from time to time.

1.2 The Operator shall provide to RfL or procure that RfL is provided with or otherwise has access to:

- (a) such information as the Operator is entitled to under LENNON; and
- (b) ad-hoc passenger counts and passenger loading systems,

and, in either case, RfL shall be entitled to share such information with LUL.

2. MONITORING

2.1 The Operator shall provide to RfL such access as RfL may require to information pertaining to the prices and other terms and conditions of Fares in respect of journeys on the Passenger Services from time to time.

2.2 By no later than week 17 of each Fares Setting Round, the Operator will provide to RfL written confirmation from a statutory director of the Operator of whether the Operator has complied with its obligations under this Schedule 3 in respect of TSA Fares during each such Fares Setting Round.

2.3 The Operator shall take such action as RfL may require following receipt of any details from the Operator pursuant to paragraph 1 (*Information*) in order to ensure that the Operator will comply with the provisions of this Schedule 3.

SCHEDULE 3.5

Transport, Travel and Other Fares Related Schemes

1. INTEGRATED TRANSPORT SCHEMES

1.1 RfL may designate any scheme proposed by any third party (including any Local Authority) which relates to the integration of any other form of transport with the Concession Services as an Integrated Transport Scheme by notifying the Operator of such designation, the terms of such scheme and the date by which it requires the Operator's participation.

1.2 If and to the extent that RfL designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme in accordance with paragraph 1.1, then the Operator shall, as required by RfL, participate in and comply with its obligations under such scheme and take such other steps as RfL may reasonably require.

1.3 RfL shall consult the Operator a reasonable period in advance of designating any scheme an Integrated Transport Scheme under paragraph 1.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such designation.

2. CONCESSIONARY TRAVEL SCHEMES

2.1 The Operator shall subject to paragraph 2.2:

- (a) participate in and comply with its obligations under:
 - (i) the following concessionary travel schemes
 - (A) the London Boroughs Concessionary Travel Scheme;
 - (B) the Freedom Pass Scheme;
 - (C) the Metropolitan and City Police Agreement; and
 - (D) the TfL Staff Travel Scheme; and
 - (ii) any other concessionary travel scheme which the Operator is required to participate in during the Concession Period pursuant to paragraph 2.1(b); and
- (b) if so requested by RfL, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in this Agreement the terms of which have been amended since the date of this Agreement; and
 - (ii) such other concessionary travel schemes as RfL may specify from time to time.

2.2 RfL shall consult the Operator a reasonable period in advance of making any request of the Operator to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

2.3 The Operator shall supply to RfL, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as RfL may reasonably

require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

3. MULTI-MODAL FARES SCHEMES

3.1 The Operator shall, subject to paragraph 3.2, if so requested by RfL, participate in and comply with its prospective obligations under:

- (a) such multi-modal fares schemes as any relevant Local Authority or funder may require or request it to participate in; and
- (b) such multi-modal fares scheme whose terms have been amended since the requirements to participate.

3.2 Subject to the terms of the relevant multi-modal fares scheme, the Operator shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of RfL:

- (a) the Operator's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail to leave the Operator financially no worse off.

3.3 RfL shall consult the Operator a reasonable period in advance of making any request of the Operator to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

3.4 The Operator shall supply to RfL, in respect of any multi-modal fares schemes referred to in paragraph 3.1, such information within such period as RfL may reasonably require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

4. DISCOUNT FARE SCHEMES

4.1 The Operator shall participate in and comply with its obligations under the terms of each Discount Fare Scheme listed in this Agreement or any other scheme designated as such pursuant to paragraph 4.2.

4.2 RfL may designate any other discount fares scheme as a Discount Fare Scheme by notifying the Operator of such designation and informing the Operator of the terms of such scheme and the date by which it requires the Operator's participation.

4.3 RfL may de-designate any Discount Fare Scheme as such by notifying the Operator of such de-designation. Upon such de-designation, the Operator shall be entitled to cease to participate in that Discount Fare Scheme in accordance with its terms.

5. INTER-OPERATOR SCHEMES

5.1 To the extent not already required under paragraph 4.1, the Operator shall participate in and comply with its obligations under the terms of each Inter-Operator Scheme.

5.2 The Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of RfL.

5.3 Without limiting any other provision of this Agreement, the Operator shall act in accordance with RfL's reasonable requirements when exercising its rights or performing its obligations under the Ticketing and Settlement Agreement.

5.4 The Operator shall not amend, or agree or propose to amend, any other Inter-Operator Scheme without the prior written consent of RfL.

5.5 The Operator shall provide reasonable notice to RfL of any proposal to amend any Inter-Operator Scheme which it receives notification of and which is reasonably likely materially to affect the provision of the Concession Services.

5.6 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of RfL in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Operator makes a saving as a consequence of such amendment or proposed amendment.

6. CPAY

The Operator shall, as and when directed by RfL, become a party to the CPAY Agreement, and thereafter, participate in and comply with its obligations under the terms of the CPAY Agreement.

7. PAYMENT CARD DATA SECURITY STANDARDS

7.1 If and to the extent that PCI DSS is relevant and applies to any of the Concession Services undertaken by the Operator, the Operator shall:

- (a) comply with the requirements of the PCI DSS;
- (b) provide to RfL on request in a secure manner a report on the progress towards PCI DSS compliant status; and
- (c) share with RfL the reports of the regular scans (including periodic vulnerability scans) that are required to maintain PCI DSS compliance.

7.2 The Operator shall provide such co-operation and assistance as may reasonably be required by RfL to support TfL in its obligations in respect of PCI DSS and to achieve PCI DSS compliance, including making personnel available to provide support and assistance and to attend meetings with TfL.

8. VOTING ON INTER-OPERATOR SCHEME COUNCILS

8.1 The Operator shall to the extent permitted under the terms of the relevant Inter-Operator Scheme give RfL reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Operator is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:

- (A) in which the Operator has a permanent position; or
 - (B) where the Operator employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
 - (c) the Operator's voting recommendations.

8.2 The Operator shall to the extent permitted under the terms of the relevant Inter-Operator Scheme:

- (a) attend such meetings referred to in paragraph 8.1(a)(i) as RfL notifies to it;
- (b) vote at any such meeting in the manner required by RfL; and
- (c) provide to RfL, copies of the minutes of any such meeting as soon as reasonably practicable after receipt.

8.3 Notwithstanding any other provision of this Agreement, any obligation that the Operator has under this Agreement to provide RfL with information or documentation pursuant to an Inter-Operator Scheme shall only be to the extent permitted under the terms of that Inter-Operator Scheme.

SCHEDULE 3.6

Ticket Equipment

1. PROCUREMENT OF TICKET EQUIPMENT

1.1 The Operator acknowledges that any Ticket Equipment that RfL will procure pursuant to this Schedule 3.6, will be procured from a third party or parties and that it is intended that that Ticket Equipment will during the Concession Period remain the property of RfL or those third party or parties, as appropriate. At no time shall the Ticket Equipment become the property of the Operator. The Operator shall not cause or permit any Ticket Equipment to be affixed to the Operator's property or any third party's property so as to become a fixture.

1.2 RfL shall procure the following Ticket Equipment during the Concession Period:

- (a) by no later than the Start Date:
 - (i) 50 Revenue Inspection Devices;
 - (ii) 24 TVMs from Greater Anglia for use at the Eastern Section Operator Stations; and
 - (iii) 26 Oyster-compliant 'FastIS' TOMs at the Eastern Section Operator Stations;
- (b) by no later than:
 - (i) 31 December 2015, 52 TVMs, subject to paragraph 3.22(b), for use at the Eastern Section Operator Stations;
 - (ii) 10 December 2017, 49 TVMs for use subject to paragraph 3.22(b), at the Western Section Operator Stations and Abbey Wood station;
 - (iii) 10 December 2017, 28 Oyster-compliant 'FastIS' TOMs for use at the Western Section Operator Stations and Abbey Wood station (but no other Central Operating Section station); and
 - (iv) the Stage 3 Start Date, 16 TVMs for use subject to paragraph 3.22(b), at the Central Operating Section Operator Stations,

(together, the *New TVMs*); and
- (c) by no later than:
 - (i) 1 December 2016, ticket gatelines at each of the Eastern Section Operator Stations; and
 - (ii) the Stage 5 Start Date, ticket gatelines at each of the Western Section Operator Stations, other than the following Western Section Operator Stations:
 - (A) Burnham;
 - (B) Hanwell;

- (C) Iver; and
- (D) Taplow.

2. SUPPLY OF TICKET EQUIPMENT

2.1 RfL shall at no cost to the Operator, supply to the Operator the Ticket Equipment specified in paragraph 1.2 by the relevant dates specified in paragraph 1.2 and any other Ticket Equipment that RfL supplies or otherwise makes available to the Operator from time to time shall also be at no cost to the Operator. Without prejudice to RfL's obligations under paragraph 4.2, RfL gives no warranty or assurance as to the quality of the Ticket Equipment supplied under this paragraph 2.1.

2.2 All Ticket Equipment supplied under paragraph 2.1 shall be the responsibility of the Operator unless and until in the case of each such item of equipment, RfL acknowledges its return as being in compliance with paragraph 5 (*Return of Ticket Equipment, return condition and audits*), by way of signature of an authorised representative, and RfL shall not be liable to the Operator for:

- (a) any loss, theft, damage or destruction of or to any such Ticket Equipment or any part thereof; or
- (b) any loss, damage or destruction of any other property caused by such Ticket Equipment,

in either case which occurs prior to such return and whether such loss is caused by negligence, the strict liability of RfL or otherwise.

3. OPERATOR RIGHTS AND OBLIGATIONS

Use of, and No Alteration or Damage to, Ticket Equipment

3.1 The Operator shall not cause any damage to, make any alteration to, or interfere with the Ticket Equipment supplied pursuant to paragraph 2.1 in any way, other than in order to comply with its obligations relating to cleaning as set out in this Agreement. The Operator shall not place advertising anywhere on that Ticket Equipment.

3.2 The Operator shall ensure that the Ticket Equipment supplied to it pursuant to paragraph 2.1:

- (a) remains in its possession or, in the case of the Revenue Inspection Devices supplied pursuant to paragraph 1.2, the possession of its employees, in each case, at all times unless any such device is returned to RfL or its nominee in accordance with this Schedule 3.6; and
- (b) is used in accordance with its purpose and shall maintain, protect and preserve such devices in good working order, subject to fair wear and tear.

Maintenance of TVMs by the Operator

3.3 The Operator shall procure the maintenance of the TVMs procured pursuant to paragraph 1.2(a)(ii) for the duration of the Concession Period or until any such TVM's earlier return in accordance with paragraph 5.2.

3.4 Upon procuring the New TVMs, a member of the TfL Group will enter into a maintenance agreement under the terms of which, RfL's nominated maintainer will be responsible for maintaining the New TVMs (the *New TVM Maintenance Agreement*).

3.5 The Operator shall have the right from time to time to request that RfL procures that the relevant member of the TfL Group negotiates a revised level of service with RfL's nominated maintainer from the level of service that is specified in the New TVM Maintenance Agreement on the date the New TVM Maintenance Agreement is entered into.

3.6 The Operator shall procure the maintenance of the TOMs procured pursuant to paragraph 1.2(a)(iii) and 1.2(b)(iii) for the duration of the Concession Period.

RfL's agent in relation to maintenance of ticket gatelines

3.7 RfL will procure the maintenance of all ticket gatelines installed at Operator Stations. The Operator shall act as RfL's agent in relation to the maintenance contract between RfL and its nominated maintainer of those ticket gatelines in accordance with RfL's reasonable instructions from time to time.

3.8 The Operator shall indemnify RfL, each member of the TfL Group (and each of their respective employees, directors and officers) on demand against any Losses arising from any action pursuant to the agency referred to in paragraph 3.7 that places RfL in breach of the maintenance contract between RfL and its nominated maintainer of ticket gatelines.

Retailing and acceptance of Oyster

3.9 The Operator shall retail and accept Oyster travel products:

- (a) at all Eastern Section Operator Stations from the Start Date and for the duration of the Concession Period; and
- (b) at any other Operator Station from the date on which the Operator becomes the Facility Owner at that Operator Station and for the duration of the Concession Period.

Loss, theft, and vandalism

3.10 The Operator shall ensure that the Ticket Equipment is kept within a secure environment and shall be responsible for costs arising from any loss, theft or damage of such Ticket Equipment. The Operator shall take all reasonable measures to protect Ticket Equipment from loss, theft or damage, including damage caused by vandalism. The Operator shall indemnify RfL for all Loss incurred by RfL or its nominee in repairing Ticket Equipment damaged by the Operator or by third parties, including any costs incurred in cleaning graffiti or repairing damage caused by vandalism.

Access, Power, Facilities

3.11 The Operator shall grant the right for RfL, any member of the TfL Group and any of their subcontractors to have access, together with equipment, to the locations of all Ticket Equipment for the purposes of maintaining, repairing and upgrading Ticket Equipment at any time. The Operator shall, where such facilities exist, also provide the following, as required from time to time, in order for the relevant supplier of any item of Ticket Equipment and its subcontractors to carry out any repair, maintenance or upgrade of Ticket Equipment:

- (a) a continuous supply of electricity, and shall allow any such supplier and its subcontractors to connect into any electrical point and make available facilities for connection to sources of supply of electricity;
- (b) storage for any such supplier and its subcontractor's equipment and spare parts;
- (c) parking for any such supplier and its subcontractors' vehicles;
- (d) toilet and washroom facilities for any such supplier and its subcontractors; and
- (e) free travel permits for any such supplier and its subcontractors for use on the Passenger Services.

Cleaning

3.12 The Operator shall ensure that the casing surrounding the Ticket Equipment (excluding any cables) is kept clean at all times in accordance with training provided by RfL from time to time, and shall ensure that:

- (a) the Ticket Equipment is only wiped clean with a clean cloth or sponge which has been immersed in a solution of clean water and detergent and thoroughly wrung out;
- (b) once cleaned, the Ticket Equipment is wiped dry so as to be free from all cleaning residues whatsoever;
- (c) Ticket Equipment is not cleaned using an abrasive cleaning agent or applicator; and
- (d) if any cleaning by high-pressure water jet is carried out at any station, no contact is made between the water jet and the Ticket Equipment.

Storage of consumables

3.13 The Operator shall ensure that consumables (tickets, wallets, hand held devices, device keys for gates and passenger validators, device instruction labels for gates and passenger validators, gate permits) are kept within a secure environment. The Operator shall be responsible for any costs arising from loss, theft or damage of such consumables.

Fault Reporting

3.14 In the event that any Ticket Equipment does not function properly or has been damaged (including by vandalism or graffiti), the Operator shall notify the helpdesk of the relevant supplier of that Ticket Equipment within such period as is directed by RfL.

Operation of Oyster

3.15 The Operator shall ensure that passengers "touch in" and "touch out" when using Oystercards, in accordance with instructions provided to the Operator by RfL from time to time.

Space for signs

3.16 The Operator shall ensure that sufficient space is available for signage relevant to Oyster products and Oystercards.

Customer Information

3.17 The Operator shall make available to passengers information, including leaflets, provided to the Operator by RfL and make announcements as directed by RfL relating to Oyster services including fares revisions.

Intellectual Property

3.18 The Operator shall indemnify RfL and each member of the TfL Group on demand against any Losses arising from any breach by the Operator of the licence granted pursuant to paragraph 4.1.

Crisis Management

3.19 The Operator shall act in accordance with directions of RfL in respect of managing Ticket Equipment for the purposes of crisis management or business recovery.

Fraud Management, Hotlist

3.20 The Operator shall take appropriate action in respect of failed or fraudulently used Oystercards in accordance with training provided by RfL from time to time. The Operator shall request that Oystercards be hot listed in the circumstances advised to the Operator by RfL and in accordance with directions provided by RfL.

Service Disruptions

3.21 In relation to service disruptions and special events, the Operator shall act as directed by RfL or another member of the TfL Group, and in particular shall allow adjustments to be made to central settings, make adjustments to local settings and advise RfL or that member of instructions that have been given to customers, in each case in accordance with training provided by RfL from time to time.

Additional TVMs and the location of TVMs

3.22 The Operator shall have the right at its cost:

- (a) to procure additional TVMs over and above the TVMs and the New TVMs in each case supplied by RfL pursuant to paragraph 2.1; and
- (b) to relocate any additional TVMs it procures and any of the TVMs supplied by RfL pursuant to paragraph 2.1 for the purpose of meeting any of its obligations under this Agreement, provided that in doing so, no Operator Station entrance is left without a TVM and any such relocation has no adverse impact on the carrying out of the ONFR Works or their objectives.

4. RfL OBLIGATIONS

Intellectual Property

4.1 RfL shall procure that the relevant member of the TfL Group grants to the Operator a licence of certain intellectual property (which has been licensed to that member of the TfL Group by any third party) for the purpose of the Operator complying with its obligations relating to Ticket Equipment.

Maintenance of certain Ticket Equipment

4.2 RfL shall, at no cost to the Operator:

- (a) procure the maintenance, repair, other work and software upgrades of all Ticket Equipment supplied by RfL pursuant to paragraph 2.1, other than TVMs, TOMs, Revenue Inspection Devices and other Ticket Equipment comprising telephone lines and data links that are necessary to maintain the functionality of such Ticket Equipment; and
- (b) enforce its rights under any contract for the maintenance of such Ticket Equipment, provided that:
 - (i) the Operator complies with the provisions of this Schedule 3.6; and
 - (ii) the Operator promptly delivers up or otherwise makes available such Ticket Equipment to RfL or its nominee in order that (as the case may be) such repairs, maintenance, other work and/or upgrades may be carried out.

5. RETURN OF TICKET EQUIPMENT, RETURN CONDITION AND AUDITS

Return of Ticket Equipment for reasons other than for maintenance

5.1 If the Operator no longer requires any of the Ticket Equipment supplied under paragraph 1.2 in order to comply with its obligations under Schedule 3 (*Fares, Ticketing and Revenue*), the Operator shall promptly return that item of equipment to RfL or its nominee at no cost to RfL or its nominee.

5.2 The Operator shall return to RfL or its nominee at no cost to RfL or its nominee, any TVM supplied by RfL pursuant to paragraph 1.2(a)(ii) upon such TVM being replaced with a New TVM.

5.3 The Operator shall at the end of the Concession Period, or on any earlier date notified to it by RfL, promptly return to RfL or its nominee at no cost to RfL or its nominee, all Ticket Equipment that RfL has supplied under paragraph 1.2, other than the TVMs supplied pursuant to paragraph 1.2(a)(ii) and to the extent not already returned pursuant to paragraph 5.1.

Audits of Ticket Equipment

5.4 Upon the return of any Ticket Equipment supplied under paragraph 1.2, whether pursuant to paragraph 4.2(b)(ii), 5.1, 5.2 or 5.3, RfL shall promptly carry out an audit of those devices to ascertain their condition. The Operator shall co-operate with RfL in the carrying out of any such audit.

5.5 As soon as reasonably practicable after the completion of any such audit, RfL shall inform the Operator of its findings as to the condition of the returned Ticket Equipment.

Ticket Equipment not in the return condition

5.6 If the Operator returns to RfL or its nominee, any Ticket Equipment supplied to the Operator under paragraph 1.2 that is, in RfL's reasonable opinion, not in good working order and in the condition in which it was provided, other than due to fair wear and tear, the Operator shall pay to RfL by way of Other Adjustment, the costs reasonably incurred by RfL for repair or replacement (as required) of that equipment.

SCHEDULE 4

STATIONS, DEPOTS AND OTHER PROPERTY

Schedule 4.1: Property Leasing and Access

Schedule 4.2: Station and Depot Refresh, Refurbishments and Enhancements

SCHEDULE 4.1

Property Leasing and Access

1. CROSSRAIL STATIONS

List of Crossrail Stations

The *Crossrail Stations* comprise the following stations:

Crossrail Stations			
1	Abbey Wood	23	Liverpool Street (Crossrail)
2	Acton Main Line	24	Liverpool Street (Main Line)
3	Bond Street	25	Maidenhead
4	Brentwood	26	Manor Park
5	Burnham	27	Maryland
6	Canary Wharf	28	Paddington (Crossrail)
7	Chadwell Heath	29	Paddington (Main Line)
8	Custom House	30	Reading
9	Ealing Broadway	31	Romford
10	Farringdon	32	Seven Kings
11	Forest Gate	33	Shenfield
12	Gidea Park	34	Slough
13	Goodmayes	35	Southall
14	Hanwell	36	Stratford
15	Harold Wood	37	Taplow
16	Hayes & Harlington	38	Tottenham Court Road
17	Heathrow Terminal 4	39	Twyford
18	Heathrow Terminal 5	40	West Drayton
19	Heathrow Terminals 1, 2 & 3	41	West Ealing
20	Ilford	42	Whitechapel
21	Iver	43	Woolwich
22	Langley		

2. CROSSRAIL STATIONS BY SECTION

2.1 The Crossrail Stations are located on the sections of the Crossrail Route referred to in this paragraph 2.

Eastern Section Stations

2.2 The following Crossrail Stations are located on the Eastern Section (*Eastern Section Stations*):

Eastern Section Stations			
1	Brentwood	8	Liverpool Street (Main Line)
2	Chadwell Heath	9	Manor Park
3	Forest Gate	10	Maryland
4	Gidea Park	11	Romford
5	Goodmayes	12	Seven Kings
6	Harold Wood	13	Shenfield
7	Ilford	14	Stratford

2.3 The following Crossrail Stations are located on the Central Operating Section (*Central Operating Section Stations*):

Central Operating Section Stations			
1	Abbey Wood	6	Liverpool Street (Crossrail)
2	Bond Street	7	Paddington (Crossrail)
3	Canary Wharf	8	Tottenham Court Road
4	Custom House	9	Whitechapel
5	Farringdon	10	Woolwich

2.4 The following Crossrail Stations are located on the Western Section (*Western Section Stations*):

Western Section Stations			
1	Acton Main Line	11	Maidenhead
2	Burnham	12	Paddington (Main Line)
3	Ealing Broadway	13	Reading
4	Hanwell	14	Slough
5	Hayes & Harlington	15	Southall
6	Heathrow Terminal 4	16	Taplow
7	Heathrow Terminal 5	17	Twyford
8	Heathrow Terminals 1, 2 & 3	18	West Drayton
9	Iver	19	West Ealing
10	Langley		

3. OPERATOR STATIONS

List of Operator Stations

3.1 The Operator shall enter into and remain a party to a Station Lease and thereby become the Facility Owner in respect of each of the following Crossrail Stations (*Operator Stations*) in accordance with paragraphs 3.2 to 3.5 inclusive and paragraph 5 (*General Station Lease Provisions*):

Operator Stations			
1	Abbey Wood	15	Ilford
2	Acton Main Line	16	Iver
3	Brentwood	17	Langley
4	Burnham	18	Manor Park
5	Canary Wharf	19	Maryland
6	Chadwell Heath	20	Paddington (Crossrail)
7	Custom House	21	Romford
8	Ealing Broadway	22	Seven Kings
9	Forest Gate	23	Southall
10	Gidea Park	24	Stratford
11	Goodmayes	25	Taplow
12	Hanwell	26	West Drayton
13	Harold Wood	27	West Ealing
14	Hayes & Harlington	28	Woolwich

Eastern Section Operator Stations

3.2 The Operator shall enter into Station Leases with Network Rail and thereby become the Facility Owner in relation to the following Operator Stations with effect from the Start Date and for the duration of the Concession Period (*Eastern Section Operator Stations*):

Eastern Section Operator Stations			
1	Brentwood	7	Ilford
2	Chadwell Heath	8	Manor Park
3	Forest Gate	9	Maryland
4	Gidea Park	10	Romford
5	Goodmayes	11	Seven Kings
6	Harold Wood	12	Stratford

Central Operating Section Operator Stations

3.3 The Operator shall enter into Station Leases with RfL (IM) and thereby become the Facility Owner in relation to the following Operator Stations with effect on or before the Scheduled Trial Operations Start Date and for the duration of the Concession Period, together with Abbey Wood station (*Central Operating Section Operator Stations*):

Central Operating Section Operator Stations	
1	Canary Wharf
2	Custom House
3	Paddington (Crossrail)
4	Woolwich

Abbey Wood station

3.4 The Operator shall enter into a Station Lease with Network Rail in relation to Abbey Wood station with effect on or before 10 December 2017 and for the duration of the Concession Period.

Western Section Operator Stations

3.5 The Operator shall enter into Station Leases with Network Rail and thereby become the Facility Owner in relation to the following Operator Stations with effect from 10 December 2017 and for the duration of the Concession Period (*Western Section Operator Stations*):

Western Section Operator Stations			
1	Acton Main Line	7	Langley
2	Burnham	8	Southall
3	Ealing Broadway	9	Taplow
4	Hanwell	10	West Drayton
5	Hayes & Harlington	11	West Ealing
6	Iver		

Granting access at Operator Stations

3.6 The Operator shall with effect from the relevant date specified in the table below, grant access to each beneficiary whose railway passenger services will call at the relevant Operator Station by entering into:

- (a) in relation to each of the Operator Stations listed in the table below, other than those listed in paragraph 3.6(b), a Station Access Agreement with the relevant Train Operator whose railway passenger services will call at that Operator Station; and
- (b) in relation to Ealing Broadway, Paddington (Crossrail) and that part of Stratford in respect of which the Operator is Facility Owner insofar as it relates to LUL, a Station Usage Agreement with LUL, in each case for a term that is coterminous with the earlier of the relevant beneficiary's interest and the Expiry Date.

	Operator Stations	Beneficiary	Relevant Date
1	Abbey Wood	South Eastern	10 December 2017
2	Brentwood	Greater Anglia	Start Date
3	Burnham	Great Western	10 December 2017
4	Ealing Broadway	LUL	10 December 2017
5	Gidea Park	Greater Anglia	Start Date
6	Hayes & Harlington	Great Western	10 December 2017
7	Harold Wood	Greater Anglia	Start Date
8	Romford	Greater Anglia	Start Date

Operator Stations		Beneficiary	Relevant Date
9	Stratford (part in respect of which the Operator is Facility Owner)	Docklands Light Railway	Start Date
		Essex Thameside	
		Greater Anglia	
		London Overground Rail Operations	
		LUL	
10	Taplow	Great Western	10 December 2017
11	West Ealing	Great Western	10 December 2017

4. OPERATOR ACCESS STATIONS

List of Operator Access Stations

4.1 The Operator shall obtain access to each of the following Crossrail Stations (*Operator Access Stations*) by entering into, as appropriate, Station Access Agreements or Station Usage Agreements with the relevant entities in accordance with paragraphs 4.2 to 4.4 inclusive and paragraph 9 (*General Station Access and Station Usage Agreement Provisions*):

Operator Access Stations			
1	Bond Street	9	Paddington (Main Line)
2	Farringdon	10	Reading
3	Heathrow Terminal 4	11	Shenfield
4	Heathrow Terminal 5	12	Slough
5	Heathrow Terminals 1, 2 & 3	13	Stratford Underground
6	Liverpool Street (Crossrail)	14	Tottenham Court Road
7	Liverpool Street (Main Line)	15	Twyford
8	M Maidenhead	16	Whitechapel

Eastern Section Operator Access Stations

4.2 The Operator shall obtain access to, by entering into Station Access Agreements with the first two entities and a Station Usage Agreement with the third entity, in each case in relation to the following Operator Access Stations on the Eastern Section listed in the following table with effect from the Start Date and for the duration of the Concession Period:

Operator Access Stations		Facility Owner
1	Liverpool Street (Main Line)	Network Rail
2	Shenfield	Greater Anglia
3	Stratford (part in respect of which LUL is the Facility Owner)	LUL

Central Operating Section Operator Access Stations

4.3 The Operator shall obtain access to by entering into Station Usage Agreements with LUL in relation to the following Operator Access Stations on the Central Operating Section

with effect on or before the Scheduled Trial Operations Start Date and for the duration of the Concession Period:

Operator Access Stations			
1	Bond Street	4	Tottenham Court Road
2	Farringdon	5	Whitechapel
3	Liverpool Street (Crossrail)		

Western Section Operator Access Stations

4.4 The Operator shall obtain access to by entering into Station Access Agreements with the following entities in relation to the following Operator Access Stations on the Western Section with effect on or before the relevant date specified in the table and for the duration of the Concession Period:

	Operator Access Stations	Facility Owner	Relevant Date
1	Heathrow Terminal 4	HAL	Scheduled Stage 2 Start Date
2	Heathrow Terminal 5	HAL	Scheduled Stage 2 Start Date
3	Heathrow Terminals 1, 2 & 3	HAL	Scheduled Stage 2 Start Date
4	M Maidenhead	Great Western	Scheduled Stage 5 Start Date
5	Paddington (Main Line)	Network Rail	Scheduled Stage 2 Start Date
6	Reading	Great Western	Scheduled Stage 5 Start Date
7	Slough	Great Western	Scheduled Stage 5 Start Date
8	Twyford	Great Western	Scheduled Stage 5 Start Date

5. OPERATOR TO SUBLEASE STATION AREAS

Notification of Car Park Areas and Non-Operational Areas

5.1 No less than three months before the Start Date in relation to the Eastern Section Operator Stations, RfL shall notify to the Operator those Car Park Areas and Non-Operational Areas within the Eastern Section Operator Stations in respect of which RfL (or another member of the TfL Group) requires a Deed of Subleases.

5.2 If RfL notifies the Operator that it (or another member of the TfL Group) requires a Deed of Subleases pursuant to paragraph 5.1, then on or before the Start Date in relation to the Eastern Section Operator Stations, the Operator shall grant a Deed of Subleases to RfL (or, at RfL's request, to another member of the TfL Group) (in either case, the **Subleases Tenant**) in respect of the Station Areas within the relevant Eastern Section Operator Stations and the following will apply:

- (a) within 10 Business Days of receipt of a notification from RfL in accordance with paragraph 5.1, the Operator shall properly serve on the Subleases Tenant a notice in the prescribed form to validly exclude the application of sections 24 to 28 inclusive of the 1954 Act in respect of the Deed of Subleases (a **1954 Act Notice**);
- (b) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the Deed of Subleases in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to enter into the Deed of

Subleases shall immediately be created and the Deed of Subleases shall be entered into on or before the Start Date;

- (c) the annual rent reserved by the Deed of Subleases in respect of the Car Park Areas shall be a peppercorn;
- (d) the annual rent reserved by the Deed of Subleases in respect of the Non-Operational Areas shall be a peppercorn;
- (e) the Subleases Tenant shall be entitled to require such amendments to the agreed form Deed of Subleases as may be required to reflect the nature, location and services required by the relevant Station Area;
- (f) if and to the extent occupational leases in respect of the Station Areas have been granted as at the date of grant of the Deed of Subleases, the Deed of Subleases will be granted subject to but with the benefit of such occupational interests; and
- (g) the Operator and the Subleases Tenant shall co-operate to procure the necessary consent required for the Deed of Subleases from the Operator's landlord before the start of the term of the Deed of Subleases and before entering into the Deed of Subleases.

Notification of New Station Areas

5.3 If at any time:

- (a) prior to the grant of a Station Lease pursuant to paragraph 3 (*Operator Stations*) in respect of any other Operator Station that is not an Eastern Section Operator Station; or
- (b) during the term of any Station Lease,

the Subleases Tenant acting reasonably identifies any area demised by a Station Lease (not being part of the Station Areas) which are not required in order to secure the safe operation of the Passenger Services (the *New Station Areas*), the Subleases Tenant shall notify the Operator of such fact and the Subleases Tenant shall be entitled to request that either:

- (i) the Operator and the Subleases Tenant by way of record (but not by way of variation to the Deed of Subleases) re-state the Deed of Subleases so that the lease of the relevant New Station Area is incorporated into the Deed of Subleases, in which case the provisions of paragraphs 5.2(c) to (g) inclusive shall apply in relation to that New Station Area; or
- (ii) the Operator grants an Occupational Agreement in relation to the New Stations Area to a third party nominated by the Subleases Tenant.

Re-Statement of the Deed of Subleases

5.4 If the Subleases Tenant requests that the Deed of Subleases is re-stated to incorporate a New Station Area pursuant to paragraph 5.3(i), then the following will apply:

- (a) within 10 Business Days of receipt of a notification and request from the Subleases Tenant in accordance with paragraph 5.3, the Operator shall properly serve on the Subleases Tenant a 1954 Act Notice; and

- (b) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the sublease of the relevant New Station Area in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to re-state the Deed of Subleases in respect of the relevant new Station Area that is the subject of the 1954 Act Notice shall immediately be created and the Deed of Subleases shall be re-stated within 14 Business Days of the date of such declaration.

5.5 Within 14 Business Days of the date on which the Deed of Subleases is re-stated, the Subleases Tenant shall apply to the Land Registry to register the re-stated Deed of Subleases on the registered title for the corresponding Station Leases and shall supply a copy of such completed registrations to the Operator once received.

5.6 In the event that the Land Registry does not permit the registration of the re-statement of the Deed of Subleases to incorporate New Station Areas pursuant to paragraph 5.3(i), the Operator shall enter into a separate Deed of Subleases in relation to the relevant New Station Areas and where the Subleases Tenant requests such a separate Deed of Subleases then the following will apply:

- (a) within 10 Business Days of receipt of a notification and request from the Subleases Tenant in accordance with this paragraph 5.6, the Operator shall properly serve on the Subleases Tenant a 1954 Act Notice; and
- (b) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the sublease of the relevant New Station Area in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to enter into the Deed of Subleases in respect of the relevant New Station Area that is the subject of the 1954 Act Notice shall immediately be created and the Deed of Subleases shall be entered into within 14 Business Days of the date of such declaration.

Occupational Agreements

5.7 If the Subleases Tenant requests that the Operator grants an Occupational Agreement to a third party nominated by the Subleases Tenant pursuant to paragraph 5.3(ii), then the following will apply:

- (a) the Subleases Tenant shall provide to the Operator an execution copy (in duplicate) of the required form of Occupational Agreement;
- (b) the Operator shall within 10 Business Days of receipt of the execution copies of the Occupational Agreement execute the same and provide the duplicate copies to the Subleases Tenant with irrevocable authority to complete the same once the nominated third party has executed the Occupational Agreement;
- (c) the Subleases Tenant shall be entitled to demand, collect, receive and retain any fees or other charges levied on the third party pursuant to the Occupational Agreement by way of a licence fee and shall not be required to account to the Operator or otherwise compensate the Operator in respect of the same; and
- (d) the Subleases Tenant shall indemnify and keep indemnified the Operator in respect of any Loss suffered by the Operator as a result of the occupation or use by the nominated third party pursuant to the Occupational Agreement save where and to the extent such Loss has arisen as a result of the Operator's own acts or omissions.

Subleases Tenant

5.8 Where RfL is not the Subleases Tenant, RfL shall procure that the Subleases Tenant performs, as and when they fall due, any of the obligations in this paragraph 5 which are expressed to be obligations of the Subleases Tenant.

6. ILFORD DEPOT

Use

6.1 The Ilford Depot shall be used by:

- (a) the Operator to procure the maintenance and cleaning of the Class 315 Fleet from the Start Date until all the Class 315 Units are replaced by Class 345 Units under the terms of the Ilford Regulated Depot Access Agreement;
- (b) the Rolling Stock Provider and RfL for the purpose of Acceptance of Class 345 Units from the Stage 1 Start Date until the Stage 1a Start Date under the terms of the Ilford Unregulated Depot Access Agreement;
- (c) the Operator to procure the exterior cleaning (being carriage machine washing) of that part of the Class 345 Fleet that is to be stabled at Ilford Depot from the Stage 1 Start Date until the Stage 4 Start Date or until such later date as RfL requires on reasonable notice to the Operator under the terms of the Ilford Regulated Depot Access Agreement;
- (d) the Operator to procure the exterior cleaning by hand of that part of the Class 345 Fleet that is to be stabled at Ilford Depot from the Stage 1 Start Date until the Stage 4 Start Date or until such later date as RfL requires on reasonable notice to the Operator, as the Operator elects, either under the terms of:
 - (i) the Ilford Regulated Depot Access Agreement by contracting with Greater Anglia to undertake that cleaning; or
 - (ii) the Ilford Unregulated Depot Usage Agreement by undertaking, with RfL's consent, that cleaning itself;
- (e) the Operator to accept delivery of and stable the Class 315 Fleet and the Class 345 Fleet;
- (f) the Rolling Stock Provider to maintain that part of the Class 345 Fleet that is to be stabled at Ilford Depot from the Stage 1 Start Date until the Stage 4 Start Date or until such later date as RfL requires on reasonable notice to the Operator under the terms of the Ilford Unregulated Depot Usage Agreement; and
- (g) the Operator to access maintenance buildings and bogie drops in connection with the Class 315 Fleet and Class 345 Fleet.

6.2 The Operator shall co-operate with Greater Anglia's operating procedures at Ilford Depot, including complying with Greater Anglia's security arrangements, directions and notices.

6.3 The Operator acknowledges that from time to time there may be competing demands with the Rolling Stock Provider to use the facilities at Ilford Depot. The Operator shall co-

operate with the Rolling Stock Provider to ensure that those competing demands are met in a way that optimises the use of those facilities and in turn the likelihood of the Passenger Services being operated in accordance with the Timetable.

6.4 The Operator acknowledges that its use of Ilford Depot for the purposes contemplated by paragraphs 6.1(d)(ii), (e), (f), and (g) will be in the capacity of agent for RfL and no relationship of landlord and tenant is or is intended to be created by such use.

Regulated and unregulated depot access arrangements

6.5 The Operator shall on or before the Start Date:

- (a) use all reasonable endeavours to obtain the approval of the ORR to a novation of the Ilford Regulated Depot Access Agreement;
- (b) enter into the Ilford Novation Agreement with RfL and Greater Anglia whereupon RfL shall novate to the Operator the Ilford Regulated Depot Access Agreement; and
- (c) use all reasonable endeavours to satisfy the conditions precedent set out in clause 2.1 and the conditions subsequent set out in clause 3.1, in each case of the Ilford Regulated Depot Access Agreement.

6.6 RfL shall continue to be a party to the Ilford Unregulated Depot Usage Agreement, but shall from the Start Date and, unless revoked by RfL on notice earlier, for the duration of the Ilford Unregulated Depot Usage Agreement, extend to the Operator as agent to RfL certain rights and obligations thereunder for the purposes described in paragraph 6.1.

6.7 The Operator shall:

- (a) exercise its rights and carry out its obligations under the Ilford Regulated Depot Access Agreement; and
- (b) exercise the User's rights and carry out the obligations under the Ilford Unregulated Depot Usage Agreement extended to it pursuant to paragraph 6.6,

in each case to ensure that the activities described in paragraph 6.1 may be carried out as contemplated by, as appropriate, this Agreement or the RSPA and in the case of the Ilford Unregulated Depot Usage Agreement, in a manner which does not put RfL in breach of its obligations and covenants under that agreement.

6.8 The Operator shall procure through its rights under the Ilford Regulated Depot Access Agreement that:

- (a) the Rolling Stock Provider and RfL have access to the train maintenance facilities at the Ilford Depot for use by the Rolling Stock Provider's employees and RfL's employees or agents in order to carry out the Acceptance activities referred to in paragraph 6.1(b); and
- (b) the Rolling Stock Provider has access to the train maintenance facilities at the Ilford Depot for the use by the Rolling Stock Provider's employees in order to carry out the maintenance activities referred to in paragraph 6.1(f).

6.9 The Operator shall provide RfL with all assistance reasonably requested by RfL in connection with the calculation and settlement of Depot Access Charges and any disputes in connection with such Depot Access Charges.

Indemnity

6.10 The Operator shall indemnify RfL (and each of its employees, directors and officers) and keep it indemnified against all Losses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating any Loss) incurred by RfL or the Facility Owner of Ilford Depot (or any of their respective employees, directors and officers) as a result of:

- (a) the death of, or personal injury to, any person to the extent arising from the negligence of the User, its employees, servants, agents or sub-contractor;
- (b) loss or damage to property (including property belonging to RfL or the Facility Owner of Ilford Depot or for which it is responsible) to the extent arising from the act or omission of the Operator, its employees, servants, agents or subcontractors;
- (c) breach of statutory duty or wilful misconduct by the Operator, its employees, servants, agents or sub-contractors; and
- (d) breach by the Operator of any of the User's obligations under the Ilford Unregulated Depot Usage Agreement.

6.11 The Operator shall promptly notify RfL if it considers that any User Event of Default or DFO Event of Default has occurred pursuant to (and as defined in) the Ilford Unregulated Depot Usage Agreement and shall take such action in respect of any such event as RfL shall reasonably require.

7. OLD OAK COMMON DEPOT

7.1 The Old Oak Common Depot shall be used by the Rolling Stock Provider to maintain and clean that part of the Class 345 Fleet that is stabled there from the Stage 2 Start Date and the Class 345 Fleet from the Stage 4 Start Date, and in each case for the remainder of the Concession Period.

7.2 RfL shall procure that:

- (a) the Operator has the right to access and to occupy the CTOC Area in accordance with clause 9.2(a) of the RSPA from the date specified in in that clause and for the remainder of the Concession Period;
- (b) the Operator has the right to access the Old Oak Common Depot to the extent reasonably necessary for the performance of its obligations under this Agreement and under the RSPA Agency Agreement, provided that the Operator shall at all times comply with applicable health and safety rules published at the Site (as defined in the RSPA) and ensure that its action shall not interfere with operations at the Old Oak Common Depot; and
- (c) the Rolling Stock Provider complies with its obligations under clause 9.2(c) of the RSPA in relation to the servicing and maintenance of the CTOC Area from the date

the Operator is granted the access referred to in paragraph 7.2(a) and for the remainder of the Concession Period.

8. GENERAL PROPERTY LEASE PROVISIONS

Property Lease restrictions

8.1 The Operator shall not without the prior written consent of RfL, whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease other than pursuant to paragraph 3 (*Operator Stations*); or
- (b) effect any amendment to any Property Lease, except to the extent that the Operator is required to do so by virtue of, as appropriate, the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions.

8.2 To the extent the Operator is to enter into any Property Lease during the Concession Period, the Operator shall enter into that Property Lease with the relevant Infrastructure Manager:

- (a) in relation to Operator Stations, in the agreed terms marked **SL** attached to this Agreement no less than 14 days before the relevant date specified in paragraph 3 (*Operator Stations*) in relation to any Operator Station and in such form as the parties agree in relation to any other Property Lease;
- (b) agreeing only such amendments to any Property Lease as are necessary to give effect to changes contemplated by the Station Access Conditions or Depot Access Conditions or their equivalent or with RfL's consent to reflect the physical and practical characteristics of the relevant property; and
- (c) on the basis that such Property Lease is excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

8.3 Within 14 days of the date of grant of a Property Lease which is registrable, the Operator shall apply to the Land Registry for the registration of such Property Lease and notification of the Property Lease on the registered title for the relevant property held by the relevant Infrastructure Manager, and upon receipt, supply a copy of the registered title for the Property Lease and the registered title held by the Infrastructure Manager to RfL.

8.4 Where:

- (a) the term of any Property Lease expires before the Expiry Date, the Operator shall enter into a new Property Lease with the relevant Infrastructure Manager on or before the expiry of that expiring Property Lease for a term commencing on the date of expiry of the initial Property Lease and expiring on the Expiry Date (each such lease once granted, shall be a Property Lease for the purposes of this Agreement); and
- (b) at RfL's request, additional land is to be included within the demise of the Property Lease, the Operator shall enter into a supplemental lease relating to that additional land as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR where appropriate) for including that additional land within the demise of such Property Lease and each such

supplemental lease, once granted, shall be a Property Lease for the purposes of this Agreement,

and in each case, the provisions of paragraph 8.2 shall apply.

8.5 The Operator shall not be in contravention of paragraph 8.4 if and to the extent that the relevant Infrastructure Manager refuses to enter into any leases specified therein.

8.6 Unless RfL agrees or otherwise requires pursuant to paragraph 8.11, the Operator shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) is terminable without compensation immediately upon the termination of this Agreement;
- (b) is automatically terminated if the relevant sub-lessee ceases to be an Affiliate of the Operator;
- (c) is for a term expiring no later than one day prior to the expiry of the Station Lease for the relevant property; and
- (d) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

8.7 No Property Lease shall have a term extending beyond the Expiry Date, unless RfL agrees otherwise.

The Operator's rights and obligations under Property Leases

8.8 At each relevant property, the Operator shall carry out during the Concession Period the facilities management activities, including maintenance, cleaning and operating activities, specified in each Property Lease relevant thereto.

8.9 Subject to paragraph 8.10 the Operator shall at all times comply with its obligations and covenants and enforce its rights under each Property Lease.

8.10 The Operator shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Property Lease;
- (b) assign all or part of its interest under any Property Lease; or
- (c) sublet the whole or substantially the whole of the relevant property comprised in any Property Lease,

except to the extent that RfL may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Operator has made arrangements, reasonably satisfactory to RfL, for the continued operation of the relevant property for the remainder of the Concession Period or if consent to the Closure of that property has been granted).

Station Subleases

8.11 If so requested by RfL, the Operator shall:

- (a) extend each Station Sublease on the same terms for such period as RfL may request (including a period equivalent to the concession term or franchise term (as the case may be) if the concession agreement or franchise agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party) is extended; and
- (b) if any such Station Sublease terminates (which for the purposes of this paragraph 8.11(b) shall include the termination, at or around the time of termination of any Previous Franchise Agreement, of a station sublease in respect of which the Incumbent Operator was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as RfL may request (including a period equivalent to the concession term or franchise term (as the case may be) of the concession agreement or franchise agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party),

subject, where required, to the consent of the relevant Infrastructure Manager (and, if required, the relevant sub-lessee) and provided that no such sub-lease shall be longer than the relevant Station Lease.

8.12 The Operator shall notify RfL immediately on it becoming aware of any event which might give the Operator a right to forfeit or terminate any Station Sublease. The Operator shall notify RfL if it wishes to forfeit or terminate any such Station Sublease but shall not (without RfL's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

9. GENERAL ACCESS AGREEMENT AND USAGE AGREEMENT PROVISIONS

Access Agreement and Station and Depot Usage Agreement restrictions

9.1 The Operator shall not without the prior written consent of RfL, whether generally or on a case-by-case basis:

- (a) enter into any new Station Access Agreement (except to the extent directed by the ORR), Station Usage Agreement, Depot Access Agreement or Depot Usage Agreement;
- (b) effect any amendment to any Station Access Agreement (except to the extent directed by the ORR), Station Usage Agreement or Depot Access Agreement;
- (c) request the provision of any of the services by the Facility Owner under the Ilford Unregulated Depot Usage Agreement which exceeds the Permitted Service Level; or
- (d) make any Proposal for Change in respect of any Station Access Agreement, Station Usage Agreement, Depot Access Agreement or Depot Usage Agreement.

9.2 The Operator shall, unless otherwise instructed by RfL, at all times comply with its obligations and covenants and enforce its rights under any Station Access Agreement and Depot Access Agreement.

9.3 The Operator shall not:

- (a) suspend or terminate or agree to suspend or terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Access Agreement, Station Usage Agreement, the Ilford Regulated Depot Access

Agreement or any other Depot Access Agreement or the Ilford Unregulated Depot Usage Agreement or any other Depot Usage Agreement; or

- (b) assign all or part of its interest under any Station Access Agreement, Station Usage Agreement, the Ilford Regulated Depot Access Agreement or any other Depot Access Agreement or the Ilford Unregulated Depot Usage Agreement or any other Depot Usage Agreement,

in each case, unless otherwise directed by RfL or the ORR.

Obligations in relation to Station Access and Usage Agreements

9.4 In respect of each Operator Station and Operator Access Station which the Operator is required pursuant to, as appropriate, paragraph 3.6 or 4.2 to 4.4 inclusive to enter into a Station Access Agreement or Station Usage Agreement, the Operator shall enter into an appropriate Station Access Agreement or Station Usage Agreement with, as appropriate, the relevant access beneficiary or Facility Owner no less than 14 days before the relevant date specified in, as appropriate, paragraph 3.6 or 4.2 to 4.4 inclusive.

9.5 The following shall apply, as appropriate, in relation to the Station Access Agreements and Station Usage Agreements that the Operator enters into pursuant to paragraph 9.4:

- (a) each such Station Access Agreement or Station Usage Agreement shall be on terms such that, as appropriate, the Facility Owner provides Common Station Services (or the equivalent thereof) to the Operator or vice versa;
- (b) each Station Access Agreement shall be on terms that are consistent with standard industry access terms regulated by the ORR (unless the Operator and, as appropriate, the access beneficiary or the Facility Owner otherwise agree); and
- (c) each Station Usage Agreement shall be substantially on terms that are consistent with the form in the agreed terms marked *SUA* (unless the Operator and, as appropriate, the access beneficiary or the Facility Owner otherwise agree), provided that in relation to those Operator Access Stations on the Central Operating Section and Stratford station and Ealing Broadway station, the Common Station Services and Common Station Amenities shall in each case be provided at no charge to the relevant beneficiary.

9.6 The Operator shall co-operate with LUL in assisting LUL to develop effective operating arrangements for the Operator Access Stations on the Central Operating Section and Stratford station in line with RfL's objectives for Crossrail.

Certain terms of Station Usage Agreements

9.7 If either the Operator or LUL requires the equivalent of any Exclusive Station Services to be provided, as appropriate, by LUL or the Operator at respectively any Operator Access Station on the Central Operating Section, Stratford station or those Operator Stations at which LUL's services call, the Operator may negotiate the terms of such Exclusive Station Services with LUL and the cost of such Exclusive Station Services shall be, as appropriate, for the Operator's or LUL's account.

9.8 The Operator hereby acknowledges that all assets and equipment comprising or relating to CCTV systems, PA systems, Help Points and CIS at or on the Operator Access Stations on the Central Operating Section is and shall remain the property of LUL.

9.9 RfL shall procure that LUL will provide training to Concession Employees that will have responsibilities at the Operator Access Stations on the Central Operating Section in order to achieve the requirements of any Safety Certificate required by the Operator and, where relevant, any Safety Certificate required by LUL, in each case, in relation to operations at the Operator Access Stations on the Central Operating Section. RfL shall procure that LUL negotiates with the Operator with a view to putting in place arrangements for the provision of that training. Such arrangements will be at market rates and will be determined with a view to reimbursing LUL for the actual costs to be incurred by LUL in the provision of such training. The Operator shall pay LUL for such training in accordance with the terms of those arrangements.

10. PROPOSALS FOR CHANGE

Notice of Proposal for Change

10.1 The Operator shall notify RfL:

- (a) of any Proposal for Change or Railtrack Change Proposal, as soon as reasonably practicable upon receiving any notification from any Facility Owner, Relevant Operator (as defined in the Stations Access Conditions or Depot Access Condition) or User (as defined in the Independent Station Access Conditions) pursuant to, as appropriate, Part C of the Station Access Conditions, Part 3 of the Independent Station Access Conditions or part C of the Depot Access Conditions; and
- (b) a reasonable period in advance of:
 - (i) responding to that Facility Owner, Relevant Operator, User or Network Rail (as the case may be) in respect of any notification referred to in paragraph 10.1(a);
 - (ii) submitting any Notice of Objection as defined in the Station Access Conditions or the Independent Station Access Conditions, as appropriate, or otherwise commenting or instigating relevant proceedings in respect of any notification referred to in paragraph 10.1(a); or
 - (iii) in the case of a Railtrack Change Proposal, requesting the appointment of an expert to determine a Material Variation Question (as defined in the Depot Access Conditions),

in order to allow the consultation pursuant to paragraph 10.2 to take place in a timely manner should it be required.

10.2 If and to the extent requested by RfL, the Operator shall:

- (a) consult RfL in relation to any of the matters referred to in paragraph 10.1; and
- (b) provide to RfL copies of any notices, correspondence or other information exchanged between any relevant party and the Operator in respect of those matters.

Response to notice of Proposal for Change

10.3 The Operator shall:

- (a) respond to the Infrastructure Manager in relation to any of the matters referred to in paragraph 10.1 in accordance with RfL's reasonable direction; and
- (b) as directed by RfL, waive its rights to any Financial Undertaking (as defined in, as appropriate, the Station Access Conditions, Independent Station Access Conditions or Depot Access Conditions) or any equivalent provision under the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions in relation to those matters referred to in paragraph 10.1.

10.4 Where RfL directs the Operator pursuant to paragraph 10.3(b), RfL shall compensate the Operator by way of Other Adjustment to the extent that the Operator:

- (a) would have been entitled to exercise those rights; and
- (b) suffered any Loss or other material adverse effect of the kind that is compensatable pursuant to those rights,

in each case, but for such direction.

10.5 The Operator shall provide to RfL such evidence as RfL requires in order to demonstrate to RfL's reasonable satisfaction the extent of any compensation to be paid pursuant to paragraph 10.4.

10.6 Where RfL does not direct the Operator pursuant to paragraph 10.3(b), but notifies the Operator that it reasonably believes the Proposal for Change or Railtrack Change Proposal will, if implemented, cause RfL Losses or have a material adverse effect on its existing or future business, then the Operator shall use all reasonable endeavours to procure a Financial Undertaking (as defined in, as appropriate, the Station Access Conditions, Independent Station Access Conditions or Depot Access Conditions) or equivalent protection under the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions from the relevant party in favour of RfL or of sufficient extent in its favour to compensate RfL for those losses or effects.

10.7 Where the Operator does recover any compensation under the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions in favour of RfL of the kind contemplated by paragraph 10.6, it shall pass any such compensation to RfL as soon as reasonably practicable after receipt.

Operator Proposals for Change

10.8 The Operator shall not make a Proposal for Change to Network Rail, RfL (IM), LUL or any other third party without RfL's prior written consent.

RfL Proposals for Change

10.9 Where RfL wishes to make a Proposal for Change, RfL shall notify the Operator of that proposal and the Operator shall exercise its rights under, as appropriate, the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions to make such a proposal promptly after such notice and otherwise act in accordance with RfL's instructions in the development of that Proposal for Change.

Implementation of Proposals for Change

10.10 The Operator shall co-operate with any Infrastructure Manager and any other relevant party in connection with any proposed works associated with any Proposal for Change or Railtrack Change Proposal.

10.11 The Operator's obligations under paragraph 10.9 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

11. LONG TERM STATION LEASES LET BY RfL (IM) OR RfL'S NOMINEE

Proposal to transfer Station Leases to RfL (IM) or RfL's nominee

11.1 It is TfL's intention during the Concession Term that RfL (IM), another TfL Group company or other company nominated by RfL enters into long-term leases with Network Rail in respect of the On-Network Stations.

Consequences of transfer Station Leases to RfL (IM) or RfL's nominee

11.2 If any of the entities referred to in paragraph 11.1 enter into long-term leases as contemplated by that paragraph, then:

- (a) the Operator shall at RfL's request, execute and deliver all such further instruments and surrenders and do and perform all such further acts and things as shall be necessary or expedient for the purpose of putting in place those long-term leases; and
- (b) a Change shall occur where the Operator's compliance with paragraph 11.2(a) has a material impact on the Operator's rights and obligations under any Station Lease and/or the Operator is no longer obliged under the terms of any replacement Station Lease to pay any Long Term Charge (as defined in any such Station Lease).

SCHEDULE 4.2

Station and Depot Refresh, Refurbishments and Enhancements

1. STATION REFRESH

Uniform condition of Crossrail Stations

1.1 It is RfL's intention that all Crossrail Stations and associated tracksides are maintained to the same standard of cleanliness throughout the Concession Period that is commensurate with a world class railway and are therefore at all times throughout that period, free from graffiti, trackside vegetation and litter.

Station Deep Clean Programme

1.2 The Operator shall develop the Outline Station Deep Clean Programme in detail and submit a draft of that detailed programme to RfL no later than six weeks before the Start Date. The draft detailed programme shall be consistent with the Outline Station Deep Clean Programme, but shall set out in sufficient detail in order to fully support the process of ensuring its timely delivery:

- (a) what steps it will take (whether directly or by enforcing its contractual rights under any Station Lease, Station Access Agreement or Track Access Agreement) including measurable milestones to procure the removal of all graffiti, trackside vegetation and litter by the relevant dates specified in the Outline Station Deep Clean Programme from:
 - (i) the areas within its control at the Eastern Section Operator Stations;
 - (ii) the areas within its control at Abbey Wood station;
 - (iii) the areas within its control at the Western Section Operator Stations;
 - (iv) the areas that may reasonably be considered to be within the Eastern Section Operator Stations;
 - (v) the areas that may reasonably be considered to be within Abbey Wood station;
 - (vi) the areas that may reasonably be considered to be within the Western Section Operator Stations; and
 - (vii) the platforms and trackside of those platforms at the Operator Access Stations at which the Passenger Services call (excluding those on the Central Operating Section);
- (b) what other activities a skilled and experienced Train Operator employed in the implementation of a deep station clean programme would include in such a programme and the means by which the Operator will carry out those activities; and
- (c) the Operator's approach to the management of the delivery of the programme and the steps it will take to monitor its compliance,

in each case by the relevant dates specified in the Outline Station Deep Clean Programme (which in each relevant case, shall be consistent with the relevant Committed Obligations in Schedule 10.1 (*List of Committed Obligations*)).

1.3 RfL shall within one month of receipt of the Operator's draft deep station clean programme, inform the Operator whether, in RfL's reasonable opinion:

- (a) the Operator's draft, detailed programme is consistent with the Outline Station Deep Clean Programme; and
- (b) the programme will achieve the timely delivery of each of the activities in the Outline Station Deep Clean Programme.

1.4 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 1.3, amend its draft station deep clean programme in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the ***Station Deep Clean Programme***.

1.5 The Operator shall implement its Station Deep Clean Programme in accordance with its terms.

1.6 The Operator shall report to RfL in each Periodic Concession Report that is to be issued prior to the completion of the Station Deep Clean Programme in accordance with paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*), its progress in delivering the Station Deep Clean Programme in each Periodic Concession Report to such level of detail as RfL may require. The Operator shall promptly provide to RfL, such further information in relation to the Operator's progress in delivering the Station Deep Clean Programme as RfL reasonably requests.

Failure to implement the Station Deep Clean Programme

1.7 Where the Operator fails to achieve a milestone specified in the Station Deep Clean Programme by the relevant date specified in the Station Deep Clean Programme for achievement of that milestone, then the Operator shall pay RfL £[REDACTED] per day (reduced pro rata by reference to the number of Crossrail Stations in respect of which that milestone has been met) by way of Committed Obligation Payment, payable in accordance with paragraph 2 (*Committed Obligation Payments*) of Schedule 10.3 (*Late/Non-Completion of Committed Obligations*).

Maintaining clean stations and tracksides

1.8 The Operator shall continue to procure that the objective set out in paragraph 1.1 is met throughout the Concession Period in relation to the Operator Stations and the platforms of the Operator Access Stations at which the Passenger Services call (excluding those on the Central Operating Section) by:

- (a) complying with its obligations and enforcing any rights it may have from time to time under any Station Lease; and
- (b) enforcing any rights it may have from time to time under any Station Access Agreements and Track Access Agreements,

in each case to procure the reduction in, prevention of, or prompt removal of graffiti, trackside vegetation and litter from those stations and the related trackside of the Crossrail Route.

2. STATION REBRAND

TfL Rail Operating Brand

2.1 The Operator shall:

- (a) procure the application of the TfL Rail Operating Brand in accordance with RfL's guidance:
 - (i) at all Eastern Section Operator Stations within two weeks of the Start Date;
 - (ii) at the Western Section Operator Stations on or before 10 December 2017; and
 - (iii) at Abbey Wood station on or before 10 December 2017;
- (b) maintain the TfL Rail Operating Brand at each of those stations until it is to be removed in accordance with paragraph 2.1(c); and
- (c) remove the TfL Rail Operating Brand in accordance with RfL's guidance:
 - (i) from the Eastern Section Operator Stations upon the application of the Crossrail Operating Brand in accordance with paragraph 2.2(a);
 - (ii) from the Western Section Operator Stations not referred to in paragraph 2.1(c)(iv) upon the application of the Crossrail Operating Brand in accordance with paragraph 2.2(b);
 - (iii) from Abbey Wood station upon the application of the Crossrail Operating Brand in accordance with paragraph 2.2(c); and
 - (iv) from the following Western Section Operator Stations: Burnham, Iver, Langley, Taplow and West Drayton, upon the application of the Crossrail Operating Brand in accordance with paragraph 2.2(d).

Crossrail Operating Brand

2.2 The Operator shall procure the application of the Crossrail Operating Brand in accordance with RfL's guidance:

- (a) at all Eastern Section Operator Stations by the Stage 1 Start Date but no earlier than one month before the Stage 1 Start Date;
- (b) at the Western Section Operator Stations referred to in paragraph 2.1(c)(ii) by the Stage 2 Start Date but no earlier than one month before the Stage 2 Start Date;
- (c) at Abbey Wood station by the Stage 3 Start Date but no earlier than one month before the Stage 3 Start Date; and
- (d) at the Western Section Operator Stations referred to in paragraph 2.1(c)(iv) by the Stage 5 Start Date but no earlier than one month before the Stage 5 Start Date,

and in each case, maintaining that brand at those stations from the relevant date for the duration of the Concession Period.

Double Arrow symbol

2.3 The Operator shall procure that the ‘Double Arrow’ symbol is prominently displayed at the entrance to each Operator Station where the railway passenger services of other Train Operators call.

3. PLANNED CROSSRAIL PROJECT STATION REFURBISHMENTS

3.1 CRL has procured that Network Rail will carry out a programme of refurbishments of the On-Network Stations in order that those stations are compatible with the Passenger Services and the Station Services as more particularly described in the ONFR Station Change Letters (the *ONFR Works*).

3.2 The scope and programme of the ONFR Works require:

- (a) specified worksite access; and
- (b) in the case of certain of the Western Section Operator Stations, decisions to be made in relation to how those ONFR Works are carried out before the Operator becomes the Facility Owner at those stations.

3.3 The Operator shall co-operate with CRL, Network Rail and the relevant Incumbent Operators to facilitate the delivery of the ONFR Works, including:

- (a) engaging with the relevant Incumbent Operators in accordance with RfL’s instructions to ensure that decisions taken by those Incumbent Operators in relation to the carrying out of the ONFR Works will be consistent with the objective that the relevant stations will be, once the ONFR Works are complete, compatible with the Passenger Services and the Station Services;
- (b) making representations in accordance with RfL’s instructions under, as appropriate, the Station Access Conditions or the Independent Station Access Conditions in relation to the extent, nature and duration of any worksite access and to ensure that the stations will be, once the ONFR Works are complete, compatible with the Passenger Services and the Station Services;
- (c) complying with its obligations under paragraph 10 (*Proposals for Change*) of Schedule 4.1 (*Property Leasing and Access*) in relation to the ONFR Works; and
- (d) developing and implementing, with the Incumbent Operators where necessary, operating arrangements at the affected On-Network Stations and Abbey Wood station that in each case RfL has given its prior written consent to.

3.4 The Operator shall not be entitled to any relief from any of its obligations under this Agreement as a consequence of the carrying out by Network Rail, its agents and subcontractors of any of the ONFR Works.

3.5 The Operator shall exercise its rights under any relevant Station Lease or Station Access Agreement to secure compensation that may be payable to it in relation to the carrying out the ONFR Works and shall promptly following receipt, pay any such compensation to RfL by way of Other Adjustment that relates to lost revenue as a result of carrying out those works.

4. ADDITIONAL RfL-SPONSORED STATION ENHANCEMENTS

Scope of RfL Crossrail Station Works

4.1 RfL wishes to procure further enhancement works at the On-Network Stations that are over and above the ONFR Works (*RfL Crossrail Station Works*) with the purpose of:

- (a) creating a consistent customer experience;
- (b) improving customer and staff security;
- (c) ensuring uniform provision of step-free access across all On-Network Stations;
- (d) extending the common design values and identity to be introduced at Central Operating Section Stations, particularly at platform level;
- (e) integrating On-Network Stations into the urban realm; and
- (f) ensuring that designs reflect the locality of communities served where appropriate.

RfL right to require Operator to procure RfL Crossrail Station Works

4.2 RfL shall have the right to require the Operator to procure all or any of the RfL Crossrail Station Works on reasonable notice. Where RfL exercises this right:

- (a) RfL and the Operator shall discuss and agree in good faith a programme, including measurable milestones, for the delivery of the RfL Crossrail Station Works;
- (b) RfL and the Operator shall discuss and agree in good faith a payment profile against which the Operator is to be paid for procuring the delivery of the RfL Crossrail Station Works, provided that the Operator shall be entitled to charge RfL a margin of [REDACTED] per cent. on the costs of the RfL Crossrail Station Works;
- (c) RfL and the Operator shall discuss and agree in good faith the extent to which the completed RfL Crossrail Station Works will have a positive impact on customer perception and, in light of that impact, whether the CSS Target Benchmarks, CSS Remedial Plan Benchmarks and/or CSS Default Benchmarks should be increased in order to hold constant the challenge to the Operator of, as appropriate, achieving or performing better than those benchmarks; and
- (d) the Operator shall procure and manage the timely delivery of the RfL Crossrail Station Works in accordance with the programme agreed pursuant to paragraph 4.2(a).

Co-operation

4.3 Whether or not RfL requires the Operator to procure all or any of the RfL Crossrail Station Works, the Operator shall co-operate with RfL to ensure the timely delivery of the RfL Crossrail Station Works, including, where necessary:

- (a) exercising its rights under the Station Access Conditions to:
 - (i) make any Proposal for Change required by RfL in accordance with paragraph 10.9 of Schedule 4.1 (*Property Leasing and Access*); and

- (ii) accept the RfL Crossrail Station Works and bring them into use; and
- (b) granting RfL and/or its agents and subcontractors access to the relevant On-Network Stations in order to undertake surveys and to carry out the RfL Crossrail Station Works.

5. FUTURE STATION ENHANCEMENTS AND MODERNISATIONS

5.1 RfL will continue to review all Crossrail Stations during the Concession Period, with the objective of identifying priorities for enhancements, modernisation or asset investment over and above the RfL Crossrail Station Works.

5.2 The Operator shall give reasonable assistance to RfL in developing the scope of such further stations enhancement and modernisation works or investment.

5.3 RfL shall be entitled to notify the Operator that it wishes to proceed with any works or investment at Crossrail Stations contemplated by paragraph 5.1.

5.4 If RfL notifies the Operator that it wishes to proceed with the implementation of any such works or investment at Crossrail Stations contemplated by paragraph 5.1 then a Change shall occur.

5.5 Whether or not RfL requires the Operator to procure all or any of the works or investment contemplated by paragraph 5.1, the Operator shall co-operate with RfL to ensure the timely delivery of those works or the making of that investment, including, where necessary:

- (a) exercising its rights under the Station Access Conditions to make any Proposal for Change required by RfL in accordance with paragraph 10.9 of Schedule 4.1 (*Property Leasing and Access*); and
- (b) granting RfL and/or its agents and subcontractors access to the relevant Crossrail Stations in order to carry out those works or make that investment.

6. DEPOT ENHANCEMENTS AND MODERNISATIONS

New sidings at Ilford Depot

6.1 Under the terms of the Ilford Regulated Depot Access Agreement, Network Rail will grant access from 31 January 2017 to 10 sidings to be built at Ilford Depot for the stabling by the Operator of Class 315 Units and Class 345 Units and in order to carry out the cleaning services referred to in paragraph 6.1(d) and the maintenance services referred to in paragraph 6.1(f), in each case of Schedule 4.1 (*Property Leasing and Access*) in relation to those Class 345 Units.

New Accommodation at Ilford Depot

6.2 Under the terms of the Ilford Operations Building Underlease, Greater Anglia will grant RfL access to part of an accommodation block to be built at Ilford Depot from September 2015. RfL shall procure that:

- (a) that part of the accommodation block (other than the two offices referred to in paragraph 6.2(b)) is available for use free of charge by the Operator's train drivers and driver managers; and

- (b) two offices within the accommodation block are available for use by the Rolling Stock Provider's employees until the Stage 4 Start Date in connection with the maintenance of the Class 345 Fleet that is stabled at Ilford Depot services referred to in paragraph 6.1(f) of Schedule 4.1.

6.3 The Operator shall procure alternative accommodation for its train drivers, train crew, driver managers and other Concession Employees until the new accommodation block referred to in paragraph 6.2 is made available at Ilford Depot by Greater Anglia.

Disruption to the Passenger Services

6.4 The Operator shall enforce its rights under the Ilford Regulated Depot Access Agreement and co-operate with RfL in order that RfL may enforce its rights under the Ilford Unregulated Depot Usage Agreement, in each case to avoid the depot enhancement works to be carried out at Ilford Depot in accordance with the Scope Book preventing the Operator from delivering the Passenger Services in accordance with the Timetable.

6.5 In the event that the depot enhancement works to be carried out by CRL at Ilford Depot for the purposes of the Crossrail Project prevent the Operator from delivering the Passenger Services in accordance with the Timetable, then the Operator shall promptly:

- (a) enforce its rights under the Ilford Regulated Depot Access Agreement and co-operate with RfL in order that RfL may enforce its rights under the Ilford Unregulated Depot Usage Agreement, in each case to obtain compensation from the Facility Owner in accordance with the terms of those agreements; and
- (b) in the case of the Ilford Regulated Depot Access Agreement, pay any such compensation to RfL by way of Other Adjustment.

SCHEDULE 5

TRAINS

Schedule 5.1: The Train Fleet

Appendix: Trains comprising the Train Fleet

Schedule 5.2: Operation, Maintenance and Refresh

Schedule 5.3: Introduction of the Class 345 Fleet

SCHEDULE 5.1

The Train Fleet

1. TRAIN FLEET

1.1 The Operator's Train Fleet:

- (a) as at the Start Date is as set out in Table 1; and
- (b) from the dates specified in Table 2 is as set out in Tables 1 and 2,

in each case contained in the Appendix, subject to paragraph 1 (*The Composition of the Train Fleet*) of the Appendix and the exercise by RfL of Priced Option 3.

1.2 The Operator shall comply with its obligations under:

- (a) paragraph 2 (*Changes to the Train Fleet*) concerning changes to the composition and characteristics of the Train Fleet; and
- (b) Schedule 19 (*Continuation of the Crossrail Concession*) with respect to the Train Fleet.

2. CHANGES TO THE TRAIN FLEET

2.1 The Operator shall maintain the composition of the Train Fleet during the Concession Period, unless RfL otherwise agrees, such that there are no changes to any rolling stock comprising the Train Fleet, including changes:

- (a) to the classes or types;
- (b) branding or internal or external finishes, except as expressly contemplated by this Agreement;
- (c) to the interior configurations; or
- (d) which may reduce the journey time capabilities.

2.2 Subject to the other provisions of this Agreement, the Operator shall procure that the rolling stock vehicles specified in the Tables contained in the Appendix, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

2.3 During the Concession Period, the Operator shall advise RfL of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of one Reporting Period or more.

2.4 If any change is made to the Train Fleet in accordance with this paragraph 2, RfL may, after consulting the Operator, notify the Operator of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

APPENDIX TO SCHEDULE 5.1

TRAINS COMPRISING THE TRAIN FLEET

1. THE COMPOSITION OF THE TRAIN FLEET

1.1 The Train Fleet consists of:

- (a) the rolling stock vehicles comprising the Class 315 Units specified in Table 1, until the lease expiry dates referred to in column 4 thereof;
- (b) following any such lease expiry, substitute rolling stock vehicles having:
 - (i) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted; and
- (c) from the dates specified in column 1 of Table 2, the Class 345 Units referred to against those dates in column 2 thereof that are on lease under the Class 345 Lease, and of those, in column 3 thereof, the Class 345 Units that are to be made Available on the relevant day to the Operator under the terms of the RSPA for the purpose of delivering the Passenger Services.

1.2 RfL may instruct the Operator to:

- (a) return Class 315 Units to the lessor earlier than anticipated in the delivery schedule of Class 345 Units in the RSPA where:
 - (i) in relation to the First Tranche, RfL is reasonably satisfied that those Class 345 Units that have been Accepted provide sufficient capacity in order to deliver the Passenger Services without creating additional risk to the Operator under Schedule 7 (*Operating Performance*); and
 - (ii) in relation to the Second Tranche:
 - (A) the Stage 4 Start Date has occurred; and
 - (B) either 65 Class 345 Units have been Accepted or RfL is otherwise reasonably satisfied that those Class 345 Units that have been Accepted provide sufficient capacity in order to deliver the Passenger Services without creating additional risk to the Operator under Schedule 7; or
- (b) delay the return of Class 315 Units to the lessor beyond the date anticipated in the delivery schedule in the RSPA (subject to the latest lease expiry date specified in column 4 of Table 1) where RfL is reasonably satisfied that doing so would not create additional risk to the Operator under Schedule 7,

and in each case, the Operator shall procure that each relevant lease expiry date is consistent with that instruction.

Table 1 (Class 315 Fleet)

Column 1	Column 2	Column 3	Column 4
Lease start date(s)	Number of vehicles and unit configuration	Owner / Lessor	Lease expiry date(s)
Start Date	24 x 4 car (the <i>First Tranche</i>)	Eversholt	Up to 12 months after the Scheduled Stage 1a Start Date unless, subject to paragraph 1.2, each such Class 315 Unit is returned to the lessor earlier in accordance with the following, in which case, the lease expiry date in relation to that Class 315 Unit shall be the date it is returned to the lessor: (1) No more than two Class 315 Units comprising the First Tranche to be replaced by one Class 345 RLU upon the Acceptance of that Class 345 RLU in accordance with the delivery schedule in the RSPA, up to and including the Acceptance of the 15 th Class 345 RLU. (2) First replacement scheduled to occur on the Subsidiary Change Date occurring in May 2017.
Start Date	20 x 4 car (the <i>Second Tranche</i>)	Eversholt	14 December 2019, unless each such Class 315 Unit is returned to the lessor earlier pursuant to paragraph 1.2, in which case, the lease expiry date in relation to that Class 315 Unit shall be the date it is returned to the lessor.

Table 2 (Class 345 Fleet)

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
From the date of Acceptance of the relevant Class 345 Unit, which shall be no later than 17 April 2017	2	Driver training Units Up to two Class 345 RLUs made Available daily for driver training in accordance with clause 19.6(a)(i) of the RSPA	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, the first such Acceptance occurring no later than 1 May 2017	Between 2 and 15	Units for Eastern Section services progressively added Class 345 RLUs progressively Available to deliver Diagrams between Shenfield station and Liverpool Street (Main Line) station to operate from the Scheduled Stage 1 Start Date, and up to two Class 345 RLUs made Available daily for driver training in accordance with clause 19.6(a)(ii) of the RSPA until the Scheduled Trial Operations Start Date	RfL or as RfL may direct	Expiry Date

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
From the date of Acceptance of the relevant Class 345 Unit, which in each case shall occur no later than 19 September 2017	15	All Units for Eastern Section services delivered Sufficient Class 345 RLUs Available to deliver 11 daily Diagrams between Shenfield station and Liverpool Street (Main Line) station (the Class 345 Stage 1a RLUs) to operate from the Scheduled Stage 1a Start Date, and from the day after the Scheduled Trial Operations Start Date, the two Class 345 RLUs referred to in the immediately preceding row replaced by one Class 345 RLU and one class 345 FLU to be made Available daily for driver training in accordance with clause 19.6(a)(ii) of the RSPA	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, which in each case shall be no later than 31 December 2017	17	Further driver training Units added Two Class 345 FLUs made Available daily for driver training in accordance with clause 19.6(a)(iii) of the RSPA, in addition to the Class 345 Units that are made Available for driver training referred to in the immediately preceding row (together, the Class 345 Training Units)	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, which in each case shall be no later than 15 April 2018	17 to 35	Units for Heathrow services added Sufficient Class 345 FLUs made Available daily to deliver six Diagrams between Heathrow Stations and Paddington (Main Line) station (the Class 345 Stage 2 FLUs) to operate from the Scheduled Stage 2 Start Date, in addition to the Class 345 Stage 1a RLUs and the Class 345 Training Units	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, but by no later than the Scheduled Stage 2 Start Date	36 to 37	Operational Spare Units added Either: <ul style="list-style-type: none"> ▪ one Class 345 FLU to be provided as an Operational Spare Unit in accordance with the RSPA where the number of Class 345 FLUs that have been Accepted exceeds 16 until 5 July 2018 and 35 from 6 July 2018 until the Scheduled Stage 3 Start Date; or ▪ two Class 345 FLUs to be provided as Operational Spare Units in accordance with the RSPA where the number of Class 345 FLUs that have been Accepted on any date exceeds 17 until 5 July 2018 and 36 from 6 July 2018 until the Scheduled Stage 3 Start Date, in either case for operation from the Scheduled Stage 2 Start Date until the day	RfL or as RfL may direct	Expiry Date

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
		prior to the Scheduled Stage 3 Start Date, and in addition to the Class 345 Stage 1a RLUs, the Class 345 Stage 2 FLUs and the Class 345 Training Units		
From the date of Acceptance of the relevant Class 345 Unit, which shall be no later than the Scheduled Trial Running Start Date	36/37 to 47	Units for Trial Running added Up to 22 x Class 345 FLUs for Trial Running (the <i>Class 345 Trial Running Units</i>), in addition to the Class 345 Stage 1a RLUs, the Class 345 Stage 2 FLUs and the Class 345 Training Units	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, which shall be no later than the Scheduled Trial Operations Start Date	36/37 to 47	Same number of Units available for Trial Operations Up to 22 x Class 345 FLUs for Trial Operations (the <i>Class 345 Trial Operations Units</i>), in addition to the Class 345 Stage 1a RLUs, the Class 345 Stage 2 FLUs and the Class 345 Training Units, but not in addition to the Class 345 Trial Running Units	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit, which shall be no later than the Scheduled Stage 3 Start Date	48	Units for Central Operating Section services added Sufficient Class 345 FLUs to deliver 19 daily Diagrams between Paddington (Crossrail) station and Abbey Wood station (the <i>Class 345 Stage 3 FLUs</i>), in addition to the Class 345 Stage 1a RLUs, the Class 345 Stage 2 FLUs and the Class 345 Training Units, but not in addition to the Class 345 Trial Operations Units	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit occurring between the Scheduled Stage 3 Start Date and the day prior to the Scheduled Stage 4 Start Date	49 to 50	Operational Spare Units added Either: <ul style="list-style-type: none"> ▪ one Class 345 FLU to be provided as an Operational Spare Unit in accordance with the RSPA where the number of Class 345 FLUs that have been Accepted exceeds 32; or ▪ two Class 345 FLUs to be provided as Operational Spare Units in accordance with the RSPA where the number of Class 345 FLUs that have been Accepted on any date exceeds 33, in either case in addition to the Class 345 Stage 1a RLUs, the Class 345 Stage 2 FLUs, the Class 345 Stage 3 FLUs and the Class 345 Training Units	RfL or as RfL may direct	Expiry Date

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
From the date of Acceptance of the relevant Class 345 Unit, which shall be no later than the Scheduled Stage 4 Start Date	62	Units for Central Operating Section and Eastern Section added Sufficient Class 345 FLUs to deliver 45 daily Diagrams between Paddington (Crossrail) station and Abbey Wood station and Shenfield station (the Class 345 Stage 4 FLUs) and five Class 345 RLUs to deliver Diagrams on Monday to Friday for the GE Residual Services (the Class 345 GE Residual Services RLUs), in addition to the Class 345 Stage 2 FLUs and the Class 345 Training Units	RfL or as RfL may direct	Expiry Date
From the date of Acceptance of the relevant Class 345 Unit occurring between the Scheduled Stage 4 Start Date and the day prior to the Scheduled Stage 5 Start Date	63 to 64	Operational Spare Units added The following: <ul style="list-style-type: none"> ▪ one Class 345 FLU to be provided as an Operational Spare Unit in accordance with the RSPA where the number of Class 345 FLUs that have been Accepted exceeds 58; and ▪ subject to the terms of the RSPA, another Class 345 FLU on or before 0600 each day, in each case in addition to the Class 345 Stage 2 FLUs and the Class 345 Training Units	RfL or as RfL may direct	Expiry Date
By 3 August 2019	63 to 64	Conversion of up to 10 Class 345 Stage 1a RLUs to Class 345 FLUs If the Class 345 Stage 1a RLUs are to operate Diagrams between Heathrow Stations and Paddington (Main Line), all such Class 345 Stage 1a RLUs to be converted to Class 345 FLUs	RfL or as RfL may direct	Expiry Date
Four weeks after Liverpool Street High Level Platform Works Completion Date (as defined in the RSPA)	63 to 64	Conversion of Class 345 GE Residual Services RLUs to Class 345 FLUs Class 345 GE Residual Services RLUs converted to Class 345 FLUs	RfL or as RfL may direct	Expiry Date
By the Scheduled Stage 5 Start Date	Up to 66	Units for Central Operating Section through services added Sufficient Class 345 FLUs to operate on or around 61 daily Diagrams in accordance with the RSPA between: <ul style="list-style-type: none"> ▪ Reading station and Heathrow Stations; and ▪ Shenfield stations and Abbey Wood station via Paddington (Crossrail) station, 	RfL or as RfL may direct	Expiry Date

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
		as well as the Class 345 GE Residual Services RLUs, including two Class 345 FLUs as Operational Spare Units, except if the Liverpool Street High Level Platform Works Completion Date (as defined in the RSPA) has not occurred at least four weeks prior to the Scheduled Stage 5 Start Date, in which case some or all of the Class GE Residual Service RLUs may be Class 345 RLUs		

SCHEDULE 5.2

Operation, Maintenance and Refresh

1. LEASING OF THE CLASS 315 FLEET

1.1 The Operator shall be responsible for arranging the leasing of each Class 315 Unit comprising the Class 315 Fleet from the Start Date until the relevant lease expiry date specified in Table 1 of the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*).

1.2 It shall be a Change if the Operator is required to continue leasing any Class 315 Unit after the latest possible lease expiry date specified in Table 1 of the Appendix to Schedule 5.1 or any other unit or units beyond such date by way of replacement for such Class 315 Unit as a result of the late Acceptance of any Class 345 Unit (other than late Acceptance resulting from any act or omission of the Operator or the Operator failing to perform its obligations under Schedule 5.3 (*Introduction of the Class 345 Fleet*)).

1.3 The Operator may retain 50 per cent. of any saving which it makes as a result of the early return of the Class 315 Fleet, or part thereof, due to the introduction into passenger revenue earning service of the Class 345 Fleet in advance of the relevant dates set out in the Appendix to Schedule 5.1. The Operator shall promptly pay the remaining 50 per cent. to RfL by way of Other Adjustment.

2. REBRANDING AND REFRESHMENT OF THE CLASS 315 FLEET

Rebranding

2.1 The Operator shall:

(a) by the end of the first Reporting Period after the Start Date, affix:

(i) branded car-cards that set out TfL's rail network; and

(ii) decals that show that part of the Crossrail Route between Shenfield station and Liverpool Street (Main Line) station,

in each case, in accordance with RfL's specification and in the interior of the passenger compartments of each rolling stock vehicle comprising the Class 315 Fleet; and

(b) by the end of the first Reporting Period of the Concession Period, rebrand the exterior of the Class 315 Fleet by applying the TfL Rail Operating Brand in accordance with RfL's branding specification.

2.2 The Operator shall by the end of the first Reporting Period of the Concession Period after the Stage 1 Start Date, rebrand the exterior of the Class 315 Fleet by applying the Crossrail Operating Brand in accordance with RfL's branding specification.

Refreshment

2.3 The Operator shall refresh the Class 315 Fleet in accordance with the requirements set out in the table below by the later of the two dates specified in the table below.

Column 1	Column 2	Column 3
Refreshment activity	Scope	Required completion date
Interior deep clean	To a specification to be agreed by the parties.	One Reporting Period of the Start Date
Exterior heavy clean	To a specification to be agreed by the parties.	One Reporting Period of the Start Date
Lighting	Where new homogenous lighting is not already provided the replacement of lighting tubes with the effect that interior lighting emits a uniform colour with no differences across the Class 315 Fleet.	One Reporting Period of the Start Date
Moquettes replacement	To a specification to be agreed by the parties replacement of existing seat cover moquettes with a new design of seat cover moquette to be specified by RfL.	Six Reporting Periods of the Start Date
Repairs	Repairs as follows: <ul style="list-style-type: none"> • replacement of glass with etched graffiti, and application of anti-etching film to all glazing in the passenger areas; • repair of damaged areas of floor covering; • recoating of all grab rails, grab poles and seat back handles in a colour to be advised by RfL; • repairing internal surfaces of passenger doors and other interior panels, as required to make good and eliminate patchwork paint on previous repaired panels; and • re-colouring of the 'pink' laminated panels, using a combination of panel replacement, repaint and/or vinyl overlay, to a colour to be specified by RfL. 	Six Reporting Periods of the Start Date
Repainting and rebranding	Repainting as follows: <ul style="list-style-type: none"> • repainting internal surfaces of passenger doors and other interior panels, as required to make good and eliminate patchwork paint on previously repaired panels; • repainting the exterior surface of exterior doors to a colour to be specified by RfL; and • application of branding decals and Crossrail Route maps. 	Six Reporting Periods of the Start Date

2.4 If the refreshment specified in paragraph 2.3 is not completed by the date specified in paragraph 2.3, the Operator shall pay to RfL a Committed Obligation Payment of £[REDACTED] (reduced pro rata by reference to the number of Class 315 Units that have been refreshed in accordance with paragraph 2.3 by that date) for each day during the period commencing on the first day of the seventh Reporting Period of the Concession Period and ending on the date on which the refreshment is completed.

2.5 The Operator shall spend at least £[REDACTED] (such amount not to be subject to indexation) on the refreshment specified in paragraph 2.3.

2.6 If the Operator fails to spend at least the amount specified in paragraph 2.5, the Operator shall pay a Committed Obligation Payment equal to the balance of the amount specified in paragraph 2.5 that remains unspent by the Operator on the date on which the refreshment is completed.

2.7 For the purpose of paragraph 2.6, the date of completion of the refreshment shall be the date on which the Operator issues the last relevant acceptance certificate (or equivalent thereof) to the contractor carrying out the refreshment, provided that the Operator:

- (a) shall grant RfL a reasonable opportunity to inspect sufficient rolling stock vehicles comprising the Class 315 Fleet to satisfy itself, acting reasonably, that the refreshment of the Class 315 Fleet has been carried out, in all material respects, in accordance with the specification set out in paragraph 2.3;
- (b) shall promptly procure that such further work as is necessary to fully complete the refreshment of the Class 315 Fleet is undertaken where, acting reasonably, RfL is not satisfied following any such inspection that that refreshment undertaken by the Operator has been carried out, in all material respects, in accordance with paragraph 2.3 in relation to any rolling stock vehicle comprising the Class 315 Fleet; and
- (c) shall remain liable for amounts payable to RfL under paragraph 2.6, notwithstanding the issue by the Operator of the last relevant acceptance (or equivalent) certificate, where, acting reasonably, RfL is not satisfied on or after first day of the seventh Reporting Period of the Concession Period that that refreshment has been carried out, in all material respects, in accordance with paragraph 2.3 in relation to any rolling stock vehicle comprising the Class 315 Fleet.

3. MAINTENANCE, REPAIR AND CLEANING OF THE CLASS 315 FLEET

Obligation to maintain, repair and service etc.

3.1 The Operator shall be responsible for procuring the maintenance, repair, stabling, servicing and cleaning of the Class 315 Fleet from the Start Date and in respect of any rolling stock vehicle comprising the Class 315 Fleet, for so long as that vehicle continues to be leased by the Operator.

Interior Train Cleaning and Preparation

3.2 The Operator shall procure that the interior of each Class 315 Unit is cleaned to satisfy the Interior Cleaning Standard for so long as each such Class 315 Unit continues to be operated by the Operator.

3.3 For the purposes of paragraph 3.2, the *Interior Cleaning Standard* means such standard of cleanliness as will satisfy the relevant:

- (a) Key Performance Indicator standards set out in Table 6 (*Train Cleaning and Condition Standards*) in Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*); and
- (b) mean score in the MSS Questionnaire.

Exterior Train Cleaning and Preparation

3.4 The Operator shall procure that the exterior of each Class 315 Unit is cleaned at Ilford Depot to satisfy the Exterior Cleaning Standard for so long as each such Class 315 Unit continues to be operated by the Operator.

3.5 For the purposes of paragraph 3.4, the *Exterior Cleaning Standard* means the machine and periodic heavy cleaning to such standard of cleanliness as will satisfy the relevant:

- (a) Key Performance Indicator standards set out in Table 6 in Appendix 1 to Schedule 8.1; and
- (b) mean score in the MSS Questionnaire.

4. LEASING OF THE CLASS 345 FLEET AND THE SIMULATOR

4.1 RfL and the Operator have entered into the Class 345 Lease on or about the date of this Agreement, pursuant to which RfL will lease the Class 345 Fleet, the Simulator and certain special tools to the Operator.

4.2 RfL reserves the right to transfer ownership of the Class 345 Fleet, the Simulator and any special tools leased under the Class 345 Lease to any third party or parties without the prior consent of the Operator, and, if so required, the Operator shall promptly enter into a lease or leases with such third party or parties or cooperate with RfL to put in place leasing arrangements with such third party or parties and RfL, in each case when so directed by RfL. Where the Operator is required to enter into a new lease of the Class 345 Fleet, the Simulator and such special tools such new lease shall be substantially on the terms of the Class 345 Lease. If during any Reporting Period the Operator is obliged by any subsequent lease to pay rental to the lessor:

- (a) RfL shall reimburse such rental to the Operator by way of adjustments to the Concession Payments in a timely manner so as to ensure that the Operator's cashflow is not adversely affected by the preferred payment cycle of the chosen lessor; and
- (b) consequential adjustments shall be made to the definition of Pass Through Adjustment and paragraph 3.1 of Schedule 11.1 (*Concession Payments*), including to the formula contained in that paragraph, to recognise those payments.

4.3 If a Class 345 Unit has been Accepted, but it cannot be operated in revenue earning passenger service from the date of Acceptance under the terms of Class 345 Lease because the Central Operating Section has not been completed, or has not been fully certified, then RfL will compensate the Operator by way of Other Adjustment for any additional costs it incurs in storing such Class 345 Unit during the period of delay, net of any savings realised by the Operator, provided RfL has approved in writing those storage arrangements, including ensuring where required that the Rolling Stock Provider has the continued ability to maintain that Class 345 Unit at that storage location.

5. MAINTENANCE, REPAIR AND CLEANING OF THE CLASS 345 FLEET

Agency in relation to Class 345 Fleet

5.1 Under the RSPA, the Rolling Stock Provider agrees to provide maintenance and related services for the Class 345 Fleet.

5.2 Under the RSPA, RfL is entitled to nominate the Operator to exercise some of its rights and/or perform some of its obligations, in connection with the RSPA. With effect from the date of the RSPA Agency Agreement, RfL shall nominate the Operator to exercise the rights, and perform the obligations, in each case of RfL under the RSPA specified in the RSPA Agency Agreement.

5.3 RfL shall not take any action which impedes or frustrates the Operator's proper day-to-day exercise of any rights and performance of obligations under the RSPA that RfL has nominated the Operator to exercise, and shall not unreasonably delay giving any instruction or approval to the Operator which is necessary for such proper exercise or performance.

Additional Services

5.4 Pursuant to paragraph 5.2, the Operator shall procure that the Rolling Stock Provider carries out Additional Services in accordance with the RSPA. RfL shall pay the Rolling Stock Provider in accordance with the terms of the RSPA in respect of any Additional Services that the Rolling Stock Provider carries out in accordance with the terms of the RSPA. The Operator shall refund RfL any such payment that RfL makes to the Rolling Stock Provider pursuant to this paragraph 5.4 by way of adjustment to the Concession Payment to be made on the next Payment Date after that payment is made (an *Additional Services Adjustment*).

Day-to-day relationship

5.5 The Operator shall establish an effective working relationship with the Rolling Stock Provider in order to ensure the consistent and reliable delivery of the services under the RSPA and the Passenger Services, including:

- (a) developing contingency arrangements in relation to the Diagrams that Class 345 Units are to operate;
- (b) agreeing stabling arrangements where restrictions are imposed by any Infrastructure Manager;
- (c) operating Class 345 Units in accordance with the Maintenance Plan;
- (d) managing Class 345 Unit failures in service;
- (e) working with the Rolling Stock Provider to establish and manage a process for determining the cause of incidents and the attribution of responsibility;
- (f) developing processes to manage fault finding, repair, rectification, modifications and the carrying out of Additional Services;
- (g) developing practical arrangements with the Rolling Stock Provider for the hand over and hand back of Class 345 Units at Ilford Depot, Old Oak Common Depot and other stabling locations identified in the RSPA;

- (h) agreeing with the Rolling Stock Provider the initial location of the Simulator at the Initial Simulator Location and the re-location of the Simulator to the Old Oak Common Depot;
- (i) planning and managing the maintenance of the Simulator, including the installation of software updates; and
- (j) developing the driver trainer training programme for the purpose of training the Operator's driver trainers.

Interior Train Cleaning and Preparation

5.6 The Operator shall procure that the interior of each Class 345 Unit is cleaned to satisfy the Interior Cleaning Standard in accordance with the requirements of paragraph 7 (*Interior Cleaning*) of schedule D1 (*Maintenance Services*) of the RSPA during each Turnaround Period.

5.7 For the purposes of paragraph 5.6, the *Interior Cleaning Standard* means such standard of cleanliness as will satisfy the relevant:

- (a) Key Performance Indicator standards set out in Table 6 (*Train Cleaning and Condition Standards*) in Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*); and
- (b) mean score in the MSS Questionnaire.

Exterior Train Cleaning and Preparation

5.8 The Operator shall procure that the exterior of each Class 345 Unit that is stabled at Ilford Depot is cleaned at Ilford Depot to satisfy the Exterior Cleaning Standard in accordance with the requirements of paragraph 6 (*Exterior Cleaning*) of schedule D1 of the RSPA until the Stage 4 Start Date.

5.9 For the purposes of paragraph 5.8, the *Exterior Cleaning Standard* means the machine and periodic heavy cleaning to such standard of cleanliness as will satisfy the relevant:

- (a) Key Performance Indicator standards set out in Table 6 in Appendix 1 to Schedule 8.1; and
- (b) mean score in the MSS Questionnaire.

6. MAINTENANCE PROGRESS REPORTS

RfL:

- (a) shall provide the Operator with regular updates on progress in connection with the provision of maintenance and servicing of the Class 345 Fleet; and
- (b) may for the purpose of any such update, provide the Operator with copies (or relevant parts thereof) of any Maintenance Progress Reports (as defined in the RSPA).

7. MAINTENANCE OF THE SIMULATOR AND OTHER EQUIPMENT

The Simulator

7.1 RfL shall provide the Operator with reasonable notice of the requirement to relocate the Simulator to a simulator suite within Old Oak Common Depot.

7.2 The Operator shall co-operate with the Rolling Stock Provider to facilitate the relocation and installation of the Simulator within a simulator suite at Old Oak Common Depot.

7.3 If RfL reasonably believes that the Simulator will not be installed within a simulator suite at Old Oak Common Depot by the date specified for such installation under the RSPA, it shall notify the Operator of that view and the Operator shall take steps to mitigate any impact on the training of its train drivers in route knowledge of the Crossrail Route and operation of the Class 345 Units, including extending any arrangements it has in place in respect of the Interim Simulator Location or identifying another suitable location for the Simulator within the Greater London Area until such time as the Simulator can be relocated and installed within a simulator suite at Old Oak Common Depot.

7.4 Where the Operator is unable to retain access to the Interim Simulator Location and identifies another location within the Greater London Area for the installation of the Simulator that meets the requirements of paragraph 7.5 of Schedule 5.3 (*Introduction of the Class 345 Fleet*), RfL shall:

- (a) procure that the Rolling Stock Provider relocates and installs the Simulator at that other location; and
- (b) except where the reason for that inability to retain access is due to the Operator breaching any lease of the Interim Simulator Location or otherwise failing to take reasonable steps to retain such access, pay the Operator by way of Other Adjustment its reasonable additional costs incurred that are over and above the costs of procuring access to the Interim Simulator Location.

DOO CCTV

7.5 The Operator shall:

- (a) provide, as RfL notifies from time to time, RfL or CRL and in each case its sub-contractors with access to each Operator Station in a timely manner in order that CRL and its sub-contractors can maintain the relevant parts of the DOO CCTV System at each such station; and
- (b) procure, as RfL notifies from time to time, RfL or CRL and in each case its sub-contractors is provided with access to each Operator Access Station in a timely manner in order that CRL and its subcontractors can maintain the relevant parts of the DOO CCTV System at each such station.

8. MODIFICATION TO THE CLASS 345 UNITS AND EQUIPMENT

RfL shall provide the Operator with reasonable notice of any Modification and promptly upon receipt of such notice, the parties shall consult for a reasonable period of time to determine:

- (a) the effects of that Modification on:

- (i) the Safety Management System; and
 - (ii) the operation and performance of the Class 345 Units, the Simulator and/or the DOO CCTV System;
- (b) the programme of works to implement that Modification and the extent to which that programme may impact on the availability of Class 345 Units for the delivery of Passenger Services; and
- (c) the steps that may be taken to minimise the extent to which that the programme may impact on such availability.

9. DISTRIBUTION OF MEDIA MATERIAL ON TRAINS

The Operator shall be prohibited from distributing or permitting the distribution of any media material whatsoever (including newspapers, magazines, leaflets, coupons and flyers) on any rolling stock vehicle forming part of the Train Fleet without the prior consent of RfL.

SCHEDULE 5.3

Introduction of the Class 345 Fleet

1. MANUFACTURE AND SUPPLY OF THE CLASS 345 FLEET

RSPA

1.1 RfL has entered into the RSPA with the Rolling Stock Provider for the design, manufacture, testing, certification, commissioning, Acceptance and supply of the Class 345 Fleet for their operation on the Crossrail Route. RfL shall project-manage the Rolling Stock Provider's delivery of the design, construction, testing, Acceptance and supply of the Class 345 Fleet under the RSPA.

1.2 The scheduled Acceptance dates for the Class 345 Units and related equipment are specified in the RSPA, with the first Class 345 Unit scheduled to be operated in revenue earning passenger service on the Scheduled Stage 1 Start Date, provided that actual Acceptance of any Class 345 Unit or any related equipment will only occur when RfL is satisfied in accordance with the terms of the RSPA that the relevant Acceptance criteria have been satisfied or RfL decides to waive any such criteria.

Operator's role in facilitating the timely delivery of the Class 345 Fleet

1.3 RfL requires the Operator to facilitate the timely delivery of the Class 345 Fleet and related equipment under the RSPA by carrying out its obligations specified in this Schedule 5.3 and the Operator agrees that it will carry out those obligations.

1.4 The Operator shall appoint the New Trains Director, with responsibility for procuring the Operator's compliance with its obligations under this Schedule 5.3 to facilitate the timely delivery of the Class 345 Fleet and related equipment under the RSPA.

1.5 The Operator shall appoint appropriately skilled persons in a timely manner to support the New Trains Director in procuring the Operator's compliance with its obligations under this Schedule 5.3.

1.6 The New Trains Director and the persons appointed by the Operator pursuant to paragraph 1.5 shall have the authority to bind the Operator in relation to the Operator's rights and obligations under this Agreement that relate to the testing, introduction into service and operation of the Class 345 Fleet and the Simulator and RfL shall be entitled to rely on and treat as irrevocable decisions made and notified to RfL by or on behalf of the New Trains Director and those persons in respect thereof.

Operator to inform itself fully

1.7 The Operator confirms that it has studied in detail the Train Technical Requirements and each document comprised therein, the Maintenance Plan and the DOO CCTV System design and installation standard contemplated by the RSPA, and has obtained for itself all necessary information as to risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Schedule 5.3 and operate the Class 345 Fleet, the Simulator and related equipment provided under the RSPA. The Operator shall not be entitled to any relief from its obligations under this Agreement, including any relief from any liability it may incur under Schedule 7 (*Operating Performance*) or Schedule 8 (*Service Quality and Passenger Perception*) in delivering the Concession Services, on the grounds that it did not or could not have reasonably foreseen any

matter which might affect or have affected the design, manufacture, testing, certification, commissioning, Acceptance, supply, maintenance or operation of the Class 345 Fleet, the Simulator and related equipment provided under the RSPA.

2. DESIGN ASSURANCE

Class 345 Unit, equipment and depot design assurance

2.1 The RSPA sets out a process for progressive assurance to be provided by the Rolling Stock Provider in relation to its performance under the RSPA. The Operator shall participate in the design assurance aspects of that process in accordance with this paragraph 2.

Operator's expert opinion

2.2 The Operator shall as and when required by RfL under any of the preliminary and detailed unit, equipment and depot design programmes contemplated by the RSPA, provide its direction and expert opinion to RfL and the Rolling Stock Provider in relation to any submission made by the Rolling Stock Provider in respect of any of the Class 345 Unit, Simulator, DOO CCTV System and Old Oak Common Depot design aspects referred to in paragraphs 2.3 and 2.4 in order that RfL may, as appropriate, issue to the Rolling Stock Provider in a timely manner, Assurance Acceptance (as defined in the RSPA).

Class 345 Unit and Simulator design assurance

2.3 The Class 345 Unit and Simulator design aspects upon which the Operator is to provide its direction and expert opinion pursuant to paragraph 2.2 comprise:

- (a) the interior cab layout to the extent not defined by Railway Industry Standards or otherwise by Good Industry Practice;
- (b) the Train Management System (as defined in the RSPA) to the extent that system interfaces with the driver or train crew, including in relation to cab and door alarms, messages and prompts;
- (c) the passenger/train and train crew/train interfaces insofar as those interfaces reasonably affect the safe operation of the Class 345 Units; and
- (d) such other aspects of the Class 345 Unit and Simulator design as RfL requires from time to time including proactively contributing to hazard reviews and the development of operating scenarios to be used on the Simulator in accordance with the RSPA.

Old Oak Common Depot design assurance

2.4 The Old Oak Common Depot design aspects that the Operator is to provide pursuant to paragraph 2.2 comprise the safety and staff welfare aspects of the CTOC Area and the passageways to and from the CTOC Area.

Close-Out Meetings

2.5 The Operator shall as and when required by RfL, attend any Close-Out Meeting (as defined in the RSPA) with the Rolling Stock Provider and RfL for the purpose of determining whether, as appropriate, the relevant preliminary or detailed design phase has been completed.

3. RELEVANT APPROVALS

3.1 Where:

- (a) any documentation forming part of a submission to a Competent Authority for a Relevant Approval may only be prepared by a Train Operator in its capacity as an operator of the Class 345 Units, the Operator shall prepare that documentation; and
- (b) a Relevant Approval may only be granted to a Train Operator, the Operator shall make the formal presentation of the submissions for such Relevant Approval,

provided that, in each case, the Rolling Stock Provider has supplied in a timely manner any information relating to the Class 345 Units and related equipment and their maintenance and any other materials reasonably required in accordance with the Relevant Approvals Management Plan (Train Works), which in each case, is in a format that is suitable for submission to the applicable Competent Authority without redrafting.

3.2 The Operator shall do all such things in relation to Route Acceptance (as defined in the RSPA) which only the Operator can undertake as a Train Operator, including the preparation and approval of the Safety Certificate in relation to Trial Running, Trial Operations and the operation of the Class 345 Units in delivering the Passenger Services, provided that the Rolling Stock Provider has supplied in a timely manner all documentation and information relating to the Class 345 Units and related equipment that is reasonably necessary for the Operator to prepare its Safety Certificate.

3.3 The Operator shall communicate regularly and in an effective manner with the Rolling Stock Provider to coordinate the exchange of information and the development of submissions to Competent Authorities for the purpose of obtaining Relevant Approvals.

4. TRAINING

Training programmes

4.1 The Rolling Stock Provider is obliged to develop driver trainer and DOO CCTV training programmes under the RSPA. As and when required by RfL, the Operator shall provide its expert opinion to RfL in relation to those programmes (including the relevant training materials) and to discuss in good faith with RfL and the Rolling Stock Provider, any changes that the Operator considers are reasonably necessary in order that its driver trainers and other trainers can train its drivers and other employees to, as appropriate, operate the Class 345 Units, the Simulator, the DOO CCTV Station Subsystem (as defined in the RSPA) (and any related items), in each case in accordance with all Applicable Laws and Standards (as defined in the RSPA), Relevant Approvals and the Safety Certificate.

4.2 The Operator shall use the Simulator to train its drivers in developing a working knowledge of the Crossrail Route and the Class 345 Units. The Operator shall report to RfL each Reporting Period as part of the Periodic Concession Report, the Simulator Available Hours (as defined in the RSPA) for that Reporting Period.

Available Class 345 Units for training

4.3 The Operator shall work with RfL and the Rolling Stock Provider to maximise the number of Class 345 Units that are available for the purpose of driver training, including meeting with RfL and the Rolling Stock Provider no later than six months prior to the Stage 1 Start Date to agree the times and locations for those units to be made available for that training to be carried out.

5. CLASS 345 UNIT AND EQUIPMENT TESTING

Class 345 Unit testing

5.1 The Rolling Stock Provider shall be responsible for testing each Class 345 Unit until its Acceptance.

5.2 The Operator shall make available to the Rolling Stock Provider or to such persons as RfL instructs:

- (a) for the purpose of Dynamic Testing, sufficiently qualified drivers, driver managers and supervisors to staff for 16 hours per day during the Dynamic Testing Period, one Class 345 FLU, progressing in stages to four Class 345 FLUs, in each case for testing on the Central Operating Section; and
- (b) for the purpose of Trial Running and Trial Operations, sufficiently qualified drivers, driver managers and supervisors to staff seven days a week during the Trial Running Period and Trial Operations Period, up to 22 Class 345 FLUs, in each case for running on the Central Operating Section.

5.3 Paragraphs 6.3 to 6.7 inclusive of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*) inclusive shall apply where RfL wishes to amend the requirements for Dynamic Testing, Trial Running and/or Trial Operations.

DOO CCTV System testing

5.4 The Operator shall, as part of its obligation to support the timely completion of the Staged Opening Infrastructure Works, support the installation of the DOO CCTV System in accordance with paragraph 5.5:

- (a) for use on or before the Scheduled Stage 1 Start Date at all Crossrail Stations on the Eastern Section between and including Stratford station and Shenfield station, with the exception of Liverpool Street (Main Line) station;
- (b) for use on or before the Scheduled Stage 2 Start Date at all Crossrail Stations on the Western Section between and including Acton Main Line station and Hayes & Harlington station, with the exception of Paddington (Main Line) station and the Heathrow Stations;
- (c) for use on or before the Scheduled Stage 3 Start Date at all Crossrail Stations on the Central Operating Section; and
- (d) for use on or before the Scheduled Stage 5 Start Date at all Crossrail Stations between West Drayton station (inclusive) and Maidenhead station (inclusive).

5.5 The Operator shall:

- (a) amend its Safety Management System to include the operating safety case for the DOO CCTV System, developing operating material that supports the argument for relevant safety approval, undertaking the process for securing that safety approval and providing drivers in accordance with the RSPA and train paths as required by paragraph 5.8(e) for the purpose of commissioning of the DOO CCTV System;

- (b) provide CRL and its sub-contractors with access to each Operator Station in a timely manner in order that CRL and its sub-contractors can install and test the relevant parts of the DOO CCTV System at each such station;
- (c) procure that CRL and its sub-contractors is provided with access to each Operator Access Station in a timely manner in order that CRL and its subcontractors can install and test the relevant parts of the DOO CCTV System at each such station; and
- (d) obtain the required number of train paths and make available to CRL and its sub-contractors, suitably qualified train drivers and other resources in order that CRL and its sub-contractors may carry out the DOO CCTV System integration testing contemplated by the RSPA.

Testing of other equipment

5.6 The Operator shall as and when required by RfL, provide its expert opinion in relation to the testing of operating scenarios used on the Simulator.

Attending meetings

5.7 The Operator shall, as requested by RfL, attend regular meetings with RfL, CRL and/or the Rolling Stock Provider together with such other relevant parties as are involved in Dynamic Testing, Trial Running or Trial Operations and the testing of other equipment in order to discuss the requirements for the provision and operation of the Class 345 Units during, as appropriate, the Dynamic Testing Period, Trial Running Period and Trial Operations Period.

Procurement of track access by the Operator

5.8 The Operator shall use all reasonable endeavours to obtain sufficient train paths at no charge to RfL or the Rolling Stock Provider in order to:

- (a) transfer Class 345 Units from Old Oak Common Depot to the Central Operating Section for the purposes of carrying out Dynamic Testing in accordance with the RSPA;
- (b) carry out driver training in accordance with the RSPA;
- (c) transfer all Class 345 RLUs to Old Oak Common Depot during Stage 4 in order that they can be converted into Class 345 FLUs, as anticipated by the RSPA;
- (d) carry out Trial Running and Trial Operations in accordance with the RSPA; and
- (e) carry out testing of the DOO CCTV System in accordance with the RSPA,

and in each case, the Operator shall not cancel any such train paths when booked unless requested in writing to do so by any Infrastructure Manager, the Rolling Stock Provider or CRL and shall promptly re-book any such train paths that are cancelled where requested in writing to do so by any Infrastructure Manager, the Rolling Stock Provider or CRL.

5.9 As and when required by RfL, the Operator shall use reasonable endeavours to obtain sufficient train paths in order to transfer Class 345 Units by way of diversionary routes to the Crossrail Route, and RfL shall compensate the Operator for the proper and reasonable additional costs it incurs as a result by way of an Other Adjustment.

6. OPERATOR AUTHORITY TO OPERATE

The Operator shall promptly make a submission to obtain route acceptance to operate the Class 345 Units on the Crossrail Route in passenger revenue earning service upon receipt of all relevant information within the Rolling Stock Provider's or its sub-contractor's control and/or possession in connection with the making of that submission.

7. CLASS 345 UNIT AND EQUIPMENT ACCEPTANCE

RfL to accept units

7.1 RfL shall be responsible for decisions relating to Acceptance of the Class 345 Fleet under the RSPA.

Operator responsibility

7.2 The Operator shall co-operate with RfL to procure that under the terms of the Ilford Unregulated Depot Access Agreement, the Rolling Stock Provider and RfL are able to undertake the process contemplated under the terms of the RSPA for the Acceptance of Class 345 RLUs and related equipment until the Old Oak Common Depot is available for that process of Acceptance to be undertaken there.

7.3 The Operator shall co-operate with RfL and the Rolling Stock Provider in returning any Class 345 RLU to the Old Oak Common Depot where that Class 345 RLU is to be reconfigured and extended to become a Class 345 FLU.

Simulator

7.4 The Operator shall provide RfL with reasonable notice, which shall be no later than 30 June 2016, of its preferred location within the Greater London Area for the Simulator to be located (the *Interim Simulator Location*) until its transfer by the Rolling Stock Provider to a location within Old Oak Common Depot.

7.5 RfL shall procure that the Rolling Stock Provider installs the Simulator at the Interim Simulator Location in order that the Simulator may achieve Acceptance on the Simulator Acceptance Date. The Operator shall be responsible for facilitating the installation by the Rolling Stock Provider of the Simulator at the Interim Simulator Location by ensuring that:

- (a) there is an appropriate place for the Simulator to be installed, with access to the power supply in order that the Simulator can be made functional by the Rolling Stock Provider; and
- (b) the Rolling Stock Provider has access to the chosen location within the Interim Simulator Location no later than eight weeks prior to the Simulator Acceptance Date in order to carry out that installation and the Acceptance of the Simulator.

7.6 If the Simulator is not installed at the Interim Simulator Location by the Simulator Acceptance Date for whatever reason, the Operator shall take steps to mitigate any impact on the training of its train drivers in route knowledge of the Crossrail Route.

7.7 The Operator shall as and when required by RfL, attend any meeting and provide its expert opinion to determine whether the Simulator should be Accepted.

8. OLD OAK COMMON DEPOT WORKS

8.1 When required by RfL, the Operator shall inspect the CTOC Area and the common facilities and such other parts of the Old Oak Common Depot as RfL may specify for the purpose of advising RfL as to whether that part of the depot is complete in accordance with the terms of the RSPA and whether there are Minor Outstanding Items (as defined in the RSPA).

8.2 The Operator shall, if required by RfL, oversee the Rolling Stock Provider's completion of any Minor Outstanding Items. Where RfL does require the Operator to oversee those works pursuant to this paragraph 8.2, the Operator shall keep RfL informed of progress.

9. COMPENSATION BY OPERATOR FOR LATE ACCEPTANCES

9.1 The Operator shall indemnify RfL against any liability on the part of RfL to compensate the Rolling Stock Provider under the terms of the RSPA due to:

- (a) a delay in the Works (as defined in the RSPA);
- (b) the Rolling Stock Provider being prevented from complying with or suffering an adverse impact on its ability to perform any of its obligations under the RSPA; and/or
- (c) the Rolling Stock Provider incurring any additional costs,

in each case where caused by the Operator failing to perform its obligations under this Agreement.

9.2 RfL shall procure that the Operator is entitled to participate fully in the process for claiming, disputing and settling claims made by the Rolling Stock Provider under the RSPA where the Operator is alleged to have caused any of the circumstances referred to in paragraph 9.1 due to its failure to comply with its obligations under this Agreement, provided that RfL shall have the right to settle any claim made against it by the Rolling Stock Provider under the RSPA.

10. COMPENSATION BY RFL FOR LATE SIMULATOR OR SPECIAL TOOLS

RfL shall compensate the Operator by way of Other Adjustment where:

- (a) the Simulator is not installed at the Interim Simulator Location and Accepted on the Simulator Acceptance Date, (except where the Operator is responsible for the failure to install or Accept) for the additional costs reasonably and properly incurred by the Operator in carrying out or procuring the carrying out of the training of its train drivers by other means; and
- (b) a Class 345 Unit that has been Accepted cannot be operated because any special tool to be leased to the Operator under the Class 345 Lease that is necessary in order to operate that Class 345 Unit is not Accepted on its Special Tools Acceptance Date (except where the Operator is responsible for the failure to Accept),

provided that, in each case, RfL shall not be liable to pay the Operator more than it is entitled to receive from the Rolling Stock Provider in respect of that failure under the terms of the RSPA.

11. GENERAL ASSISTANCE

In addition to the specific obligations specified in this Schedule 5.3 in relation to the Class 345 Fleet and related equipment, the Operator shall, to the extent reasonably requested by RfL and subject to payment of the Operator's reasonable costs by the relevant third party, co-operate with any third party which RfL may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or RfL (IM)) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Concession Services, and may include:

- (a) the movement of test trains within and around depots;
- (b) making available personnel to operate test trains along the Crossrail Route and provide information on the Crossrail Route;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and

the delivery of rolling stock vehicles to specific locations.

SCHEDULE 6

CROSSRAIL TRAIN OPERATING CONCESSION STAGED OPENING

Schedule 6: Crossrail Train Operating Concession Staged Opening

Appendix 1: Form of Stage Step-in Notice

Appendix 2: Form of Stage Step-out Notice

SCHEDULE 6

Crossrail Train Operating Concession Staged Opening

1. OBJECTIVE

1.1 The key objectives of the Crossrail Project are to achieve:

- (a) a steady state railway passenger service by the Scheduled Stage 5 Start Date through the staged opening of the Crossrail Route and the delivery of new rolling stock; and
- (b) the operation of railway passenger services, with world-class levels of performance and reliability at all times during that staged opening and once that steady state has been achieved.

1.2 The Operator's role in achieving the objective described in paragraph 1.1 is set out in this Schedule 6.

2. STAGED OPENING

Concession Services and rolling stock operation during staged opening

2.1 The Operator is to:

- (a) operate Passenger Services on each section of the Crossrail Route from the Start Date or from the relevant Stage Start Date, and in each case, for the remainder of the Concession Term;
- (b) operate Station Services at each Operator Station from the Start Date or where the Operator is not the Facility Owner at any such Operator Station on the Start Date, the date on which the Operator becomes the Facility Owner at that Operator Station, and in each case, for the remainder of the Concession Term;
- (c) deploy Concession Employees at the Operator Access Stations on the Central Operating Section in accordance with paragraph 3.3 of Schedule 2.2 (*List of Concession Services*);
- (d) operate Class 315 Units from the Start Date until the Stage 4 Start Date in accordance with the Train Plan; and
- (e) operate Class 345 Units as those Units are made available to RfL under the terms of the RSPA and for the remainder of the Concession Period in accordance with the Train Plan,

in each case as the Staged Opening Programme requires and in accordance with the terms of the other provisions of this Schedule 6.

2.2 Unless otherwise stated in this Agreement, the Operator's obligations under this Agreement shall not be affected by the implementation of the Staged Opening Programme or the transition from one Stage to another and the Operator shall:

- (a) continue to provide excellent customer service and operating performance at all times during each Stage of the Staged Opening Programme in accordance with the terms of this Agreement; and

- (b) during each relevant Stage make all due preparations that are necessary in order to bring about the timely and planned transition to the next Stage.

Stages

2.3 Crossrail shall be opened in the following Stages:

- (a) between the Start Date and (but excluding) the Stage 1 Start Date, the Operator shall operate the Class 315 Fleet to deliver Passenger Services in accordance with the SLC0 including services between Liverpool Street (Main Line) station and Shenfield station (*Stage 0*);
- (b) between the Stage 1 Start Date and (but excluding) the Stage 1a Start Date, the Operator shall operate the Class 315 Fleet and Class 345 RLUs to deliver Passenger Services in accordance with SLC1 including services between Liverpool Street (Main Line) station and Shenfield station with the intent to progressively replace the operation of a proportion of the Class 315 Fleet with Class 345 RLUs in providing those Passenger Services (*Stage 1*);
- (c) between the Stage 1a Start Date and (but excluding) the Stage 2 Start Date, the Operator shall operate the Class 315 Fleet and Class 345 RLUs to deliver Passenger Services in accordance with SLC1 including services between Liverpool Street (Main Line) station and Shenfield station (*Stage 1a*);
- (d) during the Dynamic Testing Period, the Operator shall facilitate the carrying out of Dynamic Testing including in accordance with the RSPA by providing drivers and other Concession Employees in accordance with paragraph 5 (*Class 345 Unit and Equipment Testing*) of Schedule 5.3 (*Introduction of Class 345 Units*);
- (e) during the Trial Running Period, the Operator shall facilitate the carrying out of Trial Running including in accordance with the RSPA by providing drivers and other Concession Employees in accordance with paragraph 5 of Schedule 5.3;
- (f) during the Trial Operations Period, the Operator shall facilitate the carrying out of Trial Operations including in accordance with the RSPA by providing drivers and other Concession Employees in accordance with paragraph 5 of Schedule 5.3;
- (g) between the Stage 2 Start Date and (but excluding) the Stage 3 Start Date, the Operator shall operate the Class 315 Fleet and the Class 345 Fleet, in each case to deliver Passenger Services in accordance with SLC2, including services between:
- (i) Liverpool Street (Main Line) station and Shenfield station; and
 - (ii) Paddington (Main Line) station and the Heathrow Stations,
- (together, *Stage 2*);
- (h) between the Stage 3 Start Date and (but excluding) the Stage 4 Start Date, the Operator shall operate the Class 315 Fleet and the Class 345 Fleet, in each case to deliver Passenger Services in accordance with SLC3, including services between:
- (i) Liverpool Street (Main Line) station and Shenfield station;
 - (ii) Paddington (Crossrail) station and Abbey Wood station through the Central Operating Section; and

- (iii) Paddington (Main Line) station and the Heathrow Stations,
(together, *Stage 3*);
- (i) between the Stage 4 Start Date and (but excluding) the Stage 5 Start Date, the Operator shall operate the Class 315 Fleet and the Class 345 Fleet, in each case to deliver Passenger Services in accordance with SLC4, including services between:
 - (i) Shenfield station and Paddington (Crossrail) station through the Central Operating Section;
 - (ii) Paddington (Crossrail) station and Abbey Wood station through the Central Operating Section;
 - (iii) Liverpool Street (Main Line) and Gidea Park station;
 - (iv) Paddington (Main Line) station and the Heathrow Stations,
(together, *Stage 4*); and
- (j) from the Stage 5 Start Date, the Operator shall operate the Class 345 Fleet to deliver Passenger Services in accordance with SLC5, including services between:
 - (i) Reading station and the Heathrow Stations through the Central Operating Section;
 - (ii) Abbey Wood station and Shenfield station through the Central Operating Section;
 - (iii) Paddington (Main Line) station and Reading station; and
 - (iv) Liverpool Street (Main Line) and Shenfield station,
(together, *Stage 5*).

Operator to inform itself fully

2.4 The Operator confirms that, as at the date of this Agreement, it has studied in detail the Operating Concepts and each document comprised therein and has obtained for itself all necessary information as to risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Schedule 6. The Operator shall not be entitled to any relief from its obligations under this Agreement, on the grounds that it did not or could not have reasonably foreseen any matter which might affect or have affected staged opening of Crossrail and the operation of the Passenger Services.

Staged Opening Plan

2.5 The Operator shall develop the Outline Staged Opening Plan in detail and submit a draft of that detailed plan to RfL no later than six weeks before the Start Date. The draft detailed plan shall be consistent with the Outline Staged Opening Plan, but shall set out in sufficient detail in order to fully support the process of ensuring its timely delivery:

- (a) the Key Stage Milestones and the means by which the Operator will meet the Key Stage Milestones (including where appropriate, trajectories demonstrating progress over time);

- (b) the other measurable delivery milestones (including where appropriate, trajectories demonstrating progress over time), which shall include milestones to, as appropriate, procure or facilitate the timely:
- (i) transfer of the Transferring Services and Stations as contemplated by paragraph 3 (*Co-operation in respect of Transferring Services and Stations*);
 - (ii) entry into by the Operator of a Track Access Agreement that provides for the On-Network Access Option Rights and compliance by the Operator with its other obligations under paragraph 4 (*Crossrail Access Options*);
 - (iii) entry into by the Operator of Track Access Agreements with the relevant Infrastructure Managers pursuant to paragraph 4.4;
 - (iv) acknowledgement, development and assimilation of the technical specifications, emerging designs, derogations and updates that comprise the Operations Concepts as contemplated under paragraph 5 (*Operating Concepts*);
 - (v) achievement of the infrastructure works and operating testing requirements specified in paragraph 7 (*Supporting Stage Infrastructure Works and Operational Testing*); and
 - (vi) refresh and rebranding pursuant to paragraph 8 (*Carrying out Refresh and Rebrand*),

and in each case, the dates by which those milestones will be achieved (which in each relevant case, shall be consistent with the relevant Committed Obligations in Schedule 10.1 (*List of Committed Obligations*)) as well as the means by which they will be achieved (*Stage Milestones*);

- (c) such other activities as a skilled and experienced Train Operator employed in the operation and facilitation of the staged opening of a railway would include in such a plan in order to facilitate the timely staged opening of a project of the nature and complexity of the Crossrail Project and the means by which the Operator will carry out those activities; and
- (d) the Operator's approach to the management of the delivery of the plan and the steps it will take to monitor its compliance.

2.6 RfL shall within one month of receipt of the Operator's draft staged opening plan, inform the Operator whether, in RfL's reasonable opinion:

- (a) the Operator's draft, detailed plan is consistent with the Outline Staged Opening Plan; and
- (b) the plan meets the requirements of paragraph 2.5.

2.7 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 2.6, amend its draft staged opening plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the ***Staged Opening Plan***.

2.8 The Operator shall implement its Staged Opening Plan in accordance with its terms.

2.9 The Operator shall report to RfL in each Periodic Concession Report that is to be issued prior to the Stage 5 Start Date in accordance with paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*), its progress in delivering the Staged Opening Plan in each Periodic Concession Report to such level of detail as RfL may require. The Operator shall promptly provide to RfL, such further information in relation to the Operator's progress in delivering the Staged Opening Plan as RfL reasonably requests.

3. CO-OPERATION IN RESPECT OF TRANSFERRING SERVICES AND STATIONS

Asset transfer arrangements

3.1 The Operator shall enter into each of the Great Western Transfer Agreement and the South Eastern Transfer Agreement with Great Western and South Eastern respectively no later than two weeks before 10 December 2017.

Co-operation

3.2 The Operator shall, in such manner as RfL may reasonably require from time to time, co-operate with each of Greater Anglia, Great Western and South Eastern in respect of the commencement of operation of the Transferring Services and Stations that relate to each of those Train Operators.

4. CROSSRAIL ACCESS OPTIONS

Acknowledgement and co-operation in preserving access option rights

4.1 The Operator acknowledges that TfL:

- (a) will be a party to the On-Network Access Option with Network Rail for the purpose of reserving an option for TfL or its nominee to access the Eastern Section and the Western Section to operate the railway passenger services that are contemplated by this Agreement to be operated on the On-Network;
- (b) will be a party to the Heathrow Access Option with HAL for the purpose of reserving an option for TfL or its nominee to access the Heathrow Spur to operate the railway passenger services that are contemplated by this Agreement to be operated on the Heathrow Spur; and
- (c) will be a party to the Central Operating Section Access Option with RfL (IM) for the purpose of reserving an option for TfL or its nominee to access the Central Operating Section to operate the railway passenger services that are contemplated by this Agreement on the Central Operating Section.

4.2 The Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, co-operate with:

- (a) RfL, TfL and Network Rail in the process contemplated by the On-Network Access Option to resolve any conflict between the access rights conferred on TfL by Network Rail under the On-Network Access Option (the *On-Network Access Option Rights*) and any other access rights there may be over the Eastern Section or the Western Section;
- (b) RfL, TfL and HAL in the process to be contemplated by the Heathrow Access Option to resolve any conflict between the access rights conferred on TfL by HAL under the

Heathrow Access Option (the *Heathrow Access Option Rights*) and any other access rights there may be over the Heathrow Spur; and

- (c) RfL, TfL and RfL (IM) in the process to be contemplated by the Central Operating Section Access Option to resolve any conflict between the access rights conferred on TfL by RfL (IM) under the Central Operating Section Access Option (the *Central Operating Section Access Option Rights*) and any other access rights over the Central Operating Section,

including, in each case, the Operator providing its expert opinion as to which of those other access rights might be adjusted or surrendered in order that, as the case may be, the On-Network Access Option Rights or the Heathrow Access Option Rights are not themselves adjusted or surrendered.

Working timetables

4.3 The Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, co-operate with RfL and Network Rail in the process contemplated by the On-Network Access Option, RfL, TfL and HAL in the process contemplated by the Heathrow Access Option and RfL, TfL and RfL (IM) in the process contemplated by the Central Operating Section Access Option, in each case to develop and agree any Working Timetable that is consistent with, as appropriate, the On-Network Access Option Rights, the Heathrow Access Option Rights or the Central Operating Section Access Option as specified in any Commitment Notice, including any required revisions to any Working Timetable that are consistent with, as appropriate, the On-Network Access Option Rights or the Heathrow Access Option Rights or the Central Operating Section Access Option as specified in any Commitment Notice.

Track Access Agreements

4.4 The Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, promptly use all reasonable endeavours to agree a Track Access Agreement:

- (a) with Network Rail (which may include a supplemental agreement to its Track Access Agreement or a new Track Access Agreement) that provides for:
- (i) the On-Network Access Option Rights;
 - (ii) all other track access rights that are necessary to operate the Passenger Services and to carry out the Dynamic Testing, Trial Running and Trial Operations and driver training, in each case expressly contemplated by this Agreement;
 - (iii) a performance regime that reflects the principles set out in schedule 12 (*Capability, Testing and Development of the Performance Regime*) of the On-Network Access Option; and
 - (iv) charges for traction electricity used by Class 345 Units on the On-Network to be calculated only by reference to the consumption meters fitted to those Class 345 Units;
- (b) with HAL that provides for:
- (i) the HAL Access Option Rights;

- (ii) a performance regime that reflects principles that are equivalent to those set out in paragraph 4.4(a)(iii); and
 - (iii) charges for traction electricity used by Class 345 Units on the Heathrow Spur to be calculated only by reference to the consumption meters fitted to those Class 345 Units; and
- (c) with RfL (IM) that provides for:
- (i) the Central Operating Section Access Option Rights; and
 - (ii) a performance regime that reflects principles that are equivalent to those set out in paragraph 4.4(a)(iii).

4.5 The Operator shall, unless RfL otherwise directs, opt out of the Efficiency Benefit Scheme (as defined in the NR TAA).

4.6 Following the approval by the ORR of any Track Access Agreement agreed pursuant to paragraph 4.4, the Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, promptly use all reasonable endeavours to agree with, as appropriate, Network Rail, HAL or RfL (IM), any amendment or supplemental agreement to that Track Access Agreement which may be required to introduce in each case in accordance with the Staged Opening Programme, the phased introduction of the Passenger Services on, as appropriate, the Eastern Section and the Western Section, the Heathrow Spur or the Central Operating Section provided that any such amendment or supplemental agreement, when considered with that Track Access Agreement, continues to provide for the requirements of, as appropriate, paragraphs 4.4(a), (b) or (c).

4.7 The Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, promptly meet with, as required, Network Rail, HAL or RfL (IM) to agree:

- (a) what action (if any) should be taken as a result of the occurrence of a Schedule 8 Recalibration Phase Event which has materially affected the Schedule 8 Recalibration Phase; and
- (b) the scope and nature of any amendments to the Recalibration Phase Performance Regime to reflect the Performance Data collected during the Schedule 8 Recalibration Phase.

4.8 The Operator shall in accordance with paragraph 4.9, as and when required by RfL on reasonable notice, promptly meet with, as required, Network Rail, HAL or RfL (IM) to agree an approach to improve the 13-Period Crossrail Performance Level.

Process for finalising Track Access Agreement, amendments and any recalibration

4.9 The following shall apply in relation to the finalisation of any Track Access Agreement with Network Rail that meets the requirements of paragraph 4.4(a), with HAL that meets the requirements of paragraph 4.4(b) and with RfL (IM) that meets the requirements of paragraph 4.4(c):

- (a) the Operator shall fully consult with RfL on each draft of any Track Access Agreement before submitting its comments to, as appropriate, Network Rail, HAL or RfL (IM);

- (b) provide RfL with a progress report at the end of each Reporting Period on the status of negotiations and issues with each of Network Rail, HAL and RfL (IM), indicating matters discussed in such Reporting Period and their status, and matters due to be discussed or reviewed in the forthcoming Reporting Period;
- (c) if directed to do so by RfL, exercise its rights under the Relevant Network Code and, where appropriate, make an application to the ORR under Section 17 or Section 22A of the Act in relation to any provisions of that Track Access Agreement on which the Operator and Network Rail or the Operator and HAL or the Operator and RfL (IM) are unable to reach agreement;
- (d) if the Operator and Network Rail, the Operator and HAL or the Operator and RfL (IM) are unable to agree what action (if any) should be taken as a result of the occurrence of a Schedule 8 Recalibration Phase Event which has materially affected the Schedule 8 Recalibration Phase, then the Operator shall to the extent RfL requires:
 - (i) refer the dispute for determination in accordance with the relevant provisions of, as appropriate, its Track Access Agreement with Network Rail, HAL or RfL (IM); or
 - (ii) participate in accordance with the relevant provisions of, as appropriate, its Track Access Agreement with Network Rail, HAL or RfL (IM) in any such dispute referred by Network Rail;
- (e) to the extent that the On-Network Access Option, the Heathrow Access Option or the Central Operating Section Access Option envisages that the terms of that Track Access Agreement will be agreed by a specified date, use all reasonable endeavours to agree the terms of that Track Access Agreement by such date so as to enable, as appropriate, Network Rail, HAL or RfL (IM) and in each case the Operator to submit an application to the ORR under Section 18 or Section 22 of the Act by the date contemplated by, as appropriate, the On-Network Access Option, Heathrow Access Option, Central Operating Section Access Option or that direction, as the case may be;
- (f) as directed by RfL, the Operator shall make representations to the ORR concerning the payment rate under the performance regime of that Track Access Agreement;
- (g) not give its approval of the final form of that Track Access Agreement unless RfL has approved such form in writing, nor sign that Track Access Agreement until directed to do so by RfL; and
- (h) following signature of that Track Access Agreement, not consent to any amendment or variation to that Track Access Agreement unless RfL has approved it in writing.

4.10 RfL undertakes to provide reasonable support to the Operator in any negotiations with each of Network Rail, HAL and RfL (IM) and communications with ORR concerning the form of the Track Access Agreement, and if RfL deems it necessary, it may enforce its rights under, as appropriate, the On-Network Access Option or the Heathrow Access Option or Central Operating Section Access Option.

5. OPERATING CONCEPTS

Development of operating rule book etc.

5.1 The Operator shall develop the principles contained in the technical specifications, emerging designs, derogations and updates comprising the Operating Concepts into the operating rule book, operating procedures and guidelines, instructional handbooks and other associated documents for the Crossrail Route in accordance with the Staged Opening Plan.

Assurance process

5.2 The Operator shall in accordance with the Staged Opening Plan regularly notify RfL:

- (a) how the technical specifications, emerging designs, derogations and updates comprising the Operating Concepts have informed the Operator's approach to operating the Passenger Services and the Baseline Operating Concepts and thereby demonstrate to RfL's reasonable satisfaction that the Operator fully understands those specifications, designs, derogations and updates; and
- (b) where the Operator has taken a different approach to any of the operating principles contained in the Operating Concepts in developing the materials referred to in paragraph 6.1, together with an explanation for why the Operator has taken that different approach.

5.3 The Managing Director shall declare in each Periodic Concession Report until the materials referred to in paragraph 5.1 have been developed in accordance with the Staged Opening Plan that the Operator continues to be fully informed in accordance with paragraph 2.4.

6. KEY STAGE MILESTONES

Drivers

6.1 The Operator shall, subject to paragraph 6.3, achieve the following Key Driver Milestones in accordance with the Staged Opening Plan:

[REDACTED].

Test Drivers

6.2 The Operator shall, subject to paragraph 6.3, in accordance with the Staged Opening Plan, no later than:

[REDACTED].

Changes to required staff recruitment

6.3 RfL shall be entitled on reasonable notice to the Operator to increase the number of Class 345 FLUs, the extent of the testing required in relation to any of Dynamic Testing, Trial Running and/or Trial Operations and/or the timing of Dynamic Testing, Trial Running and/or Trial Operations, in each case in order to achieve the Staged Opening Programme on time and/or be further assured that the Class 345 Fleet will operate as intended to deliver the Passenger Services. Upon such notice, the Operator shall promptly propose to RfL:

- (a) the number of additional drivers that the Operator reasonably believes are required in order to meet those additional requirements; and

- (b) the revised Key Driver Milestones that the Operator reasonably believes should apply.

6.4 Upon receipt of the Operator's proposals pursuant to paragraph 6.3, RfL shall promptly inform the Operator as to whether RfL is satisfied (acting reasonably) that the revised Key Driver Milestones will ensure the timely completion of its revised requirements for, as appropriate, Dynamic Testing, Trial Running and/or Trial Operations and that the Class 345 Fleet will operate as intended to deliver the Passenger Services.

6.5 Where RfL notifies the Operator that RfL is satisfied in accordance with paragraph 6.4, the Operator shall:

- (a) amend the Staged Opening Plan to include the additional drivers that the Operator reasonably believes are required in order to meet RfL's revised requirements and the revised Key Driver Milestones; and
- (b) comply with the requirements of paragraph 6.1 in relation to those revised Key Driver Milestones.

6.6 Where RfL notifies the Operator that RfL is not satisfied in accordance with paragraph 6.4, RfL shall promptly notify the Operator of the changes that it reasonably requires to the revised Key Driver Milestones in order to ensure the timely completion of its revised requirements for, as appropriate, Dynamic Testing, Trial Running and/or Trial Operations.

6.7 The Operator shall amend the Key Driver Milestones notified to it by RfL pursuant to paragraph 6.3 in accordance with that notification, update the Staged Opening Plan accordingly and comply with the requirements of paragraph 6.1 in relation to those revised Key Driver Milestones.

6.8 Where RfL requires any changes to the Staged Opening Plan pursuant to paragraph 6.3, adjustments shall be made to Concession Payments to reflect those changes by reference to the driver unit rates specified in the Record of Assumptions.

6.9 In the event of any conflict between the description of any Key Stage Milestone in this paragraph 6 and the Staged Opening Plan, the description in this paragraph 6 shall prevail.

7. SUPPORTING STAGE INFRASTRUCTURE WORKS AND OPERATIONAL TESTING

Staged Opening Infrastructure Works

7.1 During each relevant Stage, the Operator shall co-operate with Network Rail, CRL, the relevant Train Operator, RfL and each of their agents and sub-contractors in the carrying out those activities comprising the Staged Opening Infrastructure Works that RfL notifies the Operator of that will impact on the provision of the Concession Services or otherwise require the participation of a Train Operator, including, where appropriate:

- (a) procuring necessary changes to the stabling arrangements of the Class 315 Fleet;
- (b) resourcing drivers and train crew;
- (c) providing or procuring access to the relevant Crossrail Stations;
- (d) amending its Safety Management System; and

- (e) obtaining train paths,

in order that in each case, amongst other things, those Staged Opening Infrastructure Works can be carried out in a timely manner and Passenger Services can be delivered in accordance with the relevant Service Level Commitment.

7.2 The Operator shall describe in the Staged Opening Plan how it will provide support in relation to each activity comprising the Staged Opening Infrastructure Works which the Operator is required to support pursuant to paragraph 7.1.

Dynamic Testing, Trial Running and Trial Operations

7.3 The Operator shall make available train drivers for the purpose of Dynamic Testing, Trial Running and Trial Operations in accordance with paragraph 5 of Schedule 5.3 and shall describe how it will make those drivers available in the Staged Opening Plan.

RCC commissioning

7.4 The Operator shall coordinate the migration of the Concession Employees based at the Interim Control Facility to the RCC in accordance with the Staged Opening Plan:

- (a) with the customer information and public address systems located at the Interim Control Facility;
- (b) in sufficient time in order that those Concession Employees are fully familiar with the RCC's operation, facilities and procedures by the Trial Operations Start Date; and
- (c) without disrupting the Passenger Services and other railway passenger services being operated on the Eastern Section and the Western Section.

8. CARRYING OUT REFRESH AND REBRAND

Staff uniforms

8.1 The Operator shall procure the design, manufacture and distribution of uniforms in accordance with paragraphs 8.2 to 8.5 inclusive.

8.2 The Operator shall from the Start Date and for the remainder of Stage 0, procure that all of its Concession Employees (including any employees sub-contracted to the Operator) engaged in customer-facing activities at Eastern Section Operator Stations and on Passenger Services operated during that period, wear a uniform whilst those activities are carried out that displays the TfL Rail Operating Brand.

8.3 The Operator shall in relation to those Concession Employees (including any employees sub-contracted to the Operator) engaged in customer-facing activities:

- (a) at all Eastern Section Operator Stations from the Stage 1 Start Date and for the remainder of the Concession Period;
- (b) at the Western Section Operator Stations from 10 December 2017 and for the remainder of the Concession Period;
- (c) on the platforms of the Operator Access Stations on the Central Operating Section that are served by the Passenger Services from the Stage 3 Start Date; and
- (d) on Passenger Services operated during the relevant period,

procure that those Concession Employees (and sub-contracted employees) wear a uniform whilst those activities are carried out that displays the Crossrail Operating Brand.

8.4 The Operator shall develop the design of its staff uniforms in accordance with RfL's design requirements and shall consult RfL in a timely manner on those designs. Upon the Operator submitting those designs to RfL, RfL shall promptly advise the Operator whether it approves (acting reasonably) those designs. In determining whether or not to approve the Operator's staff uniform designs, RfL shall have regards to whether those designs meet its design requirements, including whether they:

- (a) display, as appropriate, the TfL Rail Operating Brand or the Crossrail Operating Brand;
- (b) are clearly identifiable to customers as uniforms of staff that are engaged in the operation of Crossrail;
- (c) contain winter and summer variants that allow the relevant uniform to be worn comfortably without the need for staff to wear additional or alternative clothing that does not comprise part of the uniform; and
- (d) are consistent in look, allowing for role and gender variations.

8.5 The Operator shall promptly procure:

- (a) the manufacture of staff uniforms that are consistent with the designs that have been approved by RfL pursuant to paragraph 8.4; and
- (b) the distribution of those staff uniforms to relevant Concession Employees.

Operator Stations

8.6 The Operator shall carry out the refresh and rebrand of the Operator Stations in accordance with paragraph 2 (*Station Rebrand*) of Schedule 4.2 (*Station and Depot Refresh, Refurbishments and Enhancements*); and

Class 315 Fleet

8.7 The Operator shall carry out the refresh and rebrand of the Class 315 Fleet in accordance with paragraph 2 of Schedule 5.2 (*Operation, Maintenance and Refresh*).

9. OTHER OBLIGATIONS IN RELATION TO STAGED OPENING

Proactivity and Flexibility

9.1 The Operator acknowledges that in a project of the scale and complexity of the Crossrail Project, it is not possible to prescribe every action that is required to effect its timely completion. The Operator shall therefore:

- (a) be proactive:
 - (i) in responding to RfL's reasonable requests for assistance to effect the timely completion of the Crossrail Project; and
 - (ii) in notifying RfL of any reasonably foreseeable risk that may threaten the timely completion of any Stage and any failure by the Operator to comply with any of its obligations under this Schedule 6; and

- (b) be flexible:
 - (i) in its approach to providing any such assistance; and
 - (ii) in responding to any reasonably foreseeable risks that may arise that would threaten the timely completion of any Stage.

Project Steering Group

9.2 RfL will establish a group with the responsibility for reviewing the delivery of key activities in the Staged Opening Programme within the wider context of the Crossrail Project (the *Project Steering Group*). In particular, the Project Steering Group shall:

- (a) analyse risks to the achievement of any key activities; and
- (b) where any such risk presents a material threat to the successful achievement of any key activity in the Staged Opening Programme, identify what mitigating steps may be taken to ensure the timely delivery of the Staged Opening Programme, or, where this is not possible, to ensure that any delay to the Staged Opening Programme is minimised.

9.3 The Project Steering Group shall be attended by directors from RfL, CRL, RfL (IM), the TfL Group, the Operator, Network Rail, HAL, the Rolling Stock Provider and such other technical, infrastructure management and operational organisations as RfL advises the Operator of from time to time.

9.4 The Operator shall procure that the Project Director and such other directors and Concession Employees as RfL requires from time to time shall attend each meeting of the Project Steering Group on behalf of the Operator. The Operator shall procure that its representatives comply with the requirements of paragraph 9.1 in attending Project Steering Group meetings and carrying out actions that arise from such meetings.

9.5 The Operator shall be entitled to raise at the Project Steering Group any aspects of the Staged Opening Plan that are dependent on the performance of third parties for the purpose of furthering the performance of those third parties.

Other meetings

9.6 The Operator shall procure that the Project Director and/or such other directors and Concession Employees as RfL requires attend such other meetings that are held in relation to the staged opening of Crossrail, including Project Review Meetings (as defined in the RSPA) or parts thereof. The Operator shall procure that its representatives comply with the requirements of paragraph 9.1 in attending such meetings and carrying out actions that arise from such meetings.

Supporting the Rolling Stock Provider

9.7 The Operator shall support the Rolling Stock Provider in the commissioning and early operation of the Old Oak Common Depot in accordance with paragraph 8 (*Old Oak Common Depot Works*) of Schedule 5.3 (*Introduction of the Class 345 Fleet*).

9.8 The Operator shall support the Rolling Stock Provider in the migration of the maintenance activities and storage of the Class 345 Fleet at Ilford Depot to the Old Oak Common Depot in accordance with paragraph 5.8(c) of Schedule 5.3.

10. FAILURE TO ACHIEVE A STAGE MILESTONE

Where the Operator fails to achieve a Stage Milestone by the relevant date specified in the Staged Opening Plan, then the Operator shall pay to RfL the relevant Committed Obligation Payment specified in Schedule 10.3 (*Late/Non Completion of Committed Obligations*).

11. FAILURE TO ACHIEVE A KEY STAGE MILESTONE

11.1 Where the Operator fails to achieve a Key Stage Milestone by the relevant date specified in paragraph 6 (*Key Stage Milestones*), then:

- (a) the Operator shall pay to RfL as a Committed Obligation Payment the sum of £[REDACTED] per day (or part day) that that Key Stage Milestone remains unperformed; and
- (b) a contravention of this Agreement shall have occurred,

except where any of the Key Stage Milestones referred to in paragraphs 6.10, **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.** is not achieved by the Operator solely and directly as a result of insufficient availability of Class 345 Units, other than where the Operator is responsible for such unavailability and provided that the Operator shall use all reasonable endeavours to achieve the relevant requirement as soon as reasonably practicable and work with RfL and the Rolling Stock Provider to maximise the number of Class 345 Units that are available for the purpose of driver training in accordance with paragraph 4.3 of Schedule 5.3 (*Introduction of the Class 345 Fleet*).

11.2 Upon the occurrence of a contravention of this Agreement pursuant to paragraph 11.1, RfL may elect to:

- (a) issue a Remedial Plan Notice, in which case the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply; or
- (b) step-in and assume the Operator's role in accordance with paragraph 13 (*RfL Step-in following failure to achieve a Key Stage Milestone*) in carrying out the remaining actions in relation to the relevant Key Stage Milestone in order ensure that the Crossrail Project is delivered on time and Crossrail is operated in accordance with the Staged Opening Programme, or where that is not possible due to the Operator's default in failing to achieve any Key Stage Milestone, that any resulting delay to the Crossrail Project and the Staged Opening Programme is minimised.

12. COMMITTED OBLIGATION PAYMENT ADJUSTMENTS

12.1 The obligation to pay any Committed Obligation Payment pursuant to this Schedule 6 shall, subject to paragraph 4.1 of Schedule 10.3, continue notwithstanding any obligation on the part of the Operator to propose and/or implement any Remedial Plan following the issue of a Remedial Plan Notice pursuant to paragraph 11.2(a) or RfL stepping in and assuming the Operator's role for the purpose specified in paragraph 11.2(b) pursuant to paragraph 13.2.

12.2 The aggregate of Committed Obligation Payments payable by the Operator in any Reporting Period pursuant to paragraph 10 (*Failure to achieve a Stage Milestone*) and 11 (*Failure to achieve a Key Stage Milestone*) shall be paid by way of Committed Obligation Payment Adjustment to the Concession Payment for that Reporting Period in accordance with paragraph 1.1 of Schedule 11.1 (*Concession Payments*).

13. RfL STEP-IN FOLLOWING FAILURE TO ACHIEVE A KEY STAGE MILESTONE

Notice of step-in

13.1 Where RfL elects to step-in and assume the Operator's role for the purpose specified in paragraph 11.2(b), RfL shall issue a Stage Step-in Notice, notifying the Operator that RfL or its nominee wishes to step-in and assume that role for the purpose specified in paragraph 11.2(b).

13.2 Any Stage Step-in Notice shall specify:

- (a) the reason for RfL stepping in, including specifying the Key Stage Milestone that the Operator has failed to achieve;
- (b) the extent to which RfL expects to step-in to the Operator's role in carrying out the remaining actions in relation to that Key Stage Milestone;
- (c) the Stage Step-In Date and the expected Stage Step-in Period;
- (d) the identity of its nominee, if relevant and known at the time; and
- (e) to the extent practicable, the effect, if any, on the Operator and its other obligations under this Agreement, including its obligation to provide the Passenger Services.

Effect of step-in

13.3 During any Stage Step-in Period:

- (a) RfL shall step-in and assume the Operator's role in carrying out the remaining actions in relation to the relevant Key Stage Milestone, carrying out those remaining actions and any consequential additional action as RfL reasonably believes is necessary to fulfil the objective specified in paragraph 11.2(b) (**Required Stage Step-in Action**);
- (b) the Operator shall be relieved from its obligation to carry out the remaining actions in relation to the relevant Key Stage Milestone which RfL has assumed responsibility for as specified in that Stage Step-in Notice, provided that the Operator shall continue to comply with all of its other obligations under this Agreement; and
- (c) the Operator shall provide all reasonable assistance to RfL in taking any Required Step-in Action.

13.4 Subject to the Operator providing reasonable assistance in accordance with paragraph 13.3(c), RfL shall continue to pay the Operator any Concession Payments due during any Stage Step-in Period, provided that RfL may withhold from any such payment by way of Other Adjustment, the costs RfL incurs in the relevant Reporting Period in carrying out the Required Stage Step-in Action.

13.5 Where RfL and/or its nominee takes any Required Step-in Action, RfL may recover all costs that either or both reasonably incur (including their respective administrative expenses, staff costs, other overheads and in the case of the nominee, a reasonable profit element) in relation to the taking of that Required Step-in Action.

Notice of step-out

13.6 RfL may at any time during the Step-in Period, notify the Operator that it wishes to cease taking the Required Stage Step-in Action or that the Required Step-In Action has been completed by issuing a Stage Step-out Notice to the Operator.

13.7 To the extent that the Required Step-In Action has not been completed by the Stage Step-Out Date, the Operator shall from the Stage Step-Out Date, without limiting its ongoing obligation in relation to the implementation of the Staged Opening Plan, resume its role in carrying out the remaining uncompleted actions that constitute that Required Step-in Action, with a view to completing those remaining uncompleted actions by the relevant scheduled completion date in the Staged Opening Plan, or to the extent that is not possible, as soon as reasonably practicable thereafter.

14. DEFAULT

Where the Operator fails to achieve a Key Stage Milestone one Reporting Period after the relevant date specified in paragraph 6 (*Key Stage Milestones*), then an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

15. LATE STAGED OPENING

15.1 Where any of Stage 2, Stage 3, Stage 4 or Stage 5 is not achieved by the relevant Scheduled Stage Start Date, the Operator shall by way of Other Adjustment pay to RfL an amount equal to the Late Stage Daily Rate that applies to the Stage that has not been achieved by the relevant Scheduled Stage Start Date for each day that that Stage is late up to but excluding the date occurring 12 weeks after that Scheduled Stage Start Date.

15.2 The Late Stage Daily Rates are, subject to paragraph 15.3:

Stage	Daily Rate (£)
Stage 2	[REDACTED]
Stage 3	[REDACTED]
Stage 4	[REDACTED]
Stage 5	[REDACTED]

15.3 The Late Stage Daily Rates are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Periodic and Annual Concession Payments and Indexation*).

15.4 A Change shall occur where any of Stage 2, Stage 3, Stage 4 or Stage 5 is not achieved by the date that occurs 12 weeks after the relevant Scheduled Stage Start Date.

APPENDIX 1 TO SCHEDULE 6
FORM OF STAGE STEP-IN NOTICE

Private and confidential

From: Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL (*RfL*)

To: MTR Corporation (Crossrail) Limited
Providence House
Providence Place
Islington
London
N1 0NT (the *Operator*)

[Insert date]

Dear Sirs,

Crossrail Train Operating Concession Agreement – Stage Step-in Notice

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [____] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).

2. We hereby give you notice:

- (a) that you have failed to achieve the [*specify*] Key Stage Milestone[s] by the relevant date specified in paragraph 6 (*Key Stage Milestones*) of schedule 6 (*Crossrail Train Operating Concession Staged Opening*) of the Concession Agreement; and
- (b) that, pursuant to paragraph 11.2(b) of schedule 6 of the Concession Agreement, [*we are*][*specify nominee if known*] as our nominee is stepping in and assuming your role in carrying out the remaining actions that are to be undertaken for the purpose of meeting [*that/those*] Key Stage Milestone[s] from the Stage Step-in Date and for the expected Stage Step-in Period, in each case specified in paragraph 3, in order to ensure that [*the Crossrail Project is delivered on time and Crossrail is operated in accordance with the Staged Opening Programme*][*the delay to the Crossrail Project and the Staged Opening Programme caused by that failure is minimised*].

3. The Stage Step-in Date is [*insert date RfL or its nominee will step in*] and the expected Stage Step-in Period is [*insert expected period of step-in*].

4. [*If practicable and relevant, describe effect on the Operator and its other obligations under the Concession Agreement, including the obligation to provide the Passenger Services.*]

Yours faithfully

Signed for and on behalf of RfL

APPENDIX 2 TO SCHEDULE 6

FORM OF STAGE STEP-OUT NOTICE

Private and confidential

From: Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL (*RfL*)

To: MTR Corporation (Crossrail) Limited
Providence House
Providence Place
Islington
London
N1 0NT (the *Operator*)

[Insert date]

Dear Sirs,

Crossrail Train Operating Concession Agreement – Stage Step-out Notice

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [____] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).

2. We hereby give you notice:

(a) that as per a Stage Step-in Notice dated [____], from the Stage Step-in Date specified in that Stage Step-in Notice, [we][specify nominee, as our nominee] stepped in and assumed your role in carrying out the Required Step-in Action that was to be undertaken for the purpose of meeting the Key Stage Milestone[s] specified in that Stage Step-in Notice; and

(b) that pursuant to paragraph 13.6 of schedule 6 (*Crossrail Train Operating Concession Staged Opening*) of the Concession Agreement, [we are][specify nominee] is stepping out and ceasing to take that Required Step-in Action from the Stage Step-out Date specified in paragraph 3.

3. The Stage Step-out Date is [insert date RfL or its nominee will step out].

4. [The Required Stage Step-in Action will not be complete by the Stage Step-out Date. Those activities that comprise the Required Stage Step-in Action that remain to be completed are [specify]. You are required from the Stage Step-out Date to resume your role in carrying out these uncompleted actions in accordance with paragraph 13.7 of schedule 6 of the Concession Agreement.]

Yours faithfully

Signed for and on behalf of RfL

SCHEDULE 7

OPERATING PERFORMANCE

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SCHEDULE 7.1

Operating Performance Regime

1. BASE STATION VALUES

1.1 The Base Station Values are specified in the Base Station Values Tables set out in Appendix 1.

1.2 RfL may, in its absolute discretion, make changes to any of the Base Station Value Tables provided that any such change does not result in a material increase in Availability Adjustments or Cancellation Adjustments.

2. AVAILABILITY AND CANCELLATION ADJUSTMENT CALCULATIONS

Availability Adjustment Calculations

2.1 For each Reporting Period that commences prior to the Stage 3 Start Date, RfL shall, subject to paragraphs 2.4 and 2.5, calculate any Availability Adjustment in accordance with the following:

$$AA = \sum(UT \times TR \times RF) + \sum(UOS \times OSR \times RF)$$

where:

AA means the Availability Adjustment for any Reporting Period that commences before the Stage 3 Start Date;

\sum means the summation of, as the context requires:

(a) Class 345 Units required for Central Operating Section Testing or driver training pursuant to clause 19.6(a) of the RSPA that are Unavailable; and

(b) Operational Spare Units that are Class 345 Units and which are Unavailable,

in each case, on any day in that Reporting Period for reasons attributable to the Operator or the Rolling Stock Provider and multiplied by the relevant rate;

RF means the Responsibility Factor that applies to that Unavailability caused by, as appropriate, the Operator or the Rolling Stock Provider;

UT means a Class 345 Unit that is required for Central Operating Section Testing or driver training pursuant to clause 19.6(a) of the RSPA that is Unavailable for reasons attributable to the Operator or the Rolling Stock Provider;

TR means the testing and training rate of £[REDACTED] per day that a Class 345 Unit that is required for Central Operating Section Testing or driver training pursuant to clause 19.6(a) of the RSPA is Unavailable;

UOS means an Operational Spare Unit that is a Class 345 Unit which is Unavailable for reasons attributable to the Operator or the Rolling Stock Provider; and

OSR means the Operational Spare Unit rate of £[REDACTED] per day that an Operational Spare Unit that is a Class 345 Unit is Unavailable.

2.2 For each Reporting Period that commences on or after the Stage 3 Start Date, RfL shall, subject to paragraphs 2.4 and 2.5, calculate any Availability Adjustment in accordance with the following:

$$AA = \sum CDU + \sum(UT \times TR \times RF) + \sum(UOS \times OSR \times RF)$$

where:

AA means the Availability Adjustment for any Reporting Period that commences on or after the Stage 3 Start Date;

Σ means the summation of, as the context requires:

- (a) all Capacity Deductions for Class 345 Units that are Unavailable;
- (b) Class 345 Units required for Central Operating Section Testing or driver training pursuant to clause 19.6(a) of the RSPA that are Unavailable multiplied by the relevant rate; and
- (c) Operational Spare Units that are Class 345 Units which are Unavailable multiplied by the relevant rate,

in each case, on any day in that Reporting Period for reasons attributable to the Operator or the Rolling Stock Provider multiplied by the relevant rate;

CDU means a Capacity Deduction for any Class 345 Unit that is Unavailable in any such Reporting Period for reasons attributable to the Operator or the Rolling Stock Provider, calculated in accordance with paragraph 2.3;

UT has the meaning given to it in paragraph 2.1;

TR has the meaning given to it in paragraph 2.1;

RF means the Responsibility Factor that applies to that Unavailability caused by, as appropriate, the Operator or the Rolling Stock Provider;

UOS has the meaning given to it in paragraph 2.1; and

OSR has the meaning given to it in paragraph 2.1.

2.3 Each Capacity Deduction in respect of a Class 345 Unit that is Unavailable for reasons attributable to the Operator or the Rolling Stock Provider shall be calculated in accordance with the following:

$$CDU = (\Sigma TSV) \times RF$$

where:

CDU means the Capacity Deduction in relation to that Class 345 Unit;

Σ means the summation of Total Station Values for each Missed Station Stop that occurs as a consequence of that Class 345 Unit being Unavailable;

TSV means the Total Station Value for any Missed Station Stop that occurs as a consequence of that Class 345 Unit being Unavailable; and

RF means the Responsibility Factor that applies to Unavailability caused by, as appropriate, the Operator or the Rolling Stock Provider.

2.4 Whether or not the Stage 3 Start Date has occurred, for any Class 345 Unit provided by the Rolling Stock Provider:

- (a) for either:
 - (i) Central Operating Section Testing; or
 - (ii) driver training pursuant to clause 19.6(a) of the RSPA,

where that Class 345 Unit is Unavailable for reasons attributable to the Operator or the Rolling Stock Provider, the amount applicable in relation to that Unit for the purpose of calculating the Availability Adjustment for the relevant Reporting Period pursuant to paragraph 2.1 or 2.2, shall be £[REDACTED] per day that that Class 345 Unit is Unavailable in that Reporting Period, multiplied by the Responsibility Factor that applies to that Unavailability caused by, as appropriate, the Operator or the Rolling Stock Provider; and

- (b) as an Operational Spare Unit, where that Operational Spare Unit is Unavailable for reasons attributable to the Operator or the Rolling Stock Provider, the amount applicable in relation to that Unit for the purpose of calculating the Availability Adjustment for the relevant Reporting Period pursuant to paragraph 2.1 or 2.2, shall be £[REDACTED] per day that that Class 345 Unit is Unavailable in that Reporting Period, multiplied by the Responsibility Factor that applies to that Unavailability caused by, as appropriate, the Operator or the Rolling Stock Provider.

2.5 Where the Stage 3 Start Date occurs on a day during a Reporting Period (rather than on the first day of a Reporting Period), the Availability Adjustment for that Reporting Period shall be the aggregate of the Availability Adjustment:

- (a) calculated under paragraph 2.1 for those Class 345 Units that are Unavailable for reasons attributable to the Operator or the Rolling Stock Provider on any day during that part of that Reporting Period that falls before the Stage 3 Start Date; and
- (b) calculated under paragraph 2.2 for those Class 345 Units that are Unavailable for reasons attributable to the Operator or the Rolling Stock Provider on any day during that part of that Reporting Period that commenced on the Stage 3 Start Date.

2.6 An Availability Adjustment shall, subject to paragraph 9 (*Operating Performance Overall Cap*), be made to the relevant Concession Payment for each Reporting Period in accordance with paragraphs 2.1 and 2.3 of Schedule 11.1 (*Concession Payments*).

Cancellation Adjustment Calculations

2.7 For each Reporting Period that commences prior to the Stage 3 Start Date, RfL shall, subject to paragraph 2.10, calculate any Cancellation Adjustment in accordance with the following:

$$CA = \sum(C \times CR \times RF)$$

where:

CA means the Cancellation Adjustment for any Reporting Period that commences prior to the Stage 3 Start Date;

Σ means the summation of all:

- (a) Cancellations that occur; and
- (b) Class 345 Units that are Unavailable at the start of their Diagrams or the start of their Diagram Legs,

in each case, in any such Reporting Period for reasons attributable to any of the Operator, Network Rail, HAL or the Rolling Stock Provider, multiplied by the relevant Cancellation rate;

C means a Cancellation (and for the purposes of this paragraph 2.7 only, a Cancellation includes a Class 345 Unit that is Unavailable either at the start of its Diagram or at the start of any of its Diagram Legs) that occurs in any such Reporting Period for reasons attributable to any of the Operator, Network Rail, HAL or the Rolling Stock Provider;

CR means the Cancellation rate of:

- (a) in the case of a Cancellation, £[REDACTED]; and
- (b) in the case of a Class 345 Unit that is Unavailable:
 - (i) £[REDACTED] for any Class 345 Unit that is Unavailable at the start of its Diagram on any day in that Reporting Period; and
 - (ii) £[REDACTED] for any Class 345 Unit that is Unavailable at the start of any of its Diagram Legs on any day in that Reporting Period, provided that the maximum rate applicable in relation to that Class 345 Unit being Unavailable for any Diagram Legs on a day shall be £[REDACTED]; and

RF means the Responsibility Factor that applies to that Cancellation caused by, as appropriate, the Operator Network Rail, HAL or the Rolling Stock Provider.

2.8 For each Reporting Period that commences on or after the Stage 3 Start Date, RfL shall, subject to paragraph 2.10, calculate any Cancellation Adjustment in accordance with the following:

$$CA = \Sigma CDC$$

where:

CA means the Cancellation Adjustment for any Reporting Period that commences after the Stage 3 Start Date;

Σ means the summation of all Capacity Deductions for all Cancellations that occur in any such Reporting Period for reasons attributable to any of the Operator, Network Rail, HAL or the Rolling Stock Provider; and

CDC means a Capacity Deduction for any Cancellation that occurs in any such Reporting Period for reasons attributable to any of the Operator, Network Rail, HAL or the Rolling Stock Provider, calculated in accordance with paragraph 2.9.

2.9 Each Capacity Deduction in respect of a Cancellation shall be calculated in accordance with the following:

- (a) where a Cancellation occurs for reasons attributable solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider:

$$\text{CDC} = (\sum \text{TSV}) \times \text{RF}$$

where:

CDC means the Capacity Deduction in relation to that Cancellation;

\sum means the summation of Total Station Values for each Missed Station Stop that occurs as a consequence of that Cancellation;

TSV means the Total Station Value for any Missed Station Stop that occurs as a consequence of that Cancellation; and

RF means the Responsibility Factor that applies to that Cancellation caused by, as appropriate, the Operator, Network Rail, HAL or the Rolling Stock Provider;

- (b) where a Cancellation occurs for reasons attributable jointly to the Operator and Network Rail or jointly to the Operator and HAL:

$$\text{CDC} = ((\sum \text{TSV}) \times 0.5 \times \text{RF}_O) + ((\sum \text{TSV}) \times 0.5 \times \text{RF}_{\text{IM}})$$

where:

CDC means the Capacity Deduction in relation to that Cancellation;

\sum means the summation of Total Station Values for each Missed Station Stop that occurs as a consequence of that Cancellation;

TSV means the Total Station Value for any Missed Station Stop that occurs as a consequence of that Cancellation;

RF_O means the Responsibility Factor that applies to that Cancellation and the Operator; and

RF_{IM} means the Responsibility Factor that applies to that Cancellation and the relevant Infrastructure Manager; and

- (c) where a Cancellation occurs for reasons attributable jointly to the Operator and RfL (IM):

$$\text{CDC} = ((\sum \text{TSV}) \times 0.5 \times \text{RF}_O)$$

where:

CDC means the Capacity Deduction in relation to that Cancellation;

\sum means the summation of Total Station Values for each Missed Station Stop that occurs as a consequence of that Cancellation;

TSV means the Total Station Value for any Missed Station Stop that occurs as a consequence of that Cancellation; and

RF_o means the Responsibility Factor that applies to that Cancellation and the Operator.

2.10 Where the Stage 3 Start Date occurs on a day during a Reporting Period (rather than on the first day of a Reporting Period), the Cancellation Adjustment for that Reporting Period shall be the aggregate of the Cancellation Adjustment:

- (a) calculated under paragraph 2.7 for Cancellations on any day during that part of that Reporting Period that falls before the Stage 3 Start Date; and
- (b) calculated under paragraph 2.8 for Cancellations on any day during that part of that Reporting Period that commenced on the Stage 3 Start Date.

2.11 A Cancellation Adjustment shall, subject to paragraph 9, be made to the relevant Concession Payment for each Reporting Period in accordance with paragraphs 2.1 and 2.3 of Schedule 11.1.

3. SHORT FORMATION ADJUSTMENT CALCULATIONS

Calculations

3.1 For each Reporting Period that the Operator continues to lease and operate Class 315 Units, RfL shall calculate any Short Formation Adjustment in accordance with the following:

$$SFA = \sum SFD$$

where:

SFA means the Short Formation Adjustment for any Reporting Period;

\sum means the summation of all Short Formation Deductions for Class 315 Units that are Short Formed in any such Reporting Period; and

SFD means a Short Formation Deduction for any Passenger Service that is Short Formed which is operated by Class 315 Units in any such Reporting Period, calculated in accordance with paragraph 3.2.

3.2 Each Short Formation Deduction for any Short Formation shall be calculated in accordance with the following:

$$SFD = (\sum TSV) \times 0.5$$

where:

SFD means the Short Formation Deduction in relation to that Short Formation;

\sum means the summation of Total Station Values for each Station Stop made by that Short Formed Class 315 Unit; and

TSV means the Total Station Value for any Station Stop made by that Short Formed Class 315 Unit.

3.3 A Short Formation Adjustment shall, subject to paragraph 9 (*Operating Performance Overall Cap*), be made to the relevant Concession Payment for each Reporting Period in accordance with paragraphs 2.1 and 2.3 of Schedule 11.1 (*Concession Payments*).

Meaning of Train Plan

3.4 For the purposes of calculating the number (if any) of Short Formations in any Reporting Period, *Train Plan* shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 13.2 of Schedule 1.1 (*Timetable and Service Development*) and which includes any amendments thereto:

- (a) pursuant to paragraphs 2.3 and 2.6 of Schedule 1.2 (*Passenger Service Operating Obligations*);
- (b) pursuant to paragraph 3.3 of Schedule 1.2, where such amendments are agreed by RfL in accordance with such paragraph; and
- (c) pursuant to paragraph 6 (*Publishing the Timetable*) of Schedule 1.3 (*Managing Changes to the Passenger Services*), where:
 - (i) such amendments are required as a consequence of any Infrastructure Manager exercising its rights pursuant to the relevant Track Access Agreement; and
 - (ii) the Operator has complied with the provisions of such paragraph in respect thereof.

4. HEADWAY ADJUSTMENT CALCULATIONS

4.1 For each Reporting Period that commences on or after the Stage 3 Start Date, RfL shall calculate any Headway Adjustment in accordance with the following:

$$HA = \sum HD$$

where:

HA means the Headway Adjustment for any Reporting Period that commences on or after the Stage 3 Start Date;

\sum means the summation of all Headway Deductions that apply in relation to any such Reporting Period; and

HD means a Headway Deduction for any Passenger Service that incurs Relevant Excess Headway in any such Reporting Period, calculated in accordance with paragraph 4.2.

4.2 Each Headway Deduction shall be calculated in accordance with the following:

- (a) where a Passenger Service incurs any Relevant Excess Headway due to the occurrence of a Headway Incident for reasons attributable solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider or jointly to the Operator and RfL (IM):

$$HD = REH \times \text{£}[\text{REDACTED}] \times RF$$

where:

HD means the Headway Deduction;

REH means:

- (i) in relation to any Headway Incident which is attributable solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider, all Relevant Excess Headway (including any partial minutes expressed as a decimal fraction of a minute) that arise due to the occurrence of that Headway Incident; and
- (ii) in relation to any Headway Incident which is attributable jointly to the Operator and RfL (IM), 50 per cent. of the Relevant Excess Headway (including any partial minutes expressed as a decimal fraction of a minute) that arise due to the occurrence of that Headway Incident; and

RF means the Responsibility Factor that applies to that Headway Incident by, as appropriate, the Operator, Network Rail, HAL or the Rolling Stock Provider; and

- (b) where a Passenger Service incurs any Relevant Excess Headway due to the occurrence of a Headway Incident for reasons attributable jointly to the Operator and Network Rail or the Operator and HAL:

$$HD = (\text{REH}_O \times \text{£}[\text{REDACTED}] \times \text{RF}_O) + (\text{REH}_{\text{IM}} \times \text{£}[\text{REDACTED}] \times \text{RF}_{\text{IM}})$$

where:

HD means the Headway Deduction;

REH_O means 50 per cent. of that Relevant Excess Headway that is attributable to the Operator;

RF_O means the Responsibility Factor that applies to that Headway Incident and the Operator;

REH_{IM} means 50 per cent. of that Relevant Excess Headway that is attributable to the relevant Infrastructure Manager; and

RF_{IM} means the Responsibility Factor that applies to that Headway Incident and the relevant Infrastructure Manager.

4.3 A Headway Adjustment shall, subject to paragraph 9 (*Operating Performance Overall Cap*), be made to the relevant Concession Payment for each Reporting Period in accordance with paragraphs 2.1 and 2.3 of Schedule 11.1 (*Concession Payments*).

5. DELAY ADJUSTMENT CALCULATIONS

5.1 For each Reporting Period, RfL shall calculate any Delay Adjustment in accordance with the following:

$$DA = \sum DD$$

where:

DA means the Delay Adjustment for any Reporting Period;

Σ means the summation of all Delay Deductions that apply in relation to any such Reporting Period; and

DD means a Delay Deduction for any Passenger Service that incurs Relevant Minutes Lateness in any such Reporting Period, calculated in accordance with paragraph 5.2.

5.2 Each Delay Deduction shall be calculated in accordance with the following:

(a) where a Passenger Service incurs any Relevant Minutes Lateness due to the occurrence of a Delay Incident for reasons attributable solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider or jointly to the Operator and RfL (IM):

$$DD = RML \times \text{£}[\text{REDACTED}] \times RF$$

where:

DD means the Delay Deduction;

RML means in relation to any Delay Incident which is attributable:

(i) solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider, all Relevant Minutes Lateness (including the first three Relevant Minutes Lateness arising from that Delay Incident and any partial minutes expressed as a decimal fraction of a minute) that arise due to the occurrence of that Delay Incident; and

(ii) jointly to the Operator and RfL (IM), 50 per cent. of the Relevant Minutes Lateness (including any partial minutes expressed as a decimal fraction of a minute) that arise due to the occurrence of that Delay Incident; and

RF means the Responsibility Factor that applies to that Delay Incident caused by, as appropriate, the Operator, Network Rail, HAL or the Rolling Stock Provider;

(b) where a Passenger Service incurs any Relevant Minutes Lateness due to the occurrence of a Delay Incident for reasons attributable jointly to the Operator and Network Rail or the Operator and HAL:

$$DD = (RML_O \times \text{£}[\text{REDACTED}] \times RF_O) + (RML_{IM} \times \text{£}[\text{REDACTED}] \times RF_{IM})$$

where:

DD means the Delay Deduction;

RML_O means 50 per cent. of that Relevant Minutes Lateness that is attributable to the Operator;

RF_O means the Responsibility Factor that applies to that Delay Incident and the Operator;

RML_{IM} means 50 per cent. of that Relevant Minutes Lateness that is attributable to the relevant Infrastructure Manager; and

RF_{IM} means the Responsibility Factor that applies to that Delay Incident and the relevant Infrastructure Manager; and

- (c) where a Passenger Service incurs any Relevant Minutes Lateness due to the occurrence of two or more Delay Incidents, in each case for reasons attributable solely to any of the Operator, Network Rail, HAL or the Rolling Stock Provider or jointly to the Operator and RfL (IM), the Minutes Lateness comprising that Relevant Minutes Lateness shall be allocated to each relevant Delay Incident and the Delay Deduction for each Delay Incident shall then be calculated as set out in paragraph 5.2(a) or (b) as appropriate.

5.3 A Delay Adjustment shall, subject to paragraph 9 (*Operating Performance Overall Cap*), be made to the relevant Concession Payment for each Reporting Period in accordance with paragraphs 2.1 and 2.3 of Schedule 11.1 (*Concession Payments*).

6. INDEXATION OF ADJUSTMENTS

Each of:

- (a) the Availability Adjustments;
- (b) the Cancellation Adjustments;
- (c) the Short Formation Adjustments;
- (d) the Headway Adjustments; and
- (e) the Delay Adjustments,

are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

7. PERFORMANCE AGAINST OPERATING PERFORMANCE THRESHOLDS

In respect of each Reporting Period, RfL shall calculate the Operator's performance for the Thirteen Period Measurement Period in which that Reporting Period occurs by:

- (a) ascertaining the Operating Performance Adjustment made in each of the Reporting Periods that comprise that Thirteen Period Measurement Period; and
- (b) separately comparing each of those Operating Performance Adjustments against both of the Remedial Plan Operating Performance Thresholds and the Default Operating Performance Threshold for the Stage in which each such Reporting Period occurs.

8. RECURRENT PERFORMANCE FAILURES

If a Recurrent Performance Failure occurs then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreement*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

9. OPERATING PERFORMANCE CAPS

Operating Performance Reporting Period Cap

9.1 The Operator shall not be liable to make any further Operating Performance Adjustments in any Reporting Period where the aggregate of Operating Performance Adjustments in that Reporting Period reaches the Operating Performance Reporting Period Cap.

Operating Performance Overall Cap

9.2 The Operator shall not be liable to make any further Operating Performance Adjustments where the aggregate of Operating Performance Adjustments made in any Thirteen Period Measurement Period reaches the Operating Performance Overall Cap (and in relation to instances where paragraph 9.1 has been applied to limit the Operator's liability in any Reporting Period comprising that Thirteen Period Measurement Period, taking account only of the amount of those Operating Performance Adjustments made pursuant to paragraph 9.1) and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

10. PERFORMANCE WORSE THAN THE OPERATING PERFORMANCE THRESHOLDS

Performance worse than the Remedial Plan Reporting Period Operating Performance Thresholds

10.1 If the Operating Performance Adjustment made in any two Reporting Periods in any Thirteen Period Measurement Period is equal to or exceeds the Remedial Plan Reporting Period Operating Performance Threshold for the Stage in which any such Reporting Period occurs (provided that, in relation to any such Reporting Period, where a Stage Start Date occurs other than on the first day of that Reporting Period, the Remedial Plan Reporting Period Operating Performance Threshold applicable for that Reporting Period shall be the Remedial Plan Reporting Period Operating Performance Threshold that applied before that Stage Start Date) then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreement*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

Performance worse than the Remedial Plan Annual Operating Performance Thresholds

10.2 If the aggregate of Operating Performance Adjustments made in any Thirteen Period Measurement Period is equal to or exceeds the Remedial Plan Annual Operating Performance Threshold, then

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of paragraph 1 of Schedule 17.1 shall apply.

Performance worse than the Default Operating Performance Thresholds

10.3 If the aggregate of Operating Performance Adjustments made in any Thirteen Period Measurement Period for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) is equal to or exceeds the Default Operating Performance Threshold for the Stage in which that Thirteen Period Measurement Period

occurs (provided that, where a Thirteen Period Measurement Period occurs partly in one Stage and partly in another Stage, the Default Operating Performance Threshold applicable for that Thirteen Period Measurement Period shall be the Default Operating Performance Threshold that applies to the next Stage), then:

- (a) an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply; and
- (b) notwithstanding the occurrence of an Event of Default, the Operator shall, subject to paragraph 9.1, remain liable for any Operating Performance Adjustments that are payable thereafter up to the Operating Performance Overall Cap.

APPENDIX 1 TO SCHEDULE 7.1

BASE STATION VALUES TABLES

The Base Station Value Tables are as follows:

Table A – Westbound Weekday services

Station	Station Weighting	First/Last Start to 06.05	Off Peak 06.06-06.59	AM Shoulder 07.00-07.44	AM Peak 07.45-09.14	AM Shoulder 09.15-09.59	Timebands Off Peak 10.00-15.59	PM Shoulder 16.00-16.44	PM Peak 16.45-18.14	PM Shoulder 18.15-18.59	Off Peak 19.00-20.59	Off Peak 21.00-23.59	First/Last 24.00-End
		Timeband Weighting											
		8	6	10	12	10	6	10	12	10	6	6	8
Base Station Values													
Shenfield	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Brentwood	4	32	24	40	48	40	24	30	36	30	24	24	32
Harold Wood	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Gidea Park	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Romford	4	32	24	40	48	40	24	30	36	30	24	24	32
Chadwell Heath	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Goodmayes	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Seven Kings	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Ilford	4	32	24	40	48	40	24	30	36	30	24	24	32
Manor Park	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Forest Gate	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Maryland	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Stratford	7	56	42	70	84	70	42	52.5	63	52.5	42	42	56
Abbey Wood	5	40	30	50	60	50	30	37.5	45	37.5	30	30	40
Woolwich	4	32	24	40	48	40	24	30	36	30	24	24	32
Custom House	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Canary Wharf	7	56	42	70	84	70	42	70	84	70	42	42	56
Whitechapel	7	56	42	70	84	70	42	70	84	70	42	42	56
Liverpool Street	7	56	42	70	84	70	42	70	84	70	42	42	56
Farringdon	7	56	42	70	84	70	42	70	84	70	42	42	56

Station	Station Weighting	First/Last Start to 06.05	Off Peak 06.06-06.59	AM Shoulder 07.00-07.44	AM Peak 07.45-09.14	AM Shoulder 09.15-09.59	Timebands Off Peak 10.00-15.59	PM Shoulder 16.00-16.44	PM Peak 16.45-18.14	PM Shoulder 18.15-18.59	Off Peak 19.00-20.59	Off Peak 21.00-23.59	First/Last 24.00-End
		Timeband Weighting											
		8	6	10	12	10	6	10	12	10	6	6	8
		Base Station Values											
Tottenham Court Road	7	56	42	70	84	70	42	70	84	70	42	42	56
Bond Street	7	56	42	70	84	70	42	70	84	70	42	42	56
Paddington	7	56	42	70	84	70	42	70	84	70	42	42	56
Acton Main Line	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Ealing Broadway	5	40	30	37.5	45	37.5	30	50	60	50	30	30	40
West Ealing	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Hanwell	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Southall	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Hayes & Harlington	4	32	24	30	36	30	24	40	48	40	24	24	32
Heathrow Central Terminal Area	15	120	120	120	120	120	120	120	120	120	120	120	120
Heathrow Terminal 4	15	120	120	120	120	120	120	120	120	120	120	120	120
West Drayton	4	32	24	30	36	30	24	40	48	40	24	24	32
Iver	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Langley	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Slough	4	32	24	30	36	30	24	40	48	40	24	24	32
Burnham	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Taplow	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
M Maidenhead	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Twyford	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Reading	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
	181												

Table B – Westbound Saturday services

Station	Weighting	Timebands		
		Start-09.00	09.00-22.00	22.00-end
		Timeband Weighting		
		8	8	8
Shenfield	3	24	24	24
Brentwood	4	32	32	32
Harold Wood	3	24	24	24
Gidea Park	3	24	24	24
Romford	4	32	32	32
Chadwell Heath	3	24	24	24
Goodmayes	3	24	24	24
Seven Kings	3	24	24	24
Ilford	4	32	32	32
Manor Park	3	24	24	24
Forest Gate	3	24	24	24
Maryland	3	24	24	24
Stratford	7	56	56	56
Abbey Wood	5	40	40	40
Woolwich	4	32	32	32
Custom House	3	24	24	24
Canary Wharf	7	56	56	56
Whitechapel	7	56	56	56
Liverpool Street	7	56	56	56
Farringdon	7	56	56	56
Tottenham Court Road	7	56	56	56
Bond Street	7	56	56	56
Paddington	7	56	56	56

Station	Weighting	Timebands		
		Start-09.00	09.00-22.00	22.00-end
		Timeband Weighting		
		8	8	8
Acton Main Line	3	24	24	24
Ealing Broadway	5	40	40	40
West Ealing	3	24	24	24
Hanwell	3	24	24	24
Southall	3	24	24	24
Hayes & Harlington	4	32	32	32
Heathrow Central Terminal Area	15	120	120	120
Heathrow Terminal 4	15	120	120	120
West Drayton	4	32	32	32
Iver	3	24	24	24
Langley	3	24	24	24
Slough	4	32	32	32
Burnham	3	24	24	24
Taplow	3	24	24	24
M Maidenhead	3	24	24	24
Twyford	3	24	24	24
Reading	3	24	24	24
Total	181			

Table C – Westbound Sunday services

Station	Weighting	Timebands		
		Start–12.00	12.00–21.00	21.00-end
		Timeband Weighting		
		8	8	8
Shenfield	3	24	24	24
Brentwood	4	32	32	32
Harold Wood	3	24	24	24
Gidea Park	3	24	24	24
Romford	4	32	32	32
Chadwell Heath	3	24	24	24
Goodmayes	3	24	24	24
Seven Kings	3	24	24	24
Ilford	4	32	32	32
Manor Park	3	24	24	24
Forest Gate	3	24	24	24
Maryland	3	24	24	24
Stratford	7	56	56	56
Abbey Wood	5	40	40	40
Woolwich	4	32	32	32
Custom House	3	24	24	24
Canary Wharf	7	56	56	56
Whitechapel	7	56	56	56
Liverpool Street	7	56	56	56
Farringdon	7	56	56	56
Tottenham Court Road	7	56	56	56
Bond Street	7	56	56	56
Paddington	7	56	56	56
Acton Main Line	3	24	24	24

Station	Weighting	Timebands		
		Start-12.00	12.00-21.00	21.00-end
		Timeband Weighting		
		8	8	8
Ealing Broadway	5	40	40	40
West Ealing	3	24	24	24
Hanwell	3	24	24	24
Southall	3	24	24	24
Hayes & Harlington	4	32	32	32
Heathrow Central Terminal Area	15	120	120	120
Heathrow Terminal 4	15	120	120	120
West Drayton	4	32	32	32
Iver	3	24	24	24
Langley	3	24	24	24
Slough	4	32	32	32
Burnham	3	24	24	24
Taplow	3	24	24	24
Maidenhead	3	24	24	24
Twyford	3	24	24	24
Reading	3	24	24	24
Total	181			

Table D – Eastbound Weekday services

Station	Station	First/Last Start to 06.05	Off Peak 06.06-06.59	AM Shoulder 07.00-07.44	AM Peak 07.45-09.14	AM Shoulder 09.15-09.59	Timebands Off Peak 10.00-15.59	PM Shoulder 16.00-16.44	PM Peak 16.45-18.14	PM Shoulder 18.15-18.59	Off Peak 19.00-20.59	Off Peak 21.00-23.59	First/Last 24.00-End
		Timeband Weighting											
		8	6	10	12	10	6	10	12	10	6	6	8
Base Station Values													
Shenfield	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Brentwood	4	32	24	30	36	30	24	40	48	40	24	24	32
Harold Wood	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Gidea Park	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Romford	4	32	24	30	36	30	24	40	48	40	24	24	32
Chadwell Heath	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Goodmayes	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Seven Kings	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Ilford	4	32	24	30	36	30	24	40	48	40	24	24	32
Manor Park	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Forest Gate	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Maryland	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Stratford	7	56	42	52.5	63	52.5	42	70	84	70	42	42	56
Abbey Wood	5	40	30	37.5	45	27.5	30	50	60	50	30	30	40
Woolwich	4	32	24	30	36	30	24	40	48	40	24	24	32
Custom House	3	24	18	22.5	27	22.5	18	30	36	30	18	18	24
Canary Wharf	7	56	42	70	84	70	42	70	84	70	42	42	56
Whitechapel	7	56	42	70	84	70	42	70	84	70	42	42	56
Liverpool Street	7	56	42	70	84	70	42	70	84	70	42	42	56
Farringdon	7	56	42	70	84	70	42	70	84	70	42	42	56
Tottenham Court Road	7	56	42	70	84	70	42	70	84	70	42	42	56
Bond Street	7	56	42	70	84	70	42	70	84	70	42	42	56
Paddington	7	56	42	70	84	70	42	70	84	70	42	42	56
Acton Main Line	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Ealing Broadway	5	40	30	50	60	50	30	37.5	45	37.5	30	30	40
West Ealing	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Hanwell	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Southall	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24

Station	Station	First/Last Start to 06.05	Off Peak 06.06-06.59	AM Shoulder 07.00-07.44	AM Peak 07.45-09.14	AM Shoulder 09.15-09.59	Timebands Off Peak 10.00-15.59	PM Shoulder 16.00-16.44	PM Peak 16.45-18.14	PM Shoulder 18.15-18.59	Off Peak 19.00-20.59	Off Peak 21.00-23.59	First/Last 24.00-End
		Timeband Weighting											
		8	6	10	12	10	6	10	12	10	6	6	8
		Base Station Values											
Hayes & Harlington	4	32	24	40	48	40	24	30	36	30	24	24	32
Heathrow Central Terminal Area	15	120	120	120	120	120	120	120	120	120	120	120	120
Heathrow Terminal 4	15	120	120	120	120	120	120	120	120	120	120	120	120
West Drayton	4	32	24	40	48	40	24	30	36	30	24	24	32
Iver	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Langley	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Slough	4	32	24	40	48	40	24	30	36	30	24	24	32
Burnham	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Taplow	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Maidenhead	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Twyford	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Reading	3	24	18	30	36	30	18	22.5	27	22.5	18	18	24
Total	181												

Table E – Eastbound Saturday services

Station	Weighting	Timebands		
		Start-09.00	09.00-22.00	22.00-end
		Timeband Weighting		
		8	8	8
Shenfield	3	24	24	24
Brentwood	4	32	32	32
Harold Wood	3	24	24	24
Gidea Park	3	24	24	24
Romford	4	32	32	32
Chadwell Heath	3	24	24	24
Goodmayes	3	24	24	24
Seven Kings	3	24	24	24
Ilford	4	32	32	32
Manor Park	3	24	24	24
Forest Gate	3	24	24	24
Maryland	3	24	24	24
Stratford	7	56	56	56
Abbey Wood	5	40	40	40
Woolwich	4	32	32	32
Custom House	3	24	24	24
Canary Wharf	7	56	56	56
Whitechapel	7	56	56	56
Liverpool Street	7	56	56	56
Farringdon	7	56	56	56
Tottenham Court Road	7	56	56	56
Bond Street	7	56	56	56
Paddington	7	56	56	56

Station	Weighting	Timebands		
		Start-09.00	09.00-22.00	22.00-end
		Timeband Weighting		
		8	8	8
Acton Main Line	3	24	24	24
Ealing Broadway	5	40	40	40
West Ealing	3	24	24	24
Hanwell	3	24	24	24
Southall	3	24	24	24
Hayes & Harlington	4	32	32	32
Heathrow Central Terminal Area	15	120	120	120
Heathrow Terminal 4	15	120	120	120
West Drayton	4	32	32	32
Iver	3	24	24	24
Langley	3	24	24	24
Slough	4	32	32	32
Burnham	3	24	24	24
Taplow	3	24	24	24
Maidenhead	3	24	24	24
Twyford	3	24	24	24
Reading	3	24	24	24
Total	181			

Table F – Eastbound Sunday services

Station	Weighting	Timebands		
		Start–12.00	12.00–21.00	21.00-end
		Timeband Weighting		
		8	8	8
Shenfield	3	24	24	24
Brentwood	4	32	32	32
Harold Wood	3	24	24	24
Gidea Park	3	24	24	24
Romford	4	32	32	32
Chadwell Heath	3	24	24	24
Goodmayes	3	24	24	24
Seven Kings	3	24	24	24
Ilford	4	32	32	32
Manor Park	3	24	24	24
Forest Gate	3	24	24	24
Maryland	3	24	24	24
Stratford	7	56	56	56
Abbey Wood	5	40	40	40
Woolwich	4	32	32	32
Custom House	3	24	24	24
Canary Wharf	7	56	56	56
Whitechapel	7	56	56	56
Liverpool Street	7	56	56	56
Farringdon	7	56	56	56
Tottenham Court Road	7	56	56	56
Bond Street	7	56	56	56
Paddington	7	56	56	56

Station	Weighting	Timebands		
		Start-12.00	12.00-21.00	21.00-end
		Timeband Weighting		
		8	8	8
Acton Main Line	3	24	24	24
Ealing Broadway	5	40	40	40
West Ealing	3	24	24	24
Hanwell	3	24	24	24
Southall	3	24	24	24
Hayes & Harlington	4	32	32	32
Heathrow Central Terminal Area	15	120	120	120
Heathrow Terminal 4	15	120	120	120
West Drayton	4	32	32	32
Iver	3	24	24	24
Langley	3	24	24	24
Slough	4	32	32	32
Burnham	3	24	24	24
Taplow	3	24	24	24
Maidenhead	3	24	24	24
Twyford	3	24	24	24
Reading	3	24	24	24
Total	181			

APPENDIX 2 TO SCHEDULE 7.1

OPERATING PERFORMANCE THRESHOLDS TABLE

Column 1	Column 2	Column 3	Column 4
Stage	Remedial Plan Reporting Period Operating Performance Thresholds (£)	Remedial Plan Annual Operating Performance Thresholds (£)	Default Operating Performance Thresholds (£)
Stage 0	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Reporting Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Thirteen Period Measurement Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) for the relevant Thirteen Period Measurement Period
Stage 1	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Reporting Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in Financial Model for the relevant Thirteen Period Measurement Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) for the relevant Thirteen Period Measurement Period
Stage 2	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Reporting Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Thirteen Period Measurement Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) for the relevant Thirteen Period Measurement Period

Column 1	Column 2	Column 3	Column 4
Stage	Remedial Plan Reporting Period Operating Performance Thresholds (£)	Remedial Plan Annual Operating Performance Thresholds (£)	Default Operating Performance Thresholds (£)
Stage 3 and all remaining Stages	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Reporting Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for the relevant Thirteen Period Measurement Period	The aggregate of £[REDACTED] and the level of Operating Performance Adjustments assumed in the Financial Model for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) for the relevant Thirteen Period Measurement Period

SCHEDULE 7.2

Performance Payments under Track Access Agreements

1. PAYMENTS TO AND FROM NETWORK RAIL

Payments in relation to Network Rail's performance

1.1 The Operator shall, subject to paragraph 1.3, in each Reporting Period pay to RfL by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), any Network Rail (Schedule 8) Payment paid to the Operator under any Network Rail TAA, for reasons attributable to the performance by Network Rail of its performance obligations, and the Operator shall, if RfL so directs, exercise its rights under any Network Rail TAA to ensure that any such Network Rail (Schedule 8) Payment will, when paid to RfL pursuant to this paragraph 1.1, compensate RfL to the fullest extent possible for any adverse impacts on Ticket Revenue, Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such performance, including, where appropriate, seeking compensation for RfL's actual costs incurred.

1.2 RfL shall, subject to paragraph 1.3, in each Reporting Period pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1, a sum that is equivalent to any Network Rail (Schedule 8) Payment that the Operator is obliged to make to Network Rail in relation to a Reporting Period under the terms of schedule 8 (*Performance Regime*) of any Network Rail TAA (*NR TAA Performance Regime*) where the Network Rail Performance Sum (as defined therein) is greater than zero in that Reporting Period.

Set-off of payments

1.3 Any payment to be made by the Operator to RfL pursuant to paragraph 1.1 in any Reporting Period shall be set-off against any payment to be made in the same Reporting Period by RfL to the Operator pursuant to paragraph 1.2.

2. PAYMENTS TO AND FROM HAL

Payments in relation to HAL's performance

2.1 The Operator shall, subject to paragraph 2.3, in each Reporting Period pay to RfL by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), any HAL (Schedule 8) Payment paid to the Operator under any HAL TAA, for reasons attributable to the performance by HAL of its performance obligations, and the Operator shall, if RfL so directs, exercise its rights under any HAL TAA to ensure that any such HAL (Schedule 8) Payment will, when paid to RfL pursuant to this paragraph 2.1, compensate RfL to the fullest extent possible for any adverse impacts on Ticket Revenue, Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such performance, including, where appropriate, seeking compensation for RfL's actual costs incurred.

2.2 RfL shall, subject to paragraph 2.3, in each Reporting Period pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1, a sum that is equivalent to any HAL (Schedule 8) Payment that the Operator is obliged to make to HAL in relation to a Reporting Period under the terms of schedule 8 (*Performance Regime*) of any HAL TAA (*HAL TAA*

Performance Regime) where the HAL Performance Sum (as defined therein) is greater than zero in that Reporting Period.

Set-off of payments

2.3 Any payment to be made by the Operator to RfL pursuant to paragraph 2.1 in any Reporting Period shall be set-off against any payment to be made in the same Reporting Period by RfL to the Operator pursuant to paragraph 2.2.

3. PAYMENTS TO AND FROM RfL (IM)

Payments in relation to RfL (IM)'s performance

3.1 The Operator shall, subject to paragraph 3.3, in each Reporting Period pay to RfL by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), any RfL (IM) (Schedule 8) Payment paid to the Operator under the RfL (IM) TAA, for reasons attributable to the performance by RfL (IM) of its performance obligations, and the Operator shall, if RfL so directs, exercise its rights under any RfL (IM) TAA to ensure that any such RfL (IM) (Schedule 8) Payment will, when paid to RfL pursuant to this paragraph 3.1, compensate RfL to the fullest extent possible for any adverse impacts on Ticket Revenue, Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such performance, including, where appropriate, seeking compensation for RfL's actual costs incurred.

3.2 RfL shall, subject to paragraph 3.3, in each Reporting Period pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1, a sum that is equivalent to any RfL (IM) (Schedule 8) Payment that the Operator is obliged to make to RfL (IM) in relation to a Reporting Period under the terms of schedule 8 (*Performance Regime*) of the RfL (IM) TAA (**RfL (IM) TAA Performance Regime**) where the RfL (IM) Performance Sum (as defined therein) is greater than zero in that Reporting Period.

Set-off of payments

3.3 Any payment to be made by the Operator to RfL pursuant to paragraph 3.1 in any Reporting Period shall be set-off against any payment to be made in the same Reporting Period by RfL to the Operator pursuant to paragraph 3.2.

4. RfL PAYMENTS IN RESPECT OF TOC-ON-TOC PERFORMANCE

Payments in relation to the Network Rail Track Access Agreement

4.1 Subject to paragraph 4.3, if in any Reporting Period the Operator is required to pay Network Rail a "Train Operator Performance Sum (TPS)" under the NRTAA Performance Regime due to RfL (IM)'s performance under the RfL (IM) TAA, then RfL shall pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), an amount (the **RfL (IM) NR TOC-on-TOC Payment**) equal to the lesser of:

- (a) the amount of such Train Operator Performance Sum (TPS); and
- (b) the value of RfL(IM)P (as a positive amount) in the following formula:

$$\text{RfL(IM)P} = \text{RWAML} \times \text{BF} \times \text{TPR}$$

where:

RfL(IM)P means the RfL (IM) NR TOC-on-TOC Payment;

RWAML has the same meaning as “TWAML” in the NRTAA Performance Regime, save that “MLT” therein shall mean Minutes Lateness allocated to RfL (IM) using the same methodology as specified in paragraph 8 of the NRTAA Performance Regime;

BF has the same meaning as in paragraph 10 of the NRTAA Performance Regime; and

TPR has the same meaning as in paragraph 10 of the NRTAA Performance Regime.

4.2 Where in any Reporting Period, RfL (IM) has disputed any Minutes Lateness under the terms of the RfL (IM) TAA, RfL shall be obliged to make any RfL (IM) NR TOC-on-TOC Payment:

- (a) on the next Payment Date falling no less than seven days after such dispute is resolved in accordance with the terms of the RfL (IM) TAA; and
- (b) only to the extent that following such resolution, any such Minutes Lateness are allocated to RfL (IM).

4.3 If a performance benchmark is subsequently calibrated and included within the Network Rail TAA which recognises the potential impact of RfL (IM)’s performance under the RfL (IM) TAA, then a Change shall occur and the parties shall amend paragraph 4.1:

- (a) to include a benchmark that recognises that potential impact; and
- (b) to provide for any future RfL (IM) NR TOC-on-TOC Payment to be paid where that performance is worse than that benchmark.

Payments in relation to the HAL Track Access Agreement

4.4 Subject to paragraph 4.6, if in any Reporting Period the Operator is required to pay HAL a “Train Operator Performance Sum (TPS)” under the HAL TAA Performance Regime due to RfL (IM)’s performance under the RfL (IM) TAA, then RfL shall pay to the Operator by way of by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1, an amount (the *RfL (IM) HAL TOC-on-TOC Payment*) equal to the lesser of:

- (a) the amount of such Train Operator Performance Sum (TPS); and
- (b) the value of RfL(IM)P (as a positive amount) in the following formula:

$$\text{RfL(IM)P} = \text{RWAML} \times \text{BF} \times \text{TPR}$$

where:

RfL(IM)P means the RfL (IM) HAL TOC-on-TOC Payment;

RWAML has the same meaning as “TWAML” in the HAL TAA Performance Regime, save that “MLT” therein shall mean Minutes Lateness allocated

to RfL (IM) using the same methodology as specified in paragraph 8 of the HAL TAA Performance Regime;

BF has the same meaning as in paragraph 10 of the HAL TAA Performance Regime; and

TPR has the same meaning as in paragraph 10 of the HAL TAA Performance Regime.

4.5 Where in any Reporting Period, RfL (IM) has disputed any Minutes Lateness under the terms of the RfL (IM) TAA, RfL shall be obliged to make any RfL (IM) HAL TOC-on-TOC Payment:

- (a) on the next Payment Date falling no less than seven days after such dispute is resolved in accordance with the terms of the RfL (IM) TAA; and
- (b) only to the extent that following such resolution, any such Minutes Lateness are allocated to RfL (IM).

4.6 If a performance benchmark is subsequently calibrated and included within the HAL TAA which recognises the potential impact of RfL (IM)'s performance under the RfL (IM) TAA, then a Change shall occur and the parties shall amend paragraph 4.4:

- (a) to include a benchmark that recognises that potential impact; and
- (b) to provide for any future RfL (IM) NR TOC-on-TOC Payment to be paid where that performance is worse than that benchmark.

SCHEDULE 7.3

PPM Regime

1. PPM TARGETS

The PPM Targets are specified in the table set out in the Appendix.

2. MEASURING PUNCTUALITY

When measuring the PPM achieved by the Operator in any Reporting Period for the purpose of paragraph 3 (PPM Calculations), the following shall apply:

- (a) a Passenger Service shall be treated as having arrived “punctually” for the purpose of the definition of PPM if it arrives at its final destination within five minutes of its scheduled arrival time at that final destination as shown in the Plan of the Day;
- (b) any Total Cancellation or Other Cancellation will be regarded as not having arrived punctually; and
- (c) in relation to:
 - (i) all westbound Passenger Services scheduled to terminate either at an On-Network Station or a Heathrow Station, these services shall be measured for punctuality twice, the first time at Paddington (Crossrail) station and the second time at its scheduled final destination;
 - (ii) all eastbound Passenger Services scheduled to originate either from an On-Network Station (other than Liverpool Street (Main Line)) or a Heathrow Station, these services shall be measured for punctuality twice, the first time at Liverpool Street (Crossrail) station and the second time at its scheduled final destination; and
 - (iii) all other Passenger Services, these services shall be measured for punctuality once at their scheduled final destination.

3. PPM CALCULATIONS

PPM Targets

3.1 For each Reporting Period, RfL shall determine the Operator’s performance against the relevant PPM Target by:

- (a) ascertaining the PPM achieved by the Operator in that Reporting Period;
- (b) ascertaining the PPM achieved by the Operator, measured as a moving annual average, over the preceding 12 Reporting Periods and that Reporting Period (the **PPM MAA**); and
- (c) comparing the PPM MAA against the relevant PPM Target for that Reporting Period.

3.2 Where less than 13 Reporting Periods have occurred during the Concession Period, RfL shall for the purpose of calculating the PPM MAA and determining the Operator’s performance against the PPM Target for Stage 0 pursuant to paragraph 3.1, aggregate the PPM that the Operator achieves in each of the first of those 12 Reporting Periods with a

notional PPM at the PPM Target level for such number of Reporting Periods as are necessary to generate the PPM MAA.

Force Majeure

3.3 In calculating the PPM for the purposes of paragraph 3.1, any Passenger Service that does not arrive at its destination within five minutes of the arrival time scheduled in the Plan of the Day because of the occurrence or continuing effect of a Force Majeure Event shall be deemed to have arrived at its destination within five minutes of the arrival time scheduled in the Plan of the Day.

4. FAILURE TO ACHIEVE PPM TARGETS

4.1 If the PPM MAA is below the relevant PPM Target in any two consecutive Reporting Periods that occur during the Concession Term, then a **PPM Failure** shall have occurred.

4.2 If a PPM Failure occurs, it shall constitute a contravention of this Agreement and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreements*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply, provided that, where the Operator is required by RfL pursuant to that paragraph to submit and implement a Remedial Plan to ensure in future Reporting Periods that the PPM MAA is no less than the PPM Target:

- (a) the Operator shall in submitting any such Remedial Plan, notify RfL of the expenditure it will incur in implementing that plan; and
- (b) the Operator shall not be required to spend more than £[REDACTED] in any Concession Year (an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) in implementing any such plan, taking account of any expenditure that the Operator is to incur in implementing any concurrent Remedial Plan pursuant to this paragraph 4.2.

APPENDIX TO SCHEDULE 7.3**PPM TARGETS**

Concession Year	PPM Target (%)
Year 1 (May 2015 to Mar 2016)	94
Year 2 (Apr 2016 to Mar 2017)	94.25
Year 3 (Apr 2017 to Mar 2018)	94.50
Year 4 (Apr 2018 to Mar 2019)	94.75
Year 5 (Apr 2019 to Mar 2020) and each subsequent Concession Year	95
Any extension of up to 7 Reporting Periods	95

SCHEDULE 7.4

General Operating Performance Provisions

1. DAILY PERFORMANCE DATA

Daily recording and monitoring

1.1 On each day of the Concession Period, the Operator shall accurately record and monitor all Performance Failures that occur on that day using any reliable and accurate data available to it, including from:

- (a) any Network Monitoring System;
- (b) the Operator Control Room;
- (c) any information obtained from the Concession Employees (including drivers of Units); and
- (d) in relation to the Class 345 Fleet, the SP Daily Performance Record and the Data (in each case as defined in the RSPA) provided by the Rolling Stock Provider.

Daily reporting prior to the Class 345 Operating Date

1.2 By 08.30 on each day of the Concession Period that occurs prior to the Class 345 Operating Date (other than the first two days of the Concession Period), the Operator shall provide RfL with the Operator Daily Performance Record which shall include data relating to the Class 315 Fleet.

Daily reporting on and after the Class 345 Operating Date

1.3 By 08.30 on each day of the Concession Period that occurs on and after the Class 345 Operating Date (other than in relation to the Class 345 Fleet only, the first two days after the Class 345 Operating Date), the Operator shall provide RfL with the Operator Daily Performance Record which shall include data relating to both the Class 315 Fleet and the Class 345 Fleet.

1.4 That part of any Operator Daily Performance Record that relates to the Class 345 Fleet shall be used by RfL to produce the RfL Daily Performance Record for the purposes of the RSPA and the RSPA Agency Agreement.

2. PERIODIC PERFORMANCE DATA

Periodic reporting prior to Class 345 Operating Date

2.1 At the end of each Reporting Period that commences prior to the Class 345 Operating Date, the Operator shall include data relating to the Class 315 Fleet and the PPM MAA in the Periodic Concession Report for that Reporting Period.

Periodic reporting on and after the Class 345 Operating Date

2.2 At the end of each Reporting Period that commences on or after the Class 345 Operating Date, the Operator shall for that Reporting Period include data relating to the Class 315 Fleet, the Class 345 Fleet and the PPM MAA in the Periodic Concession Report.

3. NOTICE OF CALCULATIONS

As soon as reasonably practicable after the end of each Reporting Period, RfL shall notify the Operator of the results of the calculations performed pursuant to this Schedule 7.

4. GENERAL PRINCIPLES FOR CALCULATIONS PURSUANT TO THIS SCHEDULE 7

Disregarding certain performance failures

4.1 In performing the calculations pursuant to Schedule 7.1 (*Operating Performance Regime*), RfL shall disregard any Performance Failure that:

- (a) is caused by the occurrence or continuing effect of a Force Majeure Event;
- (b) in the case of a Cancellation, Short Formation or a Headway Incident, is caused by the implementation in accordance with its terms of an RfL Agreed Recovery Plan;
- (c) is attributable to an RfL Failure; or
- (d) in the case of Minutes Lateness, occurs on an Exempt Diagram Leg.

4.2 Any reference in Schedule 7.1 to a Performance Failure:

- (a) “which is attributable to”;
- (b) which occurs “for reasons attributable to” or “for reasons attributable solely to” or “for reasons attributable jointly to”; or
- (c) which is “caused by”,

in each case any of Network Rail, HAL or RfL (IM) shall be construed as a Performance Failure that Network Rail, HAL or RfL (IM) (as the case may be) has directly caused through its own performance or non-performance or directly contributed to the occurrence of that Performance Failure through its own performance or non-performance (as the case may be) and not a Performance Failure that is attributable to or caused by another operator of railway passenger services or services for the transportation of goods, but which Network Rail, HAL or RfL (IM) is accountable for as Infrastructure Manager under the relevant Track Access Agreement.

Unavailability and Cancellations

4.3 Except as provided for in paragraph 2.7 of Schedule 7.1, where a Class 345 Unit is Unavailable to deliver its Diagram, it shall not also be considered a Cancellation and no Cancellation Adjustment shall be payable.

Disputed Minutes Lateness

4.4 Where the attribution of any Minutes Lateness pursuant to any Track Access Agreement is in dispute between the relevant Infrastructure Manager and the Operator at the end of a Reporting Period, RfL shall, for the purpose of performing the calculations pursuant to, as appropriate, paragraphs 4.2 or 5.2 of Schedule 7.1, allocate those Minutes Lateness between the Operator and that Infrastructure Manager in the proportions of:

A to B

where:

- A is the total number of undisputed Minutes Lateness from the 12 preceding Reporting Periods that are attributable to the Operator pursuant to that Track Access Agreement; and
- B is the total number of undisputed Minutes Lateness from the 12 preceding Reporting Periods that are attributable to the relevant Infrastructure Manager pursuant to that Track Access Agreement.

4.5 Where the attribution of any Minutes Lateness pursuant to any Track Access Agreement is resolved between the relevant Infrastructure Manager and the Operator in accordance with the terms of that Track Access Agreement during any Reporting Period, RfL shall, for the purposes of performing the calculations in paragraph 4.2 or 5.2 of Schedule 7.1, make provision for any resulting increase or decrease in Minutes Lateness attributable to the Operator and attributable to the relevant Infrastructure Manager.

4.6 The Operator agrees with RfL to comply with the requirements of the relevant Track Access Agreement in respect of Minutes Lateness attribution.

5. RfL AGREED RECOVERY PLANS

5.1 The Operator may propose a recovery plan to RfL that meets the requirements of paragraph 5.2 where there is a prevention or restriction of access to the track or a section of track (howsoever caused) of the kind contemplated in paragraph 1(a)(i) of Schedule 17.6 (*Force Majeure*) which results in any Cancellation, Short Formation and/or Headway Incident.

5.2 Any recovery plan proposed by the Operator pursuant to paragraph 5.1 shall seek to:

- (a) minimise the disruption arising from the given prevention or restriction by providing the best possible level of service given such disruption, including by:
- (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding; and
- (b) return the level of service to that level specified in the Timetable as soon as reasonably practicable.

5.3 RfL shall consider any recovery plan proposed by the Operator pursuant to paragraph 5.1 and confirm whether or not it agrees to the terms of that recovery plan, in each case in a timely manner, provided that RfL shall not be obliged to accept any such recovery plan.

5.4 If RfL confirms pursuant to paragraph 5.3 that it agrees to the terms of any recovery plan proposed by the Operator pursuant to paragraph 5.1:

- (a) that recovery plan shall be an ***RfL Agreed Recovery Plan***;
- (b) the Operator shall implement that RfL Agreed Recovery Plan in accordance with its terms; and
- (c) the provisions of paragraph 4.1(b) shall apply.

SCHEDULE 8

SERVICE QUALITY AND PASSENGER PERCEPTION

- Schedule 8.1:** **KPI Regime**
- Appendix 1: Key Performance Indicators**
- Appendix 2: Measures used to inform KPI Regime compliance**
- Schedule 8.2:** **MSS Regime**
- Appendix: MSS Benchmarks**
- Schedule 8.3:** **Customer Satisfaction Regime**
- Appendix: CSS Benchmarks**
- Schedule 8.4:** **Quality Performance Regime**
- Appendix: Quality Performance Regime Benchmarks**
- Schedule 8.5:** **Ticket Queuing Time Regime**
- Schedule 8.6:** **Information about Journeys**

SCHEDULE 8.1

KPI Regime

1. INTRODUCTION

This KPI Regime provides for:

- (a) the responsibilities, including auditing, and reporting requirements of the Operator;
- (b) the audits that may be carried out by RfL;
- (c) the rights of RfL to witness any audit carried out by the Operator; and
- (d) the remedies available to RfL if the Operator under-performs against the Key Performance Indicators.

2. AUDITING

KPI Audit Programme

2.1 The Operator shall establish an audit programme by the Start Date which shall provide for a reasonable spread and frequency of audits across Crossrail and across those facilities that are the subject of the Key Performance Indicators in order to ascertain:

- (a) the extent to which the Operator is implementing the Fault Management System in accordance with its terms;
- (b) the extent to which the Operator is meeting, and the way in which the Operator seeks to meet, in each case, the standards of the Key Performance Indicators; and
- (c) the extent to which the Operator is accurately reporting faults in accordance with paragraph 3 (*Reporting Requirements of the Operator*),

(the *KPI Audit Programme*).

2.2 The Operator shall implement the KPI Audit Programme in accordance with its terms:

- (a) in relation to a KPI Measured Station, from the date that the Operator becomes the Facility Owner of that KPI Measured Station;
- (b) in relation to a Unit, from the date that the Operator first operates that Unit in passenger revenue earning service, and
- (c) in all other respects, from the Start Date.

RfL auditing

2.3 RfL, and its nominee on its behalf, shall have the right to:

- (a) verify the accuracy of any reports provided by the Operator pursuant to paragraph 3.2(b);
- (b) witness any audits carried out by the Operator under the KPI Audit Programme; and

(c) carry out its own independent audits of the extent to which the Operator is implementing the Fault Management System in accordance with its terms and the way in which the Operator seeks to meet the standards of the Key Performance Indicators, in addition to any further independent audits it may carry out pursuant to paragraph 2 (*Increased Monitoring by RfL*) of Schedule 17.3 (*Other RfL Remedies*).

2.4 In undertaking independent audits carried out pursuant to paragraph 2.3(c), RfL shall:

(a) populate those parts of the MSS Questionnaire that contain any standard in relation to any Key Performance Indicator specified in Appendix 2; and

(b) use all reasonable endeavours to ensure that the persons employed carry out such audits diligently and objectively.

2.5 The Operator shall:

(a) co-operate with RfL, and its nominees on its behalf, in permitting RfL and its nominees to exercise their respective rights under paragraph 2.3 and shall provide to RfL, within 48 hours of RfL's request, any underlying data relating to any report provided by the Operator pursuant to paragraph 3.1(c);

(b) grant such access to the facilities under its control as is necessary to enable RfL and RfL's employees and nominees on its behalf to witness any audits conducted by the Operator pursuant to the KPI Audit Programme and exercise its independent audit rights under paragraph 2.3(c); and

(c) provide notice from time to time of current location-specific access, security and safety rules and regulations to RfL or its nominees for the purpose of ensuring that RfL or its nominees can carry out RfL's auditing rights in an efficient, secure and safe manner.

2.6 In carrying out any independent audit pursuant to paragraph 2.3(c), or witnessing any audits conducted by the Operator pursuant to the KPI Audit Programme, RfL shall, subject to paragraph 2.5(c), ensure that its employees or nominees:

(a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and

(b) obey any location-specific rules and regulations in respect of security and access.

2.7 RfL shall use all reasonable endeavours to notify the Operator of the result of any independent audit that is undertaken within any Reporting Period as soon as reasonably practicable thereafter.

3. REPORTING REQUIREMENTS OF THE OPERATOR

3.1 The Operator shall record any fault associated with the KPI Regime on the Fault Tracking Database automatically where the Fault Management System provides for this and to the extent not recorded automatically, promptly upon the Operator becoming aware of that fault.

3.2 The Operator shall within 14 days of the end of each Reporting Period (except during the first Reporting Period of the Concession Period) provide to RfL:

- (a) a statement of the amount of the KPI Adjustment that should be made in respect of the preceding Reporting Period in accordance with paragraph 5.1;
- (b) a breakdown of the amount stated pursuant to paragraph 3.2(a) where required by RfL and to such level of disaggregation as RfL may require;
- (c) an accurate report of its performance, providing its assessment of that performance and the reasons for any failures against any Key Performance Indicator; and
- (d) copies, where required by RfL, of the records of the audits carried out pursuant to the KPI Audit Programme.

3.3 The Operator shall be proactive in identifying and reporting to RfL faults associated with this KPI Regime which may be present on a repeated basis or in a number of assets or processes.

3.4 The Operator shall self-certify (such certification to be made by a director of the Operator) to RfL every Reporting Period its compliance with its obligations under this KPI Regime.

4. PAYMENTS

Failure to meet any Key Performance Indicator standard

4.1 If the Operator fails to meet any Key Performance Indicator standard specified in Appendix 1 in any Reporting Period, then, subject to the mitigation, if any, described in the same row as that standard in Appendix 1 and paragraph 4.2, the Operator shall include in the next calculation it makes pursuant to paragraph 5.1, the performance failure payment in respect of that standard in the amount specified for that standard in Appendix 1.

4.2 The Operator and RfL may, from time to time, agree (in writing) a contingency plan relating to any of the Key Performance Indicators (each a *KPI Contingency Plan*). Any such KPI Contingency Plan may identify any measures to be taken by the Operator to address any failure to meet any Key Performance Indicator standard together with such other provisions as the parties may agree. Provided that the Operator complies with the terms and provisions of a KPI Contingency Plan, no KPI Adjustment will be made pursuant to paragraph 5.1 in respect of the relevant Key Performance Indicator.

Material Inconsistencies

4.3 If either any investigation carried out by RfL or its nominee pursuant to paragraph 2.3 or any report produced by the Operator pursuant to paragraph 3.2(c) reveals material inconsistencies in the Operator's performance in respect of this KPI Regime in any Reporting Period, including failures by the Operator:

- (a) to accurately calculate its performance in accordance with paragraph 5.1 (except to the extent the Operator can demonstrate to the reasonable satisfaction of RfL that any such inconsistency is due to manifest error);
- (b) to report faults in accordance with the Fault Management System; or
- (c) to audit its performance in accordance with the KPI Audit Programme,

then the Operator shall include in the next calculation it makes pursuant to paragraph 5.1, a KPI Incentive Payment, calculated in accordance with paragraph 4.4.

4.4 Any ***KPI Incentive Payment*** payable pursuant to paragraph 4.3 in any Reporting Period shall be calculated in accordance with the following:

$$\text{KPIP} = \left(\text{CKPIA}_{\text{rp}-1} - \text{KPIA}_{\text{rp}-1} \right) \times 10$$

where:

KPIP means the KPI Incentive Payment payable by the Operator to RfL for any Reporting Period;

CKPIA_{rp-1} means the KPI Adjustment that should have been made in the immediately preceding Reporting Period, but for the material inconsistencies in the Operator's compliance with this KPI Regime; and

KPIA_{rp-1} means the KPI Adjustment made in the immediately preceding Reporting Period.

4.5 Any KPI Incentive Payment calculated pursuant to paragraph 4.4 shall be taken account of in the determination of whether the Operator has contravened the KPI Remedial Plan Benchmark.

5. CALCULATION OF KPI ADJUSTMENTS

5.1 The Operator shall calculate the ***KPI Adjustment*** for any Reporting Period, within the time period contemplated by paragraph 3.2 in accordance with the following:

$$\text{KPIA} = \text{PFP} + \text{KPIP}$$

where:

KPIA means the KPI Adjustment payable by the Operator to RfL for any Reporting Period;

PFP means the total performance failure payments for the immediately preceding Reporting Period, calculated by aggregating the performance failure payments in respect of all failures to meet a Key Performance Indicator in accordance with paragraph 4.1 in such Reporting Period; and

KPIP means the KPI Incentive Payment for that Reporting Period, calculated in accordance with paragraph 4.4.

5.2 Any KPI Adjustment shall be made by way of a Quality Performance Adjustment in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*).

6. REMEDIAL PLANS

Remedial Plans in respect of contraventions

6.1 It shall be a contravention of this Agreement if:

- (a) a KPI Adjustment is made in any three out of six consecutive Reporting Periods that is equal to or in excess of £[REDACTED] (an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference*

to RPI) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) (a **KPI Remedial Plan Benchmark**);

- (b) the Operator fails to implement the Fault Management System in accordance with its terms;
- (c) the Operator fails to implement the KPI Audit Programme in accordance with its terms; or
- (d) the circumstances described in paragraph 4.3 occur on two occasions.

6.2 If any of the contraventions referred to in paragraph 6.1 occurs, then:

- (a) in the case of the occurrence of a contravention referred to in paragraph 6.1(a), the provisions of Schedule 17.2 (*Quality Regime, Remedial Plans and Remedial Agreements*) shall apply;
- (b) in the case of the occurrence of a contravention referred to in any of paragraphs 6.1(b), 6.1(c) and 6.1(d), RfL shall be entitled to exercise its rights pursuant to Schedule 17.1 (*Remedial Plans and Remedial Agreements*); and
- (c) without prejudice to paragraph 6.4, the Operator shall pay by way of Other Adjustment, RfL's reasonable costs incurred in respect of any independent audits RfL specifically carries out and RfL notifies the Operator of in order for RfL to satisfy itself that such contraventions will not occur again.

6.3 Without prejudice to paragraph 2.33 of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 6.1 occurs.

Remedial Plan in respect of material inconsistencies

6.4 If there are two or more instances where the Operator is required to carry out the calculation pursuant to paragraph 4.3, then:

- (a) RfL may require the Operator to instruct an independent third party nominated by RfL to carry out an investigation (at the Operator's cost);
- (b) such investigation shall focus on recommending changes to ensure that the Operator complies with its obligations in relation to this KPI Regime and is not therefore required to carry out the calculation pursuant to paragraph 4.4; and
- (c) the recommendations that the independent third party shall submit to RfL and the Operator within such time period as RfL may specify shall be deemed a Remedial Plan for the purposes of Schedule 17.1 and, subject to RfL's approval, the Operator shall cease implementing any Remedial Plan that it is currently implementing insofar as the purpose of that plan is to remedy the occurrence of material inconsistencies and instead implement that deemed Remedial Plan.

6.5 The Operator shall:

- (a) co-operate with the investigation carried out pursuant to paragraph 6.4(a);
- (b) assist the independent third party nominated by RfL to carry out that investigation in the finalisation of any related Remedial Plan; and

- (c) implement in accordance with its terms any Remedial Agreement agreed or determined pursuant to paragraph 6.6.

6.6 RfL and the Operator shall agree, or in the absence of such agreement, RfL shall reasonably determine the terms of the Remedial Agreement (prepared on the basis of the Remedial Plan concluded pursuant to paragraph 6.4(c)).

6.7 Any expenditure incurred by the Operator in complying with its obligations pursuant to paragraph 6.4 shall not be included in the remedial spending cap referred to in paragraph 5.1 of Schedule 17.2.

Remedial Plan in respect of persistent failures

6.8 If, in RfL's reasonable opinion, the Operator has persistently failed to meet the same Key Performance Indicator standard, then a contravention shall have occurred and the provisions of Schedule 17.1 shall apply.

7. PERFORMANCE AGAINST DEFAULT KPI BENCHMARKS

If a KPI Adjustment is made in any three Reporting Periods out of six consecutive Reporting Periods during the Concession Period in an amount that is equal to or in excess of £[REDACTED] (the *Default KPI Benchmark*), then an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

8. INDEXATION OF ADJUSTMENTS

Any KPI Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

9. CHANGING THE KEY PERFORMANCE INDICATORS

9.1 RfL may amend the requirements of any Key Performance Indicator from time to time and shall promptly notify the Operator of its intention to do so.

9.2 If RfL notifies the Operator of its intention to amend the requirements of any Key Performance Indicator pursuant to paragraph 9.1:

- (a) a Change shall occur; and
- (b) the Operator shall no later than 28 days thereafter advise RfL of those amendments (if any) it believes are reasonably required to the Fault Management System in order that that system continues to meet the requirements specified in paragraphs 20.1 and 20.2 of Schedule 2.2 (*List of Concession Services*).

APPENDIX 1 TO SCHEDULE 8.1
KEY PERFORMANCE INDICATORS

TABLE 1: STAFFING LEVELS FOR EACH KPI MEASURED STATION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigations	Notes
1	Ticket office opening hours (including both the main and excess fares window where present)	Hours of operation as required pursuant to paragraph 5 (<i>Staffing of Ticket Offices and Gatelines</i>) of Schedule 2.2 (<i>List of Concession Services</i>) whereby all products are capable of being retailed.	£[REDACTED] per hour (or part of an hour) per failure	<p>A ticket office may be closed outside the Peak for no more than 10 minutes at a time in any fixed 7-hour period (or part thereof) starting when the ticket office is scheduled to open and each subsequent 7-hour period running consecutively thereafter</p> <p>This is on the condition that:</p> <ul style="list-style-type: none"> (a) passengers are able to purchase an appropriate range of tickets and Oyster products as required by the provisions of this Agreement from a TVM that must accept credit/debit card payments and be able to provide change as necessary; (b) the closure has been logged and the ticket office shutter and excess fares window (where present) remain open and a printed and clear notice is displayed in each window advising passengers to use the TVMs if they need to purchase a ticket; and (c) a member of the Operator's staff must be available in the booking hall with necessary capabilities, to provide customer assistance to standard specified in the Quality Performance Regime. 	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigations	Notes
2	KPI Measured Station staff availability	A member of staff shall be available on each KPI Measured Station as required pursuant to paragraph 3 (<i>Staffing of Crossrail Stations</i>) of Schedule 2.2	£[REDACTED] per hour (or part of an hour) per failure	A member of staff need not be available for up to 10 minutes (taken as a single block outside the Peak) in any 7-hour period (or part thereof) starting when the station is scheduled to open and each subsequent 7-hour period running consecutively thereafter. Each period of the station staff being unavailable must not be consecutive with the other.	
3	[REDACTED]				
4a	[REDACTED]				
4b	[REDACTED]				
4c	[REDACTED]				

TABLE 2: EQUIPMENT AVAILABILITY STANDARDS FOR EACH KPI MEASURED STATION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
1	Ticket Vending Machines (including the ability to retail the full range of paper tickets and provide Oyster products and services as well as accepting cash and card payments)	100 hours per machine	£[REDACTED] per asset per hour (or part hour)	No mitigation.	
2	CIS Visual Displays defective or not showing relevant / accurate information (including part of the display screen being defective)	48 hours per display screen	£[REDACTED] per asset per hour (or part hour)	No mitigation.	
3	Electronic Service Update Boards	Allowed one day (taken in a single block) in each Reporting Period per ESUB	£[REDACTED] per asset per hour (or part hour)	Allowed one day (taken in a single block) unavailability in each Reporting Period per ESUB provided a timed, dated, neatly handwritten and accurate notice is placed alongside the defective ESUB, updated at least every 30 minutes during the Station Operating Day.	
4	KPI Measured Station public address system (either component(s) or system failure) that results in unintelligible or inaudible information	48 hours per station platform	£[REDACTED] per asset per hour (or part hour)	One speaker per KPI Measured Station may be defective for up to five consecutive days.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
5	Help Points	24 hours per device	£[REDACTED] per asset per hour (or part hour)	No mitigation.	
6	Lifts (at stations leased from Network Rail)	100 hours per lift	£[REDACTED] per lift per hour (or part hour)	No mitigation, with the exception of lifts undergoing renewal by Network Rail. The Operator is expected to engage with Network Rail and RfL to agree upon a programme of possessions that minimises the impact on customers.	Notwithstanding the requirement to maximise the availability of lifts, the Operator should ensure that any lift contaminated with bio- hazards is taken out of use immediately until the hazard has been satisfactorily removed The Operator is expected to engage with Network Rail to agree a programme of maintenance that minimises the impact on customers
7	Escalators (at stations leased from Network Rail)	100 hours per escalator	£[REDACTED] per escalator per hour (or part hour)	No mitigation, with the exception of escalators undergoing renewal by Network Rail.	The Operator is expected to engage with Network Rail to agree a programme of maintenance that minimises the impact on customers
8	Lifts (at stations leased from RfL (IM))	None	£[REDACTED] per lift per hour (or part hour)	Maximum liability two hours per day.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
9	Escalators (at stations leased from RfL (IM))	None	£[REDACTED] per escalator per hour (or part hour)	Maximum liability two hours per day.	
10	<p>Public Toilets Open and fully serviceable at each KPI Measured Station throughout the Station Operating Day with following facilities available:</p> <ul style="list-style-type: none"> • running water; • lockable cubicle doors; • personal hygiene and sanitary items; • flushing toilets; • toilet seats; • lighting and heating; and • hand-driers present and working 	N/A	£[REDACTED] per asset per hour (or part hour)	No mitigation.	Toilets are cleaned as part of the daily cleaning requirement

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
11	<p>Waiting shelters and waiting rooms</p> <p>Open and available for use at each KPI Measured Station throughout the Station Operating Day.</p> <p>Available for the purposes of this Key Performance Indicator means:</p> <ul style="list-style-type: none"> • all seats are available, complete and unlikely to mark or damage clothing; • any means of heating or cooling is operational; and • doors and glazing intact 	None	£[REDACTED] per asset hour (or part hour)	No mitigation.	Notwithstanding the requirement to maximise the availability of these facilities the Operator should ensure that any facility contaminated with bio-hazards is taken out of use immediately until the hazard has been satisfactorily removed
12	<p>KPI Measured Station lighting (public areas)</p> <p>KPI Measured Station lighting, canopy lighting and all illuminated signage is in fully working order</p>	N/A	£[REDACTED] per defective light in any 24 hour period	An individual light may be defective for up to seven days but not where there are three or more defective lights on the KPI Measured Station.	

TABLE 3: POSTER QUALITY STANDARDS (EXCLUDES 3RD PARTY ADVERTISING HOARDINGS) IN EACH KPI MEASURED STATION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Defect (per Unit unless otherwise stated)	Availability – permissible downtime per annum	Payment to RfL (£)	Mitigation	Notes
1	Damaged / defaced posters (this includes poorly installed or substantially misaligned posters and those damaged by water ingress or rendered partly illegible for any reason)	None	£[REDACTED] per poster per day (or part day)	No mitigation.	
2	Damaged / defaced Poster boards	None	£[REDACTED] per poster per day (or part day)	No mitigation.	
3	Engineering works, alternative timetable and other posters not present or are out-of-date	None	£[REDACTED] per poster per day (or part day)	Presence and accuracy of posters measured from noon the next day.	

TABLE 4: STATION CLEANING AND PREMISES MANAGEMENT STANDARDS FOR EACH KPI MEASURED STATION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
1	<p>Daily Light Cleaning</p> <p>Operator to implement a cleaning regime that it considers will achieve at every KPI Measured Station a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Minimum requirements for daily light cleaning, which may be supplemented in order to achieve a mean score of 80, are as follows:</p> <ul style="list-style-type: none"> • public areas: <ul style="list-style-type: none"> ○ sweep and mop all public areas including waiting rooms and waiting areas; ○ damp wipe all seats and handrails; ○ wipe away any marks on platform edge doors; ○ remove all chewing gum, animal faeces, fly posters (any item not authorised by RfL) and fly stickers (including glue); and ○ pick litter, leaves and loose vegetation and empty bins from all areas, including outside areas within three metres of the station boundary (as defined in the station lease); and • public toilets: <ul style="list-style-type: none"> ○ clean and disinfect toilets and replenish personal hygiene and sanitary items and alcohol hand cleaners as necessary. 	Twice daily: before Morning Peak and between 1300 and start of Evening Peak at each Operator Station	<p>Failure to carry out inputs set out in column 3 and meet the requirements of column 4 at £[REDACTED] per visit</p>	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
2	<p>Periodic Heavy Cleaning and Premises Management activities</p> <p>Operator to implement a cleaning regime that it considers will achieve at every KPI Measured Station a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Minimum requirements for periodic heavy cleaning, which may be supplemented in order to achieve a mean score of 80, are as follows:</p> <ul style="list-style-type: none"> • machine scrub all floors including forecourts and passages; • wash all windows (including ticket office windows) and paintwork; • clean all displays, including customer information screens, ESUBs and poster boards; • clean CCTV cameras and DOO CCTV cameras; • clean TVMs; • cut back all overhanging vegetation surrounding the station buildings, including platforms, signage and equipment; • remove litter recently exposed from the removal of vegetation; and • weed flower beds and cut grass. 	Once in every Reporting Period	<p>Failure to carry out inputs set out in column 3 and meet the requirements of column 4 at £[REDACTED] per visit</p>	
3	<p>Trackside Cleaning</p> <p>At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	No litter or vegetation on the trackside acceptable in any part of the KPI Measured Station	No mitigation.	<p>Irrespective of the planned removal date, after 83 full days have elapsed since the litter or vegetation on the trackside was identified, £[REDACTED] per</p>	<p>72 hours for the Operator to determine the earliest practical date for removal followed by removal no later than such agreed date and the plan for removal to be made available to RfL</p>

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
				day or part day	

TABLE 5: GRAFFITI AT EACH KPI MEASURED STATION

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Input (per Unit unless otherwise stated)	Standard	Response time	Payment to RfL (£)
1	<p>Graffiti (KPI Measured Stations) that does not require a possession or power isolation for removal</p> <p>At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	None acceptable in any part of KPI Measured Station	Cleaned / painted out within 12 opening hours, Monday to Sunday	Failure at £[REDACTED] per item per day (or part thereof)
2	<p>Graffiti (KPI Measured Stations) that does require a possession or power isolation for removal in accordance with the relevant Railway Group Standard</p> <p>At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	None acceptable in any part of KPI Measured Station	72 hours for the Operator to determine the earliest practical date for removal followed by removal no later than such agreed date and the plan for removal to be made available to RfL	<p>£[REDACTED] per item per day until removal plan is agreed between the Operator and Infrastructure Manager</p> <p>£[REDACTED] per item per day or part day beyond planned removal date (provided such date is less than 84 days from date the graffiti is identified)</p> <p>Irrespective of the planned removal date, after 83 full days have elapsed since the graffiti was identified, £[REDACTED] per item per day or part day</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Input (per Unit unless otherwise stated)	Standard	Response time	Payment to RfL (£)
3	Scratched Graffiti (KPI Measured Stations) At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2	None acceptable in any part of KPI Measured Station	Scratched items replaced / repaired within 24 hours, Monday to Sunday	Failure at £[REDACTED] per item per day or part thereof

TABLE 6: TRAIN CLEANING AND CONDITION STANDARDS

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
1	Exterior 48-hour Wash (Class 315 Units and Class 345 Units) Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2	Until (but excluding) the Stage 4 Start Date, each Class 315 Unit must be cleaned no more than 48 hours before it is operated to deliver a Passenger Service	95 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Class 315 Unit
2		Each Class 345 RLU deployed on the Eastern Section must, for so long as it is to be cleaned at Ilford Depot, be cleaned no more than 48 hours before it is operated to deliver a Passenger Service		£[REDACTED] per day or part of day per non-compliant Class 345 RLU
3		From (and including) the Stage 4 Start Date, each Class 345 FLU must be cleaned no more than 48 hours before it is operated to deliver a Passenger Service	100 per cent. compliance	£[REDACTED] per day or part day per non-compliant Class 345 FLU
4	Interior Daily Cleaning (Class 315 Units) Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2	<p>Until (but excluding) the Stage 4 Start Date, each Class 315 Unit must be cleaned prior to delivering a Passenger Service on the first Diagram Leg of its Diagram.</p> <p>Minimum requirements for interior daily clean, which may be supplemented in order to achieve a mean score of 80 are as follows:</p> <ul style="list-style-type: none"> • floor sweep; • remove litter; • empty bins; • remove spillages; and • clean windows. 	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant 8-car unit

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
5	<p>Interior Turnaround Clean</p> <p>Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Until (but excluding) the Stage 4 Start Date, each Class 315 Unit and Class 345 Unit must be cleaned prior to the next Diagram Leg where it is scheduled to operate in passenger service that day, except that this is not required for services terminating at Paddington (Crossrail) or West Drayton stations</p>	100 per cent. compliance	£[REDACTED] per missed turnaround clean
6	<p>Interior Weekly Clean (Class 315 Units)</p> <p>Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Until (but excluding) the Stage 4 Start Date, each Class 315 Unit must receive a supplementary interior clean every seven days for so long as it is expected to be used in the provision of the Passenger Services. Minimum requirements for interior weekly clean are as follows:</p> <ul style="list-style-type: none"> • vacuum seats; • replace soiled seat covers; • wet wash floors; • clean windows; and • wet wipe seat fittings, panels, light fittings and lumieres. 	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Class 315 Unit

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
7	Exterior 30-day wash (Class 315 Units and Class 345 Units) Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a clean appearance (that is, no noticeable dirt) to the following areas of each such Unit: <ul style="list-style-type: none"> • bodysides and roof; • driving end; • intermediate bodyend; and • underframe. 	Until (but excluding) the Stage 4 Start Date, each Class 315 Unit must receive a supplementary exterior wash every 30 days for so long as it is expected to be used in the provision of the Passenger Services.	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Class 315 Unit
		Until the Stage 4 Start Date, each Class 345 Unit stabled at Ilford Depot must receive a supplementary exterior wash every 30 days.	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Class 345 Unit
8	Graffiti (Trains) For every Unit in the Train Fleet, the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures identified in any Mystery Shopper Survey relating to this Key Performance Indicator	None allowed prior to train entering daily service.	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Unit
9	Graffiti (offensive) For every Unit in the Train Fleet	None allowed prior to train entering daily service.	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant vehicle , provided that where the Operator is obliged to make a payment to RfL in relation to any offensive graffiti on a vehicle, the Operator shall not also be obliged to make a payment to RfL in relation to any other non-offensive graffiti on the Unit of which that vehicle comprises part for so long as that offensive graffiti remains on that vehicle

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
10	Scratched Graffiti (Trains) For every Unit in the Train Fleet, the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2	Remove / replace within 48 hours.	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Unit
11	Seats, Perches and Handrails	Fully serviceable. Each Class 315 Unit has: <ul style="list-style-type: none"> no missing seats or covers; and no torn or soiled covers. 	100 per cent. compliance	£[REDACTED] per day or part of day per non-compliant Unit
12	Internal Lighting	Fully serviceable: Each Class 315 Unit has fully functioning lighting.	100 per cent. compliance	£[REDACTED] per day or part of day per failed light
13	Visual Passenger Information Systems (where fitted)	Fully serviceable: Each Class 315 Unit has fully functioning visual passenger information systems and display screens showing correct information.	100 per cent. compliance	£[REDACTED] per day or part of day per display screen
14	Internal CCTV and recording equipment (where fitted)	Fully serviceable: Each Class 315 Unit has fully functioning CCTV cameras and recording equipment.	100 per cent. compliance	£[REDACTED] per day or part of day per key system component (such as an individual camera, recording apparatus, system controller)
15	Public Address	Fully serviceable: Each Class 315 Unit has fully functioning, audible and intelligible Public Address.	100 per cent. compliance	£[REDACTED] per day or part of day per key system component (such as an individual speaker, microphone, system controller)

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
16	External Passenger Doors	Fully serviceable. Each Class 315 Unit has all doors working.	100 per cent. compliance	£[REDACTED] per door 1-2 doors locked out of service £[REDACTED] per door 3-5 doors locked out of service £[REDACTED] per door 6 or more doors locked out of service
17	Internal Passenger Doors	Fully serviceable. Each Class 315 Unit has all doors working.	100 per cent. compliance	£[REDACTED] per pair of doors locked out of service

APPENDIX 2 TO SCHEDULE 8.1

MEASURES USED TO INFORM KPI REGIME COMPLIANCE

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related MSS Regime measure (MSS Questionnaire Reference)
1	Station cleaning and premises management standards for each KPI Measured Station	Daily light cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 29 measures in aggregate terms:</p> <ul style="list-style-type: none"> • cleanliness of platform floors (S1.1a), platform walls (S1.1b) and ceilings (S1.1c); • level of litter on platform (S1.6) and on track (S1.7); • cleanliness of platform seating (S1.8b); • cleanliness of seating (S1.9c), floors (S1.9d), walls and ceilings (S1.9e) in waiting room or enclosed waiting areas; • cleanliness of glass Platform Edge Doors (S1.11); • level of litter in waiting room or enclosed waiting area (S1.9h); • cleanliness of walls (S3.8b) and ceilings (S3.8c) in subway from Ticket Hall to Street; • cleanliness of routeway floors (S2.1a), walls (S2.1b), and ceilings (S2.1c); • level of litter in all routeway areas including litter on lifts and escalators (S2.2); • cleanliness of lifts (S2.5b), escalators (S2.6b), and direction signs (S2.7b); • cleanliness of ticket hall floors (S3.1a), walls (S3.1b) and ceilings (S3.1c); • level of litter in Ticket Hall (S3.2), Ticket Office Windows (S3.6); • cleanliness of public toilets (S4.1b); • presence of Toilet Rolls, Hand Towels/ Working Hand Driers, Soap and Mirrors in Public Toilets (S4.1e); • cleanliness of floors in subway from Ticket Hall to Street (S3.8a); and • level of litter in subway from Ticket Hall to Street (S3.9).

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related MSS Regime measure (MSS Questionnaire Reference)
2	Station cleaning and premises management standards for each KPI Measured Station	Periodic heavy cleaning and premises management activities	<ul style="list-style-type: none"> The mean score achieved in relation to this KPI shall be the mean score of the 29 measures included for daily light cleaning under item 1 of this table.
3	Station cleaning and premises management standards for each KPI Measured Station	Trackside cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure:</p> <ul style="list-style-type: none"> Cleanliness of trackside walls (S1.2).
4	Graffiti in each KPI Measured Station	Graffiti (Stations) that does not require a possession or power isolation for removal	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> level of non-scratched Graffiti on platforms but excluding trackside walls (S1.4b) and in waiting rooms or enclosed waiting areas (S1.9g); level of non-scratched Graffiti in routeways (S2.3b), in lifts (2.5d) and on escalators (2.6d); and level of non-scratched Graffiti in Ticket Hall (S3.3b), in public toilets (S4.1d), and from Ticket Hall to Street (S3.10b).
5	Graffiti in each KPI Measured Station	Graffiti (Stations) that does require a possession or power isolation for removal	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms:</p> <ul style="list-style-type: none"> level of trackside graffiti (S1.5).
6	Graffiti in each KPI Measured Station	Scatched Graffiti (Stations)	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> level of scratched Graffiti on platforms but excluding trackside walls (S1.4a) and in waiting rooms or enclosed waiting areas (S1.9f); level of scratched Graffiti in routeways (S2.3a), in lifts (2.5c) and on escalators (2.6c); and level of scratched Graffiti in Ticket Hall (S3.3a), in public toilets (S4.1c), and from Ticket Hall to Street (S3.10a).
7	Train maintenance and cleaning standards	Exterior 48-hour wash Class 315 Unit and Class 345 Unit	<p>The MSS score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms:</p> <ul style="list-style-type: none"> external cleanliness of Unit (T1.01).

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related MSS Regime measure (MSS Questionnaire Reference)
8	Train maintenance and cleaning standards	Interior daily cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> • cleanliness of ceilings and surfaces (T1.1) and internal floors (T1.2); • level of litter (T1.3); and • cleanliness of train seats (T1.6a), train perches (T1.6b), arm rests between seats (T1.7a), hand rails and hangers (T1.8b) and windows (T1.13)
9	Train maintenance and cleaning standards	Interior weekly cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> • cleanliness of ceilings and surfaces (T1.1) and internal floors (T1.2); • level of litter (T1.3); and • cleanliness of train seats (T1.6a), train perches (T1.6b), arm rests between seats (T1.7a), hand rails and hangers (T1.8b) and windows (T1.13).
10	Train maintenance and cleaning standards	Interior turnaround cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms:</p> <ul style="list-style-type: none"> • level of litter (T1.3).
11	Train maintenance and cleaning standards	Graffiti (Trains)	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 2 measures in aggregate terms:</p> <ul style="list-style-type: none"> • external level of other (non-scratched) Graffiti (T1.12); and • location of other (non-scratched) Graffiti on train exterior (T1.12a).
12	Train maintenance and cleaning standards	Scratched Graffiti (Trains)	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms:</p> <ul style="list-style-type: none"> • external level of trackside graffiti (T1.11).

SCHEDULE 8.2

MSS Regime

1. INTRODUCTION

Throughout the Concession Period, RfL or its nominee will conduct Mystery Shopper Surveys to ascertain the experience of passengers on Passenger Services and at stations. Each Mystery Shopper Survey will investigate the following main aspects of that experience:

- (a) on the train (including the condition, cleanliness, brightness, temperature, noise levels, quality of ride and audibility of announcements); and
- (b) at the stations (including the condition, cleanliness, state of repair, conditions of the advertisements and equipment on the station, routeways, platforms, seating, waiting areas, ticket halls, toilets and subways connected to or from the ticket halls and the level of crowding in public areas).

2. METHODOLOGY AND SURVEYS

Carrying out of surveys

2.1 Mystery Shopper Surveys will be conducted quarterly:

- (a) by RfL or a specialist contractor appointed by RfL with experience of conducting similar surveys for RfL;
- (b) in relation to:
 - (i) an Operator Station, from the date the Operator first becomes the Facility Owner of that Operator Station;
 - (ii) an Operator Access Stations on the Central Operating Section, from the date that Concession Employees first provide platform services on any platform of any such station; and
 - (iii) Passenger Services on a Route, from the date the Operator first commences operating Passenger Services on that Route; and
- (c) in accordance with the MSS Methodology and by populating the MSS Questionnaire across a number of visits to stations and a number of trips on the Passenger Services.

2.2 RfL shall:

- (a) procure that the results of any Mystery Shopper Survey are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance against the MSS Target Benchmark*).

2.3 The results of any Mystery Shopper Survey will be used to determine the Operator's performance against the criteria referred to in paragraph 1 (*Introduction*) (as more particularly

set out in the MSS Methodology) in accordance with paragraph 3 (*Performance against the MSS Target Benchmark*).

Changing the MSS Methodology and/or MSS Questionnaire

2.4 RfL shall be entitled to change the MSS Methodology and/or MSS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this MSS Regime, a Change shall occur.

3. PERFORMANCE AGAINST THE RELEVANT MSS BENCHMARKS

Each Mystery Shopper Survey to produce an MSS Score

3.1 Each Mystery Shopper Survey will be conducted over a Survey Period and will produce an overall score (the *MSS Score*) of the Operator's performance in the relevant Survey Period against the criteria specified in the MSS Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

Calculating the Operator's performance against the Relevant MSS Benchmark

3.2 As soon as reasonably practicable after completion of any Mystery Shopper Survey (the *Relevant Mystery Shopper Survey*), RfL shall calculate the Operator's performance in relation to the Relevant MSS Benchmark on a moving annual average basis (the *MSS MAA Score*) in accordance with, subject to paragraph 4 (*Mystery Shopper Surveys in the first Concession Year*), the following:

$$\text{MSS}_{\text{maa}} = \frac{\text{LMSSS} + \text{PMSSS}}{4}$$

where:

MSS_{maa} means the MSS MAA Score;

LMSSS means the latest MSS Score determined pursuant to the Relevant Mystery Shopper Survey; and

PMSSS means the aggregate of the MSS Scores for the three Mystery Shopper Surveys carried out immediately prior to the Relevant Mystery Shopper Survey.

Performance equal to or better than the Relevant MSS Target Benchmark

3.3 If following any Relevant Mystery Shopper Survey, the MSS MAA Score in respect of the Operator's performance against the Relevant MSS Target Benchmark is equal to or more than that Relevant MSS Target Benchmark, then no further action shall arise.

Performance worse than the Relevant MSS Target Benchmark

3.4 If following any Relevant Mystery Shopper Survey, the MSS MAA Score is less than the Relevant MSS Target Benchmark, then such event shall be recorded in the Periodic Concession Report for the relevant Reporting Period and included as an agenda item of the next Concession Performance Meeting.

Performance worse than the Relevant MSS Remedial Plan Benchmark

3.5 If following any Relevant Mystery Shopper Survey, the MSS MAA Score is equal to or less than the Relevant MSS Remedial Plan Benchmark, then a contravention of this Agreement shall have occurred and the provisions of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

4. MYSTERY SHOPPER SURVEYS IN THE FIRST 12 MONTHS

Where RfL or its nominee has conducted less than four Mystery Shopper Surveys, RfL shall, for the purpose of performing the calculation of *PMSSS* specified in paragraph 3.2, aggregate the MSS Scores that the Operator achieves in the first 12 months of the Concession Period with notional MSS Scores at the Relevant MSS Target Benchmark for such number of Mystery Shopper Surveys as are necessary to generate an MSS MAA Score in accordance with paragraph 3.2.

APPENDIX TO SCHEDULE 8.2

MSS BENCHMARKS

Column 1	Column 2	Column 3
Concession Year	MSS Target Benchmark (%)	MSS Remedial Plan Benchmark (%)
Year 1 (May 2015 to Mar 2016))	70	60
Year 2 (Apr 2016 to Mar 2017)	75	65
Year 3 (Apr 2017 to Mar 2018)	80	70
Year 4 (Apr 2018 to Mar 2019)	85	75
Year 5 (Apr 2019 to Mar 2020)	85	75
Each subsequent year until end of Year 8	85	75
Year 9 (1 Apr 2023 to 27 May 2023) <div style="border: 1px solid black; padding: 5px; width: fit-content;"> If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023) </div> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024) </div>	85	75
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	85	75

Column 1	Column 2	Column 3
Concession Year	MSS Target Benchmark (%)	MSS Remedial Plan Benchmark (%)
<p data-bbox="432 383 719 533">Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)</p> <div data-bbox="453 539 699 741" style="border: 1px solid black; padding: 5px;"> <p data-bbox="469 555 683 734">If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)</p> </div>	85	75

SCHEDULE 8.3

Customer Satisfaction Regime

1. PURPOSE

The purpose of this Customer Satisfaction Regime is to record customer perception of the Operator's provision of the Passenger Services and the relevant Station Services and to incentivise the Operator's performance of those services by measuring levels of that perception against specified thresholds.

2. SURVEYS AND METHODOLOGY

Carrying out of surveys

2.1 RfL or its nominee will carry out Customer Satisfaction Surveys in accordance with the CSS Methodology by populating the CSS Questionnaire across a number of visits to Crossrail Stations, trips on Passenger Services and replacement bus services both during and in advance of travel.

2.2 The Operator shall co-operate with the carrying out of any Customer Satisfaction Survey by granting access on trains and at Crossrail Stations to RfL (or its nominee) to carry out Customer Satisfaction Surveys and by otherwise co-operating with RfL (in such manner as RfL may reasonably direct) in order to enable RfL or its nominee to carry out Customer Satisfaction Surveys.

2.3 The results of any Customer Satisfaction Survey carried out during the Concession Period will be used to determine the Operator's performance against this Customer Satisfaction Regime in accordance with paragraphs 3 (*Performance Against the CSS Target Benchmarks*) to 7 (*Customer Satisfaction Surveys in the first Concession Year*) (inclusive).

Changing the CSS Methodology and/or CSS Questionnaire

2.4 RfL shall be entitled to change the CSS Methodology and/or CSS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Customer Satisfaction Regime, a Change shall occur.

3. PERFORMANCE AGAINST THE RELEVANT CSS BENCHMARKS

Each Customer Satisfaction Survey to produce a CSS Score

3.1 Each Customer Satisfaction Survey will be conducted over a Survey Period and will produce a score (each a *CSS Score*) of the Operator's performance in respect of each of the CSS Headline Measure, the CSS Information Measure and the CSS Security Measure for that Survey Period against the criteria specified in the CSS Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

Calculating the Operator's performance against the Relevant CSS Target Benchmark

3.2 As soon as reasonably practicable after completion of any Customer Satisfaction Survey (the *Relevant Customer Satisfaction Survey*), RfL shall calculate the Operator's performance in relation to each of the Relevant CSS Headline Target Benchmark, Relevant CSS Information Target Benchmark or Relevant CSS Security Target Benchmark, in each

case on a moving annual average basis (the **CSS MAA Score**) in accordance with the following, subject to paragraphs 6.2 and 7 (*Surveys in first Concession Year*):

$$CSS_{\text{maa}} = \frac{LCSSS + PCSSS}{4}$$

where:

CSS_{maa} means the CSS MAA Score;

LCSSS means the latest CSS Score for, as appropriate, the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure, in each case determined pursuant to the Relevant Customer Satisfaction Survey; and

PCSSS means the aggregate of the CSS Scores for the three Customer Satisfaction Surveys carried out immediately prior to the Relevant Customer Satisfaction Survey in respect of, as appropriate, the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure.

Payments in relation to the Headline Measure

3.3 If following the Relevant Customer Satisfaction Survey, the CSS MAA Score is equal to the Relevant CSS Headline Target Benchmark, then no payment shall be made by RfL to the Operator or vice versa, in each case in relation thereto.

3.4 If following the Relevant Customer Satisfaction Survey, the CSS MAA Score is either less or more than the Relevant CSS Headline Target Benchmark, then the following amount shall be payable by way of a CSS Adjustment made in accordance with paragraph 3.8:

$$CSSA = HR \times SF$$

where:

CSSA means the CSS Adjustment:

- (a) payable by RfL to the Operator where the CSS MAA Score is more than the Relevant CSS Headline Target Benchmark; and
- (b) payable by the Operator to RfL where the CSS MAA Score is less than the Relevant CSS Headline Target Benchmark;

HR means the headline rate, which shall be, where the CSS MAA:

- (a) is more than the Relevant CSS Headline Target Benchmark, a bonus equal to the aggregate of £[REDACTED] for every 0.1 point that the CSS MAA Score is more than the Relevant CSS Headline Target Benchmark; and
- (b) is less than the Relevant CSS Headline Target Benchmark, a deduction equal to the aggregate of £[REDACTED] for every 0.1 point that the CSS MAA Score is less than the Relevant CSS Headline Target Benchmark; and

SF means the CSS Stage Factor.

Payments in relation to the Information and Security Measures

3.5 If following any Customer Satisfaction Survey, the CSS MAA Score

- (a) in relation to the CSS Information Measure is equal to the Relevant CSS Information Target Benchmark, then no payment shall be made by RfL to the Operator or vice versa; and
- (b) in relation to the CSS Security Measure, is equal to the Relevant CSS Security Target Benchmark, then no payment shall be made by RfL to the Operator or vice versa.

3.6 If following any Customer Satisfaction Survey, the CSS MAA Score in relation to the CSS Information Measure is either less than or more than the Relevant CSS Information Target Benchmark, then the following amount shall be payable by way of a CSS Adjustment made in accordance with paragraph 3.8:

$$\text{CSSA} = \text{IR} \times \text{SF}$$

where:

CSSA means the CSS Adjustment:

- (a) payable by RfL to the Operator where the CSS MAA Score is more than the Relevant CSS Information Target Benchmark; and
- (b) payable by the Operator to RfL where that CSS MAA Score is less than the Relevant CSS Information Target Benchmark;

IR means the information rate, which shall be, where the CSS MAA Score:

- (i) is more than the Relevant CSS Information Target Benchmark, a bonus equal to the aggregate of £[REDACTED] for every 0.1 point that the CSS MAA Score is more than the Relevant CSS Information Target Benchmark; and
- (ii) is less than the Relevant CSS Information Target Benchmark, a deduction equal to £[REDACTED] for every 0.1 point that the CSS MAA Score is less than the Relevant CSS Information Target Benchmark; and

SF means the CSS Stage Factor.

3.7 If following any Customer Satisfaction Survey, the CSS MAA Score in relation to the Relevant CSS Security Measure is either less than or more than the Relevant CSS Security Target Benchmark, then the following amount shall be payable by way of a CSS Adjustment made in accordance with paragraph 3.8:

$$\text{CSSA} = \text{SR} \times \text{SF}$$

where:

CSSA means the CSS Adjustment:

- (a) payable by RfL to the Operator where the CSS MAA Score is more than the Relevant CSS Security Target Benchmark; and
- (b) payable by the Operator to RfL where the CSS MAA Score is less than the Relevant CSS Security Target Benchmark Score;

SR means the security rate, which shall be, where the CSS MAA Score:

- (i) is more than the Relevant CSS Security Target Benchmark, a bonus equal to the aggregate of £[REDACTED] for every 0.1 point that the CSS MAA Score is more than the Relevant CSS Security Target Benchmark; and
- (ii) is less than the Relevant CSS Security Target Benchmark, a deduction equal to £[REDACTED] for every 0.1 point that the CSS MAA Score is less than the Relevant CSS Security Target Benchmark; and

SF means the CSS Stage Factor.

CSS Adjustments

3.8 Any CSS Adjustment to be made following the calculation of any CSS MAA Score shall be the aggregate of the sums calculated pursuant to paragraphs 3.4, 3.6 and 3.7 and shall be made on the Payment Date of the next Reporting Period after the completion of the Relevant Customer Satisfaction Survey, in each case by way of adjustment to the Concession Payment to be made on that Payment Date in accordance with paragraph 2.4 of Schedule 11.1 (*Concession Payments*):

4. RE-BENCHMARKING OF CSS TARGET BENCHMARKS

Calculation of the Annual Average CSS MAA Score

4.1 Not more than one Reporting Period after the end of each Concession Year, RfL shall calculate the average of CSS MAA Scores of the Operator's performance in that Concession Year in respect of each of the CSS Headline Measure, the CSS Information Measure and the CSS Security Measure by aggregating the CSS MAA Scores for any such measure from each of the Customer Satisfaction Surveys carried out in that Concession Year and dividing by the number of Customer Satisfaction Surveys carried out in that Concession Year (the *Annual Average CSS MAA Score*).

Annual Average CSS MAA Score equal to CSS Target Benchmark

4.2 For so long as the Annual Average CSS MAA Score in relation to any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure is equal to the CSS Target Benchmark for that measure, then:

- (a) the CSS Target Benchmark shall not be re-benchmarked for any Concession Year; and
- (b) the CSS Target Benchmark for that measure and the relevant Concession Year shall be as set out in the relevant column in the table in the Appendix that corresponds to that Concession Year.

Annual Average CSS MAA Score more or less than CSS Target Benchmark

4.3 Where the Annual Average CSS MAA Score in any Concession Year (the *Preceding Concession Year*) in relation to any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure is more or less than the CSS Target Benchmark for the Preceding Concession Year and that measure, then the CSS Target Benchmark for the next Concession Year (the *Reference Concession Year*) and that measure shall be re-benchmarked in according with the following:

$$CTB_R = CTB + \sum (AAS_p - CTB_p) \times 0.5$$

where:

CTB_R means the CSS Target Benchmark for the Reference Concession Year and that measure;

\sum means the summation of each Preceding Concession Year for the relevant measure;

CTB means the CSS Target Benchmark for the Reference Concession Year and that measure specified in the relevant column of the table in the Appendix;

AAS_p means the Annual Average CSS MAA Score for the Preceding Concession Year and that measure; and

CTB_p means the CSS Target Benchmark for the Preceding Concession Year and that measure.

5. PERFORMANCE AGAINST CSS REMEDIAL PLAN BENCHMARKS

Performance better than any CSS Remedial Plan Benchmarks

5.1 If following the Relevant Customer Satisfaction Survey, the CSS Score for that survey in respect of each of the CSS Headline Measure, CSS Information Measure and the CSS Security Measure is more than respectively, the Relevant CSS Headline Remedial Plan Benchmark, Relevant CSS Information Remedial Plan Benchmark and Relevant CSS Security Remedial Plan Benchmark, then no further action shall arise.

Performance worse than any CSS Remedial Plan Benchmarks

5.2 If following the Relevant Customer Satisfaction Survey, the CSS Score for that survey in respect of any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure is equal to or less than respectively, the Relevant CSS Headline Remedial Plan Benchmark, the Relevant CSS Information Remedial Plan Benchmark or the Relevant CSS Security Remedial Plan Benchmark, then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of paragraph 2 (*Remedial Plan Notices*) of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

5.3 The Operator shall continue to implement any Remedial Plan in accordance with its terms that the Operator has been required to implement pursuant to Schedule 17.2 due to the occurrence of any contravention pursuant to paragraph 5.2, notwithstanding the fact that any Stage Start Date occurs during that period of implementation.

6. PERFORMANCE AGAINST CSS DEFAULT BENCHMARKS

Performance better than any CSS Default Benchmark

6.1 If following the Relevant Customer Satisfaction Survey, the CSS MAA Score is more than each of the Relevant CSS Headline Default Benchmark, the Relevant CSS Information Default Benchmark and the Relevant CSS Security Default Benchmark, then no further action shall arise.

Performance worse than any CSS Default Benchmark

6.2 If the CSS MAA Score in respect of any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure is equal to or less than respectively, the Relevant CSS Headline Default Benchmark, Relevant CSS Information Default Benchmark or Relevant CSS Security Default Benchmark, then:

- (a) an Event of Default shall have occurred; and
- (b) the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply,

provided that for the purpose of this paragraph 6, where any Customer Satisfaction Survey is carried out within one Railway Period of the occurrence of any industrial action by the Concession Employees that affects the provision of the Concession Services, the CSS Score for each such Customer Satisfaction Survey (each an *Affected Customer Satisfaction Survey*) shall be disregarded from the calculation of *PCSSS* specified in paragraph 3.2 and substituted instead with the CSS Score, subject to paragraph 7 (*Customer Satisfaction Surveys in the first Concession Year*), of such number of Customer Satisfaction Surveys that pre-date the Affected Customer Satisfaction Surveys as are necessary to calculate *PCSSS* as specified in paragraph 3.2.

7. CUSTOMER SATISFACTION SURVEYS IN THE FIRST 12 MONTHS

Where RfL or its nominee has conducted less than four Customer Satisfaction Surveys, RfL shall, for the purpose of performing the calculation of *PCSSS* specified in paragraph 3.2, aggregate the CSS Scores that the Operator achieves in the first 12 months of the Concession Period with notional CSS Scores at each of the Relevant CSS Headline Target Benchmark, the Relevant CSS Information Target Benchmark and the Relevant CSS Security Target Benchmark for such number of notional Customer Satisfaction Surveys as are necessary to generate a CSS MAA Score in accordance with paragraph 3.2 for each of the CSS Headline Measure, CSS Information Measure and CSS Security Measure.

8. INDEXATION OF ADJUSTMENTS

Any CSS Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

APPENDIX TO SCHEDULE 8.3

CSS BENCHMARKS

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	CSS Headline Target Benchmark	CSS Headline Remedial Plan Benchmark	CSS Headline Default Benchmark	CSS Information Target Benchmark	CSS Information Remedial Plan Benchmark	CSS Information Default Benchmark	CSS Security Target Benchmark	CSS Security Remedial Plan Benchmark	CSS Security Default Benchmark
Year (May 2015 to Mar 2016)	80	77	70	72	69	62	83	80	73
Year 2 (Apr 2016 to Mar 2017)	82	79	72	76	73	66	84	81	74
Year 3 (Apr 2017 to Mar 2018)	83	80	73	80	77	70	85	82	75
Year 4 (Apr 2018 to Mar 2019)	84	81	74	85	82	75	86	83	76
Year 5 (Apr 2019 to Mar 2020)	85	82	75	85	82	75	86	83	76
Each subsequent year until end of Year 8	85	82	75	85	82	75	86	83	76
Year 9 (1 Apr 2023 to 27 May 2023)									
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	85	82	75	85	82	75	86	83	76
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)									

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	CSS Headline Target Benchmark	CSS Headline Remedial Plan Benchmark	CSS Headline Default Benchmark	CSS Information Target Benchmark	CSS Information Remedial Plan Benchmark	CSS Information Default Benchmark	CSS Security Target Benchmark	CSS Security Remedial Plan Benchmark	CSS Security Default Benchmark
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	85	82	75	85	82	75	86	83	76
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	85	82	75	85	82	75	86	83	76
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)									

SCHEDULE 8.4

Quality Performance Regime

1. PURPOSE

Throughout the Concession Period, RfL or its nominee will conduct Station & Staff Information Surveys to ascertain the quality of provision of customer service by Concession Employees at stations, on trains and on replacement bus services. Each Station & Staff Information Survey will investigate the following main aspects of that experience:

- (a) the provision of information;
- (b) Concession Employee appearance; and
- (c) Concession Employee behaviour.

2. METHODOLOGY AND SURVEYS

Carrying out surveys

2.1 Station & Staff Information Surveys will be conducted quarterly:

- (a) by RfL or a specialist contractor appointed by RfL with experience of conducting similar surveys for RfL;
- (b) in relation to:
 - (i) an Operator Station, from the date the Operator first becomes the Facility Owner of that Operator Station;
 - (ii) an Operator Access Station on the Central Operating Section, from the date that Concession Employees first provide services on any platform of any such station; and
 - (iii) Passenger Services that start or finish:
 - (A) on the Eastern Section, from the date the Operator first commences operating Passenger Services on the Eastern Section; and
 - (B) on the Western Section from the date the Operator first commences operating Passenger Services on the Western Section; and
- (c) in accordance with the QPR Methodology and by populating the Station & Staff Information Survey across a number of visits to stations and a number of trips on the Passenger Services and on replacement bus services.

2.2 RfL shall:

- (a) procure that the results of any Station & Staff Information Survey are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not

be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance Against the QPR Target Benchmark*).

2.3 The results of any Station & Staff Information Survey will be used to determine the Operator's performance against the criteria referred to in paragraph 1 (*Purpose*) (as more particularly set out in the QPR Methodology) in accordance with paragraph 3.

Changing the QPR Methodology and/or Station & Staff Information Survey

2.4 RfL shall be entitled to change the QPR Methodology and/or Station & Staff Information Survey, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Quality Performance Regime, a Change shall occur.

3. PERFORMANCE AGAINST THE RELEVANT QPR TARGET BENCHMARKS

Each Station & Staff Information Survey to produce a QPR Score

3.1 Each Station & Staff Information Survey will be conducted over a Survey Period and will produce an overall score (the *QPR Score*) of the Operator's performance in the relevant Survey Period in accordance with the Station & Staff Information Survey and the QPR Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

Payments in relation to the Relevant QPR Target Benchmark

3.2 If following a Station & Staff Information Survey, the QPR Score for that survey is equal to or more than the Relevant QPR Target Benchmark, then no payment shall be made by the Operator to RfL in relation thereto.

3.3 If following a Station & Staff Information Survey, the QPR Score for that survey is less than the Relevant QPR Target Benchmark, then the following amount shall be payable by the Operator to RfL by way of a Quality Performance Adjustment made in accordance with paragraph 2.4 of Schedule 11.1 (*Concession Payments*):

$$QPA = \text{£R} \times \text{SF}$$

where:

QPA means the QPR Performance Adjustment for the next Reporting Period after the completion of the Survey Period relating to that Station & Staff Information Survey;

£R means the amount derived from applying the rate of £[REDACTED] for every 0.1 point between the Relevant QPR Target Benchmark and that QPR Score; and

SF means the QPR Stage Factor that applies on the first day of the relevant Survey Period, including where any such Survey Period occurs partly during one Stage and partly during another Stage.

4. PERFORMANCE AGAINST THE RELEVANT QPR REMEDIAL PLAN BENCHMARKS

If following any Station & Staff Information Survey, the QPR Score for that survey is equal to or less than the Relevant QPR Remedial Plan Benchmark, then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

5. INDEXATION OF VALUES IN THIS QUALITY PERFORMANCE REGIME

Any QPR Performance Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

APPENDIX TO SCHEDULE 8.4

QUALITY PERFORMANCE REGIME BENCHMARKS

Column 1	Column 2	Column 3	Column 4
Concession Year	Survey Period	QPR Target Benchmark	QPR Remedial Plan Benchmark
Year 1 (May 2015 to Mar 2016))	2	82	79
	3	84	81
	4	86	83
Year 2 (Apr 2016 to Mar 2017)	1	88	85
	2	90	87
	3	91	88
	4	92	89
Year 3 (Apr 2017 to Mar 2018)	1	92	89
	2	92	89
Each subsequent Year until end of Year 8	Each subsequent Survey Period until the end of Year 8	92	89
Year 9 (1 Apr 2023 to 27 May 2023)	Each subsequent Survey Period comprising the extension / continuation	92	89
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)			
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)			
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	Each subsequent Survey Period comprising the extension / continuation	92	89
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	Each subsequent Survey Period comprising the extension / continuation	92	89
If up to 7 Reporting Period extension (Potentially 24 May 2025 to 6 Dec 2025)			

SCHEDULE 8.5

Ticket Queuing Time Regime

1. INTRODUCTION

Throughout the Concession Period, RfL or its nominee will conduct Ticket Queuing Time Surveys to ascertain the queuing time of passengers at ticket offices and TVMs at Crossrail Stations.

2. METHODOLOGY AND SURVEYS

Carrying out surveys

2.1 Ticket Queuing Time Surveys will be conducted quarterly:

- (a) by RfL or a specialist contractor appointed by RfL;
- (b) in relation to any ticket office or TVM:
 - (i) located at any Operator Station, from the date the Operator first becomes the Facility Owner of that Operator Station;
 - (ii) located at any Operator Access Station, from the date the Operator first commences the management of any ticket retail facility located at that Operator Access Station; and
- (c) by recording the queuing times at certain Crossrail Stations chosen in accordance with the Ticket Queuing Time Methodology.

2.2 RfL shall:

- (a) report the results of any Ticket Queuing Time Survey to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance Against the ticket queuing Time Target Benchmark*).

2.3 The results of any Ticket Queuing Time Survey will be used to determine the Operator's performance against this Ticket Queuing Time Regime in accordance with paragraph 3.

Changing the Ticket Queuing Time Methodology

2.4 RfL shall be entitled to change the Ticket Queuing Time Methodology, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Ticket Queuing Time Regime, a Change shall occur.

3. PERFORMANCE AGAINST THE TICKET QUEUING TIME TARGET BENCHMARK

Comparison against Ticket Queuing Time Target Benchmark

3.1 Each Ticket Queuing Time Survey will be conducted over a Survey Period and will ascertain the queuing times of queues at each ticket office and TVM at any Crossrail Station surveyed in the relevant Survey Period, and of those queuing times at that Crossrail Station, the percentage of queuing times that were less than or equal to three minutes (the *Ticket Queuing Time Score*). The first Survey Period shall commence on Start Date.

3.2 As soon as reasonably practicable after completion of any Ticket Queuing Time Survey, RfL shall:

- (a) calculate the Operator's performance in relation to the Ticket Queuing Time Target Benchmark by comparing the Ticket Queuing Time Score of that Ticket Queuing Time Survey against that benchmark; and
- (b) set out that comparison in the relevant report produced pursuant to paragraph 2.2(a).

Performance worse than Ticket Queuing Time Target Benchmark

3.3 If following any Ticket Queuing Time Survey, the Ticket Queuing Time Score of any Ticket Queuing Time Survey in relation to any Crossrail Station is below the Ticket Queuing Time Target Benchmark, the Operator shall as soon as reasonably practicable after receipt of that report provide RfL with a written account:

- (a) explaining why that Ticket Queuing Time Score was below the Ticket Queuing Time Target Benchmark; and
- (b) detailing what reasonable additional steps the Operator will take, including where appropriate, improving the redeployment of its existing resources (including its retailing equipment and ticket office and other retailing employees) and procuring or recruiting, as appropriate, additional resources, to ensure that the Ticket Queuing Time Score of any future Ticket Queuing Time Survey is equal to or better than the Ticket Queuing Time Target Benchmark.

3.4 RfL shall within 14 days of receipt of any written account pursuant to paragraph 3.3, provide the Operator with its reasonable opinion as to whether the additional steps the Operator has proposed in that account will ensure that the Ticket Queuing Time Score of any future Ticket Queuing Time Survey is equal to or better than the Ticket Queuing Time Target Benchmark.

3.5 The Operator shall implement the proposals set out in any written account it has submitted pursuant to paragraph 3.3, as amended in accordance with RfL's reasonable opinion provided pursuant to paragraph 3.4, but at all times subject to paragraph 3.6.

3.6 The reasonable additional steps that the Operator may be required to take pursuant to any written account submitted pursuant to paragraph 3.3 shall not require the Operator to spend more than £[REDACTED] per annum, an amount as at the Indexation Base Month and indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

SCHEDULE 8.6

Information about Journeys

1. JOURNEY TIME METRIC

1.1 RfL will during the Concession Period for the purpose of monitoring trends in journey time performance and preparing business cases for future investments in increased capacity, monitor all time-based aspects of a passenger's journey in a single measure of performance, which will include time spent:

- (a) purchasing tickets;
- (b) in Crossrail Stations, including time moving to and from platforms;
- (c) waiting on platforms;
- (d) on Passenger Services; and
- (e) interchanging,

(the *Journey Time Metric*).

1.2 RfL will generate the data that comprises the Journey Time Metric by periodically surveying the metrics referred to in paragraph 1.1.

1.3 The Operator shall:

- (a) co-operate with RfL in generating the data that comprises the Journey Time Metric by providing or procuring the provision of access for surveys to be carried out at Crossrail Stations; and
- (b) provide RfL on request with its expert opinion of the trends in journey time performance that are evident from the data that comprises the Journey Time Metric.

2. NATIONAL PASSENGER SURVEYS

2.1 The Operator agrees with RfL that:

- (a) the Secretary of State or his representative or agent may measure the level of passenger satisfaction with relevant Concession Services through the carrying out of National Passenger Surveys;
- (b) the Secretary of State shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
- (c) the Operator shall grant access on trains or at stations to the Secretary of State or his representative or agent to carry out National Passenger Surveys;
- (d) the Operator shall co-operate with the Secretary of State or his representative or agent (in such manner as the Secretary of State may reasonably request or as RfL may reasonably direct) in order to enable the Secretary of State or his representative or agent to carry out National Passenger Surveys; and

- (e) the Secretary of State and/or RfL may, from time to time, publish the results of each National Passenger Survey.

2.2 RfL shall procure that:

- (a) the findings of any National Passenger Survey are made available by the Secretary of State to the Operator within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

SCHEDULE 9
REVENUE PROTECTION INCENTIVE REGIME

Schedule 9: **Revenue Protection Incentive Regime**
Appendix: **Notional Forecast Ticket Revenue**

SCHEDULE 9

Revenue Protection Incentive Regime

1. GENERAL TICKET REVENUE PROTECTION OBLIGATIONS

The Operator shall:

- (a) efficiently and effectively protect Ticket Revenue and implement measures in line with the retail obligations set out in Schedule 3.2 (*Fares Selling*) and the revenue protection obligations set out in Schedule 3.3 (*Ticket and Non-Ticket Revenue*), in each case to ensure that passengers are in possession of a valid ticket before boarding a train; and
- (b) ensure regular and effective Ticket Revenue protection activity across all Passenger Services that start and finish on the Eastern Section and Western Section at all times during all periods of operation of those Passenger Services, without diminishing the wider passenger interests of:
 - (i) safety required by applicable Law; or
 - (ii) security and customer service required by this Agreement.

2. TICKETLESS TRAVEL SURVEYS

Carrying out surveys

2.1 RfL or its nominee shall carry out Ticketless Travel Surveys in accordance with the Ticketless Travel Survey Methodology across the Passenger Services that either start or finish on the Eastern Section or the Western Section and during all periods of operation of those Passenger Services.

Results of surveys and representations

2.2 RfL shall:

- (a) procure that the results of any Ticketless Travel Survey are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of any such survey, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance against the Relevant Ticketless Travel Target*).

2.3 The results of:

- (a) the Ticketless Travel Survey for any Survey Period shall be used by RfL to calculate the Ticketless Travel East Rate in that Survey Period in accordance with the Ticketless Travel Survey Methodology; and
- (b) the Ticketless Travel Survey for any Survey Period that occurs after the Stage 2 Start Date shall be used by RfL to calculate both the Ticketless Travel East Rate and the Ticketless Travel West Rate in that Survey Period, each in accordance with the Ticketless Travel Survey Methodology.

2.4 If following any Ticketless Travel Survey, the Relevant Ticketless Travel Rate for that Ticketless Travel Survey is higher than the Relevant Ticketless Travel Target, then the Managing Director shall attend a meeting with representatives of RfL as soon as reasonably practicable thereafter, at which the Operator shall:

- (a) explain why the Relevant Ticketless Travel Rate for that Ticketless Travel Survey was higher than the Relevant Ticketless Travel Target for the Concession Year in which that Ticketless Travel Survey was carried out; and
- (b) propose the steps that the Operator will take to ensure that the Relevant Ticketless Travel Rate for future Ticketless Travel Surveys is equal to or below the Relevant Ticketless Travel Target for the Concession Year in which each such Ticketless Travel Survey is to be carried out.

Use of the Ticketless Travel Survey Methodology

2.5 The Operator agrees that:

- (a) it shall only use the Ticketless Travel Survey Methodology as contemplated by this Agreement, including for the purposes of:
 - (i) determining whether RfL or its nominee referred to in paragraph 2.1 has carried out any Ticketless Travel Survey in accordance with that methodology; and
 - (ii) the Operator itself analysing trends in ticketless travel on the Passenger Services; and
- (b) the Ticketless Travel Survey Methodology is subject to the terms of Schedule 16.2 (*Confidentiality and Freedom of Information Act Requirements*) and the Operator shall not disclose that methodology or any part of it except as it is permitted to do so under that Schedule.

3. PERFORMANCE AGAINST THE RELEVANT TICKETLESS TRAVEL TARGET

As soon as reasonably practicable after completion of any Ticketless Travel Survey (the **Relevant Ticketless Travel Survey**), RfL shall, subject to paragraph 2.3, separately calculate the Operator's performance against each of the Ticketless Travel East Target and the Ticketless Travel West Target on a moving annual average basis (the **Ticketless Travel MAA Rate**) in accordance with the following:

$$TT_{\text{maaR}} = \frac{TTR + PTTR}{4}$$

where

TT_{maaR} means the Ticketless Travel MAA Rate in respect of, as appropriate, the Eastern Section or the Western Section;

TTR means the Relevant Ticketless Travel Rate determined pursuant to the Relevant Ticketless Travel Survey; and

PTTR means, subject to paragraph 7 (*Surveys in first Concession Year and before Stage 2*), the aggregate of each Relevant Ticketless Travel Rate for the three

Ticketless Travel Surveys carried out immediately prior to the Relevant Ticketless Travel Survey.

4. REVENUE PROTECTION INCENTIVE ADJUSTMENTS

4.1 If following any Ticketless Travel Survey, the resulting Ticketless Travel MAA Rate, calculated in accordance with paragraph 3 (*Performance against the Relevant Ticketless Travel Target*) in relation to either the Eastern Section or, subject to paragraph 2.3, the Western Section, is equal to, as appropriate, the Ticketless Travel East Target or the Ticketless Travel West Target, then no Revenue Protection Incentive Adjustment shall be made by RfL to the Operator or vice versa, in each case in relation thereto.

4.2 If following any Ticketless Travel Survey, the resulting Ticketless Travel MAA Rate, calculated in accordance with paragraph 3 in relation to either the Eastern Section or, subject to paragraph 2.3(b), the Western Section, is either less or more than, as appropriate, the Ticketless Travel East Target, or the Ticketless Travel West Target, then on the Payment Date of the Reporting Period after RfL calculates the Operator's performance pursuant to paragraph 3, the following amount shall be payable by way of a Revenue Protection Incentive Adjustment:

$$RPIA = (TT_{\text{maa}R} - RTTT) \times RFTR \times R$$

where:

RPIA means the Revenue Protection Incentive Adjustment for the Survey Period to which that Ticketless Travel Survey relates:

- (a) payable by the Operator to RfL where the Ticketless Travel MAA Rate is more than the Relevant Ticketless Travel Target; and
- (b) payable by RfL to the Operator (as a positive amount) where the Ticketless Travel MAA Rate is less than the Relevant Ticketless Travel Target;

$TT_{\text{maa}R}$ means the Ticketless Travel MAA Rate;

RTTT means the Relevant Ticketless Travel Target;

RFTR means the notional Relevant Forecast Ticket Revenue for that Survey Period; and

R means the rate at which differences between the Ticketless Travel MAA Rate and Relevant Forecast Ticket Revenue are shared, being:

- (a) 0.5 up to, but excluding, the Stage 4 Start Date; and
- (b) 0.25 from and including the Stage 4 Start Date and for the remainder of the Concession Period.

4.3 Any Revenue Protection Incentive Adjustment calculated pursuant to paragraph 3 shall be made on the Payment Date of the next Reporting Period after the completion of any Ticketless Travel Survey by way of an adjustment to Concession Payments in accordance with paragraph 1.1 of Schedule 11.1 (*Concession Payments*).

5. PERFORMANCE AGAINST REMEDIAL PLAN THRESHOLDS

5.1 As soon as reasonably practicable after completion of any Ticketless Travel Survey, RfL shall, subject to paragraph 2.3, separately calculate the Operator's performance against each of the Ticketless Travel East Remedial Plan Benchmark and the Ticketless Travel West Remedial Plan Benchmark by:

- (a) calculating the Relevant Ticketless Travel Rate resulting from that Ticketless Travel Survey; and
- (b) comparing the Relevant Ticketless Travel Rate against the Relevant Ticketless Travel Remedial Plan Benchmark.

5.2 If following any Ticketless Travel Survey, either the Ticketless Travel East Rate or the Ticketless Travel West Rate is equal to or higher than the Relevant Ticketless Travel Remedial Plan Benchmark, then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

6. PERFORMANCE AGAINST DEFAULT THRESHOLDS

6.1 As soon as reasonably practicable after the completion of any Ticketless Travel Survey, RfL shall, subject to paragraph 2.3, separately calculate the Operator's performance against each of the Ticketless Travel East Default Benchmark and the Ticketless Travel West Default Benchmark by:

- (a) calculating the Ticketless Travel MAA Rate in accordance with paragraph 3 (*Performance against the Relevant Ticketless Travel Rate*); and
- (b) comparing the Ticketless Travel MAA Rate against the Relevant Ticketless Travel Default Benchmark.

6.2 If following any Ticketless Travel Survey, either of the Ticketless Travel MAA Rate for the Eastern Section and/or the Western Section is equal to or higher than the Relevant Ticketless Travel Default Benchmark, then:

- (a) an Event of Default shall have occurred; and
- (b) the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

7. SURVEYS IN FIRST CONCESSION YEAR AND BEFORE STAGE 2

First Concession Year

7.1 Where RfL or its nominee has conducted less than four Ticketless Travel Surveys during the Concession Period, RfL shall, for the purposes of performing the calculation specified in paragraph 3 (*Performance against the Relevant Ticketless Travel Rate*) in relation to the rate of ticketless travel on the Eastern Section, assume that the Operator has performed at the Ticketless Travel East Target for such number of notional Ticketless Travel Surveys as is necessary for the purposes of generating a Ticketless Travel MAA Rate in accordance with paragraph 3.

Stage 2

7.2 Where RfL or its nominee has conducted less than four Ticketless Travel Surveys after the Stage 2 Start Date, RfL shall, for the purpose of performing the calculation specified in paragraph 3 in relation to the rate of ticketless travel on the Western Section, assume that the Operator has performed at the Ticketless Travel West Target for such number of notional Ticketless Travel Surveys as is necessary for the purposes of generating a Ticketless Travel MAA Rate in accordance with paragraph 3.

APPENDIX TO SCHEDULE 9

NOTIONAL FORECAST TICKET REVENUE

Column 1	Column 2	Column 3	Column 4
Concession Year	Stage transition in Concession Year	Notional Forecast East Ticket Revenue (£ million)	Notional Forecast West Ticket Revenue (£ million)
Year 1 (May 2015 to Mar 2016)	N/A	2	
Year 2 (Apr 2016 to Mar 2017)	N/A		
Year 3 (Apr 2017 to Mar 2018)	Stage 0		
	Stage 1		
Year 4 (Apr 2018 to Mar 2019)	Stage 1		
	Stage 2		
	Stage 3		
Year 5 (Apr 2019 to Mar 2020)	Stage 3		
	Stage 4		
	Stage 5		
Year 6 (Apr 2020 to Mar 2021)	N/A		
Year 7 (Apr 2021 to Mar 2022)	N/A		
Year 8 (Apr 2022 to Mar 2023)	N/A		
Year 9 (1 Apr 2023 to 27 May 2023)	N/A		
<div style="border: 1px solid black; padding: 2px;"> <p>If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)</p> </div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;"> <p>If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)</p> </div>			

² [REDACTED]

Column 1	Column 2	Column 3	Column 4
Concession Year	Stage transition in Concession Year	Notional Forecast East Ticket Revenue (£ million)	Notional Forecast West Ticket Revenue (£ million)
Year 10 If Schedule 19 continuation (Potentially 1 April 2024 to 31 Mar 2025)	N/A		
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025) If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A		

SCHEDULE 10

COMMITTED OBLIGATIONS

- Schedule 10.1:** **List of Committed Obligations**
- Schedule 10.2:** **Miscellaneous Provisions**
- Schedule 10.3:** **Late/Non Completion of Committed Obligations**
- Appendix:** **Committed Obligations to which Committed
Obligation Payments Apply**

SCHEDULE 10.1**List of Committed Obligations**

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	Station Deep Clean Programme	
	<p>The Operator shall complete a deep clean comprising:</p> <ul style="list-style-type: none"> (i) removal of any redundant branding; (ii) application of the TfL Operating Brand or Crossrail Operating Brand (as appropriate); (iii) provision of static information to explain its role as operator of the relevant Crossrail Station and explain how customers may comment and/or complain; and (iv) a deep clean of public toilets to the standard required by the KPI Regime and elimination of unpleasant odours. 	<p>Complete by 13 June 2015 for the Eastern Section Operator Stations.</p> <p>Complete by 23 December 2017 for the Western Section Operator Stations and Abbey Wood Station.</p>
	<p>The Operator shall complete a deep clean comprising the removal of graffiti (including scratched graffiti) from all station surfaces including scratches in glazing to the standard required by the KPI Regime.</p>	<p>Complete by 27 June 2015 for the Eastern Section Operator Stations.</p> <p>Complete by 6 January 2018 for the Western Section Operator Stations and Abbey Wood Station.</p>
	<p>The Operator shall complete a station deep clean comprising:</p> <ul style="list-style-type: none"> (i) a deep clean of all customer areas of the station to the standard required by the KPI Regime, including canopy undersides, glazing, signage and TVMs; (ii) removal of chewing gum from surfaces to the standard required by the KPI Regime; (iii) removal of evidence of animal habitats; (iv) removal of unpleasant odours from the public areas; (v) removal of rubbish, scrap and redundant materials/facilities; (vi) removal of undergrowth on station property; (vii) cleaning and unblocking drains, gutters and drainpipes; (viii) patch repair of damaged paintwork; (ix) replacement of damaged glazing; and (x) cut-back of track-side vegetation. 	<p>Complete by 22 August 2015 for the Eastern Section Operator Stations.</p> <p>Complete by 3 March 2018 for the Western Section Operator Stations and Abbey Wood Station.</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	The Operator shall, carry out, subject to cooperation from the relevant Facility Owners (which the Operator shall use all reasonable endeavours to obtain) a platform and platform track-side programme at Operator Access Stations at which the Passenger Services call (excluding those on the Central Operating Section) comprising removal of graffiti, trackside vegetation and litter.	Complete by 22 August 2015 for the Eastern Section Operator Access Stations. Complete by 3 March 2018 for the Western Section Operator Access Stations.
	Class 315 Fleet Refreshment The completion in accordance with paragraph 2.3 of Schedule 5.2 (<i>Operation, Maintenance and Refresh</i>) of the refresh of the Class 315 Fleet specified in the table in that paragraph, spending at least the amount specified in paragraph 2.4 of Schedule 5.2.	Complete by no later than six Reporting Periods after the Start Date.
	Stage Milestones	
	The Operator shall pursuant to paragraph 2.5(b) of Schedule 6 (<i>Crossrail Train Operating Concession Staged Opening</i>): (i) enter into Station Access Agreements for Eastern Section Stations; (ii) use all reasonable endeavours to agree track access and station access arrangements with RfL (IM) for the Central Operating Section; and (iii) enter into Station Leases with Network Rail for the Western Section Stations, excluding Slough, the Heathrow Stations and Paddington (Main Line).	Achieve relevant milestone: (i) by 1 February 2015; (ii) by 29 August 2017; and (iii) by 13 October 2017.
	The Operator shall pursuant to paragraph 2.5(b)(ii) of Schedule 6: (i) enter into station access agreements for Eastern Section Stations; (ii) use all reasonable endeavours to enter into a Track Access Agreement with Network Rail for the operation of Liverpool St (Main Line) to Shenfield services; (iii) agree access and station access arrangements with RfL(IM) for the Central Operating Section; and (iv) agree track access arrangements with Network Rail for Stage 5.	Achieve relevant milestone: (i) by 1 February 2015 (see paragraph 5(a)(i)); (ii) by 19 April 2015; (iii) by 29 August 2017 (see paragraph 5(a)(ii)); and (iv) by 15 October 2019.
	The Operator shall pursuant to paragraph 2.5(b)(iii) of Schedule 6 use all reasonable endeavours: (i) to agree track access and station access with RfL(IM) for the	Achieve relevant milestone: (i) by 29 August 2017

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	<p>Central Operating Section;</p> <p>(ii) to enter into a Track Access Agreement with Network Rail for the operation of four trains per hour services and associated Old Oak Common areas;</p> <p>(iii) to enter into a Track Access Agreement with Heathrow Airport Limited in respect of Stage 2;</p> <p>(iv) to enter into a Track Access Agreement for access from Old Oak Common to the Central Operating Section; and</p> <p>(v) to enter into a suite of Track Access Agreements for Network Rail's revised service pattern.</p>	<p>(see paragraph 5(a)(ii));</p> <p>(ii) by 3 December 2017;</p> <p>(iii) by 25 March 2018;</p> <p>(iv) by 1 April 2018; and</p> <p>(v) by 9 July 2018.</p>
	<p>The Operator shall pursuant to paragraph 2.5(b)(iv) of Schedule 6 complete RfL branding at all stations between and including Acton station and the Heathrow Stations.</p>	<p>Achieve milestone by 1 May 2017.</p>
	<p>The Operator shall pursuant to paragraph 2.5(b)(v) of Schedule 6:</p> <p>(i) agree rules and procedures for the operation of the Central Operating Section.</p> <p>(ii) provide drivers for Dynamic Testing, Trial Running and Trial Operations on the Central Operating Section.</p>	<p>Achieve relevant milestone:</p> <p>(i) by 1 October 2017; and</p> <p>(ii) by 20 February 2018.</p>
	<p>The Operator shall pursuant to paragraph 2.5(b)(vi) of Schedule 6:</p> <p>(i) validate the train technical requirements regarding features and operational characteristics of Class 345 Fleet;</p> <p>(ii) complete RfL branding for Stage 0;</p> <p>(iii) complete the deep clean and rebrand of Class 315 Fleet in accordance with paragraph 2 (<i>Rebranding and refreshment of the Class 315 Fleet</i>) of Schedule 5.2 (<i>Operation, Maintenance and Refresh</i>);</p> <p>(iv) complete the 6-monthly refresh of Class 315 Fleet in accordance with those rows of the table in paragraph 2.3 of Schedule 5.2, requiring completion within six Reporting Periods of the Start Date;</p> <p>(v) ensure that Eastern Section Stations and staff uniforms display the Crossrail brand in accordance with paragraph 2 (<i>Station Rebrand</i>) of Schedule 4.2 (<i>Station and Depot Refresh, Refurbishments and Enhancements</i>) and paragraph 8 (<i>Carrying out the Refresh and Rebrand</i>) of Schedule 6 (<i>Crossrail Train Operating Concession Staged Opening</i>); and</p> <p>(vi) ensure that Western Section Stations and staff uniforms display the Crossrail brand in accordance with paragraph 2 of Schedule 4.2 and paragraph 8 of Schedule 6.</p>	<p>Achieve relevant milestone:</p> <p>(i) by 8 February 2015;</p> <p>(ii) by 13 June 2015 (see paragraph 1(a));</p> <p>(iii) by 24 June 2015;</p> <p>(iv) by 27 November 2015 (see paragraph 2);</p> <p>(v) by 22 May 2017; and</p> <p>(vi) by 8 December 2019.</p>
	<p>Corporate Governance Manual</p> <p>The Operator shall prepare a 'Corporate Governance Manual' to RfL's</p>	<p>Prepare on or before [REDACTED] and review once every</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	reasonable satisfaction and review each Concession Year.	Concession Year thereafter.
	<p>ISO Accreditations</p> <p>The Operator shall secure and subsequently maintain the following accreditations or standards: ISO14001 and ISO9001.</p>	Secure by [REDACTED] and maintain throughout Concession Period.
	<p>General Accreditations</p> <p><i>EFQM Business Excellence Model</i></p> <p>The Operator shall:</p> <p>(a) adopt the EFQM Business Excellence Model;</p> <p>(b) achieve and subsequently maintain [REDACTED]</p> <p>(c) achieve and subsequently maintain [REDACTED]</p> <p>(d) procure an independent audit of its quality [REDACTED] according to the EFQM Excellence Model.</p>	<p>(a) Adopt with effect from the Start Date;</p> <p>(b) Achieve by [REDACTED] and</p> <p>(c) Achieve by [REDACTED]</p> <p>and in each case maintain throughout Concession Period; and</p> <p>(d) Procure by [REDACTED] and every two Concession Years thereafter.</p>
	<p><i>Secure Stations Accreditation</i></p> <p>The Operator shall achieve and subsequently maintain Secure Stations Accreditation at all Operator Stations.</p>	In relation to any Operator Station, achieve within [REDACTED] of entering into the relevant Station Lease, and maintain thereafter.
	<p><i>Stakeholder Engagement Standard</i></p> <p>The Operator shall adopt and subsequently maintain the AA1000SES Stakeholder Engagement Standard (incorporating principles from BS ISO 26000).</p>	Adopt by [REDACTED] and maintain thereafter.
	<p>Investors in People</p> <p>The Operator shall secure and subsequently maintain Investors In People accreditation to [REDACTED] standard.</p>	Secure by [REDACTED] and thereafter maintain throughout the Concession Period.
	<p>Delivering Learning and Development</p> <p>The Operator shall appoint and maintain a suitably qualified person in the</p>	Appoint by [REDACTED] and subsequently maintain

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	<p>role of ‘Head of Talent and Development’ to lead the delivery of learning and development and skills development within the Operator’s organisation and whose responsibilities will include:</p> <ul style="list-style-type: none"> (a) defining and introducing a skills development process with associated policies; (b) developing a talent management process to attract, recruit, retain and develop talent; (c) supporting recruitment, training and development programmes; (d) monitoring the progress of skills and performance development within the Operator’s organisation; (e) identifying people in the Operator’s organisation whose skills will be needed to ensure long-term continuity and quality of rail operations; and (f) supporting the Operator’s obligations to provide opportunities for those who are currently workless, apprentices or graduates. 	thereafter for the remainder of the Concession Period.
	<p>Institution of Railway Operators</p> <p>The Operator shall become a member of the Institution of Railway Operators and subsequently maintain such membership.</p>	Become a member by 1 April 2015 and thereafter subsequently maintain throughout the Concession Period.
	<p>HR Strategy</p> <p>The Operator shall produce an ‘HR Strategy’ that will identify establishment profile in terms of functions, levels, profile and skills as well as a forecast of vacancies, turnover, recruitment, training and development requirements, together with a reward strategy and subsequently implement, review and refine such strategy on an ongoing basis.</p>	Produce by [REDACTED] and thereafter subsequently implement, review and refine throughout the remainder of the Concession Period.
	<p>Apprentices</p> <p>The Operator shall:</p> <ul style="list-style-type: none"> (a) employ apprentices to meet the following annual targets: <ul style="list-style-type: none"> (i) [REDACTED]in Concession Year 2; and (ii) [REDACTED]per Concession Year every Concession Year thereafter, <p>amounting to [REDACTED] apprentices over the Concession Term;and</p> (b) employ (within those [REDACTED] apprentices) at least [REDACTED] customer service apprentices per full Concession Year (and pro rata in all other Concession Years) to be offered to suitably committed 18-24 year olds from local communities and following the successful completion of the apprenticeship they will 	<ul style="list-style-type: none"> (a) Employ first [REDACTED] apprentices by [REDACTED]and thereafter employ [REDACTED] apprentices in each Concession Year; and (b) Employ [REDACTED] customer service apprentices by [REDACTED] and

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	be deployed by the Operator on standard terms and conditions.	[REDACTED] each Concession Year thereafter (pro rated for part years).
	<p>Welcome Days</p> <p>At least twice in each Concession Year, the Operator shall convene welcome days for new Operator Employees to meet some or all of the Operator's Executive and Operator Employees whose roles report directly to the Operator's Executive.</p>	Convene from 1 April 2016 and each Concession Year thereafter.
	<p>Staff Suggestion Scheme</p> <p>The Operator shall implement and subsequently maintain a staff suggestion scheme to RfL's reasonable satisfaction.</p>	Implement from the Start Date and maintain throughout the Concession Period.
	<p>Refreshment Project Manager</p> <p>The Operator shall appoint and maintain the appointment of a 'Dedicated Project Manager' responsible for overseeing the refreshment of the Class 315 Fleet contemplated by paragraph 2.3 of Schedule 5.2 (<i>Operation, Maintenance and Refresh</i>).</p>	Appoint by the Start Date and maintain until the completion of the Class 315 Fleet refreshment programme.
	<p>Priced Option 3</p> <p><i>Project Manager</i></p> <p>The Operator shall appoint a dedicated 'Project Manager' to oversee the refurbishment works for the retained Class 315 Units.</p>	Appoint by the date occurring four weeks after receiving any notification from RfL exercising Priced Option 3 and until the completion of the refurbishment.
	<p>Railway Assurance Board</p> <p>The Operator shall:</p> <p>(a) become an observer on the Railway Assurance Board; and</p> <p>(b) where RfL so requires, prepare its report submission to the Railway Assurance Board in respect of the Operator's provision of the Passenger Services in a form to be agreed with RfL prior to submission.</p>	<p>(a) Become an observer by 30 November 2015.</p> <p>(b) Report by 30 May 2016.</p>
	<p>Central CCTV Monitoring</p> <p>The Operator shall spend at least £[REDACTED] on procuring central CCTV monitoring in the Integrated Control Centre and at least £[REDACTED] on maintenance annually thereafter.</p>	Procure, incurring initial minimum spend, by [REDACTED] and maintain annually thereafter.
	SQMS	Design by

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	The Operator shall design, implement and subsequently maintain a documented service quality management system to manage the KPI Regime.	[REDACTED] and implement and maintain throughout the Concession Period.
	<p>Energy Management System</p> <p>The Operator shall implement and subsequently maintain an Energy Management System that meets the accreditation requirements of ISO50001.</p>	Implement by 31 May 2017 and maintain throughout the Concession Period.
	<p>Low Energy Lighting Solutions</p> <p>The Operator shall in respect of:</p> <p>(a) the Eastern Section Operator Stations, incur expenditure of not less than £[REDACTED]; and</p> <p>(b) the Western Section Operator Stations, incur expenditure of not less than £[REDACTED] ,</p> <p>on carrying out works to introduce low energy lighting solutions, including, low energy T5 lighting, clicksave lighting, LED lighting, electricity regulators and replacement photocells.</p>	<p>Incur expenditure:</p> <p>(a) by 31 December 2017; and</p> <p>(b) by 30 June 2019.</p>
	<p>Reducing Water Use</p> <p>The Operator shall incur expenditure of not less than:</p> <p>(a) £[REDACTED] in aggregate for the Eastern Section Stations; and</p> <p>(b) £[REDACTED] in aggregate for the Western Section Stations,</p> <p>in each case on measures designed to achieve a reduction in water consumption of per cent. against water consumption levels reported in 2013.</p>	<p>Incur expenditure:</p> <p>(a) by 31 May 2016.</p> <p>(b) by 31 December 2018.</p>
	<p>Recycling</p> <p>The Operator shall:</p> <p>(a) recycle [REDACTED] per cent. of waste collected by or on behalf of the Operator; and</p> <p>(b) send [REDACTED] per cent. of waste to landfill.</p>	Meet the environmental targets by 31 May 2016 and continue to do so throughout the remainder of the Concession Period.
	<p>Supply Chain Management</p> <p>The Operator shall instigate a programme of performance monitoring and feedback with key suppliers to the Operator and maintain that programme throughout the Concession Period.</p>	Instigate by [REDACTED] and maintain throughout the remainder of the Concession Period.
	<p>Headquarters Accommodation</p> <p>The Operator will take up first occupation of its headquarters accommodation and such headquarters shall include the RfL Accommodation.</p>	Occupy by [REDACTED].

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	<p>Providing Customer Service to passengers with reduced mobility</p> <p>The Operator shall:</p> <p>(a) ensure all station staff and Travel Safe Officers will receive disability and equality awareness and delivery of assistance training (to ensure, among other things, that staff are competent to facilitate access to and from trains by less able-bodied customers, particularly those in wheelchairs) within [REDACTED] of joining the Operator and such training will be refreshed annually; and</p> <p>(b) continually encourage less-able-bodied customers to use coaches 5 and 7 of Class 345 Units, which have provision for wheelchair users. Such spaces will be clearly marked on platforms at Operator Stations where the Operator is the sole user.</p>	<p>(a) Ensure received training by the date occurring [REDACTED] after relevant joining date and annually thereafter.</p> <p>(b) Continually encourage from the introduction of the Class 345 Fleet and throughout the remainder of the Concession Period.</p>
	<p>Management Systems Audits</p> <p>(a) The Operator shall carry out an internal audit of its management systems and data integrity; and</p> <p>(b) The Operator shall procure that its external auditors review the quality and integrity of data and management information.</p>	<p>(a) Audit by [REDACTED] and each Concession Year thereafter.</p> <p>(b) Review by [REDACTED] and each Concession Year thereafter.</p>
	<p>Ticket Machines</p> <p>The Operator shall procure [REDACTED] mobile ticketing machines. Through a programme of maintenance the Operator will maintain them in full working order to meet the maximum operational requirement of having [REDACTED] devices available at any time.</p>	<p>Procure by the Start Date and thereafter maintain throughout the Concession Period.</p>
	<p>Annual Station Enhancements Budget</p> <p>The Operator shall spend £[REDACTED] per annum (or pro rata per part Concession Year) for the Concession Period on station enhancements at Operator Stations. The Operator shall identify and agree with RfL each year the schemes on which the funds will be spent.</p>	<p>Initial spend by the date occurring [REDACTED] after the Start Date and further spend annually thereafter throughout the Concession Period.</p>

SCHEDULE 10.2

Miscellaneous Provisions

1. APPLICATION

This Schedule 10.2 sets out further terms which apply to the Committed Obligations set out in Schedule 10.1 (*List of Committed Obligations*) and the references to Committed Obligations in this Schedule 10 are only to the Committed Obligations in Schedule 10.1.

2. CONTINUATION OF AVAILABILITY

2.1 Save as expressly provided in this Schedule 10, the Operator shall maintain facilities established in accordance with its Committed Obligations throughout the remainder of the Concession Period.

2.2 The Operator shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence (for sickness or holiday), subject in each case to the Operator taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Schedule 10.1 includes a commitment regarding staffing or particular appointments it plans to make:

- (a) the obligation of the Operator applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Operator is recruiting for that post, subject to the Operator using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Operator's rights in relation to the numbers or deployment of its other staff remain unaffected.

3. EXPENDITURE COMMITMENTS

Annual Expenditure

3.1 Where Schedule 10.1 (*List of Committed Obligations*) provides for the expenditure of an annual amount (or an amount over some other period) by the Operator, that amount:

- (a) is net of Value Added Tax;
- (b) is the amount required to be expended by the Operator itself or procured by the Operator to be expended; and
- (c) will, for those Concession Years of less than 12 months, be reduced pro-rata by reference to Reporting Periods (unless otherwise stated in Schedule 10.1) where the commitment is for the expenditure of an amount per Concession Year or calendar year.

Expenditure Commitments

3.2 All expenditure commitments set out in Schedule 10.1 (*List of Committed Obligations*), to the extent they have not already been incurred by the Operator, are amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)).

Expenditure by Infrastructure Managers

3.3 All amounts which the Operator has committed (whether unconditionally or otherwise) pursuant to Schedule 10.1 to expend in connection with improvements to track or Crossrail Stations shall be in addition to any expenditure made by any Infrastructure Manager as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Operator.

4. LIAISON AND CO-OPERATION

Where the Operator is committed to liaison and co-operation under Schedule 10.1 (*List of Committed Obligations*), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Operator reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. NATURE OF COMMITMENT

5.1 Any Committed Obligation shall be in addition to any obligation of the Operator elsewhere in this Agreement and nothing in this Schedule 10 shall limit or restrict an obligation imposed on the Operator elsewhere in this Agreement.

5.2 Where in Schedule 10.1 (*List of Committed Obligations*), references are made to particular manufacturers, suppliers of equipment or services or products, the Operator may fulfil its relevant commitment by using reasonable equivalents.

5.3 Each commitment under this Schedule 10 shall come to an end on expiry of the Concession Period for whatever reason, save in respect of any accrued payments owed pursuant to Schedule 10.3 (*Late/Non Completion of Committed Obligations*) but not yet paid.

6. REVIEW OF COMPLIANCE

6.1 Progress in delivering Committed Obligations is an agenda item for Concession Performance Meetings and the Operator shall ensure that at such meetings, RfL is given such progress reports to such level of detail and in such format as it may in each case reasonably request.

6.2 In addition to its obligation under paragraph 6.1, the Operator shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as RfL may reasonably request.

SCHEDULE 10.3

Late/Non Completion of Committed Obligations

1. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

If the Operator fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 10.1 (*List of Committed Obligations*), such late, partial or non-delivery shall constitute a contravention of this Agreement, except where any of the Key Stage Milestones referred to in paragraphs 3.1(a), (e), (f), (g), (i) or (k) of Schedule 10.1 (*List of Committed Obligations*) is not achieved by the Operator solely and directly as a result of insufficient availability of Class 345 Units, other than where the Operator is responsible for such unavailability and provided that the Operator shall use all reasonable endeavours to achieve the relevant requirement as soon as reasonably practicable and work with RfL and the Rolling Stock Provider to maximise the number of Class 345 Units that are available for the purpose of driver training in accordance with paragraph 4.3 of Schedule 5.3 (*Introduction of the Class 345 Fleet*).

2. COMMITTED OBLIGATION PAYMENTS

Obligation to pay

2.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table set out in the Appendix is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, the Operator shall pay to RfL the relevant Committed Obligation Payment as indicated in column 4 of the Table.

Nature of Committed Obligation Payments

2.2 Where “RP” is marked in column 4 of that Table next to the Committed Obligation Payment in column 5 of that Table then the Operator shall pay:

- (a) in respect of each relevant period (whether a Reporting Period, Concession Year or other time period) or part thereof for which that Committed Obligation remains undelivered in full; and
- (b) until the Committed Obligation is delivered in full,

a Committed Obligation Payment, being the amount set out in column 5 of that Table, as adjusted in accordance with paragraph 2.4 (if appropriate) and column 6 of that Table shall specify whether paragraph 2.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of that Table.

2.3 Where “PB” is marked in column 4 of that Table next to the Committed Obligation Payment in column 5 of that Table then the Operator shall pay a Committed Obligation Payment equal to the balance of the amount set out in column 5 of that Table that remains unspent by the Operator by the date specified for delivery of that Committed Obligation in column 3 of that Table.

Pro-rating of Committed Obligation Payments where partial delivery

2.4 Where:

- (a) in relation to any Committed Obligation that is to be subject to the terms of this paragraph 2.4 is expressed in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and
- (b) the Operator has delivered or carried out the relevant activity in respect of one or more but not all of the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

Adjustment to Committed Obligation Payment where partial spend

2.5 Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective, the Operator is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Operator may apply to RfL for the consent referred to in paragraph 2.6.

2.6 RfL's consent for the purposes of paragraph 2.5 is its consent for the Operator to invest any unspent amount towards the fulfilment of such other commitments as the Operator proposes at that time. That consent may not be unreasonably withheld.

2.7 If RfL consents to an application pursuant to paragraph 2.5 in respect of any Committed Obligation, then:

- (a) Schedule 10.1 (*List of Committed Obligations*) and this Schedule 10.3 shall be amended to reflect the terms of any new commitments; and
- (b) no Committed Obligation Payment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

3. COMMITTED OBLIGATION PAYMENT ADJUSTMENTS

Any Committed Obligation Payment Adjustment for any Reporting Period shall be the aggregation of all Committed Obligation Payments that are payable in that Reporting Period.

4. WAIVER OF PAYMENTS UNDER THIS SCHEDULE 10.3

4.1 RfL may at its reasonable discretion decide to waive its right to receive any Committed Obligation Payment.

4.2 In deciding whether to waive such rights RfL may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

APPENDIX TO SCHEDULE 10.3
COMMITTED OBLIGATIONS TO WHICH COMMITTED OBLIGATION
PAYMENTS APPLY

[REDACTED]

SCHEDULE 11

PAYMENTS

Schedule 11.1: Concession Payments

Schedule 11.2: Periodic and Annual Concession Payments and Indexation

**Appendix 1: Reporting Period and Annual Concession
Payment Figures**

Appendix 2: Assumed Electricity Prices and Consumption

Schedule 11.3: Pass Through Access Charge Adjustments

Schedule 11.4: Profit Share

Appendix: Threshold Profit

SCHEDULE 11.1**Concession Payments****1. CONCESSION PAYMENTS**

1.1 The Concession Payment for any Reporting Period shall be an amount equal to:

$$£CP = PCP + PA + PTA + OA$$

where:

£CP means the Concession Payment for that Reporting Period;

PCP means, where that Reporting Period commences:

- (a) prior to April 2021, the amount determined in accordance with paragraph 1 (*Periodic Concession Payments to 31 March 2021*) of Schedule 11.2 (*Annual Concession Payments and Indexation*); and
- (b) from April 2021 onwards:

$$ACP \times \frac{RPD}{FYD}$$

where:

ACP means the Annual Concession Payment for:

- (i) that Concession Year; or
- (ii) that extension pursuant to paragraph 1.4 of Schedule 19 (*Continuation of Crossrail*),

in either case, as determined in accordance with paragraph 2 (*Annual Concession Payments from 1 April 2021*) of Schedule 11.2;

RPD means the number of days in that Reporting Period; and

FYD is equal to the number of days:

- (i) in the Concession Year; or
- (ii) that would apply, where an extension of Crossrail is required by RfL pursuant to paragraph 1.4 of Schedule 19, if the duration of that extension was specified for a full seven Reporting Periods,

in either case, in which that Reporting Period occurs;

PA means the Performance Adjustment to made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2 (*Performance Adjustments*);

PTA means the Pass Through Adjustment to made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3 (*Pass Through Adjustments*); and

OA means the Other Adjustment to be made on that Reporting Period's Payment Date.

1.2 Where a Concession Year starts or ends during a Reporting Period, £CP and PCP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Concession Year start or end, and the Concession Payment for such Reporting Period shall be the sum of £CP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) each of £CP, PA, PTA and OA may be a positive or negative number in any Reporting Period;
- (b) where any of the adjustments that are to be made to PCP in any Reporting Period:
 - (i) is positive, RfL shall pay to the Operator that adjustment as an addition to PCP on the Payment Date for that Reporting Period; and
 - (ii) is negative, the Operator shall pay to RfL that adjustment as a reduction to PCP on the Payment Date for that Reporting Period;
- (c) where £CP is a positive number in any Reporting Period, RfL shall pay that amount to the Operator on the Payment Date for that Reporting Period; and
- (d) where £CP is a negative number in any Reporting Period, the Operator shall pay the corresponding positive amount to RfL on the Payment Date for that Reporting Period.

2. PERFORMANCE ADJUSTMENTS

Calculation of Performance Adjustments

2.1 The Performance Adjustment for any Reporting Period shall be an amount equal to:

$$PA = OPA + QPA + RPIA - COPA$$

where:

- PA means the Performance Adjustment for that Reporting Period;
- OPA means the Operating Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2.3;
- QPA means the Quality Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2.4;
- RPIA means the Revenue Protection Incentive Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 4 (*Revenue Protection Incentive Adjustments*) of Schedule 9 (*Revenue Protection Incentive Regime*); and
- COPA means the Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3 (*Committed Obligation Payments Adjustments*) of Schedule 10.3 (*Late/Non-Completion of Committed Obligations*).

2.2 The parties agree that:

- (a) OPA shall be zero or a negative number in any Reporting Period; and
- (b) each of QPA and RPIA may be a positive or negative number in any Reporting Period.

Calculation of Operating Performance Adjustments

2.3 The Operating Performance Adjustment for any Reporting Period shall be the aggregate of the adjustments listed in this paragraph 2.3 to be made in that Reporting Period, each as calculated in accordance with Schedule 7.1 (*Operating Performance Regime*):

- (a) the Availability Adjustment;
- (b) the Cancellation Adjustment;
- (c) for each Reporting Period that the Operator continues to lease and operate Class 315 Units, the Short Formation Adjustment;
- (d) the Headway Adjustment; and
- (e) the Delay Adjustment.

Calculation of Quality Performance Adjustments

2.4 The Quality Performance Adjustment for any Reporting Period shall be the net of the adjustments listed in this paragraph 2.4 to be made in that Reporting Period:

- (a) the KPI Adjustment, calculated in accordance with Schedule 8.1 (*KPI Regime*);
- (b) the CSS Adjustment, calculated in accordance with Schedule 8.3 (*Customer Satisfaction Regime*); and
- (c) the QPR Performance Adjustment, calculated in accordance with Schedule 8.4 (*Quality Performance Regime*).

3. PASS THROUGH ADJUSTMENTS

Calculation of Pass Through Adjustments

3.1 The Pass Through Adjustment for any Reporting Period shall be an amount equal to:

$$PTA = ATA + TALA - ASA + TAAPA + ACA + TECA - TESCA$$

where:

- PTA means the Pass Through Adjustment for that Reporting Period;
- ATA means the Alternative Timetable Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);
- TALA means the Ticketing and Account Liabilities Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 5.4 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

- ASA means the Additional Services Adjustment to be made on that Reporting Period's Payment Date, determined in accordance with paragraph 5.4 of Schedule 5.2 (*Operation, Maintenance and Refresh*);
- TAAPA means the Track Access Agreement Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.3;
- ACA means the Access Charge Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.4;
- TECA means the Traction Electricity Charge Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.5; and
- TESCA means the Traction Electricity Consumption Saving Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.6.

3.2 The parties agree that each of PTA, ATA, TALA, TAAPA, ACA and TECA may be a positive or negative number in any Reporting Period.

Calculation of Track Access Agreement Performance Adjustments

3.3 The Track Access Agreement Performance Adjustment for any Reporting Period shall be the aggregate of the payments listed in this paragraph 3.3 to be made in that Reporting Period, each as calculated in accordance with Schedule 7.2 (*Performance Payments under Track Access Agreements*):

- (a) any Network Rail (Schedule 8) Payment;
- (b) any HAL (Schedule 8) Payment;
- (c) any RfL (IM) (Schedule 8) Payment;
- (d) any RfL (IM) NR TOC-on-TOC Payment; and
- (e) any RfL (IM) HAL TOC-on-TOC Payment.

Calculation of Access Charge Adjustments

3.4 The Access Charge Adjustment for any Reporting Period shall be the net of the adjustments listed in this paragraph 3.4 to be made in that Reporting Period, each as calculated in accordance with the relevant paragraph of Schedule 11.3 (*Pass Through Access Charge Adjustments*):

- (a) the Track Access Adjustment;
- (b) the Station Charge Adjustment; and
- (c) the Ilford Depot Access Charge Adjustment.

Calculation of TEC Adjustments

3.5 The Traction Electricity Charge Adjustment for any Reporting Period shall be an amount equal to:

$$\text{TECA} = \sum (\text{AK} \times \text{AC} \times (\text{TEC} - \text{ATEC}))$$

where:

TECA means the Traction Electricity Charge Adjustment for a Reporting Period;

\sum means the summation of charges for traction electricity consumption by Class 315 Units on the On-Network and Class 345 Units on the On-Network and the Heathrow Spur;

AK means the aggregate actual distance (measured in kilometres) run by the relevant Unit type on the On-Network or the Heathrow Spur in the preceding Reporting Period;

AC means, the assumed consumption of traction electricity relating to that preceding Reporting Period or Concession Year in which that Reporting Period occurred, in each case specified in the Table set out in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2 (*Annual Concession Payments and Indexation*);

TEC means the traction electricity charge that the Operator is charged under the terms of the NR TAA and HAL TAA in relation to that preceding Reporting Period; and

ATEC means the assumed traction electricity charge specified in relation to that preceding Reporting Period or Concession Year in which that Reporting Period occurs in column 3 of the table in Appendix 2 to Schedule 11.2, indexed in accordance with paragraph 3 (*Indexation By Reference to RPI*) of Schedule 11.2 (*Periodic and Annual Concession Payments and Indexation*).

Calculation of TECSA Adjustments

3.6 The Traction Electricity Consumption Saving Adjustment for any Reporting Period shall be an amount equal to:

$$\text{TESCA} = ((\text{FC}_{\text{RLU}} - \text{AC}_{\text{RLU}}) \times \text{TEC} \times \text{AK}_{\text{RLU}} \times 0.75) + ((\text{FC}_{\text{FLU}} - \text{AC}_{\text{FLU}}) \times \text{TEC} \times \text{AK}_{\text{FLU}} \times 0.75)$$

where:

TESCA means the consumption saving that is payable by the Operator to RfL as a positive amount for a Reporting Period;

FC_{RLU} means the forecast traction electricity consumption for the Class 345 RLUs and the preceding Reporting Period, as specified in column 5 of the table set out in Appendix 2 of Schedule 11.2;

AC_{RLU} means the actual traction electricity consumption for the Class 345 RLUs and the preceding Reporting Period;

TEC means the traction electricity charge that the Operator is charged under the terms of the NR TAA and HAL TAA in relation to the preceding Reporting Period;

AK_{RLU} means the aggregate of distance (measured in kilometres) run by the Class 345 RLUs in the preceding Reporting Period;

- FC_{FLU} means the forecast traction electricity consumption for the Class 345 FLUs and the preceding Reporting Period, as specified in column 6 of the table set out in Appendix 2 of Schedule 11.2;
- AC_{FLU} means the actual traction electricity consumption for the Class 345 FLUs and the preceding Reporting Period; and
- AK_{FLU} means the aggregate of distance (measured in kilometres) run by the Class 345 FLUs in the preceding Reporting Period.

4. PAYMENT OF CONCESSION PAYMENTS

Notification of Concession Payments

4.1 RfL shall notify the Operator, no less than seven days prior to the end of each Reporting Period, of the amount of the Concession Payment payable in respect of that Reporting Period.

4.2 Each such notification shall set out in reasonable detail how the Concession Payment has been calculated.

Payment Dates

4.3 The Payment Date for a Reporting Period shall be the last Business Day of that Reporting Period.

4.4 Each Concession Payment shall be payable by RfL or, as the case may be, the Operator in the amount notified by RfL in accordance with paragraph 4.1 on the Payment Date of the Reporting Period to which it relates.

Method and timing of payment and invoices

4.5 Each Concession Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

4.6 The Operator shall submit an invoice for the Concession Payments set out in the notice given by RfL pursuant to paragraph 4.1 (or such other sum as may have been agreed between the parties prior to submission of such invoice) notwithstanding any dispute as to the amount of any such Concession Payment.

Disputes

4.7 If either party disputes the amount of a Concession Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of either party to pay a Concession Payment notified in accordance with this paragraph 4.

Failure to pay

4.8 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

Corrections

4.9 If the amount of any Concession Payment is agreed or determined to be incorrect and either party has made a payment to the other party:

- (a) which is greater than it would have made if the amount of the Concession Payment had been correct, then the recipient shall repay the excess within three Business Days of the agreement or determination; or
- (b) which is less than it would have made if the amount of the Concession Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three Business Days of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Concession Payment was paid until the date on which such excess amount or shortfall is paid.

5. PAYMENTS FREE AND CLEAR

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

6. VALUE ADDED TAX

6.1 Subject to paragraph 6.2(a), all Concession Payments payable by RfL to the Operator under this Agreement are exclusive of Value Added Tax.

6.2 If Value Added Tax is properly chargeable on the supply for which any such Concession Payment is the consideration:

- (a) RfL shall:
 - (i) make, in a timely manner, such Other Adjustments as are necessary to ensure that the Operator is in funds to meet its Value Added Tax liability arising on those Concession Payments; and
 - (ii) in any event, pay the balance of that Value Added Tax liability to the Operator by way of a further Other Adjustment following delivery of an appropriate Value Added Tax invoice to RfL and such payment shall be made no less than five days before the Operator is required to account to HM Revenue & Customs for the balance of that Value Added Tax liability; and
- (b) the parties shall agree on or before the Start Date the process for the submission of such invoices by the Operator to RfL, including the timing of such submissions and the content of such invoices.

6.3 If it is subsequently determined by HM Revenue & Customs that Value Added Tax was not properly chargeable on the supply for which any such Concession Payment is the

consideration, then the Operator shall, promptly following notification of such determination, issue a credit note to RfL and repay such Value Added Tax to RfL.

SCHEDULE 11.2**Periodic and Annual Concession Payments and Indexation****1. PERIODIC CONCESSION PAYMENTS TO 31 MARCH 2021**

The Concession Payment for any Reporting Period that occurs prior to 1 April 2021 is an amount equal to:

$$PCP = FXD + (VCRPI \times RPI) + (PRPI \times RPI)$$

where:

- PCP equals the Concession Payment in the relevant Reporting Period;
- FXD means the figure shown in respect of the relevant Reporting Period or extension period in column 3 of the Table set out in Appendix 1, representing the Operator's fixed costs;
- VCRPI means the figure shown in respect of the relevant Reporting Period or extension period in column 4 of the Table set out in Appendix 1, representing the Operator's variable costs which are to be inflated by the RPI Index;
- RPI is ascertained in accordance with paragraph 3 (*Indexation by reference to RPI*); and
- PRPI means the figure shown in respect of the relevant Reporting Period or extension period in column 5 of the Table set out in Appendix 1, representing the Operator's profit which is to be inflated by the RPI Index.

2. ANNUAL CONCESSION PAYMENTS FROM 1 APRIL 2021

The Annual Concession Payment for any Concession Year is an amount equal to:

$$ACP = FXD + (VCRPI \times RPI) + (PRPI \times RPI)$$

where:

- ACP equals the Concession Payment in the relevant Concession Year;
- FXD means the figure shown in respect of the relevant Concession Year or extension period in column 3 of the Table set out in Appendix 1, representing the Operator's fixed costs;
- VCRPI means the figure shown in respect of the relevant Concession Year or extension period in column 4 of the Table set out in Appendix 1, representing the Operator's variable costs which are to be inflated by the RPI Index;
- RPI is ascertained in accordance with paragraph 3 (*Indexation by reference to RPI*); and
- PRPI means the figure shown in respect of the relevant Concession Year or extension period in column 5 of the Table set out in Appendix 1, representing the Operator's profit which is to be inflated by the RPI Index.

3. INDEXATION BY REFERENCE TO RPI

3.1 At the start of each Concession Year (other than the first Concession Year), indexation shall be applied to those amounts, values and adjustments referred to in this Agreement that are expressly required to be indexed in accordance with the methodology set out in this paragraph 3.

3.2 Those amounts that are specified in this Agreement to be indexed in accordance with this paragraph 2 shall be indexed as follows:

$$IA_n = A \times \frac{RPI_n}{RPI_o}$$

where:

IA_n means the indexed relevant amount specified in this Agreement for the relevant Concession Year;

A means the relevant amount specified in this Agreement for the relevant Concession Year before indexation;

RPI_n means the RPI Index for February in the year immediately preceding the relevant Concession Year; and

RPI_o means the RPI Index for the Indexation Base Month.

APPENDIX 1 TO SCHEDULE 11.2

REPORTING PERIOD AND ANNUAL CONCESSION PAYMENT FIGURES

Column 1	Column 2	Column 3	Column 4	Column 5	
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)	
Year 1 (May 2015 to Mar 2016)	3	³			
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	Year 2 (Apr 2016 to Mar 2017)	1			
		2			
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
Year 3 (Apr 2017 to Mar 2018)	1				
	2				
	3				

³ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	4			
	5			
	6			
Year 3 (Apr 2017 to Mar 2018) continued	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 4 (Apr 2018 to Mar 2019)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 5 (Apr 2019 to Mar 2020)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	11			
	12			
	13			
Year 6 (Apr 2020 to Mar 2021)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 7 (Apr 2021 to Mar 2022)	N/A			
Year 8 (Apr 2022 to Mar 2023)	N/A			
Year 9 (1 Apr 2023 to 27 May 2023)	N/A			
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A			
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A			
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A			
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A			

APPENDIX 2 TO SCHEDULE 11.2

ASSUMED ELECTRICITY PRICES AND CONSUMPTION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 1 (May 2015 to Mar 2016)	3	4			
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 2 (Apr 2016 to Mar 2017)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				

⁴ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 3 (Apr 2017 to Mar 2018)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 4 (Apr 2018 to Mar 2019)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 5 (Apr 2019 to Mar 2020)	1				
	2				
	3				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	4				
Year 5 (Apr 2019 to Mar 2020) (continued)	5				
	6				
	7				
	8				
	9				
	10				
	11				
Year 6 (Apr 2020 to Mar 2021)	12				
	13				
	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
Year 7 (Apr 2021 to Mar 2022)	11				
	12				
	13				
Year 8 (Apr 2022 to Mar 2023)	N/A				
Year 9 (1 Apr 2023 to 27 May 2023)	N/A				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A				
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A				
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A				
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A				
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A				

SCHEDULE 11.3

Pass Through Access Charge Adjustments

1. TRACK ACCESS ADJUSTMENTS

1.1 The Track Access Adjustment for each of the NR TAA and the HAL TAA to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{TAA} = (\text{GCA} - \text{W}) \times \frac{\text{RPD}}{\text{FYD}}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of “GC” for the Concession Year in which the Reporting Period falls under Part 3A of Schedule 7 (*Track Charges*) (or its equivalent) of the relevant Track Access Agreement;

W is the value of “W_t” for the Concession Year in which the Reporting Period falls under Part 2 of Schedule 7 (or its equivalent) of the relevant Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Concession Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Operator shall notify RfL upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise its rights under the relevant Track Access Agreement in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for “W_t” or “GC” under Parts 2 or 3A of Schedule 7 (or its equivalent) of that Track Access Agreement.

1.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.

1.4 If no value is ascertained for W or GCA prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of W and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

2. STATION CHARGE ADJUSTMENT

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of each adjustment determined in accordance with the following formula for each Operator Station and each Operator Access Station (each, an *Individual Station Charge Adjustment*):

$$\text{ISCA} = L \times \frac{\text{RPD}}{\text{FYD}}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of “L_t” for the Concession Year in which that Reporting Period falls:

- (a) under condition F11.2 of the Stations Access Conditions if that Operator Station or Operator Access Station is not a Managed Station; and
- (b) under condition 42.2 of the Independent Station Access Conditions if that Operator Access Station is a Managed Station,

but in each case, only to the extent that value represents an amount payable to or by Network Rail or HAL or any other relevant Facility Owner by or to the Operator on its own behalf under the relevant Station Access Agreement (excluding any amount payable to Network Rail or HAL by the Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to a Station Access Agreement in respect of that Operator Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls except that, where a Reporting Period occurs during two Concession Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

2.2 The Operator shall notify RfL upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise such rights as it may have under any relevant Station Lease or Station Access Agreement in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute under any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for “L_t” or “P_t” under any relevant Station Lease or Station Access Agreement.

2.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the values of L and P under paragraph 2.1.

2.4 If no value is ascertained for any of L or P prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.5 The values of L and P when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments it represents by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

3. CHARGE FOR ACCESS TO CENTRAL OPERATING SECTION AND STATIONS

3.1 It is the parties' intention that the Operator will not be charged for access to the Central Operating Section under the terms of the RfL (IM) TAA or for access to Crossrail Stations on the Central Operating Section under the terms of any Station Lease or Station Usage Agreement.

3.2 If the Operator is charged for access to the Central Operating Section or to any Crossrail Station on the Central Operating Section, then:

- (a) RfL shall by way of Access Charge Adjustments, pay to the Operator amounts equal to the amounts that the Operator is charged for such access;
- (b) RfL shall pay the amounts referred to in paragraph 3.2(a) into an account specifically created by the Operator for the purpose, and the Operator shall grant a charge in favour of RfL on terms acceptable to RfL over amounts standing to the credit of that account from time to time;
- (c) the parties shall make consequential amendments to paragraph 3.4 of Schedule 11.1 (*Concession Payments*) to recognise the payments referred to in paragraph 3.2(a); and
- (d) RfL shall be entitled to withdraw any such amount paid into that account as and when required, including on the same day that it is deposited, for the purpose of paying, as appropriate, RfL (IM) or LUL that amount for access to the Central Operating Section or any Crossrail Station on the Central Operating Section.

4. ILFORD DEPOT USAGE CHARGES

The Ilford Depot Access Charge Adjustment to be made in respect of any Reporting Period shall be an amount payable by the Operator to RfL equal to the Depot Access Charge for that Reporting Period that is payable by RfL under the Ilford Unregulated Depot Usage Agreement.

SCHEDULE 11.4

Profit Share

1. OVERALL PURPOSE

1.1 The objective of the profit share arrangements set out in this Schedule 11.4 is to ensure that at the end of the Concession Period, any reconciled cumulative excess profit made by the Operator has been shared between the Operator and RfL.

2. ANNUAL CALCULATION AND INFORMATION PROVISION

Annual calculation

2.1 Within four Reporting Periods after the end of each Concession Year, the Operator shall provide to RfL a calculation of:

- (a) the Cumulative Profit Share Amount for that Concession Year calculated in accordance with paragraph 3 (*Cumulative Profit Share Amount Calculation*); and
- (b) with effect from the Concession Year ending 31 March 2016, its proposed Profit Share Payment payable, calculated in accordance with paragraph 4.2.

2.2 Any calculations provided pursuant to paragraph 2.1 shall be certified by the Operator's auditors.

2.3 As soon as reasonably practicable following RfL's request, the Operator shall supply to RfL any additional information that RfL might reasonably require in relation to any calculation provided pursuant to paragraph 2.1.

2.4 Where, as required by its Parent, the Operator reports its financial results by reference to financial years that have different start and end dates from Concession Years, the Operator shall in performing the calculations pursuant to paragraph 2.1:

- (a) reconcile those financial results to report by reference to Concession Years, extracting and reporting on all relevant information for the purpose of performing the calculation pursuant to 2.1; and
- (b) procure that its auditor's certification pursuant to paragraph 2.2, duly certifies the accuracy of that reconciliation.

2.5 Where the Annual Audited Accounts in relation to any previous Concession Year are subject to adjustment or restatement, RfL shall be entitled to require:

- (a) the recalculation (and recertification pursuant to paragraph 2.2) of the Cumulative Profit Share Amount for the relevant Concession Year; and
- (b) that within 30 days of RfL notifying the Operator that it requires a payment to be made pursuant to this paragraph 2.5, a further Profit Share Payment is to be made by way of Other Adjustment that is equal to the amount which is the difference between the Profit Share Payment actually paid pursuant to paragraph 4.2 and the amount that would have been paid had the Cumulative Profit Share Amount been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts.

2.6 Within 28 days of receiving the calculations pursuant to paragraph 2.1 in relation to any Concession Year, or where RfL has requested additional information in accordance with paragraph 2.3, within 28 days of such request, RfL shall notify the Operator whether it agrees or disputes any such calculation, including where RfL reasonably considers that in calculating the Cumulative Profit Share Amount, any particular item or transaction has not been accounted for on a reasonable basis (for example, where the accounting treatment looks to the form rather than the substance, of the item or transaction) and in providing any such notification that disputes any such calculation, RfL shall explain in reasonable detail why it disputes such calculation.

2.7 Where RfL does reasonably consider that in calculating the Cumulative Profit Share Amount, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction), then RfL shall be entitled to require it to be accounted for on such other basis as it may reasonably determine and notify to the Operator pursuant to paragraph 2.6, provided that the Secretary of State shall not be entitled pursuant to this paragraph 2.7 to alter the accounting policies of the Operator from those set out in the Record of Assumptions and applied through the Suite of Models.

2.8 If in relation to any calculation provided by the Operator in accordance with paragraph 2.1, RfL fails to notify the Operator of its agreement or otherwise with that calculation in accordance with paragraph 2.5, then RfL shall be deemed to have agreed the calculation.

Disputed calculation

2.9 If RfL notifies the Operator in accordance with paragraph 2.5 that it disputes any calculation provided by the Operator in accordance with paragraph 2.1, the parties shall seek to resolve the dispute through discussion in accordance with paragraphs 2.1 to 2.3 (inclusive) of Schedule 20, provided that, if the dispute cannot be resolved through such discussion within 21 Business Days of the date of receipt of that notice by the Operator, either party may refer the matter for expert determination by a single expert in accordance with paragraphs 2.10 to 2.12 inclusive.

Expert Determination

2.10 Where pursuant to paragraph 2.9, either party wishes to refer a dispute of any calculation provided by the Operator in accordance with paragraph 2.1 to an expert, that party shall propose to the other party by way of notice, the expert to be appointed, who shall be an accountant. The parties shall seek to agree the choice of expert as soon as reasonably practicable thereafter and in any event, within 14 days of receipt of any such notice.

2.11 If the parties agree the choice of expert pursuant to paragraph 2.10, the parties shall duly appoint that expert as soon as reasonably practicable thereafter. If no agreement has been reached within 14 days of service of the notice referred to in paragraph 2.10, either party may ask the President of the Institute of Chartered Accountants in England and Wales to nominate an expert willing to accept an appointment on the terms set out in paragraph 2.12. That nominated expert shall be appointed by the parties as soon as reasonably practicable thereafter.

2.12 The Operator and RfL agree, and the expert appointed is obliged, to follow the terms and principles set out in this paragraph 2.12:

- (a) the expert must act as an expert and not as an arbitrator;

- (b) the Arbitration Act 1996 and the law of arbitration shall not apply to the expert, to the determination procedure or to the expert's decision;
- (c) acceptance by the expert of the terms set out in this paragraph 2.12 shall be a condition of appointment of the expert;
- (d) the expert shall establish such rules and procedures for the conduct of the determination as he sees fit having regard to the timescale set out in paragraph 2.12(f);
- (e) RfL and the Operator shall abide by the rules and procedures established by the expert;
- (f) the expert shall make his decision in writing available to the parties as soon as reasonably practicable and in any event within 42 days of his appointment;
- (g) the decision must include full detailed reasons to explain the findings and justify the decision;
- (h) the decision shall be final and binding;
- (i) RfL and the Operator shall each bear its own costs in relation to the expert determination, including the costs of providing all data, information and submissions and the costs and expenses of all witnesses and persons retained by, as the case may be, RfL or the Operator; and
- (j) the costs and expenses of the expert and any independent advisers to the expert and any costs of his appointment if he is appointed by the President of the Institute of Chartered Accountants in England and Wales shall be shared equally between RfL and the Operator.

3. CUMULATIVE PROFIT SHARE AMOUNT CALCULATION

The Operator shall calculate the Cumulative Profit Share Amount for the purposes of paragraph 2.1(a), in accordance with the following:

$$\text{CPSA} = (\text{CAP} - \text{CTP}) \times 0.5$$

where:

- CPSA is the Cumulative Profit Share Amount for all of the Concession Years from the Start Date up to and including the relevant Concession Year;
- CAP is the cumulative Actual Profit for all of the Concession Years from the Start Date up to and including that Concession Year; and
- CTP is the cumulative threshold profit for that Concession Year, expressed in nominal terms as specified in the table set out in the Appendix and with the relevant increments thereto, also specified in that table, where any Priced Option has been called in any preceding Concession Year or that Concession Year,

provided that if (CAP – CTP) is a negative number, CPSA shall be zero.

4. PROFIT SHARE PAYMENTS

4.1 No Profit Share Payment shall be payable until the Concession Year ending on 31 March 2016.

4.2 With effect from the Concession Year ending on 31 March 2016, a Profit Share Payment shall be payable each Concession Year on the following basis:

$$\text{PSP} = \text{CPSA} - \text{NPSP}$$

where:

PSP means the Profit Share Payment for the relevant Concession Year;

CPSA means the Cumulative Profit Share Amount for that Concession Year; and

NPSP means the net of any Profit Share Payments made by the Operator to RfL against any Profit Share Payments made by RfL to the Operator, in each case, in any previous Concession Year.

4.3 Where in relation to any Concession Year, the Profit Share Payment calculated pursuant to paragraph 4.2:

(a) is a positive amount, the Operator shall pay that Profit Share Payment to RfL; and

(b) is a negative amount, RfL shall pay that Profit Share Payment to the Operator,

in each case by way of an Other Adjustment on the next Payment Date following the agreement of that amount, or where agreement cannot be reached and the dispute is referred for determination pursuant to paragraph 2.9, in each case as soon as reasonably practicable after such determination, together with interest at a rate equal to the Interest Rate from the date when such payment would have been payable but for that referral until the date of actual payment (after as well as before judgment). Such interest shall accrue from day to day.

APPENDIX TO SCHEDULE 11.4

THRESHOLD PROFIT

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Cumulative Threshold Profit (£)	PRICED OPTION 1 (Programme Flexibility – Delayed Stages 3 to 5)	PRICED OPTION 2 (Programme Flexibility – Advanced Stage 5)	PRICED OPTION 3 (Retention of Class 315s)
		Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)
Year 1 (May 2015 to Mar 2016)	5			
Year 2 (Apr 2016 to Mar 2017)				
Year 3 (Apr 2017 to Mar 2018)				
Year 4 (Apr 2018 to Mar 2019)				
Year 5 (Apr 2019 to Mar 2020)				

⁵ [REDACTED].

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Cumulative Threshold Profit (£)	PRICED OPTION 1 (Programme Flexibility – Delayed Stages 3 to 5)	PRICED OPTION 2 (Programme Flexibility – Advanced Stage 5)	PRICED OPTION 3 (Retention of Class 315s)
		Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)
Year 6 (Apr 2020 to Mar 2021)				
Year 7 (Apr 2021 to Mar 2022)				
Year 8 (Apr 2022 to Mar 2023)				
Year 9 (1 Apr 2023 to 27 May 2023)				
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)				
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)				

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Cumulative Threshold Profit (£)	PRICED OPTION 1 (Programme Flexibility – Delayed Stages 3 to 5)	PRICED OPTION 2 (Programme Flexibility – Advanced Stage 5)	PRICED OPTION 3 (Retention of Class 315s)
		Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)	Incremental Cumulative Threshold Profit to Column 2 (£)
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)				
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)				
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)				

SCHEDULE 12
PRICED OPTIONS

- Schedule 12.1:** **List of Priced Options**
- Schedule 12.2:** **Calling and implementing Priced Options**
- Schedule 12.3:** **Adjustments to Concession Payments**
- Schedule 12.4:** **Adjustments to Assumed Electricity Prices and
Consumption**

SCHEDULE 12.1

List of Priced Options

1. PRICED OPTION 1: PROGRAMME FLEXIBILITY – DELAYED STAGES 3 TO 5

Description, objective and specification

1.1 The Scheduled Stage 3 Start Date, the Scheduled Stage 4 Start Date and the Scheduled Stage 5 Start Date are each delayed by 12 months.

Price for exercising Priced Option 1 (in £ base date)

1.2 Where this Priced Option 1 is called by RfL in accordance with its terms:

- (a) the price for this Priced Option 1 shall be the price set out in Table 1 in Schedule 12.3 (*Adjustments to Concession Payments*) and shall be payable by replacing the Table of Annual Concession Payments set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) with that Table 1; and
- (b) the traction electricity prices and consumption shall be the assumed prices and consumption set out in Table 1 in Schedule 12.4 (*Adjustments to Assumed Electricity Prices and Consumption*) which shall replace the Table of assumed electricity prices and consumption in Appendix 2 (*Assumed Electricity Prices and Consumption*) to Schedule 11.2.

Latest date for calling Priced Option 1 to maintain price

1.3 The price referred to in paragraph 1.2 shall apply where RfL calls this Priced Option 1 by issuing a notice to the Operator on any date up to (and including) the date occurring no less than 13 Reporting Periods before the Scheduled Stage 3 Start Date.

Effects on the Concession Agreement of exercising Priced Option 1

1.4 Where RfL calls this Priced Option 1 by the date specified in paragraph 1.3, from the date of the notice issued pursuant to paragraph 1.3:

- (a) the changes to the Concession Payments anticipated by this Priced Option 1 shall be made;
- (b) in row 2, column 4 of Table 1 in the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*), the words “14 December 2019” shall be deleted and replaced with “13 December 2020”;
- (c) each of the Dynamic Testing Period, the Trial Running Period, the Trial Operations Period, the Scheduled Stage 3 Start Date, the Scheduled Stage 4 Start Date, the Scheduled Stage 5 Start Date and the Key Stage Milestones and the Stage Milestones that have yet to be achieved by the Operator by the date of that notice shall be deferred by 12 months and RfL shall issue to the Operator a revised Staged Opening Programme that reflects those changes;
- (d) the Operator shall promptly after receipt of the revised Staged Opening Programme, reissue the Staged Opening Plan, making only those changes that reflect the revised

Staged Opening Programme and implement that Staged Opening Plan in accordance with its terms;

- (e) paragraph 15 (*Late Staged Opening*) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*) shall not apply;
- (f) the benchmarks contained in each of the MSS Regime, Customer Satisfaction Regime and Quality Performance Regime for the first full Concession Year after the Concession Year in which the Scheduled Stage 3 Start Date would have occurred but for the exercise of this Priced Option 1 and for each Concession Year thereafter (the ***Late Stage 3 to 5 Concession Years***) shall each be deferred by 12 months, such that, the benchmarks for any Concession Year comprising the Late Stage 3 to 5 Concession Years shall be the benchmarks for the preceding Concession Year, provided that those benchmarks that would have applied in the final Concession Year but for the exercise of this Priced Option 1, shall no longer be benchmarks against which the Operator's performance is measured;
- (g) the Forecast East Ticket Revenue and the Forecast West Ticket Revenue for each Concession Year of the Late Stage 3 to 5 Concession Years shall be deferred by 12 months, such that the Forecast East Ticket Revenue and Forecast West Ticket Revenue for any Concession Year comprising the Late Stage 3 to 5 Concession Years shall be the Forecast East Ticket Revenue and Forecast West Ticket Revenue of the preceding Concession Year, provided in each case, that the Forecast East Ticket Revenue and the Forecast Ticket West Revenue that would have applied in the final Concession Year but for the exercise of this Priced Option 1, shall no longer be revenue forecasts against which the Operator's performance is measured; and
- (h) the reference to "31 March 2018" in paragraph 2.1(a)**Error! Reference source not found.** and to "1 April 2018" in paragraph 2.1(a)**Error! Reference source not found.**, in each case of Schedule 14 (*Financial Obligations and Credit Support*) shall be deleted and replaced with "31 March 2019" and "1 April 2019" respectively.

2. PRICED OPTION 2: PROGRAMME FLEXIBILITY – ADVANCED STAGE 5

Description, objective and specification

2.1 The Scheduled Stage 5 Start Date is brought forward to coincide with the Scheduled Stage 4 Start Date.

Condition for implementation of Priced Option 2

2.2 The implementation of this Priced Option 2 is subject to all of the Class 345 RLUs having first been converted to Class 345 FLUs in accordance with the requirements of the RSPA.

Price for exercising Priced Option 2

2.3 Where this Priced Option 2 is called by RfL in accordance with its terms:

- (a) the price for this Priced Option 2 shall be the price set out in Table 2 in Schedule 12.3 (*Adjustments to Concession Payments*) and shall be payable by replacing the Table of Annual Concession Payments set out in the Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) with that Table 2; and

- (b) the traction electricity prices and consumption shall be the assumed prices and consumption set out in Table 2 in Schedule 12.4 (*Adjustments to Assumed Electricity Prices and Consumption*) which shall replace the Table of assumed electricity prices and consumption in Appendix 2 (*Assumed Electricity Prices and Consumption*) to Schedule 11.2.

Latest date for calling Priced Option 2 to maintain price

2.4 The price referred to in paragraph 2.3 shall apply where RfL calls this Priced Option 2 by issuing a notice to the Operator on any date up to (and including) the date occurring no less than 15 Reporting Periods before the Scheduled Stage 4 Start Date.

Effects on the Concession Agreement of exercising Priced Option 2

2.5 Where RfL calls this Priced Option 2 by the date specified in paragraph 2.4, from the date of the notice issued pursuant to paragraph 2.4:

- (a) the changes to the Concession Payments anticipated by this Priced Option 2 shall be made;
- (b) the Scheduled Stage 5 Start Date shall be the same as the Scheduled Stage 4 Start Date;
- (c) each of the Key Stage Milestones and the Stage Milestones that relate to the achievement of Stage 5 shall be brought forward such that if achieved on time, they would ensure the coincident occurrence of Stage 4 and Stage 5 on the Scheduled Stage 4 Start Date and RfL shall issue to the Operator a revised Staged Opening Programme that reflects those changes; and
- (d) the Operator shall promptly after receipt of the revised Staged Opening Programme, reissue the Staged Opening Plan, making only those changes that reflect the revised Staged Opening Programme and implement that Staged Opening Plan in accordance with its terms.

3. PRICED OPTION 3: PROPORTION OF CLASS 315 FLEET RETAINED

Description, objective and specification

3.1 RfL elects that the Operator is to retain 18 Class 315 Units from the Scheduled Stage 4 Start Date to operate Peak services between Gidea Park station and Liverpool Street (Main Line) station until the end of the Concession Period, which requires the following to occur:

- (a) the issue by RfL to the Operator in a timely manner of the Service Level Commitments in the agreed terms marked *SLC4(315)* and *SLC5(315)*;
- (b) the Operator promptly using all reasonable endeavours to obtain the timetable development rights from Network Rail that are necessary to permit the operation of a Timetable that is compliant with *SLC4(315)* and *SLC5(315)*;
- (c) the Operator procuring the refurbishment of the Class 315 Units that are the subject of this Priced Option 3 to RfL's specification in accordance with the Class 315 Refurbishment Programme;
- (d) the operation by the Operator of that Timetable from the Stage 4 Start Date and until either:

- (i) the date the Operator is required by RfL to operate an alternative Timetable through the issue of a new Service Level Commitment in accordance with the passenger service development procedure set out in Schedule 1.1 (*Timetable and Service Development*); or
 - (ii) the end of the Concession Period if RfL does not so require; and
- (e) the operation by the Operator of Class 315 Units in delivering the relevant railway passenger services in that Timetable.

Price for exercising Priced Option 3

3.2 Where this Priced Option 3 is called by RfL in accordance with its terms:

- (a) the price for this Priced Option 3 shall be the price set out in Table 4 in Schedule 12.3 (*Adjustments to Concession Payments*) and shall be payable by replacing the Table of Annual Concession Payments set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) with that Table 4; and
- (b) the traction electricity prices and consumption shall be the assumed prices and consumption set out in Table 4 in Schedule 12.4 (*Adjustments to Assumed Electricity Prices and Consumption*) which shall replace the Table of assumed electricity prices and consumption in Appendix 2 (*Assumed Electricity Prices and Consumption*) to Schedule 11.2.

Latest date for calling Priced Option 3 to maintain price

3.3 The price referred to in paragraph 3.2 shall apply where RfL calls this Priced Option 3 by issuing a notice to the Operator on no less than 12 months' notice.

Effects on the Concession Agreement of exercising Priced Option 3

3.4 Where RfL calls this Priced Option 3 by the date specified in paragraph 3.3, from the date of the notice issued pursuant to paragraph 3.3:

- (a) the changes to the Concession Payments anticipated by Priced Option 3 shall be made;
- (b) paragraph (c) of the definition of Change shall be amended by replacing "and" between "SLC4" and "SLC5" with ";" and adding after "SLC5", ", SLC4(315) and SLC5(315)";
- (c) the following definition shall be added to clause 2 (*Definitions*):

"Class 315 Refurbishment Programme means the following refurbishment programme in respect of 18 Class 315 Units that are the subject of Priced Option 3:

- (i) the fitting of air condition on all rolling stock vehicles comprising those Class 315 Units;
- (ii) the painting or application of vinyls to the exterior of each such vehicle consistent with the Crossrail Operating Brand;
- (iii) the painting of the interior of each such vehicle consistent with the Crossrail Operating Brand;

- (iv) the reconfiguration of the interiors to longitudinal seating using seat designs to RfL’s specification;
 - (v) the remote condition monitoring of, as a minimum, the passenger doors on each such vehicle;
 - (vi) the energy metering to Network Rail’s standards; and
 - (vii) the removal of all luggage racks and the making good of ceiling sections in the place of luggage racks;”
- (d) “or” shall be deleted and replaced with “,” between “SLC4” and “SLC5” in the last line of 5.1(c) of Schedule 1.1 (*Timetable and Service Development*) and adding after “SLC5”, “, SLC4(315) and SLC5(315)”;
 - (e) “or” shall be deleted and replaced with “,” between “SLC4” and “SLC5” in the last line of 6.3(d) of Schedule 1.1 and adding after “SLC5”, “, SLC4(315) and SLC5(315)”;
 - (f) “rows 1 and 2 of” shall be added to paragraph 1.1(a) of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*) between “in” and “Table 1” in the first line;
 - (g) a new paragraph 1.1(b) shall be added to the Appendix to Schedule 5.1 as follows:
 - “(b) from the date of RfL exercising Priced Option 3, the rolling stock vehicles specified in row 3 of Table 1 with the capacity characteristics referred to there until the lease expiry dates referred to in column 5 thereof;”
 - (h) Table 1 in the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*) shall be amended by adding the following row to that table:

Column 1	Column 2	Column 3	Column 4
Lease start date(s)	Number of vehicles and unit configuration	Owner / Lessor	Lease expiry date(s)
Day after last date of relevant lease term in row 1 or 2	18 x 4 car	Eversholt	Expiry Date

- (i) a new paragraph 3 shall be added to Schedule 5.2 (*Operation, Maintenance and Refresh*) as follows:

“3. REFURBISHMENT OF THE CLASS 315 FLEET

3.1 The Operator shall procure the carrying out the Class 315 Refurbishment Programme by no later than 12 months after the date on which Priced Option 3 is exercised.

3.2 In carrying out the Class 315 Refurbishment Programme, the Operator shall:

- (a) comply with the standards and guidance issued by the Rail Safety and Standards Board Limited in relation thereto; and
- (b) spend at least £[REDACTED], such amount not to be subject to indexation and to be payable through capital rental to the lessor of the Class 315 Fleet.

3.3 If the Class 315 Refurbishment Programme is not completed by the date specified in paragraph 3.1, the Operator shall pay to RfL a Committed Obligation Payment of £[REDACTED] per day (reduced pro rata by reference to the number of Class 315 Units that have been refurbished in accordance with paragraph 3.1 by that date) for each day during the period commencing on the day after the date specified in paragraph 3.1 and ending on the date on which the refurbishment is completed.

3.4 If the Operator fails to spend at least the amount specified in paragraph 3.2(b), the Operator shall pay a Committed Obligation Payment equal to the balance of the amount specified in paragraph 3.2(b) that remains unspent by the Operator on the date on which the refurbishment is complete.

3.5 The date of completion of the Class 315 Refurbishment Programme shall be the date on which the Operator issues the last relevant acceptance certificate (or equivalent thereof) to the contractor carrying out the refurbishment, provided that the Operator:

- (a) shall grant RfL a reasonable opportunity to inspect sufficient rolling stock vehicles comprising the Class 315 Fleet to satisfy itself, acting reasonably, that the refurbishment of the Class 315 Fleet has been carried out, in all material respects, in accordance with the specification set out in the Class 315 Refurbishment Programme;
- (b) shall promptly procure that such further work as is necessary to fully complete the Class 315 Refurbishment Programme is undertaken where, acting reasonably, RfL is not satisfied following any such inspection that that refurbishment undertaken by the Operator has been carried out, in all material respects, in accordance with paragraph 3.1 in relation to any rolling stock vehicle comprising the Class 315 Fleet; and
- (c) shall remain liable for amounts payable to RfL under paragraph 3.3, notwithstanding the issue by the Operator of the last relevant acceptance (or equivalent) certificate, where, acting reasonably, RfL is not satisfied on or after the first day after the date specified in paragraph 3.1 that that refurbishment has been carried out, in all material respects, in accordance with paragraph 3.1 in relation to any rolling stock vehicle comprising the Class 315 Fleet.”;
- (j) paragraph 3 (*Short Formation Adjustment Calculations*) of Schedule 7.1 (*Operating Performance Regime*) shall continue to apply after the Scheduled Stage 4 Start Date and for the remainder of the Concession Period;
- (k) the relevant Key Performance Indicators relating to cleaning of the Class 315 Units in Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*) shall continue to apply after the Scheduled Stage 4 Start Date and for the remainder of the Concession Period; and

- (1) paragraph 2.1(c) of Schedule 11.1 (*Concession Payments*) shall continue to apply after the Scheduled Stage 4 Start Date and for the remainder of the Concession Period.

SCHEDULE 12.2**Calling and implementing Priced Options****1. TERMS ON WHICH PRICED OPTIONS MAY BE CALLED**

1.1 RfL may call any Priced Option by issuing a written notice to the Operator:

- (a) at any time on or prior to the last date for the call of such Priced Option on the terms of such Priced Option, in which case the terms of such Priced Option, including the price specified for that Priced Option in Schedule 12.3 (*Adjustments to Concession Payments*); and
- (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option, in which case:
 - (i) the parties shall consult for a reasonable period of time after the call of that Priced Option to agree the amendments to this Agreement that are required in order to reflect only that late call and/or call on different terms; and
 - (ii) such call shall be a Change, but only to the extent of determining the difference from the price specified in Schedule 12.3 caused only by that late call and/or call on different terms.

1.2 Where any condition specified in Schedule 12.1 (*List of Priced Options*) in relation to such Priced Option is not satisfied (other than by reason of failure by the Operator to take reasonable steps to satisfy such condition, where appropriate), then that shall constitute “different terms” for purposes of paragraph 1.1 and paragraph (u) of the definition of Change.

1.3 Priced Option 1 and Priced Option 2 cannot both be called by RfL. Subject to that, RfL shall be entitled to exercise any combination of Priced Options, but where it does so, this shall constitute “different terms” for the purposes of paragraph 1.1 and paragraph (dd) of the definition of Change.

2. IMPLEMENTATION OF PRICED OPTIONS

The Operator shall implement any Priced Option in accordance with:

- (a) its terms where RfL has called that Priced Option in accordance with its terms; and
- (b) any additional or alternative terms agreed pursuant to paragraph 1.1(b)(i).

SCHEDULE 12.3

Adjustments to Concession Payments

1. PRICED OPTION 1: PROGRAMME FLEXIBILITY – DELAYED STAGES 3 TO 5

Table 1: Figures for Calculation of Annual Concession Payments

This table sets out the replacement figures for calculation of the Annual Concession Payments and set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where any of the following Priced Option 1 is called in accordance with paragraph 1 (*Priced Option 1: Programme Flexibility – Delayed Stages 3 to 5*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 1 (May 2015 to Mar 2016))	3	6		
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 2 (Apr 2016 to Mar 2017)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			

⁶ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	11			
	12			
	13			
Year 3 (Apr 2017 to Mar 2018)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 4 (Apr 2018 to Mar 2019)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 5 (Apr 2019 to Mar 2020)	1			
	2			
	3			
	4			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	5			
	6			
Year 5 (Apr 2019 to Mar 2020) continued	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 6 (Apr 2020 to Mar 2021)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 7 (Apr 2021 to Mar 2022)	N/A			
Year 8 (Apr 2022 to Mar 2023)	N/A			
Year 9 (1 Apr 2023 to 27 May 2023)	N/A			
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A			
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A			
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A			
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A			

2. PRICED OPTION 2: PROGRAMME FLEXIBILITY – ADVANCED STAGE 5

Table 2: Figures for Calculation of Annual Concession Payments

This table sets out the replacement figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where this Priced Option 2 is called in accordance with paragraph 2 (*Priced Option 2: Programme Flexibility – Advanced Stage 5*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 1 (May 2015 to Mar 2016)	3	⁷		
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 2 (Apr 2016 to Mar 2017)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			

⁷ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 3 (Apr 2017 to Mar 2018)	1			
	2			
Year 3 (Apr 2017 to Mar 2018) continued	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 4 (Apr 2018 to Mar 2019)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 5 (Apr 2019 to Mar 2020)	1			
	2			
	3			
	4			
	5			
	6			
	7			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	8			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 5 (Apr 2019 to Mar 2020) continued	9			
	10			
	11			
	12			
	13			
Year 6 (Apr 2020 to Mar 2021)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 7 (Apr 2021 to Mar 2022)	N/A			
Year 8 (Apr 2022 to Mar 2023)	N/A			
Year 9 (1 Apr 2023 to 27 May 2023)	N/A			
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A			
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A			
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A			
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A			

3. PRICED OPTION 3: PROPORTION OF CLASS 315 FLEET RETAINED

Table 3: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where this Priced Option 3 is called in accordance with paragraph 3 (*Priced Option 3: Proportion of Class 315 Fleet Retained*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)	
Year 1 (May 2015 to Mar 2016)	3	⁸			
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	Year 2 (Apr 2016 to Mar 2017)	1			
		2			
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					

⁸ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
Year 3 (Apr 2017 to Mar 2018)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 4 (Apr 2018 to Mar 2019)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
Year 5 (Apr 2019 to Mar 2020)	1			
	2			
	3			
	4			
	5			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
	6			
	7			
Year 5 (Apr 2019 to Mar 2020)	8			
	9			
	10			
	11			
	12			
	13			
Year 6 (Apr 2020 to Mar 2021)	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
13				
Year 7 (Apr 2021 to Mar 2022)	N/A			
Year 8 (Apr 2022 to Mar 2023)	N/A			
Year 9 (1 Apr 2023 to 27 May 2023)	N/A			
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A			

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	Reporting Period	FXD (£)	VCRPI (£)	PRPI (£)
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A			
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A			
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A			
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A			

SCHEDULE 12.4

Adjustments to Assumed Electricity Prices and Consumption

1. PRICED OPTION 1: PROGRAMME FLEXIBILITY – DELAYED STAGES 3 TO 5

Table 1: Figures for Assumed Traction Electricity Consumption

This table sets out the replacement of the figures for calculation of Traction Electricity Charge Adjustment set out in Appendix 2 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where this Priced Option 1 is called in accordance with paragraph 1 (*Priced Option 1: Programme Flexibility – Delayed Stages 3 to 5*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 1 (May 2015 to Mar 2016)	3	9			
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 2 (Apr 2016 to Mar 2017)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				

⁹ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	9				
	10				
Year 2 (Apr 2016 to Mar 2017) continued	11				
	12				
	13				
Year 3 (Apr 2017 to Mar 2018)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 4 (Apr 2018 to Mar 2019)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 5 (Apr 2019 to Mar 2020)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 6 (Apr 2020 to Mar 2021)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 7 (Apr 2021 to Mar 2022)	N/A				
Year 8 (Apr 2022 to	N/A				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Mar 2023)					
Year 9 (1 Apr 2023 to 27 May 2023)	N/A				
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A				
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A				
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A				
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A				
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A				

2. PRICED OPTION 2: PROGRAMME FLEXIBILITY – ADVANCED STAGE 5

Table 2: Figures for Assumed Traction Electricity Consumption

This table sets out the replacement of the figures for calculation of Traction Electricity Charge Adjustment set out in Appendix 2 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where this Priced Option 2 is called in accordance with paragraph 2 (*Priced Option 2: Advanced Stage 5*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 1 (May 2015 to Mar 2016)	3	10			
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 2 (Apr 2016 to Mar 2017)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				

¹⁰ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per Kwh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	12				
	13				
Year 3 (Apr 2017 to Mar 2018)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 4 (Apr 2018 to Mar 2019)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 5 (Apr 2019 to Mar 2020)	1				
	2				
	3				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	4				
	5				
Year 5 (Apr 2019 to Mar 2020) continued	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 6 (Apr 2020 to Mar 2021)	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
Year 7 (Apr 2021 to Mar 2022)	N/A				
Year 8 (Apr 2022 to Mar 2023)	N/A				
Year 9 (1 Apr 2023 to 27 May 2023)	N/A				

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A				
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A				
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A				
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A				
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A				

3. PRICED OPTION 3: PROPORTION OF CLASS 315 FLEET RETAINED

Table 3: Figures for Assumed Traction Electricity Consumption

This table sets out the replacement of the figures for calculation of Traction Electricity Charge Adjustment set out in Appendix 2 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where this Priced Option 3 is called in accordance with paragraph 3 (*Priced Option 3: Proportion of Class 315 Fleet Retained*) of Schedule 12.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	Reporting Period	Traction Electricity Charge (pence per Kwh)	Class 315 Units (loaded km)	Class 315 Units (unloaded km)	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
Year 1 (May 2015 to Mar 2016)	3	11				
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
Year 2 (Apr 2016 to Mar 2017)	1					
	2					
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
11						

¹¹ [REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	Reporting Period	Traction Electricity Charge (pence per Kwh)	Class 315 Units (loaded km)	Class 315 Units (unloaded km)	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	12					
	13					
Year 3 (Apr 2017 to Mar 2018)	1					
	2					
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
Year 4 (Apr 2018 to Mar 2019)	1					
	2					
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
Year 5 (Apr 2019 to Mar 2020)	1					
	2					
	3					

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	Reporting Period	Traction Electricity Charge (pence per Kwh)	Class 315 Units (loaded km)	Class 315 Units (unloaded km)	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
	4					
	5					
Year 5 (Apr 2019 to Mar 2020) continued	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
Year 6 (Apr 2020 to Mar 2021)	1					
	2					
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
Year 7 (Apr 2021 to Mar 2022)	N/A					
Year 8 (Apr 2022 to Mar 2023)	N/A					
Year 9 (1 Apr 2023 to 27 May 2023)	N/A					

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	Reporting Period	Traction Electricity Charge (pence per kWh)	Class 315 Units (loaded km)	Class 315 Units (unloaded km)	Class 345 RLUs	Class 345 FLUs
			Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)	Consumption (Kwh per Unit km)
If up to 7 Reporting Period extension (Potentially 28 May 2023 to 9 Dec 2023)	N/A					
If Schedule 19 continuation (Potentially 28 May 2023 to 31 Mar 2024)	N/A					
Year 10 If Schedule 19 continuation (Potentially 1 Apr 2024 to 31 Mar 2025)	N/A					
Year 11 If Schedule 19 continuation (Potentially 1 Apr 2025 to 24 May 2025)	N/A					
If up to 7 Reporting Period extension (Potentially 25 May 2025 to 6 Dec 2025)	N/A					

SCHEDULE 13

CHANGES AND VARIATIONS

- Schedule 13.1: Financial Consequences of Change**
- Schedule 13.2: Identity of the Suite of Models**
- Schedule 13.3: Runs of the Model Suite**
- Schedule 13.4: Variations**

SCHEDULE 13.1

Financial Consequences of Change

1. FINANCIAL CONSEQUENCES OF A CHANGE

1.1 When there is or is to be a Qualifying Change,

- (a) the values of FXD, VCRPI and PRPI specified for each Reporting Period and Concession Year in the table set out in the Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2 shall be restated in the amounts and values ascertained by a Run of the Model Suite in accordance with Schedule 13.3 (*Runs of the Model Suite*); but
- (b) after taking into account any reconciliation payment relating to Estimated Revisions pursuant to paragraph 7 (*Estimated Revisions*) of Schedule 13.3 (*Runs of the Model Suite*).

1.2 Where a Run of the Model Suite is required it shall be performed:

- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Qualifying Change; or
- (b) as soon as reasonably practicable thereafter.

1.3 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Qualifying Change or the date of the last Change pursuant to paragraph 3.1 (as the case may be); and
- (b) the date on which RfL approves or the Model Suite Run Auditor certifies the results of the Run of the Model Suite.

1.4 RfL may stipulate (on or before the date on which RfL approves or the Model Suite Run Auditor certifies the results of the Run of the Model Suite) that those amounts and values are to apply for a limited period of time only, with provision thereafter, if appropriate, for a further Run of the Model Suite with new Revised Inputs based on information available at that time.

2. ESTIMATED FINANCIAL CONSEQUENCES

2.1 Where:

- (a) there is or is to be a Change before there is a Run of the Model Suite in relation to it; and
- (b) RfL reasonably determines that the Change is likely to be a Qualifying Change,

then RfL shall in accordance with paragraph 2.3 notify to the Operator a reasonable estimate of the values of FXD, VCRPI and PRPI specified for each Reporting Period and Concession Year in the table set out in Appendix 1 (*Reporting Period and Annual Concession Payment*

Figures) to Schedule 11.2 (*Annual Concession Payments and Indexation*), and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (Electricity Prices and Assumed Consumption) to Schedule 11.2 which a Run of the Model Suite using RfL's view of Revised Inputs and any Model Changes would produce (*Estimated Revisions*).

2.2 In the circumstances described in paragraph 2.1, the values of FXD, VCRPI and PRPI specified for each Reporting Period and Concession Year in the table set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*), and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 to Schedule 11.2 shall be restated in the amounts and values of the Estimated Revisions, and Concession Payments shall be paid accordingly until the Run of the Model Suite has taken place and its results have been put into effect.

2.3 RfL shall use all reasonable endeavours to provide the notification required by paragraph 2.1 at least two Reporting Periods before it considers the Change is likely to occur. If, having exercised all reasonable endeavours, RfL cannot provide two Reporting Periods' notice, it shall provide such notification as soon as reasonably practicable afterwards.

2.4 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Change; and
- (b) the date on which RfL notifies the Operator of the Estimated Revisions.

3. CHANGES BENEATH THRESHOLD AMOUNT

3.1 Subject to paragraph 3.3, paragraph 1 (*Financial Consequences of a Change*) shall also apply to any two or more Changes which do not exceed the Threshold Amount taken alone but which do exceed it when taken together (any such Change being a *Sub-Threshold Change*).

3.2 If either party believes that two or more Sub-Threshold Changes, when taken together, exceed the Threshold Amount, such that paragraph 3.1 applies, such party shall notify the other party within the time limit prescribed in paragraph 4.1(b)(iii).

3.3 Where the parties have aggregated two or more Sub-Threshold Changes pursuant to paragraph 3.1 and consequently performed a Run of the Model Suite in accordance with paragraph 1 in relation to those Sub-Threshold Changes, upon the performance of that Run of the Model Suite and any restatement of the values of FXD, VCRPI and PRPI specified for each Reporting Period and Concession Year in the table set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2:

- (a) those Sub-Threshold Changes shall be disregarded and no longer aggregated to determine whether the Threshold Amount has been exceeded; and
- (b) it shall once again be necessary for the purpose of paragraph 3.1 for two or more subsequent Sub-Threshold Changes to exceed, when taken together, the Threshold Amount in order for a Run of the Model Suite to be performed thereunder.

4. TIME LIMITS

Requirement to notify a Qualifying Change

4.1 Either party may require there to be a Run of the Model Suite in respect of a Change provided that:

- (a) there are good reasons for considering that a Change is likely to be a Qualifying Change; and
- (b) that party notifies the other party of its requirement within six months of:
 - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*);
 - (ii) becoming aware of any other Change; or
 - (iii) where the claim is pursuant to paragraph 3.1, the occurrence of the last Sub-Threshold Change.

4.2 Unless otherwise agreed between the parties, there shall be no entitlement to a Run of the Model Suite unless the claiming party has notified the other party within the six-month period referred to in paragraph 4.1.

Requirement to notify a Sub-Threshold Change

4.3 Each party shall promptly notify the other party where that notifying party, acting in good faith, believes there are good reasons for considering that a Sub-Threshold Change has occurred. Such notification shall also specify the notifying party's best estimate of the financial impact of any such Sub-Threshold Change.

4.4 RfL shall keep a register of any Sub-Threshold Changes that have been notified pursuant to paragraph 4.3 and promptly update that register and make it available to the Operator following the notification of any Sub-Threshold Change pursuant to paragraph 4.3.

SCHEDULE 13.2

Identity of the Suite of Models

1. OPERATOR'S OBLIGATIONS

1.1 The Operator shall deliver two copies of each of the Financial Model, each of the Operational Models and the Record of Assumptions (each such copy in electronic format on CD-ROM and in hard format) (the *Escrow Documents*) to RfL in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:

- (a) on the date of this Agreement;
- (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
- (c) within seven days of any approval or audit of a Run of the Model Suite as provided for in paragraph 1.3 of Schedule 13.3 (*Runs of the Model Suite*), but updated with the Revised Inputs and any Model Changes.

1.2 The Operator shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:

- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
- (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
- (c) if required by RfL, a certificate from independent auditors approved by RfL, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1(a) or (as the case may be) is in accordance with paragraphs 1.1(b) or (c).

2. RfL'S OBLIGATIONS

2.1 RfL shall:

- (a) within three days following receipt, acknowledge receipt to the Operator of any version of the Escrow Documents delivered to it for the purposes of being Placed in Escrow;
- (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing RfL shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of this Agreement;
- (c) notify the Operator if it becomes aware at any time during the term of this Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed; in such an event, RfL shall be permitted to

create a new copy of the Escrow Documents or part thereof from any other copy Placed in Escrow and shall within seven days notify the Operator accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a “complete and accurate” copy has been made. Following the making of such a new copy of the Escrow Documents, RfL shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);

- (d) within seven days of receipt of a notice from the Operator stating that the Escrow Documents are required for the purposes of an indicative or actual Run of the Model Suite in relation to any Change, or should RfL itself so decide, release one copy of the Escrow Documents to the Operator and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Operator arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Operator fails to perform a Run of the Model Suite pursuant to paragraph 1.1(a) of Schedule 13.3 (*Runs of the Model Suite*) and fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to return the released copy to RfL shall be a contravention of this Agreement;
- (b) RfL may release the other copy of the Escrow Documents that are Placed in Escrow and take a copy thereof (the **Replacement Copy**) in order that RfL may perform a Run of the Model Suite pursuant to paragraph 1.1(b) of Schedule 13.3 (*Runs of the Model Suite*);
- (c) once copied, the Replacement Copy shall be Placed in Escrow; and
- (d) once the Run of the Model Suite has been approved or audited as provided for in paragraph 1.3 of Schedule 13.3 (*Runs of the Model Suite*) the Replacement Copy shall also be Placed in Escrow.

SCHEDULE 13.3**Runs of the Model Suite****1. RUN OF THE MODEL SUITE**

1.1 Any Run of the Model Suite that is required for the purposes of this Agreement shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:

- (a) the Operator promptly on receiving notification of the Revised Inputs and any Model Changes from RfL pursuant to paragraph 2.3; or
- (b) RfL if the Operator fails to do so.

1.2 The party that performs the Run of the Model Suite pursuant to paragraph 1.1 shall provide the non-performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.

1.3 RfL, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:

- (a) certify to the Operator its approval of the New Results; or
- (b) notify the Operator that it requires the Run of the Model Suite and its results to be audited by the Model Suite Run Auditor.

1.4 For purposes of paragraph 1.3(b), the requirement for an audit is one that requires the Model Suite Run Auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3); or
- (b) the restated values of FXD, VCRPI and PRPI to be specified for each Reporting Period and Concession Year in the table set out in Appendix 1 (*Reporting Period and Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*), and the assumed consumption of traction current for each Reporting Period and Concession Year specified in Appendix 2 (*Electricity Prices and Assumed Consumption*) to Schedule 11.2 by itself applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3).

1.5 The parties shall procure that any Model Suite Run Auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

1.6 The results as certified by RfL pursuant to paragraph 1.3 or by the Model Suite Run Auditor pursuant to paragraph 1.4 shall be final and binding on the parties, except in the case of manifest error.

1.7 The costs of any audit shall be met as the Model Suite Run Auditor may direct.

2. REVISED INPUTS AND MODEL CHANGES

2.1 **Revised Inputs** means:

- (a) the data that the Suite of Models utilised in order to produce the Old Results, as such data is recorded in the Suite of Models released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 13.2 (*Identity of the Suite of Models*) or released by RfL pursuant to paragraph 2.2 of Schedule 13.2 for the purposes of a Run of the Model Suite; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or RfL may reasonably determine is required by the provisions of paragraphs 3 (*Agreement or Determination of Revised Inputs*) to 7 (*Estimated Revisions*) (inclusive) in respect of a Change in order to produce the New Results.

2.2 **Model Changes** means any changes that the parties may agree or RfL may reasonably determine are required to the Financial Model and/or the Operational Models, as released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 13.2 or released by RfL pursuant to paragraph 2.2 of Schedule 13.2 for purposes of a Run of the Model Suite, as a consequence of and in order to give effect to the Revised Inputs.

2.3 RfL shall provide a written statement of the Revised Inputs and any Model Changes to the Operator for purposes of paragraph 1.1 promptly after they have been agreed or determined.

3. AGREEMENT OR DETERMINATION OF REVISED INPUTS

The parties shall agree or RfL shall reasonably determine the Revised Inputs that are required in respect of a Change:

- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 4 (*General Adjustments/Assumptions*);
- (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 5 (*Assumptions in the Record of Assumptions*);
- (c) so as to provide for profit in accordance with paragraph 6 (*Revised Input for Profit*); and
- (d) so as to provide for Estimated Revisions in accordance with paragraph 7 (*Estimate of Revisions*).

4. GENERAL ADJUSTMENTS/ASSUMPTIONS

4.1 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be taken into account.

4.3 Revised Inputs are also to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) the Operator will use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and
 - (ii) increase any revenue that may arise and avoid any cost that may be avoided,
 as a consequence of a Change; and
- (b) any requirement for borrowing in respect of Capital Expenditure by the Operator is dealt with in accordance with paragraph 2 (*Capital Expenditure*) of Schedule 13.4 (*Variations*).

5. ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS

5.1 The parties shall (unless to do so would be contrary to paragraph 4 (*General Adjustments/Assumptions*)) agree or RfL shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 5.2 or 5.3.

5.2 Where RfL reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or RfL shall reasonably determine additional assumptions for this purpose.

5.3 Where RfL reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Operator and the revenues of the Operator; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient Train Operator,

then the parties shall agree or RfL shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient Train Operator.

6. REVISED INPUT FOR PROFIT

6.1 The parties shall agree or RfL shall reasonably determine Revised Inputs in relation to profit:

(a) where a Change is forecast to result in an increase to the Operator's costs and/or revenue, that provide for an increase in the amount of profit in any Concession Year equal to the lower of:

- (i) [REDACTED] per cent.; or
- (ii) the average profit margin in the current Business Plan for the remaining Concession Term,

of the forecast increase in costs for that Concession Year; and/or

(b) where a Change is forecast to result in a reduction in the Operator's costs and/or revenue, that provide for a decrease in the amount of profit in any Concession Year equal to the lower of:

- (i) [REDACTED] per cent.; or
- (ii) the average profit margin in the current Business Plan for the remaining Concession Term,

provided that, the Revised Input in relation to profit where any such Change is a Charge Variation shall ensure that the Operator does not earn any additional profit or suffer any reduced profit as a consequence of a change to access charges resulting from that Charge Variation.

6.2 In agreeing or determining Revised Inputs in respect of any Change, the parties or RfL shall effect such change (if any) in the amount attributable to profit in paragraph 6.1 as they agree or RfL reasonably determines to reflect the risk for the Operator in continuing to provide the Concession Services on the terms of this Agreement after and as a result of the Change.

6.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or RfL shall effect such change (if any) to the amount attributable to profit as they agree or RfL reasonably determines:

- (a) fairly rewards the Operator for proposing the Protected Proposal; and
- (b) reasonably incentivises the Operator to propose further Protected Proposals,

by sharing with the Operator a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

7. ESTIMATED REVISIONS

7.1 This paragraph 7 applies only where and to the extent that, prior to the Run of the Model Suite, payments made between RfL and the Operator have been altered in accordance with Estimated Revisions notified by RfL to the Operator pursuant to paragraph 2 (*Estimated Financial Consequences*) of Schedule 13.1 (*Financial Consequences of Change*).

7.2 No Revised Inputs shall be made for Estimated Revisions that have been paid or are to be paid in respect of any Change.

7.3 Where Estimated Revisions have been paid and/or are to be paid then, as soon as reasonably practicable after the performance of the related Run of the Model Suite, the parties shall agree or RfL shall reasonably determine the difference (the **Reconciliation Amount**) between:

- (a) the total amount of Estimated Revisions paid and/or to be paid; and
- (b) the total amount of the payments, as determined by that Run of the Model Suite, in respect of the same period as the period over which Estimated Revisions have been paid/or are to be paid.

7.4 The Reconciliation Amount shall be paid by the Operator to RfL where it is positive and paid by RfL to the Operator where it is negative, in either case, on the first Payment Date after agreement or determination by way of Other Adjustment.

SCHEDULE 13.4

Variations

1. VARIATIONS TO THIS AGREEMENT

1.1 The terms of this Agreement may be varied as follows but not otherwise:

(a) by RfL, in relation to:

- (i) any aspect of the Concession Services; and
- (ii) any provision of this Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Operator referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement; and

(b) in relation to any other provision of this Agreement, by agreement in writing between the parties to that effect,

(each a **Variation**).

1.2 Without prejudice to RfL's rights under paragraph 1.1(a), the terms of each of clause 4 (*Term*) (to the extent any Variation would have the effect of shortening the Concession Term), Schedule 11 (*Payments*), Schedule 13 (*Changes and Variations*), Schedule 14 (*Financial Obligations and Credit Support*), Schedule 17 (*Remedies, Termination and Expiry*), Schedule 18 (*Continuity, Restrictions on Dealing and Transfer*) and Schedule 19 (*Continuation of Crossrail Concession*) shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.

1.3 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 RfL may:

- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
- (b) require the Operator to provide any information that RfL reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Model Suite in relation to one or more Changes that RfL is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Model Suite.

1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.

1.7 The Operator may notify RfL of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

- (a) the time scale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the Concession Services and the Operator's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the Variation proposed by the Operator in terms of the Revised Inputs that the Operator considers the Variation would require.

1.8 RfL shall be under no obligation to consider a Variation proposed by the Operator but if it wishes to do so, it shall do so pursuant to paragraph 1.1 of this Schedule 13.4.

1.9 Where the Operator proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Operator through costs saving measures (a ***Protected Proposal***), RfL may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 6 (*Revised Input for Profit*) of Schedule 13.3 (*Runs of the Model Suite*).

2. CAPITAL EXPENDITURE

Capital Expenditure Threshold

2.1 The Operator shall notify RfL promptly if it reasonably expects that a Change to which paragraph 1 (*Variations to this Agreement*) relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of:

- (a) [REDACTED] per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts in any of the first four Concession Years; and
- (b) £[REDACTED] (indexed by reference to the Retail Prices Index) thereafter,

and, in each case, when so notified, RfL shall either:

- (i) withdraw the Change;
- (ii) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (iii) direct the Operator to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time.

Operator to Seek Finance

2.2 If RfL elects to require the Operator to use all reasonable endeavours as described in paragraph 2.1(iii) then the Operator shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Operator and the Parent;
- (b) if it is unable to raise funding, provide RfL with all information RfL may reasonably require in relation to the efforts made by the Operator and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Operator shall provide to RfL letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if RfL so requires, arrange and attend meetings with them for RfL to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that RfL considers to be commercial terms or at rates which are consistent with market conditions at that time RfL may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Operator shall account for the Capital Expenditure in accordance with international accounting standards, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

2.4 The expression *Capital Expenditure* when used in this Schedule 13.4 refers to the nature of the expenditure incurred by the Operator and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 14

FINANCIAL OBLIGATIONS AND CREDIT SUPPORT

Schedule 14: Financial Obligations and Credit Support

Appendix 1: Form of Performance Bond

Appendix 2: Form of Guarantee

SCHEDULE 14

Financial Obligations and Credit Support

1. OBLIGATIONS

Except to the extent provided for under this Agreement, or as RfL may otherwise agree from time to time, the Operator shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Concession Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the Inter-company Loan Facility, the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Concession Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. PERFORMANCE BOND AND GUARANTEE

Requirement to procure a Performance Bond and Guarantee

2.1 The Operator shall on or prior to the date of this Agreement, procure the provision of an executed:

- (a) Performance Bond with a value of: £[REDACTED] as security to RfL for the payment of all sums that the Operator may be liable from time to time to pay to RfL under this Agreement, including any liability arising under paragraphs 2.4 and 2.5 of Schedule 17.4 (*Termination and Expiry*); and
- (b) Guarantee as security to RfL for the performance by the Operator of all of its obligations under this Agreement.

2.2 The Operator shall maintain the continuing validity and effectiveness of the Performance Bond (including any replacement thereof) and the Guarantee:

- (a) from, in each case, the date that such security is provided to RfL in executed form and for the duration of the Concession Period; and
- (b) following the end of the Concession Period, for the period that obligations or liabilities of the Operator in connection with this Agreement remain outstanding or unperformed, provided that, in the case of the Performance Bond, such period shall expire one year after the end of the Concession Term (as may be extended in accordance with this Agreement (the *Performance Bond Longstop Date*)).

Replacement or renewal of Performance Bond

2.3 The Operator shall replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond Provider with the Required Rating and that meets the requirements of paragraphs 2.1 and 2.2:

- (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; and
- (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date (the *Interim Performance Bond Expiry Date*), on or before the date falling 15 Business Days prior to any Interim Performance Bond Expiry Date.

Demands under the Performance Bond

2.4 The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to RfL for the full amount (or permitted balance thereof if a demand or demands have already been made) in London in accordance with RfL's written demand(s) on the Bond Provider, certifying as to any one or more of the following:

- (a) whether or not this Agreement is, or is to be, terminated as a result thereof:
 - (i) the Operator has failed to pay any sum to RfL which is due and payable under the terms of this Agreement; or
 - (ii) an Event of Default has occurred and is continuing and RfL expects to incur additional costs in connection with early termination of this Agreement, including costs referred to in paragraph 2.4 of Schedule 17.4 (*Termination and Expiry*);
- (b) that this Agreement has either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Operator to RfL;
- (c) that the Operator has failed to perform or comply with its obligations under the Supplemental Agreement; or
- (d) the Operator has not provided a replacement, renewed or extended Performance Bond when required pursuant to paragraph 2.3.

2.5 If RfL makes a demand under paragraph 2.4(d), then:

- (a) any such amount demanded shall be paid by the Bond Provider into an interest-bearing account with a clearing bank in London and held on trust for RfL and the Operator for application in or towards amounts in respect of which RfL would have been entitled to make any demand under the Performance Bond;
- (b) any interest accruing in such account and any balance remaining at the Performance Bond Longstop Date shall, subject to RfL's right of set-off under paragraph 6 (*Set-off*) of Schedule 20 (*Other Provisions*), belong to the Operator; and
- (c) if the Operator subsequently delivers a replacement, renewed or extended Performance Bond that meets the requirements of paragraphs 2.1 and 2.2, the balance standing to the credit of the account referred to in paragraph 2.5(b) (including any interest) shall belong to the Operator, and RfL shall promptly take such steps as are

reasonably requested by the Operator to ensure the release of such balance to the Operator.

2.6 Any reference in this Agreement to circumstances in which RfL may issue a demand notice or take any other action under the Performance Bond or the Guarantee shall be without prejudice to the generality of paragraph 2.1(a) or (b) respectively.

3. FINANCIAL RATIO

Lock-up Period

3.1 The Operator may not without RfL's prior consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Operator;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan or any Updated Business Plan; or
- (c) make payment under any intra-group borrowings, including under the Inter-company Loan Facility,

during any Lock-up Period if either of the circumstances referred to in paragraph 3.2 apply.

3.2 The restrictions described in paragraph 3.1 shall apply where:

- (a) the ratio of Current Assets to Current Liabilities is less than the ratio of [REDACTED] and/or the Operator's minimum cash balance is less than £[REDACTED], in each case as shown in the latest Management Accounts, in which case, the Lock-up Period shall continue until the ratio of Current Assets to Current Liabilities, as shown in the latest Management Accounts, is once again equal to or more than the ratio of [REDACTED]; or
- (b) the Management Accounts for any three Reporting Periods out of any 13 consecutive Reporting Periods (the *Financial Performance Measurement Period*) disclose that the ratio of Current Assets to Current Liabilities is less than the ratio of [REDACTED] and/or the Operator's minimum cash balance is less than £[REDACTED], in which case, the Lock-up Period shall continue for a period of 13 consecutive Reporting Periods commencing with the next Reporting Period after the Financial Performance Measurement Period, regardless of whether the ratio of Current Assets to Current Liabilities, as shown in any Management Accounts relating to any of the Reporting Periods in that Lock-up Period, is equal to or more than the ratio of [REDACTED].

3.3 Where any Lock-up Period referred to in paragraph 3.2(b) occurs, the next Financial Performance Measurement Period shall not commence until the next Reporting Period after the end of that Lock-up Period, provided that the Lock-up Period referred to in paragraph 3.2(a) may apply from the next Reporting Period after the end of any Financial Performance Measurement Period where either of the circumstances referred to in paragraph 3.2(a) apply.

Inter-company Loan Facility

3.4 The Operator shall procure that the Inter-company Loan Facility is available to it on the terms set out in the Support Letter as at the date of this Agreement.

APPENDIX 1 TO SCHEDULE 14
FORM OF PERFORMANCE BOND

Dated _____ 20[_____]

[_____]

RAIL FOR LONDON LIMITED

ON-DEMAND PERFORMANCE BOND



Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

THIS BOND is made as a deed on [____] 20[____]

BETWEEN:

- (1) [____] whose registered office is at [____] and registered number is [____] (the **Bond Provider**); and
- (2) **RAIL FOR LONDON LIMITED** whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL and registered number is 05965930 (**RfL**).

RECITALS

(A) By a concession agreement to be made on or about the date of this Agreement between RfL and [____] (the **Operator**) on [____] (the **Concession Agreement**), as amended or varied from time to time, the Operator is to be awarded the right to operate the services relating to the concession in accordance with the terms of the Concession Agreement, as more particularly specified and defined in the Concession Agreement.

(B) Under the Concession Agreement, the Operator is to be obliged to procure, in favour of RfL, a performance bond.

(C) The Bond Provider has agreed with RfL, at the request of the Operator, to provide this performance bond in satisfaction of the Operator's obligation referred to in Recital (B) (this **Bond**).

THE PARTIES AGREE AS FOLLOWS:

1. OBLIGATION TO MEET DEMANDS UNDER THIS BOND

The Bond Provider irrevocably and unconditionally undertakes to pay to RfL or its assigns, immediately on receipt of the first and all subsequent written demands to the Bond Provider, the sum stated in each such demand, without proof or conditions. RfL may at any time make any number of demands under this Bond provided that the maximum aggregate liability of the Bond Provider under this Bond shall not exceed the sum of £[____]¹² (the **Maximum Amount**).

2. PRIMARY OBLIGATION

The Bond Provider's obligation to make payment under this Bond shall be a primary, independent, irrevocable and absolute obligation and it shall not be entitled to delay or withhold payment for any reason whatsoever.

3. DEMAND IS CONCLUSIVE EVIDENCE OF LIABILITY

3.1 A demand shall be conclusive evidence of the Bond Provider's liability and of the amount of the sum or sums which it is liable to pay to RfL, notwithstanding any objection made by the Operator or any other person. The Bond Provider shall have no right and shall not be under any duty or responsibility to enquire:

¹² Amount to be inserted that is consistent with the period of validity of the bond and the maximum amount that relates to that period of validity specified in paragraph 3.1(a) of Schedule 14 (*Financial Obligations and Credit Support*) of the Concession Agreement.

- (a) into the reason or circumstances of any demand;
- (b) the respective rights, obligations and/or liabilities of RfL and the Operator under the Concession Agreement; or
- (c) the authenticity of any written demand made by or the authority of the persons signing any written demand by RfL.

3.2 RfL shall not be obliged, before enforcing any of its rights or remedies conferred upon it by this Bond or by law, to take any step or action, including, without limitation:

- (a) the taking of any legal proceedings or action or the obtaining of any judgment against the Operator in any court, arbitration or adjudication;
- (b) the making or filing of any claim in bankruptcy, liquidation, winding up or dissolution of the Operator; or
- (c) the pursuance or exhaustion of any other right or remedy against the Operator,

and the liabilities of the Bond Provider under this Bond may be enforced irrespective of whether any legal proceedings are being or have been taken against the Operator.

4. NO CLAIMS

The Bond Provider must not (so long as the Operator has any actual or contingent obligations pursuant to the Concession Agreement) by reason of performance by it of its obligations under this Bond or on any other ground:

- (a) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Operator or claim any set-off or counterclaim against the Operator; or
- (b) claim or prove in a liquidation or other insolvency proceeding of the Operator in competition with RfL in respect of any payment by the Bond Provider under this Bond and in case the Bond Provider receives any sums from the Operator in respect of any payment of the Bond Provider under this Bond, the Bond Provider must hold such monies on trust for RfL so long as any sums are payable (contingently or otherwise) under this Bond.

5. PAYMENTS

All payments under this Bond shall be in pounds sterling and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of, any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

6. DURATION

This Bond is a continuing obligation and shall remain in full force and effect until the earlier of:

- (a) the payment by the Bond Provider to RfL of a sum or sums in aggregate which equals or equal the Maximum Amount; or

(b) []¹³,

when it shall expire and cease to be valid, whether or not this Bond is returned to the Bond Provider except in respect of any demand made by RfL in accordance with clause 1 (*Obligation to meet demands under this Bond*) on or before such date.

7. REQUIREMENTS FOR MAKING DEMANDS

All demands to be made in accordance with clause 1 (*Obligation to meet demands under this Bond*) must be in writing and be sent by hand, courier, prepaid first-class post or recorded delivery to the Bond Provider at []¹⁴ (marked for the attention of []¹⁵), and:

- (a) any demands sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second business day (which expression means a day (excluding Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business) after posting;
- (b) any demands sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed; and
- (c) the Bond Provider may by five days' written notice to RfL change its postal address or addressee for receipt of such demands.

8. TRANSFER

8.1 RfL may assign, transfer or novate the benefit of, and its rights under, this Bond to any person to whom the Concession Agreement is assigned, transferred or novated by RfL without having to obtain the consent of the Bond Provider, and RfL shall notify the Bond Provider of the identity of any such assignee, transferee or novatee within 20 Business Days of any such assignment, transfer or novation.

8.2 The Bond Provider shall not assign, transfer or novate this Bond in whole or in part.

9. VALID AND BINDING OBLIGATION

The Bond Provider hereby covenants, warrants and represents that it is duly authorised to enter into, deliver and perform its obligations under this Bond and that it constitutes valid, binding and enforceable obligations of the Bond Provider in accordance with its terms.

10. RIGHTS OF THIRD PARTIES

A person who is not a party to this Bond has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.

¹³ Insert date. Total period of bond coverage (whether made up of a series of bonds or a single bond) to be 12 months after the Expiry Date of the Concession Agreement (including possible extensions thereto).

¹⁴ Insert address of Bond Provider.

¹⁵ Insert for whose attention demands are to be marked.

11. INVALIDITY

If any provision of this Bond is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

12. ENTIRE AGREEMENT

The terms of this Bond constitute the entire agreement and understanding between the parties to this Bond in connection with the subject matter to this Bond. Neither party to this bond has relied upon any representation by the other party except as expressly set out in this Bond.

13. GOVERNING LAW AND JURISDICTION

13.1 This Bond and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Bond or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

13.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Bond or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause 13.2 shall affect the ability of RfL to enforce any judgment against the Bond Provider in any jurisdiction.

IN WITNESS whereof this Bond has been executed as a deed on the date first above written.

SIGNED FOR AND ON
BEHALF OF **[BOND PROVIDER]**
DIRECTOR:



DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF **RAIL FOR LONDON
LIMITED**
DIRECTOR:



DIRECTOR/SECRETARY:

APPENDIX 2 TO SCHEDULE 14

FORM OF GUARANTEE

Dated _____ 20[_____]

[_____]

RAIL FOR LONDON LIMITED

GUARANTEE



Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

THIS DEED is made on [] 20[]

BETWEEN:

- (1) [] whose registered office is at [] and registered number is [] (the *Guarantor*); and
- (2) **RAIL FOR LONDON LIMITED** whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL and registered number is 05965930 (*RfL*).

RECITALS

(A) By a concession agreement made between RfL and [] (the *Operator*) on [] (the *Concession Agreement*), as amended or varied from time to time, the Operator was awarded the right to operate Crossrail in accordance with the terms of the Concession Agreement, as more particularly specified and defined in the Concession Agreement.

(B) The Guarantor has agreed with RfL, at the request of the Operator, to guarantee the due and proper performance of the Operator's obligations under the Concession Agreement upon the terms and conditions of this Guarantee.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Guarantee, words and phrases commencing with capital letters will, unless defined below or a contrary intention appears, have the same meaning ascribed to them under the Concession Agreement:

Guaranteed Obligations has the meaning given to it in clause 2.1(a);

Relevant Right has the meaning given to it in clause 11 (*Waiver of Relevant Rights*); and

Taxes means any kind of tax, duty, levy or other charge (other than Value Added Tax) whether or not similar to any in force at the date of this Guarantee and whether imposed by a local, governmental or other relevant authority in the United Kingdom or elsewhere.

1.2 In the event of any conflict between the Concession Agreement and this Guarantee, the latter will prevail.

2. GUARANTEE AND INDEMNITY

Guarantee

2.1 In consideration of RfL entering into the Concession Agreement with the Operator, the Guarantor irrevocably and unconditionally:

- (a) guarantees to RfL the due and punctual performance and observance by the Operator of each and all of its duties and obligations (whether express, implied, actual or contingent) under the Concession Agreement (the *Guaranteed Obligations*) when they or any part of them become due and performable according to the terms of the Concession Agreement; and
- (b) covenants with and undertakes to RfL fully to perform and observe such Guaranteed Obligations (or to procure the full performance and observance thereof) within 30

Business Days of written demand in accordance with the terms of this Guarantee if the Operator shall fail in any respect to perform and observe the same.

Indemnity

2.2 The Guarantor, as principal obligor and as separate and independent obligations and liabilities from its obligations and liabilities under clause 2.1, agrees to indemnify RfL against all loss, debt, damage, interest, liability, cost and expense (including legal expenses) incurred or suffered by RfL by reason of a failure by the Operator to perform any or all of the Guaranteed Obligations when they are due and performable and undertakes to pay to RfL immediately on RfL's first written demand, the amount of that loss, debt, damage, interest, liability, cost and expense without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever.

More than one demand

2.3 RfL may serve more than one demand under this clause 2.

Awards

2.4 The Guarantor agrees to satisfy and discharge any court, arbitrator or adjudicator's award made against the Operator in favour of RfL.

Right to amend Concession Agreement

2.5 The Guarantor irrevocably authorises RfL and the Operator to make any amendment or variation to the terms of the Concession Agreement in their absolute discretion and the Guarantor shall be bound by and shall guarantee all of the Guaranteed Obligations under the Concession Agreement as amended or varied.

Limit of liability

2.6 Without prejudice to clause 10 (*Costs and Expenses*) and notwithstanding any other provision of this Guarantee, the Guarantor's maximum aggregate liability hereunder shall not exceed an amount equal to the Overall Liability Cap.

3. PRESERVATION OF RIGHTS

3.1 The obligations of the Guarantor under this Guarantee are in addition to and independent of any other security that RfL may at any time hold in respect of the Guaranteed Obligations.

3.2 The Guarantor's obligations and liabilities under this Guarantee will remain in full force and effect and are not to be discharged, diminished or affected in any way by reason of any of the following:

- (a) the insolvency, bankruptcy, liquidation, winding-up, dissolution, administration, receivership, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Operator or the Guarantor;
- (b) any change in the status, function, constitution, control or ownership of the Operator, the Guarantor or RfL;

- (c) the taking, variation, compromise, renewal, release or refusal or neglect to perfect or enforce any right, remedies or securities against the Operator or any other person;
- (d) any purported obligation of the Operator or any other person to RfL (or any security for that obligation) becoming wholly or in part void, invalid, illegal or unenforceable for any reason;
- (e) any incapacity, lack of power, authority or legal personality or any change in the constitution of, or any amalgamation or reconstruction of, the Operator, RfL or any other person;
- (f) any variation to or amendment of the Concession Agreement (including, without limitation, any extension of time for performance, or any concession or waiver by RfL in respect of the Operator's obligations under the Concession Agreement) so that references to the Concession Agreement in this Guarantee shall include each such variation or amendment;
- (g) any provision of the Concession Agreement being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;
- (h) any failure of supervision or detection or prevention of any default of the Operator under or in connection with the Concession Agreement;
- (i) any additional or advance payment to the Operator under or in connection with the Concession Agreement;
- (j) the suspension or termination of the Concession Agreement or of the employment of the Operator under the Concession Agreement for any reason whatsoever;
- (k) any indulgence, forbearance or waiver of any right of action or remedy of RfL against the Operator or negligence by RfL in enforcing any such right of action or remedy;
- (l) any compromise of any dispute with the Operator arising out of or in connection with the Concession Agreement; and
- (m) any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred on RfL by this Guarantee or by law.

4. NO COMPETITION

4.1 The Guarantor must not (so long as the Operator has any actual or contingent obligations pursuant to the Concession Agreement) by reason of performance by it of its obligations under this Guarantee or on any other ground:

- (a) exercise any right it may have to be subrogated to or otherwise entitled to share in, any security or monies held, received or receivable by RfL or to claim any right of contribution in relation to any payment made by the Guarantor under this Guarantee;
- (b) following a claim being made on the Guarantor under this Guarantee, exercise any right it may have to demand or accept repayment of any monies due from the Operator or claim any set-off or counterclaim against the Operator;

- (c) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Operator or claim any set-off or counterclaim against the Operator;
- (d) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of RfL under the Concession Agreement or otherwise; or
- (e) claim or prove in a liquidation or other insolvency proceeding of the Operator in competition with RfL in respect of any payment by the Guarantor under this Guarantee or otherwise be entitled in competition with RfL to claim or have the benefit of any security which RfL has or may hold for any monies or liabilities due or incurred by the Operator to RfL and in case the Guarantor receives any sums from the Operator in respect of any payment of the Guarantor under this Guarantee the Guarantor must hold such monies on trust for RfL so long as any sums are payable (contingently or otherwise) under this Guarantee.

4.2 The Guarantor undertakes to RfL that it has not taken and will not take any security from the Operator in respect of the Guarantor's obligations under this Guarantee and any security taken and all monies received by the Guarantor in breach of this provision will be held on trust for RfL as security for the obligations of the Guarantor.

5. IMMEDIATE RECOURSE

RfL will not be obliged, before enforcing any of its rights or remedies conferred upon it by this Guarantee or by law, to take any step or action, including, without limitation:

- (a) the taking of any legal proceedings or action or the obtaining of any judgment against the Operator in any court, arbitration or adjudication;
- (b) the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Operator; or
- (c) the pursuance or exhaustion of any other right or remedy against the Operator,

and the liabilities of the Guarantor under this Guarantee may be enforced irrespective of whether any legal proceedings are being or have been taken against the Operator. The Guarantor hereby waives any right it may have of first requiring RfL to proceed against or enforce any rights or security or claim payment from any person before claiming it under this Guarantee.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Guarantor represents and warrants to RfL in the terms set out in the remainder of this clause 6.

Incorporation

6.2 The Guarantor is duly incorporated and validly existing with limited liability under the laws of Hong Kong and has the power to own its assets and carry on its business.

Power and Capacity

6.3 The Guarantor has the power and capacity to enter into and comply with its obligations under this Guarantee.

Authorisation

6.4 The Guarantor has taken all necessary action:

- (a) to authorise the entry into and compliance with its obligations under this Guarantee;
- (b) to ensure that its obligations under this Guarantee are valid, legally binding and enforceable in accordance with their terms; and
- (c) to make this Guarantee admissible in evidence in the courts of England.

Consents

6.5 All consents and filings required by it for the conduct of its business as presently conducted and in connection with the entry into, performance, validity, enforceability and admissibility in evidence of this Guarantee have been unconditionally obtained and are in full force and effect.

No Contravention

6.6 Neither the entry into of this Guarantee by the Guarantor nor the performance of any of its obligations under it do now or will:

- (a) conflict with its constitutional documents;
- (b) contravene any law, regulation, judgment or order to which the Guarantor is subject; or
- (c) breach any agreement or the terms of any consent binding on the Guarantor.

7. CONTINUING OBLIGATION

This Guarantee is a continuing guarantee and will, subject to clause 18 (*Expiry*), remain in full force and effect until each and every part of the Guaranteed Obligations have been discharged and performed in full.

8. SUSPENSE ACCOUNT

Until all Guaranteed Obligations have been irrevocably satisfied in full, RfL may place and keep any money received or recovered from the Guarantor in relation to the Guaranteed Obligations in a suspense account and interest accrued shall be credited to that account.

9. PAYMENTS

9.1 All payments to be made by the Guarantor to RfL under this Guarantee shall be made to RfL in immediately available cleared funds and paid in full in pounds sterling (or a successor currency) without set-off or counterclaim free of any present or future Taxes, deduction, levies, charges, fees or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, RfL receives a net amount equal to the amount RfL would have received had no such deduction or withholding been made.

9.2 The Guarantor shall pay interest to RfL on all amounts due from it under this Guarantee from the date any such demand is made until payment of such amounts (both before and after any judgment) calculated on a daily basis at the Interest Rate.

9.3 All payments by the Guarantor under this Guarantee must be made to RfL to its account at a bank in the United Kingdom as RfL may notify the Guarantor on the date of this Guarantee or otherwise in any notice of demand served under the terms of clause 2 (*Guarantee and Indemnity*).

9.4 If a payment under this Guarantee is due on a day that is not a Business Day, the due date for that payment will instead be the next Business Day.

10. COSTS AND EXPENSES

The Guarantor will pay to RfL on demand the amount of all costs and expenses (including legal fees and other out-of-pocket expenses and any Value Added Tax or similar tax thereon) incurred by RfL in connection with the negotiation, preparation, execution, amendment, release, enforcement or attempted enforcement of, or preservation of RfL's rights under, this Guarantee, or in consequence of any payment made under this Guarantee (whether made by the Guarantor or a third person) being declared void for any reason whatsoever.

11. WAIVER OF RELEVANT RIGHTS

For the benefit of RfL and the Operator, the Guarantor waives any right or remedy that it has or may have to subrogation, indemnification or payment on any other basis by the Operator and any other remedy against the Operator (each a **Relevant Right**) by reason of or in connection with the performance of the Guarantor's obligations under this Guarantee in circumstances where the Operator promotes, enters into, or implements a voluntary arrangement (under Part 26 of the Companies Act 2006). Damages shall not be an adequate remedy for RfL or the Operator in respect of a breach of this clause 11 and the parties shall consent to any application brought by RfL or the Operator for injunctive relief to prevent any such Relevant Right being enforced.

12. ASSIGNMENT

RfL may assign, novate or otherwise transfer the benefit of, and its rights under, this Guarantee to any person to whom the Concession Agreement is assigned without having to obtain the consent of the Guarantor. The Guarantor shall not assign, novate or otherwise transfer this Guarantee or any right or obligation arising or pursuant to this Guarantee to any person.

13. THIRD PARTY RIGHTS

Except for the Operator's rights under clause 10 (*Costs and Expenses*), a person who is not a party to this Guarantee has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

14. PARTIAL INVALIDITY

If any provision of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

15. GOVERNING LAW

This guarantee and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Guarantee or its formation (including any non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

16. JURISDICTION

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Guarantee or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause 16 shall affect the ability of RfL to enforce any judgment against the Guarantor in any jurisdiction.

17. NOTICES

17.1 All demands and notices to be given under this Guarantee must be in writing and sent by hand, courier, prepaid first-class post or recorded delivery to the address of the relevant party set out in clause 17.2 or such other address as that party may by notice in writing nominate for the purpose of service and any demands or notices:

- (a) sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second Business Day after posting; and
- (b) sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed.

17.2 Unless notified otherwise, all demands and notices shall be addressed to the parties as follows:

[The Guarantor]

Address:

Attention:

RfL

Address: Windsor House, 42-50 Victoria Street, London SW1H 0TL

Attention:

18. EXPIRY

This Guarantee shall expire on the date which falls three years after the Expiry Date, save to the extent any claim has been made under this Guarantee prior to the expiry of such period, in which case this Guarantee shall remain in full force and effect in relation to any such claim until the date of its withdrawal, satisfaction or dismissal by a final and binding order of a court of competent jurisdiction.

IN WITNESS whereof this deed has been executed and delivered on the date first above written.

SIGNED FOR AND ON
BEHALF OF **[GUARANTOR]**

DIRECTOR:

DIRECTOR/SECRETARY:



SIGNED FOR AND ON
BEHALF OF **RAIL FOR LONDON
LIMITED**

DIRECTOR:

DIRECTOR/SECRETARY:



SCHEDULE 15

CONCESSION MANAGEMENT PROVISIONS

Schedule 15.1: Personnel, Communications and Access

Schedule 15.2: Co-location

Schedule 15.3: Responsible procurement

Schedule 15.4: Environment

Schedule 15.5: Pensions

SCHEDULE 15.1

Personnel, Communication and Access

1. OPERATOR'S CONTRACT MANAGER

1.1 The Operator shall appoint a competent Contract Manager who shall have power and authority delegated to it by the Operator to act and to make decisions on behalf of the Operator in relation to this Agreement. The principal responsibilities of the Contract Manager to the Operator shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Operator;
- (b) to ensure that the necessary resources within the Operator's organisation are made available expeditiously for the performance of the Operator's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate the Operator in fulfilling its obligations under this Agreement to RfL, including where necessary, to procure and co-ordinate the performance of third parties.

1.2 The Contract Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Contract Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until RfL is deemed to have received notice of it in writing in accordance with paragraph 4.3 of Schedule 20 (*Other Provisions*).

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Operator, a minimum of one month's notice must be given to the Concession Manager of a proposal to replace the Contract Manager.

2. KEY PERSONNEL

2.1 The Operator shall identify a schedule of Key Personnel who shall be employed by the Operator in the performance of this Agreement. This shall include the following persons:

- (a) a Managing Director;
- (b) a Contract Manager;
- (c) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Operator with Schedule 7 (*Operating Performance*) (the *Operations Director*);
- (d) a safety manager, whose role will include responsibility for ensuring that the Operator complies with its legal obligations in relation to the Concession Services including the Safety Certificate (the *Safety Director*);

- (e) a finance manager, whose role will include responsibility in relation to the Financial Model (the *Finance Director*);
- (f) a manager experienced in the provision of customer service, whose role will include responsibility for overseeing the Operator's compliance with the levels of customer service contemplated by this Agreement (the *Customer Service Director*);
- (g) a project manager, whose role will include responsibility for delivering the Operator's obligations under this Agreement in relation to the staged opening of Crossrail including the timely implementation of the Staged Opening Plan (the *Project Director*); and
- (h) a manager experienced in the procurement and operation of rolling stock, whose role will include responsibility for facilitating the Operator's obligations under this Agreement in relation to the delivery of the Class 345 Fleet and its operation in revenue-earning passenger service (the *New Trains Director*).

2.2 The Operator shall procure that, provided they remain in the employment of a Parent, the individuals referred to in paragraph 2.3, unless RfL otherwise agrees:

- (a) remain in the related posts for at least the related periods set out in paragraph 2.3 and not transferred within the group of any Parent; and
- (b) devote substantially all of their time to performing the duties attached to those posts.

2.3 The individuals and periods of appointment to which paragraph 2.2 applies are:

[REDACTED]

2.4 The Operator shall not appoint the any of the individuals named in paragraph 2.3 or any other members of Operator's Executive without the prior written consent of RfL (such consent not to be unreasonably withheld).

2.5 The Operator shall provide to RfL an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel on or prior to the Start Date and shall update such chart (and provide a copy to RfL promptly thereafter) as and when any changes occur.

3. RfL'S CONCESSION MANAGER

3.1 RfL shall appoint a competent Concession Manager who shall have power and authority delegated to him by RfL to act and to make decisions on behalf of RfL in relation to this Agreement and amend this Agreement on behalf of RfL. The principal responsibilities of the Concession Manager to RfL shall be, amongst other things:

- (a) to manage this Agreement on behalf of RfL;
- (b) to monitor the Operator's performance of its obligations under this Agreement and where appropriate, issue Remedial Plan Notices and agree the terms of Remedial Agreements;
- (c) to ensure that the necessary resources within RfL are made available expeditiously for the performance of RfL's obligations under this Agreement; and

- (d) to facilitate RfL in fulfilling its obligations under this Agreement to the Operator, including where necessary, to procure and co-ordinate the performance of third parties.

3.2 The Concession Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Concession Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Operator is deemed to have received notice of it in writing in accordance with paragraph 4.3 of Schedule 20 (*Other Provisions*).

3.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of RfL, RfL shall give the Contract Manager reasonable notice of a proposal to replace the Concession Manager.

4. CONTROL OF COMMUNICATIONS, INFORMATION AND DOCUMENTS

4.1 All correspondence between the Operator and RfL (other than correspondence in connection with the matters referred to in paragraph 4.1 of Schedule 20 (*Other Provisions*)) shall be sent to the Contract Manager and/or the Concession Manager (as appropriate) in accordance with the terms of paragraph 4.14.2 of Schedule 20.

4.2 The Operator shall use a logical and structured system for correspondence reference. All correspondence between the Operator and RfL shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement, as the context may require.

4.3 The Operator shall maintain a sequentially numbered register of all correspondence relating to Crossrail. Such register shall record the reference number for each piece of correspondence, its date, a brief description of the topic covered in the correspondence, the date on which a response is due and the date on which a response was made or received.

4.4 The correspondence register referred to in paragraph 4.3 and any outstanding items shall be reviewed at each Concession Performance Meeting.

5. CONCESSION PERFORMANCE MEETINGS

5.1 The parties shall hold a Concession Performance Meeting once in each Reporting Period at a time and location notified to the Operator by RfL.

5.2 The parties shall review the financial, operating and contractual performance of the Operator at each Concession Performance Meeting, using the contents of the latest Periodic Concession Report as a means of informing the agenda.

5.3 Each Concession Performance Meeting shall be chaired by the Concession Manager and minuted by the Concession Manager or his nominee from RfL. The minutes shall be published within seven Business Days of each such meeting.

5.4 The Operator shall procure that its Managing Director and such other directors as required shall attend each Concession Performance Meeting and each such representative shall have full power and authority delegated to him by the Operator to act and to make binding decisions on behalf of the Operator.

5.5 RfL shall be entitled to invite other members of the TfL Group to attend any Concession Performance Meeting, provided that RfL has confirmed to the Operator such attendance in advance.

5.6 In addition to the obligation to prepare the Periodic Concession Report pursuant to paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*), the Operator shall prepare and present such additional reports to each Concession Performance Meeting as RfL may reasonably request. The Operator's obligations under this paragraph 5.6 are subject to the Operator receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

5.7 No comment or failure to comment nor any agreement or approval, implicit or explicit by RfL or any other member of the TfL Group at such meetings will relieve the Operator of any of its obligations under this Agreement.

6. DEVELOPMENT OF RAILWAY INDUSTRY STANDARDS

6.1 The Operator shall at all times during the Concession Period co-operate with TfL, RfL and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to ***Railway Industry Standards*** in this paragraph 6 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.

6.2 In co-operating with RfL and/or any third party in developing any railway industry standards, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with RfL and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any railway industry standards;
- (b) provide the Operator's opinion on any proposed railway industry standards;
- (c) provide the Operator's opinion on any existing railway industry standards or any replacement railway industry standards;
- (d) review and comment upon implementation timetables and programmes for any railway industry standards or any replacement railway industry standards;
- (e) make recommendations for modifications to any existing or new railway industry standards in the light of operating experience;
- (f) make representations to competent authorities to prevent the introduction of new railway industry standards where in the Operator's opinion the introduction of such new railway industry standards would cause disproportionate additional cost; and
- (g) make representations to competent authorities to seek derogations from the application of new railway industry standards where such new railway industry standards are judged inappropriate by the Operator.

7. SYSTEM INTERFACE COMMITTEES

7.1 The Operator shall at all times during the Concession Period co-operate with the reasonable requirements of any relevant System Interface Committees in the development,

modification, agreement and implementation of any system interface recommendations made by those committees.

7.2 In co-operating with any relevant System Interface Committee, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
- (b) provide the Operator's opinion on any such proposed recommendations;
- (c) review and comment upon implementation timetables and programmes for any such recommendations;
- (d) make recommendations for modifications to any existing or system interface recommendations in the light of operating experience; and
- (e) make representations to competent authorities to seek derogations from the application of such recommendations where the Operator reasonably believes that such derogations are appropriate.

8. RIGHT OF ASSESSMENT OR INSPECTION

8.1 The Operator shall, if requested by RfL, allow RfL:

- (a) to inspect and copy any records referred to in Schedule 16.1 (*Records, plans and reports*) and RfL may verify any such records; and
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Operator and/or its auditors and any assets (including the Concession Assets) used by the Operator in connection with the Concession Services.

8.2 The Operator shall make available to RfL the information referred to in paragraph 8.1 and grant or procure the grant of such access (including to or from third parties) as RfL shall reasonably require in connection therewith.

8.3 RfL shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

8.4 If any inspection reveals that information previously supplied to RfL was in any material respect inaccurate or if such inspection reveals any other material contravention of the Operator's obligations under this Agreement, the costs of any such inspection shall be borne by the Operator.

SCHEDULE 15.2

Co-location

1. ACCOMMODATION FOR RfL MANAGEMENT TEAM

1.1 The Operator shall from the date referred to in paragraph 1.3 and at all times thereafter during the term of this Agreement provide secure, separate and fully serviced office accommodation for RfL's concession management team, within the same building as the Operator's management team, which building shall be located within Zone 1, 2 or 3 (the **RfL Accommodation**). The RfL Accommodation shall be available for use without any unreasonable time restrictions through the common part of the building in which it is located and shall provide for as a minimum:

- (a) one secure suite which RfL shall be able to control access to day-to-day;
- (b) one open-plan office that provides sufficient capacity for 12 workstations;
- (c) two separate senior managers' offices, each of not less than 150 square feet with facilities to hold meetings;
- (d) adequate furniture for meetings to be held in the offices referred to in paragraph 1.1(c) and in the remainder of the RfL Accommodation in order that RfL's employees may carry out their functions in relation to the performance of this Agreement;
- (e) adequate toilet and kitchen facilities for RfL's employees, provided that these facilities may be shared with Concession Employees;
- (f) a level of comfort and facilities that is consistent with the other areas of the building that are used by Concession Employees;
- (g) adequate office cleaning and waste disposal services (including secure waste disposal services); and
- (h) private, direct telephone lines for each workspace and each of the offices referred to in paragraph 1.1(c).

1.2 The Operator shall procure within the building in which the RfL Accommodation is located, that RfL's employees have access to a boardroom-style meeting room, provided that such meeting room may be a shared facility with Concession Employees. Such meeting room shall be of sufficient capacity for those RfL employees that are located at the RfL Accommodation to all meet simultaneously.

1.3 The Operator shall make available the RfL Accommodation at least four weeks before the Start Date.

2. SUPPORT AND SERVICES

2.1 The Operator shall co-operate with RfL to assist RfL in the successful mobilisation of its resources and the carrying out of its activities prior to the start of Crossrail, and this co-operation shall include:

- (a) regularly consulting RfL (including RfL's information technology representatives) on the Operator's project plans for the Operator's fit out of the RfL Accommodation; and
- (b) taking reasonable steps to accommodate RfL's information technology requirements for the RfL Accommodation as soon as reasonably practicable.

2.2 The Operator shall establish a facilities management function prior to making the RfL Accommodation available to RfL and maintain that function, in each case for the purpose of rectifying or procuring the rectification of defects reported or identified in respect of the building in which the RfL Accommodation is located. The Operator shall procure that any such defects reported to it by RfL are duly recorded by that facilities management function and investigated and rectified promptly following such notification.

SCHEDULE 15.3

Responsible Procurement

1. COMPLIANCE WITH LAWS

Bribery Act

1.1 The Operator shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

Crime and Disorder Act 1998

1.2 The Operator acknowledges that TfL is under a duty in accordance with section 17 of the Crime and Disorder Act 1998:

- (a) to have due regard to the impact of crime, disorder and community safety in the exercise of its duties;
- (b) where appropriate, to identify actions to reduce levels of crime and disorder; and
- (c) to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Concession Services, the Operator will assist and co-operate with RfL, and will use reasonable endeavours to procure that its Direct Subcontractors observe these duties and assists and co-operates with RfL where possible to enable TfL to satisfy its duty.

2. COMPLIANCE WITH POLICIES

2.1 The Operator, at no additional cost to RfL, undertakes to procure that all Concession Employees comply with all of TfL's policies and standards that are relevant to the performance of the Concession Services, including TfL's:

- (a) 'Code of Conduct' including the provisions set out in and those relating to safety, security, and any other on site regulations specified by TfL for personnel working at its premises or accessing TfL's computer systems; and
- (b) 'Drugs and Alcohol Policy'.

2.2 RfL shall procure that TfL provides the Operator on request with copies of the policies and standards referred to in paragraph 2.1 that may apply from time to time.

3. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Operator shall not, and shall ensure that its employees, agents, Direct Subcontractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of TfL or any member of the TfL Group nor favour any employee, officer or agent of TfL or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of TfL or any member of the TfL Group other than as a representative of TfL, without TfL's prior written approval.

4. EQUALITY AND DIVERSITY STATUTORY DUTIES

Duty not to discriminate

4.1 Without limiting any other provision of this Agreement, the Operator shall (and shall procure that its Direct Subcontractors shall), in relation to Crossrail:

- (a) not unlawfully discriminate; and
- (b) procure that the Concession Employees do not unlawfully discriminate,

within the meaning and scope of the Equality Act and any other relevant enactments in force from time to time relating to discrimination in employment.

Equality Act duties

4.2 The Operator acknowledges that under section 149 of the Equality Act, TfL is under a duty to have due regard for the need to, amongst other things:

- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by or under the Equality Act on the grounds of age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion and belief, sex and sexual orientation (a *Relevant Protected Characteristic*);
- (b) promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Concession Services, the Operator shall assist and cooperate with TfL where possible in satisfying this duty; and
- (c) foster good relations between people who share a Relevant Protected Characteristic and persons who do not.

4.3 The Operator shall inform TfL promptly in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Equality Act.

GLA Act duties

4.4 The Operator, at no additional cost to RfL acknowledges that TfL is under a duty by virtue of a direction under section 155 of the GLA Act in respect of section 404(2) of that act to have due regard to the need to:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Concession Services, the Operator shall assist and co-operate with TfL where possible to enable TfL to satisfy its duty.

Direct Subcontractors

4.5 On entering into any agreement with a Direct Subcontractor in relation to this Agreement, the Operator shall impose obligations upon the Direct Subcontractor to comply with this paragraph 4 as if the Direct Subcontractor was in the position of the Operator.

5. EQUALITY AND DIVERSITY PLANS

Developing the plans

5.1 The Operator shall develop each of the following plans:

- (a) a strategic equality and diversity plan;
- (b) an equality and diversity training plan; and
- (c) supplier diversity plan,

and submit a separate draft of each such plan to RfL no later than four months before the Start Date in accordance with the requirements of paragraph 5.2.

5.2 Each of the draft plans referred to in paragraph 5.1 shall set out in sufficient detail, the relevant requirements of the Equality and Diversity Framework.

5.3 RfL shall within one month of receipt of any of the Operator's draft plans referred to in paragraph 5.1, inform the Operator whether, in RfL's reasonable opinion meets the requirements of paragraph 5.2.

5.4 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 5.2 in relation to any plan referred to in paragraph 5.1, amend the relevant draft plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be, as appropriate:

- (a) the Strategic Equality and Diversity Plan;
- (b) the Equality and Diversity Training Plan; and
- (c) the Supplier Diversity Plan.

Electronic Library

5.5 The Operator shall ensure that the Electronic Library at all times includes up-to-date versions of the Strategic Equality and Diversity Plan, the Equality and Diversity Training Plan and the Supplier Diversity Plan.

Strategic Equality and Diversity Plan

5.6 During the Concession Period, the Operator shall comply with the Strategic Equality and Diversity Plan and shall procure that each of its Direct Subcontractors and Indirect Subcontractors adopts and implements an equality and diversity policy in respect of their respective employees engaged in relation to the performance of this Agreement which is at least as extensive in scope as the Strategic Equality and Diversity Plan.

Equality and Diversity Training Plan

5.7 During the Concession Period, the Operator shall comply with the Equality and Diversity Training Plan in relation to all Concession Employees and shall procure that each of its Direct Subcontractors and its Indirect Subcontractors adopts and implements a diversity training plan in respect of their respective employees engaged in relation to the performance of this Agreement which is at least as extensive in scope as the Equality and Diversity Training Plan.

Supplier Diversity Plan

5.8 During the Concession Period, the Operator shall comply with the Supplier Diversity Plan and shall procure that each of its Direct Subcontractors and its Indirect Subcontractors adopts and implements a supplier diversity training plan in relation to the performance of this Agreement which is at least as extensive in scope as the Supplier Diversity Plan.

6. DIVERSITY MONITORING AND REPORTING

6.1 Subject to paragraph 6.2, the Operator shall provide to RfL on or before the Start Date and subsequently every six months thereafter (or at such lesser or greater intervals as determined by RfL acting reasonably and notified to the Operator) the following information:

- (a) the proportion of Concession Employees, agents and consultants and, to the extent reasonably possible, the employees of its Direct Subcontractors and Indirect Subcontractors, in each case engaged pursuant to the terms of the relevant sub-contracts in the performance of this Agreement, who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community; and/or
 - (iv) disabled; and
- (b) the proportion of its Direct Subcontractors and Indirect Subcontractors that are SMEs and/or BAMEs.

6.2 The Operator shall ensure at all times that it, its Direct Subcontractors and its Indirect Subcontractors comply with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to RfL pursuant to paragraph 6.1.

7. DIVERSITY INFRACTIONS

7.1 If the Operator or any of its Direct Subcontractors commits a Diversity Infraction, RfL shall be entitled (but shall not be obliged) to without prejudice to any other right or remedy it might have under this Agreement, serve written notice upon the Operator identifying in reasonable detail the nature of the Diversity Infraction, and

- (a) where a Diversity Infraction is committed by the Operator, the Operator shall cease committing and remedy such Diversity Infraction within 30 days of receipt of such notice (or such longer period as may be specified by RfL in the notice); and

- (b) where the Diversity Infraction is committed by a Direct Subcontractor of the Operator, the Operator shall procure that the relevant Direct Subcontractor ceases committing and remedies the Diversity Infraction within 30 days of receipt by the Operator of such notice (or such longer period as may be specified by RfL in the notice).

7.2 If the Operator fails to procure the remedy of any Diversity Infraction referred to in paragraph 7.1(b), then RfL may (in its sole discretion) serve a further written notice upon the Operator and within 30 days of receipt of such further notice (or such longer period as may be specified by RfL in the notice) upon which the Operator shall terminate the engagement of its Direct Subcontractor under the relevant sub-contract and procure performance of the affected works or services by a replacement Direct Subcontractor which complies with the obligations of paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Diversity Monitoring and Reporting*) (inclusive)]

7.3 RfL may, in its sole discretion, require that the Operator to provide evidence to substantiate any replacement Direct Subcontractor's compliance with the obligations specified in paragraphs 4 to 6 inclusive.

8. EQUALITY AND DIVERSITY AUDITS

8.1 RfL (or its nominee) may undertake an audit of any and/or all information relating to the Operator's compliance with paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Diversity Monitoring and Reporting*) (inclusive) in accordance with paragraph 8 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*).

8.2 The Operator shall, and shall procure that each of its Direct Subcontractors shall and, where applicable subject to the provisions of paragraphs 4 to 6 (inclusive), its Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six years with respect to all matters relating to the Operator's performance of and compliance with paragraphs 4 to 6 (inclusive). The Operator shall procure that each sub-contract between the Operator and its Direct Subcontractors and, where applicable, subject to the provisions of paragraphs 4 to 6 (inclusive), each sub-contract between its Direct Subcontractor and any Indirect Subcontractor of the Operator and each sub-contract between the Operator's Indirect Subcontractors shall contain rights of audit in favour of and enforceable by RfL substantially equivalent to those granted by the Operator pursuant to paragraph 8.1.

8.3 The Operator shall promptly provide, and shall procure that its Direct Subcontractors shall and, where applicable subject to the provisions of paragraphs 4 to 6 (inclusive), its Indirect Subcontractors shall, promptly provide all reasonable co-operation to RfL or its nominated auditor, in each case in relation to any audit, including to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in the Operator's performance of this Agreement or in any Direct Subcontractor's or Indirect Subcontractor's performance of its sub-contract, whether on the Operator's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Operator's or any Direct Subcontractor's or Indirect Subcontractors obligations specified in paragraphs 4 to 6 (inclusive), wherever situated and whether the Operator owns the equipment or otherwise; and

- (c) complying with RfL's (or its nominee's) reasonable requests for access to the Operator's senior personnel (including Key Personnel) engaged in the performance of this Agreement or the relevant Direct Subcontractor's or Indirect Subcontractor's performance of its sub-contract.

9. STRATEGIC LABOUR NEEDS AND TRAINING PLAN

9.1 The Operator shall develop a draft strategic labour needs and training plan and submit that draft to RfL no later than four months before the Start Date. The draft plan shall set out in sufficient detail the relevant requirements of the Equality and Diversity Framework.

9.2 RfL shall within one month of receipt of the Operator's draft strategic labour needs and training plan, inform the Operator whether, in RfL's reasonable opinion meets the requirements of paragraph 9.1.

9.3 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 9.2, amend its draft strategic labour needs and training plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the ***Strategic Labour Needs and Training Plan***.

9.4 The Operator shall:

- (a) comply with the provisions of the Strategic Labour Needs and Training Plan; and
- (b) at no additional cost to RfL and subject to the provisions of paragraph 9.2, review and amend the Strategic Labour Needs and Training Plan as a minimum, every 12 months following the Start Date or at such other times as may be requested by RfL, to reflect:
 - (i) Good Industry Practice;
 - (ii) any changes to the terms of this Agreement; and
 - (iii) any amendments proposed by RfL.

9.5 Any changes or amendments to the Strategic Labour Needs and Training Plan shall not be implemented until approved in writing by RfL.

10. STRATEGIC LABOUR NEEDS AND TRAINING CO-ORDINATOR

10.1 Within 20 Business Days of the Start Date, the Operator shall nominate a member of its personnel with the necessary skills and authority to:

- (a) be responsible for the implementation and on-going development and maintenance of the Strategic Labour Needs and Training Plan; and
- (b) act as the single point of contact between RfL personnel on all matters concerning the Strategic Labour Needs and Training Plan,

(the ***Strategic Labour Needs and Training Co-ordinator***), provided that, the Strategic Labour Needs and Training Co-ordinator need not be a dedicated resource.

10.2 The Operator shall add the Strategic Labour Needs and Training Co-ordinator to the list of Key Personnel.

11. COMMUNITY RELATIONS

11.1 The Operator acknowledges that members of the TfL Group work closely with strategic labour needs and training third party organisations.

11.2 The Operator shall:

- (a) at the time of placing an advertisement for an employment vacancy, notify the Concession Manager (and/or any third parties nominated by RfL) of such advertisement, providing details of:
 - (i) the employment vacancy;
 - (ii) the date of the advertisement; and
 - (iii) the publication in which the advertisement is scheduled to appear or appeared (as applicable); and
- (b) attend a minimum of two events each year, to publicise employment, apprenticeship and training opportunities arising from the provision of the Concession Services.

12. SLNT MONITORING AND REPORTING

The Operator shall each Reporting Period provide RfL with a Periodic SLNT Report detailing the Operator's performance against the Strategic Labour Needs and Training Plan.

13. SLNT INFRACTIONS

13.1 If the Operator fails to:

- (a) ensure that each output for the monitoring period is delivered in accordance with the Strategic Labour Needs and Training Plan; and/or
- (b) review the Strategic Labour Needs and Training Plan in accordance with paragraph 9.1(b),

then the Operator shall explain the reasons for such failure in the next Concession Performance Meeting.

14. SLNT AUDITS

14.1 RfL (or its nominee) may undertake an audit of any and/or all information relating to the Operator's compliance with paragraphs 9 (*Strategic Labour Needs and Training Plan*) to 12 (*SLNT Monitoring and Reporting*) (inclusive) in accordance with paragraph 8 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*).

14.2 The Operator shall maintain and retain records relating to the Strategic Labour Needs and Training Plan and its compliance with the provisions of paragraphs 9 to 12 (inclusive) for a minimum of six years.

15. LONDON LIVING WAGE

15.1 Without prejudice to any other provision of this Agreement, the Operator shall:

- (a) ensure that no Concession Employee, contracted employee and/or employee of its Direct Subcontractors or Indirect Subcontractors who, in each case is employed in the

carrying out of the Operator's rights and obligations under this Agreement or the performance of activities reasonably ancillary thereto, in each case either:

- (i) within the GLA Area; or
 - (ii) outside the GLA Area where employed at a facility in respect of which the Operator is the Facility Owner or at other premises reasonably proximate to the Crossrail Route,
- (b) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage as adjusted annually;
 - (c) provide to RfL such information concerning the London Living Wage as RfL or its nominees may reasonably require from time to time;
 - (d) disseminate on behalf of RfL to its employees engaged in complying with its obligations under this Agreement such perception questionnaires as RfL may reasonably require from time to time and promptly collate and return to RfL responses to such questionnaires; and
 - (e) co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

15.2 RfL reserves the right to audit the provision of the London Living Wage to the employees referred to in paragraph 15.1(a).

15.3 Any failure by the Operator to comply with the terms of this paragraph 15 shall be a contravention of this Agreement and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreements*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

16. ETHICAL SOURCING

16.1 RfL is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Operator shall comply with and shall procure that its Direct Subcontractors (as applicable) comply with those principles of the ETI Base Code or any subsequent website created for the purpose, or an equivalent code of conduct (the *Ethical Sourcing Principles*) in relation to the provision of the Concession Services.

16.2 The Operator shall within three Reporting Periods of the Start Date and annually thereafter conduct a risk analysis of:

- (a) human rights issues; and
- (b) labour conditions,

in each case of the supply chains used in the fulfilment of this Agreement, and shall agree with RfL a process for managing high-risk supply chains. This may include where appropriate, the carrying out of social audits and the agreement of corrective action plans.

16.3 During the course of this Agreement, if RfL has reasonable cause to believe that the Operator is not complying with any of the Ethical Sourcing Principles, RfL shall notify the Operator and RfL and the Operator shall agree an action plan with appropriate timeframes for compliance by the Operator (the *Ethical Sourcing Action Plan*), such Ethical Sourcing Action Plan to be agreed by no later than 20 Business Days from the date of RfL notifying the

Operator that remedial action is required or such other period as RfL and the Operator may otherwise agree in writing.

16.4 During the course of this Agreement, RfL has the right to request the Operator to carry out one or more audits in accordance with paragraph 8 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*) to verify whether the Operator is complying with the Ethical Sourcing Principles (or any associated Ethical Sourcing Action Plan).

17. FLEET OPERATOR RECOGNITION SCHEME ACCREDITATION

17.1 Where the Operator operates Freight Vehicles, it shall within 90 days of the Start Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of RfL, is an acceptable substitute to FORS (the *Alternative Scheme*); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

17.2 The Operator shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Operator has attained Silver Accreditation or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

17.3 The Operator shall ensure that those of its Direct Subcontractors who operate Freight Vehicles shall comply with this paragraph 17 as if they applied directly to the Direct Subcontractor.

18. SAFETY EQUIPMENT ON VEHICLES

18.1 The Operator shall ensure that any Van which it uses to provide the Concession Services shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

18.2 The Operator shall ensure that any Lorry which it uses to provide the Concession Services, shall:

- (a) have Side Guards fitted, unless the Operator can demonstrate to the reasonable satisfaction of RfL that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- (b) have a close proximity warning system fitted comprising:
 - (i) a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera; or
 - (ii) a Fresnel Lens, provided that the Fresnel Lens provides a reliable alternative to the CCTV camera and the Operator has obtained RfL's approval to use the Fresnel Lens, such approval may be withheld by RfL in its unfettered discretion; and
 - (iii) a Close Proximity Sensor;

- (c) have a Class VI Mirror; and
- (d) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

19. DRIVER LICENCE CHECKS

19.1 The Operator shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences driving any vehicles in support of the Concession Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Operator's risk scale, provided that the Operator's risk scale has been approved in writing by RfL within the preceding 12 months:

- (a) 0 – 3 points on the driving licence: annual checks;
- (b) 4 – 8 points on the driving licence: six monthly checks;
- (c) 9 – 11 points on the driving licence: Quarterly checks; or
- (d) 12 or more points on the driving licence: monthly checks.

20. DRIVER TRAINING

The Operator shall ensure that each of its Drivers who have not undertaken:

- (a) Approved Driver Training (or training, which in the reasonable opinion of RfL, is an acceptable substitute) in the last three years, undertakes Approved Driver Training or that acceptable substitute training within 60 days of the Start Date; and
- (b) a FORS e-learning safety module in the preceding 12 months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of RfL, is an acceptable substitute).

21. COLLISION REPORTING

Within 15 days of the Start Date, the Operator shall provide to RfL a Collision Report. The Operator shall provide to RfL an updated Collision Report on a quarterly basis, or more often if changes are made to vehicles or Drivers delivering to or attending premises or sites managed by the Operator, and within five Business Days of a written request from RfL.

22. FORS REPORTS

22.1 Within 30 days of its achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Operator shall make a written report to RfL at fors@tfl.gov.uk detailing its compliance with paragraph 18 (*Safety Equipment on Vehicles*) (the **Safety, Licensing and Training Report**). The Operator shall provide updates of the Safety, Licensing and Training Report to RfL at fors@tfl.gov.uk on each three-month anniversary of its submission of the initial Safety, Licensing and Training Report.

22.2 Evidence of compliance supplied in the Safety, Licensing and Training Report should enable the vehicle and driver to be identified and comply with RfL's reporting requirements.

23. OBLIGATIONS OF THE OPERATOR REGARDING SUBCONTRACTORS

The Operator shall ensure that each of its Direct Subcontractors that operate Car-derived vans, Vans and Lorries shall comply with requirements of paragraphs 18 (*Safety equipment on*

vehicles) to 22 (*FORS reports*) (inclusive) as if those Direct Subcontractors were a party to this Agreement.

SCHEDULE 15.4

Environment

1. GENERAL

1.1 Without prejudice to its other obligations contained in this Agreement, the Operator shall ensure that throughout the Concession Term it:

- (a) complies with all Applicable Requirements related to the environment;
- (b) measures and reports on carbon emissions and develops plans to reduce carbon usage that supports TfL in delivering its programme to improve the energy efficiency of its premises and premises associated with its functions (including stations and depots) that will help decrease emissions and lower costs under the Carbon Reduction Commitment;
- (c) carries out its obligations in response to any environmental incidents, including environmental incidents occurring on or about the Crossrail Route, at Ilford Depot or on its own premises in accordance with Good Industry Practice; and
- (d) complies with the requirements of FORS.

2. ENVIRONMENTAL OBJECTIVES

The Operator shall be aware of, and contribute towards, the following TfL environmental objectives:

- (a) to reduce greenhouse gas emissions (CO₂);
- (b) to reduce pollutant emissions to the air (NO_x and 'PM10');
- (c) to reduce transport related noise and vibration;
- (d) to maintain and, where possible, enhance the quality of London's built environment;
- (e) to reduce resource consumption and improve green procurement;
- (f) to reduce the waste generated by applying the principles of 'reduce, reuse and recycle'; and
- (g) reduce water consumption.

3. ENVIRONMENTAL MANAGEMENT SYSTEM

From the Start Date and throughout the Concession Period, the Operator shall operate an environmental management system (the *Environmental Management System*) which shall be independently accredited to BS EN ISO 14001 or equivalent within one year of the Start Date.

4. PROCUREMENT OF SUSTAINABLE MATERIALS

When procuring materials, the Operator shall consider the principles of resource efficiency. RfL may from time to time request the Operator to provide evidence of such consideration.

5. ANNUAL ENVIRONMENTAL IMPROVEMENT PLAN

5.1 Not later than 1 November in each calendar year, the Operator shall prepare and submit to RfL its proposed annual environmental improvement plan (the *Annual Environmental Improvement Plan*) for the following calendar year.

5.2 The Operator shall ensure that each proposed Annual Environmental Improvement Plan:

- (a) supports the environmental objectives specified in paragraph 2 (*Environmental objectives*);
- (b) establishes challenging but specific, measureable, achievable, realistic and time oriented environmental objectives and targets, covering (but not limited to):
 - (i) CO₂ emissions;
 - (ii) waste management;
 - (iii) resource use (including energy consumption);
 - (iv) water consumption; and
 - (v) PM10 and NO_x emissions;
- (c) contains initiatives to improve the Operator's environmental culture;
- (d) details who within the Operator's organisation is responsible and accountable for each objective, target and initiative;
- (e) contains sufficient detail to satisfy RfL that the Operator has understood its environmental obligations under this Agreement;
- (f) contains an associated assurance programme; and
- (g) has been reviewed, approved and signed by the Managing Director prior to submission to RfL.

5.3 RfL shall (acting reasonably) review the proposed Annual Environmental Improvement Plan and provide the Operator with any reasonable amendments or comments. The Operator shall take into account any reasonable amendments or comments provided by RfL and shall continue to update and resubmit the proposed Annual Environmental Improvement Plan until it has obtained RfL's acceptance.

5.4 Any subsequent Annual Environmental Improvement Plan shall take effect at the beginning of the calendar year to which it relates or, if later, the date it is accepted by RfL in accordance with paragraph 5.3 and the Operator shall from such date:

- (a) comply with such Annual Environmental Improvement Plan; and
- (b) use best endeavours to ensure that the objectives, targets and initiatives contained in the Annual Environmental Improvement Plan are performed, complied with or achieved (as the case may be).

5.5 The Operator shall ensure that the actions required to meet environmental objectives, targets and initiatives contained in the relevant Annual Environmental Improvement Plan are

identified and communicated effectively to the Concession Employees and the Direct Subcontractors, where applicable.

5.6 The Operator shall regularly review and monitor the status of the environmental objectives, targets and initiatives set out in the Annual Environmental Improvement Plan, and have in place processes that define what action is to be taken when an objective or target is not met or it becomes apparent that it will not be met.

5.7 The Operator shall report to RfL on the implementation of the Annual Environmental improvement Plan on a quarterly basis.

6. ANNUAL ENVIRONMENTAL REPORTING

Not later than 28 February in each calendar year, the Operator shall prepare and submit to RfL an annual environmental report (the *Environmental Report*) which shall:

- (a) review and describe the extent to which the Operator has complied with its general environmental obligations contained in this Agreement and all Applicable Requirements during the previous calendar year;
- (b) review and describe the extent to which the Operator achieved the specific environmental objectives, targets and initiatives set out in the Annual Environmental Improvement Plan for the previous calendar year;
- (c) identify any common themes arising from either of the reported items in paragraphs 6(a) and (b);
- (d) identifies which objectives have not been met, the reasons why and the actions taken to address the issue; and
- (e) be reviewed, approved by and signed by the Managing Director prior to submission to RfL.

7. PERIODIC ENVIRONMENTAL REPORTING

7.1 The Operator shall include in each Periodic Concession Report:

- (a) a summary of all environmental incidents which have occurred in relation to any of the Crossrail Route, Ilford Depot and the Operator's premises, including the aggregate number of environmental incidents which have occurred, a description of the incidents and their dates, locations and regulatory impact; and
- (b) a report progress of actions arising from environment-related audits, investigations and inspections.

7.2 The Operator shall provide RfL with all environmental audit reports, investigations, reviews and inspections carried out as part of the implementation of the Environmental Management System including the independent accreditation and re-accreditation audits of the Environmental Management System and ongoing assurance audits and/or inspections.

7.3 The Operator shall ensure that a governance process is in place to deal with recommendations arising from any environmental-related investigations, audits, reviews or inspections.

8. CONTROL OF VEHICLE EMISSIONS

8.1 The Operator shall:

- (a) consider CO₂, air quality and noise impacts as part of the decision making process when procuring and leasing road vehicles; and
- (b) adopt a technology neutral approach in the procurement and leasing of its road vehicles.

8.2 The Operator shall procure that all Direct Subcontractors' cars and vans meet the following CO₂ limits and European emission standards (euro standards) from the Start Date:

- (a) cars: maximum certified CO₂ emissions of 95 g/km and a minimum of Euro 5 emission standards;
- (b) vans equal to or less than 1205 kg kerb weight: maximum certified CO₂ emissions of 105 g/km and a minimum of Euro 5 emission standards;
- (c) vans between 1205 and 1660 kg kerb weight: maximum certified CO₂ emissions of 145 g/km and a minimum of Euro 5 emission standards; and
- (d) vans greater than 1660 kg kerb weight: maximum certified CO₂ emissions of 205 g/km and a minimum of Euro 5 emission standards.

8.3 From the Start Date, all of the Operator's heavy duty road vehicles and non-road diesel engines shall (unless otherwise agreed by RfL in its absolute discretion) meet the following emission standards:

- (a) heavy duty road vehicles >3500 kg kerb weight: Euro 6 European emission standards, except that where the Operator is unable to attain Euro 6 emission standards for all such vehicles by the Start Date, a Euro 5 emission standard shall be acceptable in relation to a small number of heavy duty vehicles, provided that the Operator shall attain a Euro 6 emission standard in relation to all such vehicles as soon as reasonably practicable following the Start Date;
- (b) non-road diesel engines between 19 and 36 kW: Stage 3A European emission standards; and
- (c) non-road diesel engines between 37 and 560 kW: Stage 3B European emission standards.

8.4 If any road vehicles or non-road diesel engines become due for replacement during the Concession Term, the Operator shall ensure that the replacement vehicle or engine meets the European emission standards and CO₂ limits (if applicable) for that year in which it is introduced into the fleet as set out in the relevant following table(s):

European Emissions Standards for Road Vehicles							
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Cars	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6
Vans ≤ 1205kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6

European Emissions Standards for Road Vehicles							
Vans 1205 to 1660 kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Vans > 1660 kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Heavy Duty Vehicles > 3500 kg kerb weight	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6

European Emissions Standards for Non-Road Diesel Vehicles							
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Non-road diesel engines 19-37kW	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A
Non-road diesel engines 19-56kW	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B
Non-road diesel engines 56- 560kW	Stage 3B	Stage 3B	Stage 4	Stage 4	Stage 4	Stage 4	Stage 4

Certified CO ₂ Limits (g/km)							
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Cars	95	90	85	80	75	70	65
Vans ≤ 1205kg kerb weight	105	100	95	90	85	80	75
Vans 1205 to 1660 kg kerb weight	145	140	135	130	125	120	115
Vans > 1660 kg kerb weight	205	200	195	190	185	180	175

8.5 The Operator shall procure that each Concession Employee required to drive in connection with the provision of the Concession Services:

- (a) that is employed at the Start Date shall undertake a ‘Safe and Fuel Efficient Driving’ (SAFED) training course within three months of the Start Date, which course shall consist of theoretical training and practical implementation skills and shall be a minimum duration of one hour; and
- (b) that is employed three months after the Start Date shall also be required to undertake such course within three months of commencing such employment.

8.6 The Operator shall encourage its Direct Subcontractors to undertake fuel efficient driver training that is the same or similar to the training referred to in paragraph 8.5.

8.7 RfL may require the Operator to provide evidence of its compliance with paragraph 8.5 from time to time.

8.8 In accordance with Mayoral environmental strategies and commitments to reduce carbon dioxide emissions, the Operator shall, wherever possible, include zero or ultra low carbon vehicles, such as electric, plug-in hybrid or bio methane vehicles, in its fleet. Where the Operator is unable to comply with this paragraph 8.8, the Operator shall provide to RfL an explanation of the reasons for such failure.

9. ENVIRONMENTAL INDICATORS

The Operator shall measure and report to RfL, on a Railway Period and year-to-date basis, on the following environmental indicators in relation to Crossrail in each Periodic Concession Report:

- (a) ‘NO_x’ and ‘PM10’ for air quality;
- (b) energy consumption (amounts of electricity and gas/fuel, disaggregated by traction and non traction) and for non-traction energy, this information shall be disaggregated by Operator Station and any office buildings;
- (c) CO₂ emissions (total tonnes and grams per passenger kilometre), disaggregated in accordance with paragraph 9(b);
- (d) number of noise related complaints received and the Operator’s response;
- (e) commercial and industrial waste, and percentage recycled, in terms of both tonnes and per passenger kilometre split by source;
- (f) tonnes of hazardous solid waste, litres of hazardous liquid waste and percentage recycled;
- (g) number of pollution spill incidents to land or water caused by the Operator; and
- (h) cubic metres of water consumed disaggregated in accordance with paragraph 9(b).

10. ENVIRONMENTAL INTERFERENCE

In performing its obligations under this Agreement, the Operator shall:

- (a) at all times use all reasonable endeavours to prevent any unlawful nuisance (including noisy working operations), obstruction, trespass, interference with any right of light,

way, air or water, or other interference with the rights of any adjoining landowners, tenants or occupiers or any statutory undertaker; and

- (b) not commit any act or omission whereby any property (including the air above, water running on or through the soil, subsoil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the environment or on human health,

and the Operator shall indemnify RfL from and against any and all Loss suffered by RfL from a failure by the Operator to comply with its obligations under this paragraph 10.

11. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006

When procuring any WEE Equipment for use in accordance with the Concession Services whether by direct purchase by the Operator, purchase on behalf of RfL, lease or otherwise the Operator will ensure that, in accordance with the WEEE Regulations, the producer of the WEE Equipment (whether that be the Operator or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of such WEE Equipment.

SCHEDULE 15.5

Pensions

1. GENERAL

1.1 The Operator shall, in relation to its Concession Employees, comply with all relevant employment and pensions' legislation and, where applicable, shall perform its obligations under this Schedule 15.5 in a manner which is consistent with the Protection Order.

2. FUTURE SERVICE

2.1 The Operator shall establish and, during the Concession Period, maintain a shared costs section of the Railways Pension Scheme as the Concession Section.

2.2 Subject to paragraphs 2.3 and 2.4, active membership of the Concession Section shall be restricted to the Concession Employees, while they are employed by the Operator, and shall not be made available by the Operator to any other person.

2.3 The Operator shall offer membership of the Concession Section for future service to the Protected Employees with effect on and from their applicable Transfer Date and shall provide each such member who accepts membership of the Concession Section with Protected Pension Rights required to be provided by the Protection Order on and from his applicable Transfer Date for the duration of this Agreement.

2.4 The Operator may elect to offer to each Non-Protected Employee:

- (a) membership of the Operator's pension scheme or a pension scheme nominated by the Operator; or
- (b) membership of the Concession Section.

3. PAST SERVICE

3.1 The Operator will procure that the Protected Employees will, by no later than one month after joining the Concession Section, be invited to transfer their accrued (past service) benefits under the Transferring Employer Section to the Concession Section in accordance with the relevant provisions governing such transfers under the Protection Order.

3.2 The Operator will procure that the Concession Section will, in consideration of receipt of the transfer payments in respect of each Protected Employee who transfers his (past service) benefits from the Transferring Employer Section to the Concession Section, ensure that each such person is credited in the Concession Section with Pensionable Service on a year-for-year basis in respect of the period of Pensionable Service in relation to which the transfer payment has been made.

4. FIRST AND SECOND ACTUARIAL VALUATIONS

4.1 This paragraph 4 shall apply in respect of the first actuarial valuation (the *First Valuation*) and the second actuarial valuation (the *Second Valuation*) of the Concession Section to be commissioned under the scheme specific funding provisions of Part 3 of the Pensions Act 2004, with effective dates (the *Actuarial Effective Dates*) on or after the Transfer Dates (as at the date of this Agreement, the expected Transfer Dates are May 2015 and December 2017 respectively):

- (a) in respect of the Relevant Protected Employees employed by the Operator before the Actuarial Effective Date of the First Valuation, the Operator shall not take any action on, before or after the Actuarial Effective Date of the First Valuation that would materially impact on the past service position under the First Valuation by increasing the liabilities under the First Valuation by more than [REDACTED] per cent., and in particular, the Operator shall defer the effects of any salary negotiations until at least the day after the applicable Actuarial Effective Date of the First Valuation (and any salary increases shall not be backdated);
- (b) in respect of the Relevant Protected Employees employed by the Operator after the Actuarial Effective Date for the First Valuation but before the Actuarial Effective Date for the Second Valuation, the Operator shall not take any action on, before or after the Actuarial Effective Date of the Second Valuation that would impact on the past service position under the Second Valuation by increasing the liabilities under the Second Valuation by more than [REDACTED] per cent., and in particular, the Operator shall defer the effects of any salary negotiations until at least the day after the Actuarial Effective Date of the Second Valuation (and any salary increases shall not be backdated);
- (c) the Operator shall consult with RfL concerning any discussions between the Operator and the Trustee regarding the First Valuation and the Second Valuation, including the actuarial method and assumptions to be adopted, and matters under Part 3 of the Pensions Act 2004 (including any statement of funding principles, schedule of contributions, statutory funding objective and recovery plan), and shall have regard to any reasonable representations of RfL in that regard;
- (d) the Operator shall promptly supply to RfL any documentation, related material or communication from the Trustee (or related parties) in respect of the First Valuation and the Second Valuation or other matters within Part 3 of the Pensions Act 2004, including a copy of the formal valuation report, the Statement of Funding Principles and resulting Schedule of Contributions;
- (e) RfL shall pay to the Operator each by way of Other Adjustments an amount (subject to compliance with paragraph 4.1(g) and 6.2 and to the Operator paying contributions promptly to the Concession Section at the rate recommended by the Railway Pensions Scheme actuary for the period up to the relevant Actuarial Effective Date) equal to each amount which the Operator is required under the First Valuation or the Second Valuation (and the Schedule of Contributions in place as a result) to pay to the Trustee to make up any funding deficit in the Concession Section identified by the Trustee in respect of accrued (past service) benefits (including allowance for projected pay increases) of the Relevant Protected Employees as at the Actuarial Effective Dates, provided that, RfL shall only be liable for the deficit derived from the First Valuation or the Second Valuation (as applicable) that is expressed in nominal terms and not the deficit as expressed as a percentage of salaries. The Operator shall promptly pay each such amount it has been required to pay under either the First Valuation or the Second Valuation, as applicable, to the Trustee. The funding deficit referred to in this paragraph 4.1(e) shall take account of any payment required to be made by Transferring Employers, as required under Article 7(4)(a) of the Protection Order or otherwise, and any transfer payment made in accordance with this paragraph 4;
- (f) for the purposes of paragraph 4.1(e), RfL will only be required to reimburse the Operator for any funding deficit revealed by the Second Valuation to the extent that such deficit is attributable to those Protected Employees who transferred to the

Operator from a Transferring Employer prior to the Actuarial Effective Date of the Second Valuation and who were not accounted for in the First Valuation;

- (g) if the Schedule of Contributions resulting from the First Valuation or the Second Valuation (as applicable) takes into account actual salary increases effective after the applicable Actuarial Effective Date, the amount payable by RfL to the Operator under paragraph 4.1(e) shall be reduced so as to ensure that the Operator bears the impact on the funding deficit of any such increases to the extent that those actual salary increases exceed the long-term level of salary increases assumed in the First Valuation or the Second Valuation (as applicable); and
- (h) if the First Valuation or the Second Valuation (as applicable) does not reflect the bulk transfer of assets and liabilities (from Transferring Employer Section) to the Concession Section in respect of the accrued (past service) benefits of the Relevant Protected Employees (accrued prior to the Transfer Date), the following shall apply:
 - (i) RfL shall, to the extent not already paid under paragraph 4.1(e), pay to the Operator, by way of Other Adjustment, an amount (subject to compliance with paragraph 4.1(g) and 6.2(a)) equal to each amount (expressed in nominal terms only and not as a percentage of salaries) which the Operator is required by the First Valuation or the Second Valuation (as applicable) to pay to the Trustee to make up any funding deficit in the Concession Section identified by the Trustee in respect of accrued (past service) benefits of the Relevant Protected Employees accrued before the Transfer Date, provided that, RfL shall only be liable for the deficit derived from the First Valuation or Second Valuation (as applicable) that is expressed in nominal terms and not the deficit as expressed as a percentage of salaries;
 - (ii) the Operator shall hold such amount on trust and promptly pay each such amount to the Trustee; and
 - (iii) the deficit referred to in this paragraph 4.1(h) shall take account of any payment required to be made by the Transferring Employers as required under the Protection Order or otherwise.

4.2 Save for any obligation under paragraph 4.1(h), following completion of the First Valuation or Second Valuation (as applicable), any revised employer and employee contributions in respect of the Relevant Protected Employees notified by the Trustee following this or a later formal valuation or other actuarial assessment will be the sole responsibility of the Operator and the active members of the Concession Section, and RfL shall not be obliged to reimburse to the Operator all or part of the revised rates.

5. OTHER TRANSFERS TO THE CONCESSION SECTION

5.1 This paragraph 5 applies in respect of any Concession Employees with protected status under the Protection Order but who are not Protected Employees:

- (a) article 7(4) of the Protection Order shall apply where, for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to the Concession Section from another section of the Railways Pension Scheme, in relation to Concession Employees with protected status (who are not Protected Employees) who had accrued (past service) benefits in such other section and who become members of the Concession Section; and

- (b) RfL shall not be obliged to reimburse the Operator for any amounts being due as a result.

6. FINAL ACTUARIAL VALUATION

6.1 This paragraph 6 shall apply in respect of the Final Valuation of the Concession Section under the scheme specific funding provisions of Part 3 of the Pensions Act 2004, with an effective date (the *Final Actuarial Effective Date*) on or before the date of termination of this Agreement (as at the date of this Agreement, the expected Final Actuarial Effective Date is 22 December 2023).

6.2 The Operator shall promptly consult with RfL in relation to any proposal it considers would fall within the scope of paragraphs 6.2(a) to (d) (inclusive) prior to putting such a proposal to the Pensions Committee of the Concession Section, the Trustee of the Railways Pension Scheme, or to any trade union or works council. The Operator shall not, without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit):

- (a) restructure or change the composition of the earnings of the Concession Employees in such a way as to increase the part of those earnings which qualifies as pensionable earnings (including Section Pay) under the Rules applicable to the Concession Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of the Concession Section, including varying or providing different or additional benefits under the Concession Section or promising to do so, unless:
- (i) such change is required by Law; or
 - (ii) such change only affects benefits payable in respect of past service of members of the Concession Section and on or prior to the effective date of the change the Operator pays an additional cash payment to the Trustee which, in the opinion of the actuary, meets in full the additional funding cost imposed on the Concession Section;
- (b) take any action (or consent to the taking of any action) which could affect the contributions payable by the Designated Employer under the Concession Section, including making any redundancies, exercising any discretion allowed to the Operator as Designated Employer, and varying or providing different or additional benefits under the Concession Section in respect of future service, unless such action is required by Law;
- (c) agree to adopt a revised investment strategy for the Concession Section; or
- (d) take (or omit to take) any action which could result in the Concession Section being wound up, in whole or in part.

6.3 The Operator:

- (a) shall:
- (i) use all reasonable endeavours to procure that the provisions of clause 5G (*Consultation with Pensions Committees*) of the Railways Pension Scheme are amended such that they do not apply in respect of the Concession Section; and

- (ii) in any event consult with RfL as to the manner in which the assets of the Concession Section are to be invested as part of its discussions with the Trustee or any Pensions Committee in this regard; and
- (b) shall not propose or agree to any amendment to the Concession Section without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit).

7. COVENANT RATING

The Operator shall not during the Concession Period take any action outside of the ordinary course of its trading the main purpose (or one of the purposes) of which is to result in a material weakening of the financial strength of the Operator, without the prior written consent of RfL (such consent not to be unreasonably withheld) and shall use its reasonable endeavours to procure that the Trustee awards to the Operator the strongest possible covenant rating for the Concession Section, including by, but not limited to, co-operating with the Trustee and promptly providing to the Trustee any documentation that the Trustee may reasonably request from the Operator in connection with the Trustee deciding on such an employer covenant rating.

8. DISCHARGE OF OBLIGATIONS

8.1 RfL may at any time during the Concession Period seek information from the Trustee with a view to satisfying itself that the Operator (as Designated Employer) has fully discharged its obligations under the Railways Pension Scheme, including its obligations in respect of the payment of contributions to the Concession Section. The Operator hereby consents to disclosure of any such information to RfL by the Trustee.

8.2 The Operator shall, at its expense, promptly provide such information in relation to the Concession Section, including actuarial advice and information, as RfL may from time to time request and shall authorise and consent to the Trustee doing so.

8.3 The Operator shall use all reasonable endeavours to provide to RfL:

- (a) within one month of the expiry of each Concession Year; and
- (b) at other times as soon as practicable following a request by RfL (including in respect of the final Concession Year during the Concession Period, any request of RfL that is made within a reasonable period of the expiry of the Concession Period),

a certificate signed by the Trustee stating either that the Operator (as Designated Employer) has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Concession Section or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 8.3(a), it shall cover the relevant Concession Year and where given pursuant to paragraph 8.3(b), it shall cover such period as RfL shall specify.

8.4 If the Trustee does not certify that the Operator (as Designated Employer) has fully complied with its obligations under the Railways Pension Scheme or if RfL otherwise reasonably considers that the Operator (as Designated Employer) has not complied with such obligations, RfL shall be entitled to withhold from any Concession Payments payable by it under Schedule 11.1 (*Concession Payments*) by way of an Other Adjustment, an amount which is, in RfL's opinion, no greater than the amount of any contribution that the Operator (as Designated Employer) has thereby failed to make or avoided making.

8.5 RfL may withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Operator (as Designated Employer). Following that determination, the amount withheld shall become payable (without interest) on the next Payment Date, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that RfL has not so determined within four weeks after the expiry of the Concession Period, the Operator's right to receive the amount so withheld under this Agreement shall lapse and RfL shall not be obliged to pay such amount.

9. INFORMATION AND CONSULTATION

9.1 The Operator shall carry out such consultation as RfL reasonably requests in accordance with section 259 of the Pensions Act 2004 in respect of any changes proposed to be made by the Operator to the pension arrangements affecting the Transferring Employees.

10. TERMINATION OF PROVISIONS

10.1 Unless on the termination of this Agreement (whether through default, effusion of time or otherwise) the Operator agrees to remain the Designated Employer in relation to the Concession Section, RfL shall procure that the Successor Operator is substituted for the Operator as the Designated Employer in relation to the Concession Section so that following such termination:

- (a) if the Operator has complied with its obligations including funding contributions at the contribution rate specified by the actuary at the triennial actuarial reviews up to the date of termination of this Agreement then it shall have no liability for any deficit in the value of the Concession Section;
- (b) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator shall procure that the value of such surplus is retained in the Concession Section for the benefit of Successor Operators; and
- (c) no claims arise against the Operator under Section 75 of the Pensions Act 1995.

10.2 Paragraph 10.1 is subject to the Operator complying with its obligations under this Schedule 15.5 in relation to the Concession Section.

10.3 If the Concession Section is wound up through any act or omission of the Operator in contravention of paragraph 6.2(d), then:

- (a) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator hereby assigns that benefit to RfL and the right to any surplus shall vest in RfL absolutely; and
- (b) any claims that the Trustee may have in relation to the Concession Section under Section 75 of the Pensions Act 1995 shall be payable by the Operator.

10.4 This paragraph 10 shall remain in force notwithstanding the termination of this Agreement.

11. INDEPENDENT ACTUARY

Any dispute between the Operator and RFL concerning the assessment of liabilities for the purposes of paragraphs 5.1(a) or (b) or any other matter of an actuarial or mathematical nature (the *Actuarial Dispute*) shall, in the absence of agreement between them, be referred to an independent actuary agreed by the Operator and RFL or (failing agreement within 14 days of a written request from one party to the other to agree to the appointment of such an actuary) appointed at the request of either party by, or on behalf of, the President for the time being of the Institute and Faculty of Actuaries. The independent actuary shall have the power to determine the Actuarial Dispute and the decision of the independent actuary, including as to costs, shall be final. The independent actuary shall act as an expert and not as an arbitrator.

12. DEFINITIONS

Unless otherwise defined or stated in this Agreement, terms used in this Schedule 15.5 shall have the meanings given to them in the Protection Order.

SCHEDULE 16

CONCESSION INFORMATION

Schedule 16.1: Records, plans and reporting

**Schedule 16.2: Confidentiality and Freedom of Information Act
Requirements**

SCHEDULE 16.1

Records, plans and reporting

1. CORPORATE INFORMATION

1.1 The Operator shall provide the following information to RfL on or before the Start Date and shall notify RfL of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Operator's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than [REDACTED] per cent. of the votes at general meetings of the Operator.

1.2 The Operator shall inform RfL of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Operator or the Parent.

2. OPERATING INFORMATION

Daily Performance Record

2.1 The Operator shall provide RfL with the Operator Daily Performance Record in accordance with the requirements of paragraphs 1.2 and 1.3 of Schedule 7.4 (*General Operating Performance Provisions*).

Periodic Concession Report

2.2 The Operator shall submit to RfL a Periodic Concession Report for each Reporting Period during the Concession Period within 10 days of the last day of each such Reporting Period.

3. BUSINESS PLANS

Initial Business Plan

3.1 No earlier than three Reporting Periods and no later than one Reporting Period before the Start Date, the Operator shall deliver to RfL its Initial Business Plan, describing its planned activities for each Concession Year during the Concession Term, which shall include:

- (a) a description of the Operator's strategy, including as to how the Operator will be able to meet its obligations under this Agreement for the Concession Term, supported by operating plans demonstrating this;

- (b) details of any investments proposed to be made or procured by the Operator in relation to the Concession Services during the Concession Term;
- (c) the Suite of Models and Record of Assumptions in the agreed form (in addition to the two copies of each such document required pursuant to Schedule 13.2 (*Identity of the Suite of Models*)); and
- (d) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

3.2 At the same time as it provides the Initial Business Plan, the Operator shall also provide plans which support the information set out in the Initial Business Plan by explaining how the Operator will meet its obligations in relation to the Staged Opening Plan, operating performance, customer service and revenue protection under this Agreement.

3.3 RfL may require the resubmission of the Initial Business Plan on the Start Date, adjusted to the extent necessary to reflect any difference between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan submitted in accordance with paragraph 3.1.

Updated Business Plans

3.4 Not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Concession Year (other than the first Concession Year), the Operator shall deliver to RfL an Updated Business Plan:

- (a) in substantially the same form as the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, revised to include the information available to the Operator as at the date of its delivery, describing the Operator's planned activities for each Concession Year during the remainder of the Concession Term;
- (b) containing a statement of the differences between such Updated Business Plan, the Initial Business Plan and the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, together with an explanation of such differences;
- (c) containing revised financial and operational models, together with a detailed statement, reconciliation and explanation of any material difference in the outputs provided by such financial and operational models from the Model Suite as to the date of this Agreement and any such models provided in the immediately preceding Business Plan;
- (d) containing details of any Business Action Plan notified to RfL and any progress made in respect of such Business Action Plans;
- (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Concession Year; and
- (f) supported by the further plans referred to in paragraph 3.2.

Material changes to the business outlook or prospective financial results

3.5 The Operator shall:

- (a) notify RfL as soon as reasonably practicable if the business outlook or prospective financial results of the Operator are likely to be materially different from those specified in the most recent Business Plan; and
- (b) within one month of any request by RfL following receipt of a notification in accordance with paragraph 3.5(a), supply RfL with a revised Updated Business Plan for the remainder of the Concession Term which reflects the latest view of its business.

Provisions relating to Business Plans

3.6 The Operator shall:

- (a) comply with any guidance issued by RfL from time to time as to its reasonable requirements for the format of any Business Plan. The contents and assumptions to be included in any Business Plan shall, unless the parties otherwise agree, be consistent with the Record of Assumptions; and
- (b) attend such meetings and make such presentations as RfL shall request in connection with any Business Plan.

3.7 The Operator shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by RfL on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by RfL at any time.

3.8 RfL may at any time require the Operator to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:

- (a) timetable development;
- (b) performance management improvement;
- (c) customer service improvement; and
- (d) improvements in the quality of service delivery or the efficiency of delivery of the Concession Services.

3.9 The Operator shall confirm with each Updated Business Plan submitted to RfL, that that plan has been approved by the Operator's board.

Business cases for the improvement of the network

3.10 The Operator shall co-operate with RfL in the development of business plans and business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

4. MARKETING PLAN

4.1 Not less than:

- (a) 28 days before the Start Date, RfL shall deliver to the Operator a Marketing Plan for the first Concession Year; and

- (b) one Reporting Period prior to the start of each Concession Year (other than the first such year), RfL shall deliver to the Operator a Marketing Plan for that Concession Year.

4.2 The Operator shall, within 14 days of receipt of a Marketing Plan, review such Marketing Plan and provide RfL with its informed opinion to assist RfL's decision making in relation to marketing activities for Crossrail.

4.3 The Operator shall support RfL as RfL may reasonably require in the implementation of the Marketing Plan.

5. ACCOUNTING AND FINANCIAL INFORMATION

Accounting Records

5.1 The Operator shall prepare and at all times during the Concession Period maintain true, up to date and complete accounting records in respect of this Agreement as separate and stand alone accounts (the *Management Accounts*) in accordance with international accounting practices. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

5.2 The Operator shall deliver to RfL, as an appendix to the Periodic Concession Report, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Concession Year to date.

5.3 The Management Accounts shall also set out:

- (a) a comparison of the Operator's performance during such period against the forecast provided by the Operator in the then current Business Plan;
- (b) a comparison of the Operator's cumulative performance during the Concession Year in which such period occurs against the forecast referred to in paragraph 5.3(a);
- (c) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 5.3(a), cross-referring to deviations from the applicable Operational Models; and
- (d) where the level of financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Operator shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

5.4 Within four weeks after the end of the third, sixth, tenth and thirteenth Reporting Periods in each Concession Year, the Operator shall deliver to RfL an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 3.1(d), for each of the following 13 Reporting Periods.

Annual Financial Information

5.5 Within three weeks of the end of each Concession Year, the Operator shall deliver to RfL its Annual Management Accounts for that Concession Year.

5.6 Within four Reporting Periods after the end of each Concession Year, the Operator shall deliver to RfL the following information:

- (a) certified true copies of its annual report and Annual Audited Accounts for that Concession Year, together with copies of all related directors' and auditors' reports; and
- (b) a reconciliation to the Management Accounts for the same period.

Accounting Standards and Practices

5.7 Each set of Management Accounts and Annual Management Accounts shall be:

- (a) be drawn up in a form consistent with the form of profit and loss account, cashflow projection and balance sheets specified by RfL from time to time; and
- (b) be prepared consistently in accordance with the Operator's normal accounting policies, details of which shall be supplied, on request, to RfL and any changes to which shall be notified to RfL on submission of such accounts, together with a commentary of the impact of those changes on the Management Accounts and Annual Management Accounts.

5.8 Each set of Annual Audited Accounts shall:

- (a) be prepared and audited in accordance with international accounting standards regulations or such other accounting conventions, policies and requirements as RfL may from time to time specify after consultation with the Operator, provided that those other conventions, policies and requirements are compatible with the requirement of the accounting conventions applicable in the UK at the time and consistently applied and in accordance with international accounting standards regulation; and
- (b) together with the notes thereto and subject to any qualifications contained in any relevant auditors' report, give a true and fair view of the financial information pertaining to this Agreement and whether the Annual Management Accounts have been properly prepared in accordance with the requirements under this Schedule 16.1.

Parent Accounts

5.9 The Operator shall, upon the request of RfL, promptly deliver to, or procure delivery to, RfL, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports. If the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent shall be delivered to RfL.

6. SAFETY INFORMATION

Co-operation with competent authorities

6.1 The Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

Provision of formal notices

6.2 The Operator shall notify RfL as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Operator shall provide RfL with a copy of such notification or notice.

Provision of updates, information relating to incidents and reports

6.3 The Operator shall:

- (a) provide RfL with regular updates (on a “real time” basis) on service and safety information, including details of any significant disruption, peak performance, cancellations, stations or route closures, major incidents (whether resulting in a disruption to Passenger Services or a serious crime or death or injury to any person using or on the railway), and any incidents classified as near misses and any other information reasonably requested by RfL;
- (b) inform RfL promptly of the occurrence of any serious accident or incident (including any incident likely to cause major disruption to the Passenger Services involving criminal activities or causing major disruption to the Passenger Services), whether “reportable” or not, and co-operate fully and promptly with RfL and other TfL Group companies concerning such accident or incident, including by the provision of all information requested by RfL;
- (c) provide RfL with regular information on safety issues, including providing annual safety objectives, progress reports on achievement of such objectives, and a safety performance report at the end of each Reporting Period, reporting (to the standard required by RIDDOR) on the following: dangerous occurrences: major customer accidents, major employee accidents, major employee assaults, major contractor incidents, procedural irregularities, and incidents of trespass;
- (d) provide RfL with copies of all relevant material correspondence from or to the Operator concerning health, safety and environmental matters, including correspondence with regulatory bodies, incident reports, accident reports and any correspondence relating to accidents, incidents and significant occurrences; and
- (e) comply promptly with any other request from RfL (or any other member of the TfL Group) for information concerning any safety-related matter connected with the Concession Services.

6.4 The Operator shall co-operate with any safety auditors appointed by RfL, including providing timely responses to any safety issues raised by such auditors.

6.5 Notwithstanding the reporting obligations in this paragraph 6, the Operator shall remain fully responsible for the proper discharge of all its safety-related obligations and duties

under this Agreement and all applicable laws and regulations (including the Safety Regulations).

7. FURTHER INFORMATION

7.1 The Operator shall:

- (a) deliver to RfL, or procure the delivery to RfL of, such information, records or documents as it may request within such period as it may reasonably require and which relate to or are connected with the Operator's performance of this Agreement; and
- (b) procure that each Affiliate of the Operator complies with paragraph 7.1(a) in respect of any information, records or documents that relate to its dealings with the Operator in connection with the Operator's performance of this Agreement.

7.2 The information referred to in paragraph 7.1(a) shall include:

- (a) any agreement, contract or arrangement to which the Operator is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Operator has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

7.3 RfL may require the Operator to provide:

- (a) the information required to be provided under this Schedule 16 more frequently than set out in this Schedule 16;
- (b) the information required to be provided under this Schedule 16, or, in RfL's discretion, more detailed financial information, at any time in connection with the re-letting of the Concession; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by RfL, acting reasonably, from time to time.

8. CONTRAVENTIONS OF THIS AGREEMENT

8.1 The Operator shall notify RfL, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Operator of any provision of this Agreement. This includes where the Operator is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

8.2 The Operator shall deliver to RfL, or procure the delivery to RfL of, such information, records or documents as RfL may request within such period as RfL may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Agreement.

9. INFORMATION TO AND FROM THIRD PARTIES

Information to Stakeholders

9.1 The Operator shall comply with any reasonable requests and guidance issued by RfL from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

Information from third parties

9.2 The Operator shall, if RfL so requests, use all reasonable endeavours to ensure that RfL has direct access to any information, data or records relating to the Operator which is or are maintained by third parties and to which RfL is entitled to have access, or of which RfL is entitled to receive a copy under this Agreement.

9.3 The Operator shall, if RfL so requests, procure the provision by RSP to RfL of such information, data and records as the Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as RfL may specify from time to time.

9.4 The obligations of the Operator under this Schedule 16.1 to provide information to RfL shall not apply if RfL notifies the Operator that it has received the relevant information directly from any other person (including any Infrastructure Manager or RSP). The Operator shall, if RfL so requests, confirm or validate any such information which is received from any such other person.

9.5 The Operator shall promptly advise RfL of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will materially affect the continuity of any of the records that are provided pursuant to this Schedule 16.1. Any such advice shall include an assessment of the materiality of the relevant change.

10. MAINTENANCE AND STANDARD OF INFORMATION

Maintenance of records

10.1 The Operator shall maintain true, up to date and complete records of all of the information required to be provided by the Operator under this Agreement.

10.2 Each record required to be maintained by the Operator in accordance with paragraph 10.1 shall be held for a period of six years following the date on which such record was required to be created.

10.3 References to records in this Schedule 16.1 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the Concession Services and the Operator has access to them (which it shall use all reasonable endeavours to secure).

Electronic Library

10.4 The Operator shall maintain and update throughout the Concession Period an electronic library containing such information about Crossrail (including copies of associated contracts and information necessary for the re-letting of the Concession Services) as RfL may require (the *Electronic Library*). The Electronic Library shall be developed in accordance with a structure and format approved by RfL. The Operator shall make the Electronic Library immediately available to RfL and its advisers (via a web browser) at all times during the

Concession Period, and similarly accessible to any potential Successor Operator and its advisers.

Compatibility of information

10.5 The Operator shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 10.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Operator shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 10.1.

10.6 All financial, operating or other information, and any data and records required to be provided to RfL under this Agreement shall be provided, if so requested by RfL, in a form compatible with RfL's electronic data and records systems on the Start Date, as modified from time to time.

10.7 The Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to RfL under this Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

SCHEDULE 16.2

Confidentiality and Freedom of Information Act Requirements

1. CONFIDENTIALITY

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and paragraphs 2 (*Disclosure of Confidential Information*) to 10 (*Continuing Obligation*) inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement) and shall not, except with the other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. DISCLOSURE OF CONFIDENTIAL INFORMATION

Each party may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*);
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or
- (g) by the Operator, to the ORR, the Rail Passengers' Council or a Local Authority.

3. RfL PUBLICATION OF CERTAIN INFORMATION

RfL right to publish specific information

3.1 The Operator acknowledges that RfL is subject to the Transparency Commitment. Accordingly, notwithstanding paragraph 1 (*Confidentiality*), the Operator hereby gives its consent for RfL to publish the Concession Agreement Information to the general public, the press or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as it sees fit (irrespective of whether the same was provided to RfL by the Operator or a third party).

3.2 RfL may in its absolute discretion redact all or part of the Concession Agreement Information prior to its publication. In so doing and in its absolute discretion, RfL may:

- (a) take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation; and/or
- (b) consult with the Operator regarding any redactions to the Concession Agreement Information to be published pursuant to paragraph 3.1, but RfL shall make the final decision regarding publication and/or redaction of the Concession Agreement Information.

RfL right to publish other information

3.3 Without prejudice to any other provision of this Schedule 16.2, RfL may publish any other information relating to the Operator if it has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of RfL within 14 days of such notification that the publication of such information would be materially detrimental to its business. If the Operator attempts so to demonstrate to RfL but it is not so satisfied, RfL shall allow seven more days before publishing the relevant information.

4. PASSENGER SERVICE DEVELOPMENT INFORMATION

Nothing in this Schedule 16.2 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to any Infrastructure Manager, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Rail Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (*Timetable and Service Development*).

5. PUBLICATION BY RfL

Nothing in this Schedule 16.2 shall be deemed to prohibit, prevent or hinder, or render RfL liable for, the disclosure of any information by RfL to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority, the Rail Passengers' Council, any Local 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 the functions of TfL in relation to the operation of railway passenger services to, from or within London.

6. NO PUBLICATION BY OPERATOR WITHOUT CONSENT

6.1 Subject to paragraph 6.3 and whether or not any other restriction contained in this Schedule 16.2 applies, the Operator shall not, and shall procure that its Concession

Employees and Subcontractors do not, make any announcement (including any communication to the public, to any clients or suppliers of either party or to all or any of the employees of either party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about any member of the TfL Group (including any information that is confidential by virtue of this Schedule 16.2 without the prior written approval of RfL).

6.2 RfL shall have absolute discretion in deciding whether to give any consent referred to in paragraph 6.1.

6.3 Paragraph 6.1 shall not apply:

- (a) if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over the Operator or any of its Affiliates (including the Financial Conduct Authority, the Prudential Regulation Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such announcement will be made only after consultation with RfL; or
- (b) to the Operator making such announcements to its Concession Employees and Subcontractors as are necessary to instruct or direct any of them for the purpose of carrying out its obligations or exercising its rights, in each case, under this Agreement, provided that, the Operator shall not be entitled by virtue of this paragraph 6.3(b) to make any such announcement concerning any matter that relates to the Operator's relationship with RfL or any other member of the TfL Group.

7. PROVISION OF INFORMATION TO THE ORR

The Operator hereby authorises RfL to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to RfL in relation to the Operator under this Agreement.

8. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL

The parties recognise that the Comptroller and Auditor General may, in pursuance of its functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which it has obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 16.2.

9. FREEDOM OF INFORMATION

9.1 The Operator acknowledges that RfL:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with RfL to enable RfL to comply with its obligations under the FOI Legislation; and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining the consent of the Operator.

9.2 Without limiting paragraph 9.1, the Operator shall and shall procure that its Subcontractors (if any) shall:

- (a) transfer to the Concession Manager (or such other person as may be notified by RfL to the Operator) each Information Request relevant to the Concession Agreement, the Concession Services or any member of the TfL Group that it or they (as the case may be) receive as soon as reasonably practicable and in any event, within two Business Days of receiving such Information Request; and
- (b) in relation to Information held by the Operator on behalf of RfL, provide to RfL with details about and/or copies of all such Information that RfL requests and such details and/or copies shall be provided within five Business Days of a request from RfL (or such other period as RfL may reasonably specify), and in such forms as RfL may reasonably specify.

9.3 RfL 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 any Information Request in accordance with the FOI Legislation.

9.4 The Operator shall not itself respond to any person making any Information Request, save to acknowledge receipt, unless expressly authorised to do so by RfL.

10. CONTINUING OBLIGATION

This Schedule 16.2 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.

SCHEDULE 17

REMEDIES, TERMINATION AND EXPIRY

Schedule 17.1:	Remedial Plans and Remedial Agreements
Schedule 17.2:	Quality Regime Remedial Plans and Remedial Agreements
Schedule 17.3:	Other RfL Remedies
	Appendix 1: Form of Event of Default Step-in Notice
	Appendix 2: Form of Event of Default Step-out Notice
Schedule 17.4:	Termination and Expiry
Schedule 17.5:	Events of Default, Termination Event and Voluntary Termination
Schedule 17.6:	Force Majeure
Schedule 17.7:	Liability

SCHEDULE 17.1

Remedial Plans and Remedial Agreements

1. REMEDIAL PLAN NOTICES AND REMEDIAL AGREEMENTS

RfL right to issue a Remedial Plan Notice

1.1 Without limiting its other rights under this Schedule 17, if RfL is satisfied that the Operator is contravening or is likely to contravene any term of this Agreement, RfL may serve a notice on the Operator requiring it to propose such steps as the Operator considers appropriate for the purpose of securing or facilitating compliance with the term in question (a *Remedial Plan Notice*).

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of this Agreement that RfL is satisfied that the Operator is contravening or is likely to contravene (each a *Relevant Term*); and
- (b) the time period within which RfL requires the Operator to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a *Remedial Plan*).

Obligation to submit Remedial Plan

1.3 If RfL issues a Remedial Plan Notice, the Operator shall submit a Remedial Plan to RfL within the period specified in such Remedial Plan Notice.

Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused a Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the Operator proposes to implement those steps.

2. REMEDIAL AGREEMENTS

2.1 If RfL is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) it may, without limiting its other rights under this Agreement or otherwise, require the Operator to enter into a supplemental agreement (the *Remedial Agreement*) with RfL to implement those matters.

2.2 The Operator shall comply with the terms of any Remedial Agreement.

3. EVENT OF DEFAULT

If the parties enter into a Remedial Agreement in relation to non-compliance with a Relevant Term and the Operator is non-compliant with that Relevant Term by the end of the period for being compliant specified in that Remedial Agreement, then an Event of Default shall occur, provided that where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under any of KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime, then the provisions of paragraph 6 (*Event of Default*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*) shall apply.

SCHEDULE 17.2

Quality Regime Remedial Plans and Remedial Agreements

1. APPLICATION OF THIS SCHEDULE 17.2

The provisions of this Schedule 17.2 supplement the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) and apply in relation to any contravention of a Relevant Term that is a Remedial Plan Quality Benchmark.

2. REMEDIAL PLAN NOTICES

If RfL is satisfied that the Operator is contravening or is likely to contravene any Relevant Term that is a Remedial Plan Quality Benchmark, it may serve a Remedial Plan Notice on the Operator in accordance with paragraph 1.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

3. REMEDIAL PLANS

Where RfL has served on the Operator a Remedial Plan Notice in respect of any Relevant Term that is a Remedial Plan Quality Benchmark, the Operator shall submit to RfL a Remedial Plan in accordance with paragraph 1.3 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

4. REMEDIAL AGREEMENTS

RfL may, subject to paragraph 5, require the Operator to enter into a Remedial Agreement in accordance with paragraph 2.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) in relation to any Remedial Plan that concerns a Relevant Term that is a Remedial Plan Quality Benchmark.

5. REMEDIAL SPENDING CAP

5.1 Subject to this paragraph 5, RfL may require the Operator to spend (from unbudgeted resources) up to £[REDACTED] in any Concession Year (an amount as at the Indexation Base Month and indexed in accordance with paragraph 3 of (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) in carrying out the steps specified in any Remedial Agreement or Corrective Action Notice for securing or facilitating compliance with a Relevant Term which is a Remedial Plan Quality Benchmark.

5.2 The amount referred to in paragraph 5.1 is a combined annual limit for all remedial expenditure carried out pursuant to any Remedial Agreement or Corrective Action Notice in relation to the KPI Regime, the MSS Regime, the Customer Satisfaction Regime and the Quality Performance Regime.

5.3 RfL may not require the Operator to enter into a Remedial Agreement or require a Corrective Action Notice to be complied with, in each case relating to any Relevant Term that is a Remedial Plan Quality Benchmark, where the solutions proposed in that agreement or notice would require the Operator to incur expenditure in excess of the combined annual limit referred to in paragraph 5.1.

5.4 The Operator shall promptly inform RfL where it reasonably believes that the circumstances referred to in paragraph 5.3 apply. If RfL agrees, acting reasonably, that those circumstances do apply, then RfL and the Operator shall promptly discuss whether alternative

solutions can be identified that will not require the Operator to incur expenditure in excess of that combined annual limit.

5.5 If such solutions can be identified, the parties shall promptly enter into a Remedial Agreement or RfL shall reissue the Corrective Action Notice (as the case may be), in each case, on that basis. If such solutions cannot be identified or the combined annual limit has already been reached, then the Operator shall not be required to enter into a related Remedial Agreement or comply with the related Corrective Action Notice, but shall use all reasonable endeavours to continue to achieve compliance with the relevant Remedial Plan Quality Benchmark, including by identifying and implementing solutions which do not require external expenditure, or (where applicable) solutions which will only require the Operator to incur expenditure up to the combined annual limit.

6. EVENT OF DEFAULT

If the parties enter into a Remedial Agreement in relation to non-compliance with a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under any of the KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime and (subject to paragraph 5 (*Remedial Spending Cap*)) the Operator is not materially compliant with that Relevant Term by the end of the period for being compliant specified in that Remedial Agreement, then an Event of Default shall have occurred.

SCHEDULE 17.3

Other RfL Remedies

1. CORRECTIVE ACTION NOTICES

RfL right to issue Corrective Action Notices

1.1 Without limiting its other rights under this Schedule 17, RfL may issue a Corrective Action Notice to the Operator in any case where:

- (a) RfL is satisfied that the Operator is contravening or is likely to contravene a Relevant Term;
- (b) RfL does not approve of the terms of any Remedial Plan submitted to it by the Operator (including a Remedial Plan submitted under Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*)); or
- (c) the Operator fails to comply with its obligations in respect of the implementation of any Remedial Agreement or prior Corrective Action Notice (including a Remedial Agreement or prior Corrective Action Notice relating to a breach of any Remedial Plan Quality Benchmark issued pursuant to paragraph 1.1(b) or this paragraph 1.1(c)), but, notwithstanding the consequent occurrence of an Event of Default, RfL does not wish to terminate this Agreement.

Contents of a Corrective Action Notice

1.2 Each Corrective Action Notice shall specify the following:

- (a) the Relevant Term that RfL is satisfied that the Operator is contravening or is likely to contravene;
- (b) the action that RfL reasonably requires the Operator to take or procure and/or the outputs RfL reasonably requires to see delivered to facilitate or secure compliance with that Relevant Term; and
- (c) the time period within which RfL requires the Operator to take that action or see those outputs delivered.

1.3 Any Corrective Action Notice served in relation to the Operator's performance against any Remedial Plan Quality Benchmark is subject to the same limitations regarding the cap on the Operator's annual expenditure as apply in respect of relevant Remedial Agreements specified in paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*). Consequently, RfL is not entitled to issue a Corrective Action Notice to the Operator where the effect of such notice would require the Operator to incur expenditure in excess of the relevant annual cap.

Event of Default

1.4 An Event of Default shall occur if RfL issues a Corrective Action Notice to the Operator in relation to non-compliance with:

- (a) a Relevant Term (other than where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under

any of KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime) and the Operator is non-compliant with that Relevant Term by the end of the period specified in that notice for being compliant with that Relevant Term; or

- (b) a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under any of KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime, and (subject to paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2) the Operator is not materially compliant with that Relevant Term by the end of the period specified in that notice for being compliant with that Relevant Term.

2. INCREASED MONITORING BY RfL

2.1 Following the occurrence of a contravention of this Agreement, RfL may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Operator's performance of any relevant obligation until such time as the Operator demonstrates, to RfL's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.

2.2 The Operator shall co-operate fully with RfL in relation to such monitoring referred to in paragraph 2.1.

2.3 The results of such monitoring will be reviewed at each Concession Performance Meeting held pursuant to paragraph 5 (*Concession Performance Meetings*) of Schedule 15.1 (*Personnel, Communication and Access*).

2.4 The Operator shall compensate RfL for all reasonable costs incurred by RfL in carrying out such monitoring and if such monitoring is in respect of a contravention of any Remedial Plan Quality Benchmark, the Ticket Queuing Time Target Benchmark or any other obligation contained in Schedule 8 (*Service Quality and Passenger Perception*), the contravention of which expressly contemplates the requirement for a Remedial Plan, such compensation shall not be included in any remedial spending required in respect of any Remedial Plan pursuant to Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and capped pursuant to paragraph 5 (*Remedial Spending Cap*) thereof.

3. EFFECT OF FORCE MAJEURE EVENT

Without prejudice to the operation of paragraph 3.2 of Schedule 17.6 (*Force Majeure*), the following provisions shall apply in relation to Force Majeure Events affecting performance of the requirements of a Remedial Agreement or a Corrective Action Notice:

- (a) the Operator shall give written notice to RfL promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Operator's ability to comply with a Remedial Agreement or a Corrective Action Notice within the period specified therein;
- (b) each notice submitted in accordance with paragraph 3(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Operator considers it likely to occur;

- (c) the Operator shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement or Corrective Action Notice; and
- (d) the Operator shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement or a Corrective Action Notice in order to take account of the effect of a Force Majeure Event which has occurred on the Operator's ability to comply with any Remedial Agreement or a Corrective Action Notice.

4. RfL STEP-IN FOLLOWING EVENT OF DEFAULT

Notice of step-in

4.1 Where an Event of Default has occurred and is continuing (including where paragraph 14 (*Default*) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*) applies) and RfL has decided not to terminate this Agreement at that time or a Termination Notice has been duly served on the Operator specifying the future date of termination of this Agreement, RfL may, in either case, serve an Event of Default Step-in Notice on the Operator, informing the Operator of the following:

- (a) the Event of Default that has occurred and is continuing (to the extent not already notified in a Termination Notice);
- (b) the extent to which, if any, RfL wishes to expel the Operator from the infrastructure and/or facilities related to Crossrail and, subject to paragraph 4.3(a), the date from which RfL requires that expulsion to apply;
- (c) the steps that RfL intends to take itself or the steps that RfL intends its nominee to take on its behalf, each in relation to the operation or the carrying out of the Concession Services or of any of the Operator's obligations under this Agreement to ensure the continuity or delivery of those services and/or obligations;
- (d) the identity of its nominee, if relevant and known at the time; and
- (e) the date on which RfL expects those steps to first be taken (which may be the date of the Event of Default Step-In Notice) and the time period that RfL estimates is reasonably necessary to take those steps.

4.2 Following service of an Event of Default Step-In Notice, where so requested by RfL, the Operator shall as soon as reasonably practicable after that request, submit to RfL proposals that demonstrate that the Operator is and will continue to be capable of ensuring the continuity or delivery of the Concession Services and/or its obligations under this Agreement in relation to which that Event of Default Step-In Notice was served.

Effect of step-in

4.3 Where RfL indicates in any Event of Default Step-In Notice that it wishes to expel the Operator from some or all of the infrastructure and/or facilities related to Crossrail:

- (a) the date referred to in paragraph 4.1(b) shall be no less than seven days after the date of that Event of Default Step-In Notice;
- (b) the Operator shall comply with the terms of any such expulsion; and

(c) in so requiring, neither RfL will have avoided this Agreement nor the Operator have been released from any of its obligations or liability under this Agreement.

4.4 To the extent RfL has not already notified the Operator in an Event of Default Step-In Notice, RfL shall, where relevant, notify the Operator of the identity of its nominee as soon as reasonably practicable after that nominee's appointment.

4.5 RfL or its nominee shall be entitled to take such steps during any Event of Default Step-In Period as RfL or that nominee (as the case may be) reasonably considers necessary in order to fulfil the objective referred to in paragraph 4.1(c).

4.6 The Operator shall co-operate with RfL and/or its nominee during any Event of Default Step-In Period to assist RfL and/or its nominee (as the case may be) in fulfilling the objective referred to in paragraph 4.1(c), including by:

- (a) providing to RfL and/or its nominee (as the case may be) on reasonable notice, access to or copies of such financial, operating, management or other information relevant to the Concession Services or any of the Operator's obligations under this Agreement;
- (b) granting or procuring the grant to RfL and/or its nominee of such access as RfL or its nominee (as the case may be) reasonably requires to the infrastructure and/or facilities, including Computer Systems, related to Crossrail;
- (c) procuring the prompt assistance and availability to RfL and/or its nominee of all relevant Concession Employees; and
- (d) taking such other action or omitting to take such action as RfL reasonably requires.

4.7 Where RfL and/or its nominee takes any steps pursuant to paragraph 4.5, RfL may recover all costs that either or both reasonably incur (including their respective administrative expenses, staff costs, other overheads and in the case of the nominee, a reasonable profit element) in relation to the taking of those steps, in each case by way of Other Adjustments.

4.8 Concession Payments shall continue to be payable by RfL in accordance with Schedule 11.1 (*Concession Payments*) during any Event of Default Step-In Period except where a Termination Notice has been duly served on the Operator, in which case during the Event of Default Step-In Period from the date of such notice, RfL shall, subject to paragraph 4.7, pay the Operator by way of Other Adjustments on an emerging cost basis for such costs as the Operator reasonably and prudently incurs in the carrying out of the remainder of the Concession Services and otherwise complying with its obligations under this Agreement that are not the subject matter of the relevant Event of Default Step-In Notice. Any such payment shall not include any margin on those costs or any management fees unless RfL otherwise agrees in its absolute discretion.

4.9 The Operator shall provide such information as RfL reasonably requires during any Event of Default Step-In Period where a Termination Notice has been duly served by RfL in order that RfL may verify that any costs by the Operator during that Event of Default Step-In Period have been reasonably and prudently incurred by the Operator.

Notice of step-out

4.10 RfL may in its discretion, regardless of whether it has asked for the Operator to provide the proposals referred to in paragraph 4.2, serve on the Operator an Event of Default Step-out Notice, specifying the following:

- (a) the extent to which RfL wishes the Operator to resume providing those Concession Services and/or meeting those obligations under this Agreement in relation to which the relevant Event of Default Step-In Notice was served; and
- (b) the date on which the Operator is to resume providing those services and/or obligations, provided that the Operator shall be given no less notice than a skilled and experienced Train Operator of Crossrail would require in order to resume those services and/or obligations.

4.11 The Operator shall comply with the requirements of any Event of Default Step-out Notice.

4.12 RfL may:

- (a) serve more than one Event of Default Step-Out Notice in relation to those Concession Services and/or those obligations under this Agreement that are the subject of a single Event of Default Step-In Notice; and
- (b) require the Operator to resume the provision of those services and/or obligations in full, partially or gradually.

4.13 RfL:

- (a) shall or shall procure that its nominee shall use all reasonable endeavours to ensure that:
 - (i) the Operator does not suffer or incur any Loss; or
 - (ii) the Operator's ability to deliver the Concession Services and/or its obligations under this Agreement is not materially diminished,

in either case arising from RfL's or its nominee's actions or omissions during any Event of Default Step-In Period; but

- (b) shall not be liable for any such Loss suffered or incurred by the Operator or any reduction in such ability, in either case arising from those actions or omissions during any Event of Default Step-In Period.

APPENDIX 1 TO SCHEDULE 17.3**FORM OF EVENT OF DEFAULT STEP-IN NOTICE**

Private and confidential

From: Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL (*RfL*)

To: MTR Corporation (Crossrail) Limited
Providence House
Providence Place
Islington
London
N1 0NT (the *Operator*)

[Insert date]

Dear Sirs,

Crossrail Train Operating Concession Agreement – Event of Default Step-in Notice

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [____] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).
2. We hereby give you notice:
 - (a) that the following Event of Default has occurred and is continuing [*specify*]; and
 - (b) that, pursuant to paragraph 4.1 of schedule 17.3 (*Other RfL Remedies*) of the Concession Agreement, [*we are*][*specify nominee if known*] as our nominee is stepping in and assuming your role in carrying out those of your obligations under the Concession Agreement that are specified in paragraph 3 from the Event of Default Step-in Date and for the estimated Event of Default Step-in Period, in each case as specified in paragraph 4 and in order to secure [*continuity of those services*][*delivery of those obligations*].
3. During the Event of Default Step-in Period, [*we*][*specify nominee if known*] intend[*s*] to take the following steps in relation to carrying out [*the following Concession Services*][*the following of your obligations under the Concession Agreement:*] [*specify*].
4. For the purpose specified in paragraph 3, you shall not perform those [*Concession Services*][*obligations*] specified in that paragraph for the duration of the Event of Default Step-in Period and you shall and you shall procure that your employees, agents, sub-

contractors and other representatives shall not attend the following infrastructure and facilities during that time, unless otherwise instructed by us: *[specify]*.

5. The Event of Default Step-in Date is *[insert date RfL or its nominee will step in]* and the expected Event of Default Step-in Period is *[insert expected period of step-in]*.

4. During the Event of Default Step-in Period, you shall co-operate with *[us][and/or]* *[specify nominee]* as contemplated by paragraph 4.6 of schedule 6 of the Concession Agreement.

Yours faithfully

Signed for and on behalf of RfL

APPENDIX 2 TO SCHEDULE 17.3

FORM OF EVENT OF DEFAULT STEP-OUT NOTICE

Private and confidential

From: Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL (*RfL*)

To: MTR Corporation (Crossrail) Limited
Providence House
Providence Place
Islington
London
N1 0NT (the *Operator*)

[Insert date]

Dear Sirs,

Crossrail Train Operating Concession Agreement – Event of Default Step-out Notice

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [____] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).

2. We hereby give you notice:

- (a) that as per an Event of Default Step-in Notice dated [____], from the Event of Default Step-in Date specified in that Event of Default Step-in Notice, [we][[specify nominee], as our nominee] stepped in and assumed your role in carrying out certain [Concession Services][of your obligations under the Concession Agreement]; and
- (b) that pursuant to paragraph[s] 4.10 [and 4.12] of schedule 13.3 (*Other RfL Remedies*) of the Concession Agreement, [we are][[specify nominee] is] stepping out and ceasing to perform [those][the following] [Concession Services][obligations] from the Event of Default Step-out Date specified in paragraph 3.

3. The Event of Default Step-out Date is [insert date RfL or its nominee will step out].

We require you to resume the performance of the [Concession Services][obligations] specified in paragraph 2(b) from the Event of Default Step-out Date, [fully.][as follows:]

Yours faithfully

Signed for and on behalf of RfL

SCHEDULE 17.4

Termination and Expiry

1. TERMINATION NOTICES

1.1 RfL may, on and at any time:

- (a) after the occurrence of an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and which RfL considers to be material;
- (b) after the occurrence of a Termination Event which is unremedied or continuing; or
- (c) pursuant to paragraph 4 (*Voluntary Termination*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*),

terminate this Agreement by serving a Termination Notice on the Operator. This Agreement shall terminate with effect from the date specified in any such Termination Notice, which date in the case of a Termination Notice issued pursuant to paragraph 4 of Schedule 17.5, shall be no earlier than the notice period specified in paragraph 4 of Schedule 17.5.

1.2 RfL may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Operator is required to deliver to RfL the Remedial Plan specified in such Remedial Plan Notice.

1.3 RfL may not serve a Termination Notice in respect of an Event of Default for which the Operator is implementing a Remedial Agreement in accordance with its terms.

2. CONSEQUENCES OF TERMINATION OR EXPIRY

Continued performance until termination

2.1 Subject to Applicable Requirements, or as otherwise set out in this Agreement, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice until the termination of this Agreement becomes effective in accordance with this Agreement.

Cessation of rights and obligations on termination

2.2 Upon termination of this Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

- (a) any accrued rights and obligations as at the date of termination;
- (b) any rights and obligations arising as a result of any antecedent contravention of this Agreement;
- (c) any rights and obligations which are expressed to continue in accordance with the terms of this Agreement; and
- (d) any other rights and obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

Right to bring a claim and pursue other remedies

2.3 Nothing in this paragraph 2 shall prevent RfL from bringing an action against the Operator in connection with the termination of this Agreement prior to the expiry of the Concession Term, and the rights of RfL under this paragraph 2 are in addition and without prejudice to any other right RfL may have to obtain redress or relief available at law (whether by way of damages, specific performance, or otherwise) on account of the acts or omissions of the Operator, whether pursuant to this Agreement, the Performance Bond, Guarantee or otherwise.

Retendering costs

2.4 Subject to paragraph 2.5, and paragraph 1.7 of Schedule 17.7 (*Liability*), upon termination of this Agreement by RfL pursuant to paragraph 1.1(a), the Operator shall be liable to RfL for any retendering costs incurred by RfL in retendering Crossrail together with the increased costs of appointing a Successor Operator to carry out the Operator's obligations under this Agreement following termination until the end of the Concession Term.

2.5 If the terms and conditions of any new concession offered by RfL in the retendering process (including the basis upon which payment is made) are materially different from the terms and conditions contained in this Agreement, then an adjustment shall be made to the amount calculated in accordance with paragraph 2.4 which reasonably reflects how the increased costs of a Successor Operator would have been different (whether greater or lesser) had the new concession been let on substantially the same terms and conditions.

Voluntary termination compensation

2.6 Where RfL terminates this Agreement pursuant to paragraph 4 (*Voluntary Termination*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*), then the Operator shall be entitled to recover from RfL:

- (a) its reasonable costs of demobilisation;
- (b) any Loss incurred under agreements with third parties provided that such agreements have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) an amount in respect of the Operator's loss of profit for 12 months from the date of termination, which shall not exceed the profit of the relevant Concession Year specified in the Financial Model.

No other claim

2.7 The Operator shall have no claim for compensation or otherwise as a result of termination of this Agreement except in accordance with the express provisions of this Agreement.

SCHEDULE 17.5

Events of Default, Termination Event and Voluntary Termination

1. PROVISIONS RELATING TO EVENTS OF DEFAULT

Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Operator.

Notification of Event of Default

1.2 The Operator shall notify RfL as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Operator shall take such action or steps as RfL may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 17.4 (*Termination and Expiry*) shall apply, but the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*), Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and Schedule 17.3 (*Other RfL Rights*) shall also continue to apply.

2. EVENTS OF DEFAULT

2.1 Each of the following is an Event of Default events in the remainder of this paragraph 2.

Insolvency-related events

2.2 The following insolvency-related events:

- (a) **Administration:** any step being taken by any person with a view to the administration of the Operator or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;
- (b) **Insolvency:** any of the Operator or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being 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) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
 - (ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted with “£[REDACTED]” or such higher figure as RfL may from time to time notify in writing to the Operator; and

- (iii) any of the Operator or the Parent or any Bond Provider 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 being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;
- (c) **Arrangements with Creditors:** The directors of the Operator or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Operator or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Operator or the whole or a substantial part of the assets or undertaking of the Operator, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Operator, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Operator or the Parent or any Bond Provider ceasing or threatening 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 RfL before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Operator under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.2,

unless, in the case of paragraphs 2.2(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt.

Non-payment

2.3 For reasons attributable to the Operator, RfL is unable to withdraw any Revenue Sweep from the Revenue Account within three days of the due date for such withdrawal.

2.4 The Operator failing to pay to RfL any other amount due under this Agreement within 28 days of the due date for such payment.

Change of Control

2.5 Without the prior consent of RfL a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Operator or the Parent on and from the date of this Agreement and during the Concession Period, which shall include a

person, or two or more persons acting by agreement, ceasing to Control the Operator or the Parent at any time during the Concession Period, whether or not any other person Controls the Operator or the Parent at the same time and, for the purposes of this paragraph 2.5, two or more persons shall be deemed to be acting by agreement in relation to the Operator or the Parent if, assuming the Operator or the Parent was a target company as defined in section 824(1) of the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

2.6 Revocation of any Licence required to be held by the Operator in order to comply with its obligations under this Agreement.

Safety Certificate and Safety Authorisation

2.7 Any Safety Certificate and/or Safety Authorisation of the Operator being withdrawn or terminated.

Breach of Law

2.8 It becoming unlawful for the Operator to provide all or a material part of the Passenger Services or to operate all or a material number of the Operator Stations or any Depot (except to the extent not required so to do under this Agreement).

2.9 The Operator or any of the directors or senior managers of the Operator being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Concession Services.

2.10 The Operator being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Operator makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10 until such appeal has been determined to be unsuccessful.

Non-membership of Inter-Operator Schemes

2.11 The Operator ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Key Stage Milestones

2.12 The Operator fails to achieve a Key Stage Milestone one Reporting Period after the relevant date specified in paragraph 6 (*Key Stage Milestones*) of Schedule 6 (*Crossrail Train Operating Concession Staged Opening*) except where any of the Key Stage Milestones referred to in paragraphs [REDACTED] 6.1 is not achieved by the Operator solely and directly as a result of insufficient availability of Class 345 Units, other than where the Operator is responsible for such unavailability and provided that the Operator shall use all reasonable endeavours to achieve the relevant requirement as soon as reasonably practicable and work with RfL and the Rolling Stock Provider to maximise the number of Class 345 Units that are available for the purpose of driver training in accordance with paragraph 4.3 of Schedule 5.3 (*Introduction of the Class 345 Fleet*).

Operating Performance

2.13 The Operating Performance Overall Cap has been reached in any Thirteen Period Measurement Period.

2.14 The aggregate of Operating Performance Adjustments made in any Thirteen Period Measurement Period for Performance Failures that occur for reasons attributable to the Operator (including those Performance Failures that occur for reasons attributable jointly to the Operator and any Infrastructure Manager) is equal to or exceeds the Default Operating Performance Threshold for the Stage in which that Thirteen Period Measurement Period occurs (provided that, where a Thirteen Period Measurement Period occurs partly in one Stage and partly in another Stage, the Default Operating Performance Threshold applicable for that Thirteen Period Measurement Period shall be the Default Operating Performance Threshold that applies to the next Stage).

KPI Regime

2.15 The Operator is obliged to make a KPI Adjustment payment to RfL in three Reporting Periods out of six consecutive Reporting Periods in an amount that is equal to or in excess of the Default KPI Benchmark, provided that no Event of Default shall occur where those circumstances arise in during the first six Reporting Periods of the Concession Period.

Customer Satisfaction Regime

2.16 The CSS MAA Score in respect of any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure is equal to or less than respectively, the Relevant CSS Headline Default Benchmark, Relevant CSS Information Default Benchmark or Relevant CSS Security Default Benchmark.

Revenue Protection

2.17 The Ticketless Travel MAA Rate for the Eastern Section and/or the Western Section is equal to or higher than the Relevant Ticketless Travel Default Benchmark.

Performance Bond

2.18 A failure by the Operator to procure the provision to RfL of a Performance Bond which fulfils the requirements of paragraph 2 (*Performance Bond and Guarantee*) of Schedule 14, including failing to replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond Provider with the Required Rating and that meets the requirements of paragraphs 2.1 and 2.2 of Schedule 14:

- (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; or
- (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date, on or before the date falling 15 Business Days prior to any Interim Performance Bond Expiry Date.

2.19 Any Performance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder.

2.20 The Bond Provider failing or refusing to comply with any payment obligation assumed under the Performance Bond.

Guarantee

2.21 A failure by the Operator to procure the provision to RfL of a Guarantee which fulfils the requirements of paragraph 2 of Schedule 14.

2.22 The Guarantee ceasing to be a legal, valid and binding obligation on the relevant Guarantor (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for the Guarantor to perform its obligations thereunder.

2.23 The Guarantor failing or refusing to comply with any performance obligation assumed under the Guarantee.

Diversity Infraction

2.24 Following receipt of a notice given pursuant to paragraph 7.1 of Schedule 15.3 (*Responsible Procurement*), the Operator failing to remedy a Diversity Infraction to the satisfaction of RfL within the timescale prescribed in that paragraph 7.1(a) or (b), as appropriate.

2.25 Following receipt of a notice given pursuant to paragraph 7.2 of Schedule 15.3, the Operator, failing to terminate the engagement of its direct subcontractor under its contract with that subcontractor and procuring performance by another person on the terms specified in that paragraph within the further timescale prescribed in that paragraph.

Remedial Agreements and Corrective Action Notices

2.26 The Operator is non-compliant with a Relevant Term (other than where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under any of KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime) by the end of the period for being compliant specified in any Remedial Agreement entered into pursuant to Schedule 17.1 (*Remedial Plans and Remedial Agreements*) or Corrective Action Notice issued pursuant to Schedule 17.3 (*Other RfL Remedies*), in each case relating to that Relevant Term.

2.27 Subject to paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*), the Operator is materially non-compliant with a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Benchmark under any of KPI Regime, the MSS Regime, the Customer Satisfaction Regime or the Quality Performance Regime by the end of the period for being compliant specified in any Remedial Agreement entered into pursuant to Schedule 17.1 or Corrective Action Notice issued pursuant to Schedule 17.3, in each case relating to that Relevant Term.

Enforcement Orders

2.28 Non-compliance by the Operator with:

- (a) a provisional order;
- (b) a final order;
- (c) a penalty; or
- (d) any other order made relating to a contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order.

Other rail concessions or bus contracts

2.29 Termination, as a result of an event of default (excluding termination as a result of non-satisfaction of a condition precedent), of any other train operating agreement (whether heavy or light rail) or bus contract to which RfL or a member of the TfL Group and the Operator or an Affiliate of the Operator (including where that Affiliate is Controlled by only one member of the Parent) are a party.

Maximum aggregate liability

2.30 The Operator's liability to RfL under the Transaction Documents reaches or exceeds 80 per cent. of the Overall Liability Cap.

Key Contracts

2.31 Termination of any Key Contract except where requested by RfL or (other than in relation to termination of the Class 345 Lease) to the extent that the Operator has demonstrated to the reasonable satisfaction of RfL that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Concession Services.

Security over Primary Concession Assets

2.32 If the Security Interest granted by the Operator pursuant to paragraph 15.2 of Schedule 18.2 (*Restrictions on dealings*) ceases to be valid, binding and enforceable as a first priority Security Interest, unless the Operator replaces such security with replacement security acceptable to RfL within five days after written notice from RfL.

Contravention of Other Obligations

2.33 The occurrence of the following:

- (a) the Operator contravening to a material extent or persistently contravening any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the other provisions of this Schedule 17.5);
- (b) the service by RfL on the Operator of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Operator is required to so remedy; and
- (c) the Operator contravening or persistently contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as RfL has specified in the notice served pursuant to paragraph 2.33(b)(ii).

3. TERMINATION EVENT

RfL may terminate this Agreement in accordance with Schedule 17.4 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six consecutive months (a *Termination Event*).

4. VOLUNTARY TERMINATION

RfL may terminate this Agreement at any time on or before the last day of the Concession Term by issuing a Termination Notice to the Operator stating:

- (a) that RfL is terminating this Agreement under this paragraph 4; and
- (b) the date that this Agreement will terminate, which shall be no less than 60 days after the date of such notice.

SCHEDULE 17.6

Force Majeure

1. FORCE MAJEURE EVENTS

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 (*Conditions to Force Majeure Events*) being satisfied:

- (a) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1.1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Operator is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) **Contingency Plan** means a contingency plan (as defined in Condition H of the Network Code or its equivalent in any other Relevant Network Code) implemented by and at the instigation of Network Rail or any plan implemented by and at the instigation of LUL that has substantially the same effect as such a contingency plan, or such other contingency or recovery plan as RfL may agree from time to time;
- (b) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Operator) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or

- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two Rolling Stock Units and 10 per cent. of all rolling stock vehicles used by the Operator in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Operator prevents or restricts the operation of any train on safety grounds, provided that:

- (i) the Operator has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and

- (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;

- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion or the act of any government instrumentality (including the ORR but excluding RfL), provided that there shall be no Force Majeure Event under this paragraph 1.1(e) by reason of:

- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;

- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or

- (iii) an act of God which results in the Operator or its agents or subcontractors being prevented or restricted by any Infrastructure Manager from gaining access to any relevant section or part of track;

- (f) any strike or other Industrial Action by any or all of the employees, agents or subcontractors of:

- (i) any Infrastructure Manager; or

- (ii) any other operator of any railway facility,

other than, in each case, the Operator; and

- (g) any strike or other Industrial Action by any or all of the employees, agents or subcontractors of the Operator, or any person with whom the Operator has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services.

1.2 For the purposes of paragraphs 1.1(f) and (g), **Industrial Action** shall include any concerted action taken in connection with the employment of the relevant employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Operator being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of RfL.

2. CONDITIONS TO FORCE MAJEURE EVENTS

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) the Operator notifies RfL within two Business Days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Operator's performance of the Passenger Services;
- (c) at the same time as the Operator serves notification on RfL under paragraph 2, it informs RfL of the steps taken and/or proposed to be taken by the Operator to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Operator or its agents or subcontractors, save that in relation to any event under paragraph 1.1(g) which occurs as a result of any such act or omission to act, paragraph 2.2 shall apply; or
 - (ii) the Operator's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Operator used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Operator shall, to the extent reasonably so requested by RfL, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where any strike or other Industrial Action referred to in paragraph 1.1(g) occurs and the relevant conditions specified in paragraph 2.1 have been satisfied in relation to that occurrence, RfL may in its absolute discretion determine whether or not such occurrence constitutes a Force Majeure Event.

3. CONSEQUENCES OF FORCE MAJEURE EVENTS

On obligations

3.1 The Operator shall not be responsible for any failure to perform any of its obligations under this Agreement (nor shall there be any contravention of this Agreement) if and to the extent that such failure is caused by any Force Majeure Event.

3.2 If any Force Majeure Event continues, with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3 (*Termination Event*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*).

On payments

3.3 Following the occurrence of a Force Majeure Event, the payment of Concession Payments shall continue unaffected.

Force majeure leading to Change

3.4 RfL may, in its absolute discretion elect at any time within two months of the occurrence of any Force Majeure Event that such event shall be treated as a Change.

3.5 A Force Majeure Event that continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services or Station Services for more than two consecutive months shall be a Change.

3.6 Where either RfL elects that a Change has occurred under paragraph 3.4, then in calculating any restated amounts and values pursuant to paragraph 1 (*Financial Consequences of a Change*) of Schedule 13.1 (*Financial Consequences of Change*), the parties shall only have regard to the period commencing:

- (a) in the case of the circumstances set out in paragraph 3.4, on the date RfL notifies the Operator of such election; and
- (b) in the case of the circumstances set out in paragraph 3.5, on the date that is two months and one day after the first occurrence of the relevant Force Majeure Event.

SCHEDULE 17.7

Liability

1. OPERATOR'S LIABILITY

General indemnity

1.1 Subject to paragraph 1.4, the Operator shall on demand, hold the Indemnified Parties fully protected and indemnified in respect of all Losses incurred by or made on the Indemnified Parties in connection with:

- (a) any death, personal injury;
- (b) loss or damage suffered by passengers or by any third party (including loss of or damage to property); or
- (c) third party actions, claims, demands, costs, charges and expenses brought against any Indemnified Party (including legal expenses on an indemnity basis),

which, in the case of any liability pursuant to:

- (i) paragraph 1.1(a), may arise out of, or in consequence of:
 - (A) the operation of the Concession Services or the maintenance of the Concession Assets or any other assets supplied under the Transaction Documents which the Operator is obliged to maintain;
 - (B) the performance or non-performance by the Operator of its obligations under the Transaction Documents; or
 - (C) the presence on the Crossrail Route of the Operator or its sub-contractors, employees or agents, in each case in connection with the Transaction Documents; and
- (ii) paragraph 1.1(b) or (c), may arise out of or in consequence of any contravention or breach of this Agreement or the other Transaction Documents by the Operator, its employees, servants, agents, subcontractors, directors or officers, with any such contravention of the other Transaction Documents constituting a breach of this Agreement.

Operator indemnity for contraventions

1.2 The Operator shall, subject to paragraph 1.4 and 1.7, indemnify each of the Indemnified Parties in full on demand against any Losses suffered or incurred by the Indemnified Parties as a result of any contravention of this Agreement by the Operator, its employees, servants, agents, Subcontractors, directors or officers, which shall include any retendering costs and increased costs incurred by RfL pursuant to paragraph 2.4 of Schedule 17.4 (*Termination And Expiry*) and any Losses incurred by or made on the Indemnified Parties where that contravention has caused any breach of statutory duty.

1.3 The Operator shall comply with the terms of the Transactions Documents (other than this Agreement) and, accordingly, any contravention or breach by the Operator, its employees, servants, agents, subcontractors, directors or officers of any of those Transaction

Documents, shall be a breach of this Agreement. Any Loss suffered or incurred by any of the Indemnified Parties under those Transaction Documents shall not be unforeseeable solely because such Loss has resulted from a contravention or breach of those Transaction Documents.

No Operator liability where caused by Indemnified Party

- 1.4 The Operator shall not be obliged pursuant to paragraph 1.1 or 1.2 to indemnify:
- (a) the Indemnified Parties to the extent that any Loss is caused by the negligence or wilful misconduct of any of the Indemnified Parties or by the breach by RfL of its obligations under the Transaction Documents;
 - (b) RfL for any loss of Ticket Revenue; or
 - (c) RfL for any ticket refunds or other compensation paid to passengers in relation to delays or cancellations of the Passenger Services,

except to the extent, that any such Losses are recoverable by the Operator under any insurance policy.

Operator responsible for RfL offence

1.5 Where the act, omission or default of the Operator, any Affiliate or any Concession Employee, agent, contractor or sub-contractor of the Operator or any Affiliate causes RfL to commit an offence, then the Operator shall immediately take any measure necessary to ensure that that act, omission or default no longer causes RfL to commit that offence. Where RfL reasonably believes that such an act, omission or default is about to take place and will result in RfL committing an offence, then RfL may issue a Corrective Action Notice to the Operator to remedy the act, omission or default promptly and the Operator shall promptly comply with that Corrective Action Notice.

No impact on other RfL rights or remedies

1.6 The Operator's liability to RfL arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to RfL and in particular shall not prejudice in any way the ability of RfL to enforce any bond, guarantee or other security given pursuant to this Agreement at any time and in any manner whatsoever.

Maximum aggregate liability

1.7 Subject to paragraph 1.8, the Operator's maximum aggregate liability to the Indemnified Parties for all matters arising out of, under or in connection with the Transaction Documents shall not exceed an amount equal to the Overall Liability Cap.

- 1.8 The Operator's liability in relation to the following shall be unlimited:
- (a) any costs or expenses which the Operator is obliged to or does expend in carrying out its obligations under the Transaction Documents;
 - (b) any liability of the Operator to the Indemnified Parties arising as a result of or in connection with:
 - (i) death or personal injury;

- (ii) fraud, fraudulent misrepresentation or corruption by the Operator or any of its Concession Employees, agents, servants, officers, contractors and subcontractors (whether direct or indirect);
- (iii) wilful default or abandonment; or
- (iv) otherwise arising under paragraph 1.1;
- (c) in connection with any Losses incurred by or made on the Indemnified Parties due to breach of statutory duty which arose out of or in consequence of any contravention by the Operator of the Transaction Documents;
- (d) in connection with any Losses recoverable by the Operator under any insurance policy;
- (e) payments of Performance Adjustments that are due and payable;
- (f) payments of Pass-Through Adjustments that are due and payable by the Operator (other than any Alternative Timetable Shortfall Payment comprising part of any Alternative Timetable Adjustment);
- (g) payments of the following Other Adjustments that are due and payable by the Operator:
 - (i) under paragraph 10.1 of Schedule 1.3 (Managing Changes to the Passenger Services);
 - (ii) under paragraph 6.5 of Schedule 4.2 (Stations and Depot Refresh, Refurbishment and Enhancements);
 - (iii) under paragraph 1.3 of Schedule 5.2 (*Operation, Maintenance and Refresh*); and
 - (iv) under paragraph 7.4 of Schedule 13.3 (*Runs of the Model Suite*);
- (h) any Loss arising under or in respect of paragraphs 3.4 to 3.8 inclusive of Schedule 18.3 (*Transfer*);
- (i) the Operator's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Requirements; or
- (j) any interest payable under this Agreement.

No double recovery

1.9 Neither party to this Agreement shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same Loss suffered by that party under this Agreement.

Survival

1.10 The indemnities in this paragraph 1 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement.

2. RfL'S LIABILITY

No RfL liability with respect to passengers and third parties

2.1 The Operator hereby acknowledges that RfL will not be responsible for the actions of the Operator or any Affiliate of the Operator and that, except as expressly provided in this Agreement, the Operator shall provide and operate the Concession Services without recourse to RfL or government funds or guarantees.

No RfL liability for negligence unless contravention

2.2 Neither RfL nor any of its officers, agents or employees shall in any circumstances be liable to the Operator for any Loss caused by the negligent exercise of any powers reserved to RfL under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of RfL under this Agreement. The Operator may not recover from RfL or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

No RfL liability for monitoring or exercise of functions unless contravention

2.3 RfL may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Operator under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of RfL during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under this Agreement.

2.4 The exercise by or on behalf of RfL of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on RfL to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by RfL of an express provision of this Agreement and RfL does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under this Agreement.

3. MITIGATION

Where any Indemnified Party or the Operator is indemnified by, as appropriate, the Operator or RfL under this Agreement, the Indemnified Party or the Operator (as the case may be) shall mitigate any Losses which it is seeking indemnification for.

SCHEDULE 18

CONTINUITY, RESTRICTIONS ON DEALINGS AND TRANSFER

Schedule 18.1: Continuity of Services

Appendix 1: Handover Package

Appendix 2: List of Key Contracts

Schedule 18.2: Restrictions on dealings with Concession Assets

Schedule 18.3: Transfer

Appendix 1: Form of Transfer Notice

Appendix 2: Form of Supplemental Agreement

SCHEDULE 18.1

Continuity of Services

1. ENSURING CONTINUITY OF SERVICES

1.1 Both prior to and following the selection of a Successor Operator (whether a Train Operator or otherwise and whether or not subject to the satisfaction of any conditions), the Operator shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, RfL; and
- (b) take such steps as may reasonably be requested by RfL,

so as to ensure the continuity of, and orderly handover of control over of the Concession Services.

1.2 The steps that RfL may reasonably request the Operator to take pursuant to paragraph 1.1 include:

- (a) participating in any timetable development process that takes place during the Concession Period, but which relates to any timetable period applying wholly or partly after the expiry of the Concession Period (***Successor Operator Timetable***), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Concession Period;
- (c) assisting RfL or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Operator shall not be required to enter into any such Access Agreement unless RfL has first provided to it confirmation in writing that it will include that Access Agreement in any Transfer Notice pursuant to paragraph 6.1 of Schedule 18.3 (*Transfer*).

2. CO-OPERATION WITH SUCCESSOR OPERATOR

2.1 Without limiting paragraph 1 (*Ensuring Continuity of Services*), in order to ensure the continuity of, and an orderly handover of control over, the Concession Services, the Operator shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or

(b) where a Successor Operator has not been so appointed, RfL, and shall take such steps as may be reasonably requested by RfL in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Operator shall:

- (a) bid for and use reasonable efforts to secure the Timetable and the Train Plan for the railway passenger services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period); and
- (b) make appropriately skilled and qualified Concession Employees reasonably available to attend such meetings with RfL, the Successor Operator, any Infrastructure Manager, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) Shared Facility agreements;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts; and
 - (F) any other Key Contract; and
 - (ii) without prejudice to RfL's rights under Schedule 18.3 (*Transfer*), those rights and liabilities as may be specified in any Transfer Notice.

3. HANDOVER PACKAGE

Obligation to maintain, update and make available

3.1 The Operator shall:

- (a) maintain the Handover Package;
- (b) update it at least every three Reporting Periods;
- (c) deliver an updated version to each of RfL and the solicitor holding the Handover Package referred to in paragraph 3.2 every six Reporting Periods; and
- (d) make it available to RfL for inspection or audit by RfL or its representatives every six months during the Concession Period or otherwise whenever requested.

3.2 The Operator shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Concession Period and shall accordingly agree with RfL from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by RfL.

Director's Certificate

3.3 Once in each Concession Year, the Operator shall provide to RfL a certificate signed by a nominated and duly authorised statutory director of the Operator, addressed to RfL, which confirms that the Handover Package contains the information and objects specified in Appendix 1 (*Form of Handover Package*) and that such information is accurate as at the date of the certificate.

Handover Package Information

3.4 Without prejudice to the preceding provisions of this Schedule 18.1, the Operator shall provide to RfL the following information and letters on or prior to the Start Date, and shall supply revised information and/or letters to RfL as and when required in order to ensure that such information and letters remain accurate and up to date:

- (a) details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- (b) a letter in a form approved by RfL:
 - (i) from the Operator to RfL confirming that an irrevocable instruction has been given to the solicitor holding the Handover Package (or other persons authorised by RfL for such purpose) that any of RfL, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming RfL's right to audit the Handover Package at any time; and
 - (ii) from the solicitor holding the Handover Package (or other person authorised by RfL for such purpose) to RfL confirming that it or she will release the Handover Package to any of RfL, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by RfL;
- (c) a list of all Key Contacts, as set out in Appendix 2; and
- (d) a letter in a form approved by and addressed to RfL confirming the details of any insurer providing insurance to the Operator, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of RfL, a Successor Operator or its agent on demand.

4. KEY CONTRACTS

List of Key Contracts

4.1 The Key Contracts as at the date of this Agreement are set out in Appendix 2.

Designation of Key Contracts

4.2 Where RfL considers that it is reasonably necessary for securing the continued provision of the Concession Services or the provision of services similar to the Concession Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 4.3.

- 4.3 RfL may at any time, by serving notice on the Operator, designate as a Key Contract:
- (a) any actual or prospective agreement, contract, licence or other arrangement; and
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which the Operator is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

4.4 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Operator or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

De-designation of Key Contracts

4.5 RfL may at any time, by serving a notice on the Operator, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

Re-designation of Key Contracts

4.6 RfL may at any time, by serving notice on the Operator, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 4.5 from the date specified in such notice.

Designation of Key Contracts as Primary Concession Assets

4.7 RfL shall, subject to paragraphs 1.2(b) and 4.5, be entitled to designate any Key Contract as a Primary Concession Asset at any time during the Concession Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.

No Amendment

4.8 The Operator shall not without the prior consent of RfL (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

Replacement of Key Contracts

4.9 The Operator shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of RfL in relation to such replacement contract.

Termination of Key Contracts

4.10 Whether or not this Agreement is continued after the Initial Expiry Date in accordance with Schedule 19 (*Continuation of the Crossrail Concession*), the Operator shall, to the extent so requested by RfL, exercise its right to terminate any Key Contract on the Expiry Date.

5. EMERGENCIES

Where any emergency may arise in connection with the provision and operation of the Concession Services, the Operator:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist RfL in entering into the same;
- (c) shall promptly inform RfL of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as RfL may request.

6. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

6.1 The Operator shall not:

- (a) execute any Rolling Stock Related Contract; or
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Operator or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement,

without, in either case, the prior written consent of RfL (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to RfL.

6.2 The Operator shall not, without the prior written consent of RfL:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
- (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (*New Insurance Arrangements*).

6.3 The Operator shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Operator, whether on a reciprocal basis or otherwise.

7. DIRECT AGREEMENTS

7.1 Unless RfL otherwise agrees, or unless directed to do so by the ORR, the Operator shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or

- (b) has entered into a Direct Agreement with RfL in respect of that prospective Key Contract, providing on a basis acceptable to RfL, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Operator Stations and any Depot in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of the Operator.

7.2 Where RfL designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Operator is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Operator is already a party to a contract, licence or other arrangement which, by virtue of RfL's designation or re-designation, is classified in such category,

the Operator shall use all reasonable endeavours to assist RfL in entering into a Direct Agreement as envisaged by paragraph 7.1(b).

7.3 The Operator shall pay to RfL by way of Other Adjustment an amount equal to any Losses which may be suffered or incurred by RfL under the provisions of any Direct Agreement and which may be notified to the Operator as a result of, or in connection with:

- (a) any breach by the Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

8. RE-LETTING OF CONCESSION

8.1 The Operator acknowledges that RfL may wish, at or before the expiry of the Concession Period, either to invite persons (including the Operator) to tender for the right to provide all or some of the Passenger Services under a concession agreement or alternatively to enter into a concession agreement in respect of the Passenger Services without having gone through a tendering process.

8.2 The Operator further acknowledges that RfL has entered into an agreement with the Secretary of State in respect of putting in place, amongst other things, suitable contingency arrangements to secure in certain circumstances, the provision of the Passenger Services, including if no further concession agreement is entered into on the termination of this Agreement in respect of such Passenger Services.

8.3 The Operator hereby accepts and agrees to the restrictions and obligations imposed on it under Schedule 2 (*Concession Services*) and this Schedule 18.1.

9. PREPARATION FOR RE-LETTING

9.1 The Operator shall, if so requested by RfL, provide RfL and its representatives and advisers with access to the Concession Employees and all books, records and other materials

kept by or on behalf of the Operator in connection with the Concession Services for the purpose of assisting RfL and such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Concession Services;
- (b) to prepare invitations to other potential operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any concession agreement or other agreement relating to the Concession Services, whether or not having gone through a tendering process.

9.2 The Operator shall, without requiring RfL's advisers to enter into a confidentiality agreement with the Operator (provided RfL has complied with paragraph 2(b) of Schedule 16.2 (*Confidentiality and Freedom of Information Act Requirements*)), make available to RfL and its representatives and advisers such information (including financial and operating information) as they shall reasonably require in connection with the matters referred to in paragraph 9.1. The Operator shall prepare and present such information in such manner (including in disaggregated form) as RfL may require, and shall provide such assistance as RfL may require in connection with the verification of such information.

9.3 The Operator shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 9.1 as RfL shall require from time to time.

9.4 In connection with any proposal (whether or not yet finalised) to enter into separate concession agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Concession Services (whether or not together with other railway passenger services) at or following the end of the Concession Period, the Operator agrees and acknowledges that RfL may require:

- (a) that the Operator provides RfL with additional information and reports and analysis in respect of such Service Groups as RfL may specify. This may include:
 - (i) information relating to the operating and financial performance of the Operator in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) that the Operator reorganises the business of providing the Concession Services in order to facilitate the transfer anticipated by this Schedule 18.1 on an ongoing basis of the business of providing the Concession Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or

- (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Concession Services within that Service Group.

9.5 RfL may disclose to any potential Successor Operator any reports and accounts delivered to it under Schedule 16 (*Information and Industry Initiatives*).

APPENDIX 1 TO SCHEDULE 18.1**FORM OF HANDOVER PACKAGE****1. KEY CONTACTS**

A printed or electronic list (in a format acceptable to RfL) of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Operator's business. This list shall include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list shall also include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. CONTRACTS

A printed or electronic list (in a format acceptable to RfL) of all contracts (sales, purchases or otherwise including leases and licences) between the Operator and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Operator and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by RfL.

3. PROPERTY

A printed or electronic list (in a format acceptable to RfL) of all property owned, leased, operated or occupied by the Operator which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

4. SYSTEMS

A printed or electronic list (in a format acceptable to RfL) of the electronic systems in use by the Operator, together with the name, office address and telephone number of the Operator's information technology manager (or the holder of any equivalent post) who is responsible for administration of each such system.

5. DAILY OPERATIONS

A printed or electronic list (in a format acceptable to RfL) of all assets owned or operated by the Operator, together with their location.

6. INSURANCE

A printed or electronic list (in a format acceptable to RfL) of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Operator, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

APPENDIX 2 TO SCHEDULE 18.1**LIST OF KEY CONTRACTS****1. KEY CONTRACTS**

The following items have as at the date of this Agreement been designated as Key Contracts:

- (a) any Access Agreement to which the Operator is a party other than in its capacity as a Facility Owner;
- (b) any Property Lease;
- (c) any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);
- (d) any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Operator in the provision of the Passenger Services;
- (e) any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the RfL is required to such subcontracting or delegation under paragraph 4 (*Additional Railway Passenger Services*) of Schedule 1.2 (*Passenger Service Operating Obligations*));
- (f) any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
- (g) any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
- (h) any contract or arrangement for the supply of spare parts or Spares;
- (i) any contract or arrangement for the maintenance of track and other related infrastructure;
- (j) the New TVM Maintenance Agreement; and
- (k) any other TVM maintenance contract to which the Operator is or becomes a party.

SCHEDULE 18.2**Restrictions on dealings with Concession Assets****1. CONCESSION ASSETS**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Operator from time to time during the Concession Period shall be designated as Concession Assets.

1.2 The rights and liabilities of the Operator in respect of the following items shall not be designated as Concession Assets:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Notice or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution; and
- (e) such other property, rights and liabilities as the Operator and RfL may agree from time to time or as RfL may de-designate as Concession Assets under paragraph 6 (*Designation of Taxes and Discount Cards*).

2. PRIMARY CONCESSION ASSETS

The following property, rights and liabilities shall (to the extent that they constitute Concession Assets) be designated as Primary Concession Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the Appendix (which constitute Primary Concession Assets agreed between the parties as at the date of this Agreement), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 (*Designation of Additional Primary Concession Assets*) from time to time during the Concession Period, on the date of such designation;
- (c) any property or right which is vested in the Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Concession Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Operator under any Key Contract designated in accordance with paragraph 5 (*Emergencies*) of Schedule 18.1 (*Continuity of Services*), on the date of such designation; and
- (e) the rights and liabilities of the Operator in respect of the terms of any Fare or Discount Card designated under paragraph 6 (*Designation of Taxes and Discount Cards*), on the date of such designation.

3. DESIGNATION OF ADDITIONAL PRIMARY CONCESSION ASSETS

RfL may at any time and from time to time during the Concession Period, by serving notice on the Operator, designate any or all of the Concession Assets as Primary Concession Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. DESIGNATION DURING LAST 12 MONTHS OF CONCESSION PERIOD

If RfL designates a Concession Asset as a Primary Concession Asset under paragraph 3 (*Designation of Additional Primary Concession Assets*) at any time during the last 12 months of the Concession Period then, within 28 days of such designation, RfL may de-designate such Primary Concession Asset by serving notice on the Operator. Such de-designation shall take effect upon delivery of such notice.

5. DESIGNATION OF KEY CONTRACTS AS PRIMARY CONCESSION ASSETS

RfL shall, subject to paragraphs 1.2(b) and 7 (*Rights and Liabilities*), be entitled to designate any Key Contract as a Primary Concession Asset at any time during the Concession Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.

6. DESIGNATION OF FARES AND DISCOUNT CARDS

RfL may designate any Fare or Discount Card as a Primary Concession Asset at any time during the Concession Period by serving a notice on the Operator. Such designation shall take effect from delivery of such notice.

7. RIGHTS AND LIABILITIES

RfL, in designating the rights and liabilities of the Operator (whether under a particular contract or other arrangement) as a Primary Concession Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Concession Period) or to those relating only to the Concession Services or a particular part thereof.

8. DISPUTES OVER DESIGNATION

8.1 The Operator may object in writing to RfL to any designation pursuant to paragraph 3 (*Designation of Additional Primary Concession Assets*) or 4 (*Designation During Last 12 Months of Concession Period*).

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Operator's opinion, reasonably necessary to secure the continued provision of the Concession Services by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or to facilitate the transfer to such Successor Operator of the provision of the Concession Services at such time.

8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Concession Period or 14 days of a designation made during the last 12 months of the Concession Period.

8.4 RfL shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Operator regarding the use of the relevant Primary Concession Asset otherwise than in the provision and operation of the Concession Services.

8.5 If the Operator's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Operator may, subject to paragraphs 8.6 and 8.7, refer the dispute for resolution in accordance with the Dispute Resolution Rules.

8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Concession Services may continue to be provided by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or otherwise facilitating the transfer of the provision of the Concession Services at such time, and accordingly whether or not they should cease to be so designated.

8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Concession Period, then such dispute shall be deemed to cease immediately before the expiry of the Concession Period and the relevant Concession Assets shall continue to be designated as Primary Concession Assets on and after the expiry of the Concession Period.

9. PROVISION OF INFORMATION TO RfL

9.1 The Operator shall provide such information as RfL may reasonably require in order to satisfy RfL that any Concession Assets which are to be designated as Primary Concession Assets after the Start Date under this Agreement will at the time of such designation be vested in the Operator. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Operator shall further provide such information as to the property, rights and liabilities of the Operator as RfL may reasonably require in connection with the designation of Primary Concession Assets. Such information shall be supplied to RfL within such timescale as RfL may reasonably require.

10. DE-DESIGNATION OF CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS

10.1 RfL and the Operator may agree in writing at any time during the Concession Period that a Concession Asset shall cease to be so designated as a Concession Asset or that a Primary Concession Asset shall cease to be so designated as a Primary Concession Asset, and the relevant Concession Asset or Primary Concession Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 RfL may in addition at any time during the Concession Period, by serving notice on the Operator, cause a Concession Asset which is not a Primary Concession Asset to cease to be so designated as a Concession Asset. Such Concession Asset shall cease to be so designated on the date specified in such notice.

10.3 RfL may in addition, at any time during the Concession Period, by serving notice on the Operator, cause a particular Primary Concession Asset to cease to be designated as such. Such Primary Concession Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Concession Asset, no later than one year prior to the expiry of the Concession Term.

11. SPARES

The obligation of the Operator to maintain, preserve and protect Primary Concession Assets under this Schedule 18.2 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Concession Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Operator for use in the provision of the Concession Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

12. ASSETS NOT DESIGNATED AS PRIMARY CONCESSION ASSETS

12.1 This paragraph 12 relates to any Concession Assets that are property or rights and are not designated as Primary Concession Assets.

12.2 Subject to paragraph 14.3, RfL consents to the Operator:

- (a) transferring or agreeing to transfer any such Concession Assets or any interests in, or right over, any such Concession Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Concession Assets.

13. LIABILITIES NOT DESIGNATED AS PRIMARY CONCESSION ASSETS

13.1 This paragraph 13 relates to any liabilities which are not designated as Primary Concession Assets.

13.2 RfL consents to the Operator entering into any agreement under which any such liability is released or discharged, or transferred to another person.

14. DEALING WITH CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS

14.1 This paragraph 14 relates to Concession Assets (whether or not designated as Primary Concession Assets) which are property or rights.

14.2 RfL hereby consents to the installation of Spares which have been designated as Primary Concession Assets on any Class 315 Units. Any Spare which is so installed shall cease to be so designated on such installation.

14.3 RfL hereby consents to the Operator creating or agreeing to create any Security Interest over any of these Concession Assets to the extent that the terms of any such Security Interest provide that:

- (a) if the relevant Concession Asset becomes the subject of a Transfer Notice, it shall be fully and automatically released from the relevant Security Interest immediately before the Transfer Date (as defined in the Transfer Notice);
- (b) if the relevant Concession Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Concession Asset ceases to be designated as a Concession Asset.

14.4 The Operator shall give not less than 14 days' prior written notice to RfL of the date on which it intends to create a Security Interest over a Primary Concession Asset and shall provide RfL with such information in relation thereto as RfL may reasonably require.

15. SECURITY INTERESTS

Prohibition on Security over Primary Concession Assets

15.1 The Operator shall not create or agree to create a Security Interest over any Primary Concession Asset except on the terms permitted under paragraphs 14.3 and 15.2.

Security in favour of RfL over Primary Concession Assets

15.2 The Operator shall, if and to the extent required by RfL in respect of a Primary Concession Asset, immediately grant in favour of RfL a first priority Security Interest over such Primary Concession Asset and shall promptly enter into such documents, and make such filings, recordings and registrations, in respect of such Security Interest, as RfL may reasonably require to ensure the validity, enforcement and priority thereof.

Notice

15.3 The Operator shall promptly inform RfL of any Security Interest arising at any time over any of its property or rights and shall provide RfL with such information in relation thereto as it may reasonably require.

APPENDIX TO SCHEDULE 18.2

LIST OF PRIMARY CONCESSION ASSETS

1. PRIMARY CONCESSION ASSETS

The following items have as at the date of this Agreement been designated as Primary Concession Assets:

- (a) all Ticket Equipment supplied under Schedule 3.6 (*Ticket Equipment*) other than those TVMs supplied pursuant to paragraph 1.2(a)(ii) of Schedule 3.6; and
- (b) Ilford Regulated Depot Access Agreement.

SCHEDULE 18.3**Transfer****1. NOVATION OF ACCESS AGREEMENTS DURING THE CONCESSION PERIOD**

1.1 The Operator shall, to the extent so requested by RfL (other than on termination of this Agreement, for which the provisions of paragraph 5 (*Novation of Access Agreements on Termination of this Agreement*) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 5.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

1.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 5.3 shall apply to any such novation.

1.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under paragraph 5.

2. ASSIGNMENT OF PROPERTY LEASES DURING THE CONCESSION PERIOD

2.1 The Operator shall (other than on termination of this Agreement, for which the provisions of paragraph 7.7 shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

2.2 Such assignment shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 2.2(a), and the Operator shall indemnify RfL or its nominee, as the case may be, on an after-tax basis against any Losses suffered or incurred in relation thereto.

2.3 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 2.1 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 2.2 shall apply to any such assignment.

2.4 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 2.

3. CONCESSION EMPLOYEES

Last 12 or 13 Month Period

3.1 Where reference is made in this Agreement to the last 12 or 13 months of the Concession Period, such period shall be deemed (except where the actual date of expiry of the Concession Period is known) to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date;
- (b) the date on which RfL notifies the Operator that such period of 12 or 13 months shall be deemed to commence on the grounds that RfL reasonably considers that an Event of Default may occur within the following 12 or 13 months; or
- (c) the date on which RfL notifies the Operator that such period of 12 or 13 months shall be deemed to commence on the grounds that RfL considers it reasonably likely that this Agreement will be terminated by agreement between the parties within such period.

3.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 3.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 3.1(b) or (c) or, in each case, such earlier date as RfL may determine.

3.3 If the last 12 or 13 months of the Concession Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1.1 of Schedule 19 (*Continuation of Crossrail*) is given, then the last 12 or 13 months of the Concession Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

Terms of Employment of Existing Employees

3.4 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Concession Employee (in particular, the Operator shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Concession Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Concession Employee of no more than the amount determined in accordance with the following formula:

$$\frac{\text{MRPI} + \text{JRPI} + \text{SRPI} + \text{DRPI}}{4}$$

where:

MRPI is the increase in the RPI Index between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JRPI is the increase in the RPI Index between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SRPI is the increase in the RPI Index between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DRPI is the increase in the RPI Index between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Concession Period;
- (c) results in any such employment not being terminable by the Operator or other relevant employer within six months of the expiry of the Concession Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Concession Period; or

- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Operator.

3.5 Without limiting the foregoing, the Operator shall consult RfL as soon as reasonably practicable in any circumstances in which RfL's consent under paragraph 3.4 may be required. Further, it shall always be deemed to be reasonable for RfL to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 3.4(a) provided RfL:

- (a) makes an overall increase in Concession Payments equal to the amount of the direct net Losses suffered by the Operator on the days when the Passenger Services are affected by industrial action taken by the Concession Employees which is a consequence of a refusal by RfL to agree to the variation or addition; and
- (b) agrees that, to the extent that the Operator would otherwise be in contravention of this Agreement as a consequence of the industrial action referred to in this paragraph 3.5, no such contravention shall have occurred, save where such contravention relates to safety requirements.

3.6 The expression *promise to vary* when used in paragraph 3.4 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining RfL's consent).

Terms of Employment of New Employees

3.7 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Concession Employee where the employment of such Concession Employee by the Operator or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Concession Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Concession Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in contravention of paragraph 3.4.

Changes in Numbers and Total Cost of Employees

3.8 Subject to and excluding any increase in the remuneration of Concession Employees permitted under paragraph 3.4, the Operator shall not, and shall secure that each other relevant employer shall not, without the prior written consent of RfL (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Concession Period the number of Concession Employees such that:

- (a) the total number of Concession Employees or the total cost per annum to the Operator and each other relevant employer of employing all Concession Employees is increased; or
- (b) the total number of Concession Employees is decreased,

in each case, by more than five per cent. during such period of 12 months.

Indemnity

3.9 The Operator shall indemnify RfL and keep RfL indemnified against any Loss which relates to or arises out of any act or omission by the Operator or any other event or occurrence prior to the Expiry Date and which RfL may incur in relation to any contract of employment or collective agreement concerning one or more of the Concession Employees pursuant to the provisions of TUPE or otherwise including any such matter relating to or arising out of:

- (a) the Operator's rights, powers, duties and/or liabilities (including any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to RfL in accordance with TUPE; or
- (b) anything done or omitted before the Expiry Date by or in relation to the Operator in respect of any such contract of employment or collective agreement or any Concession Employee, which is deemed by TUPE to have been done or omitted by or in relation to RfL save where the thing done or omitted to be done before the Expiry Date relates to RfL's failure to comply with its obligations referred to in paragraph 3.10.

3.10 RfL shall, to the extent that any contract of employment or collective agreement in relation to any Concession Employee transfers to RfL in accordance with TUPE, co-operate with the Operator in the delivery to each such employee of letters in an agreed form as soon as reasonably practicable after the Expiry Date (to the extent not already delivered prior to the Expiry Date).

4. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR

4.1 The Operator shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Concession Services at the end of the Concession Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of this Schedule 18) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of this Agreement, the Operator may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THIS AGREEMENT

5.1 The Operator shall, to the extent so requested by RfL on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

5.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

5.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 5.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

5.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 5.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 5.3 shall apply to any such novation.

5.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 5.

6. TRANSFER OF PRIMARY CONCESSION ASSETS

Transfer Notice

6.1 RfL shall have the right to give, and the Operator shall have the right to require RfL to give, a Transfer Notice on or within 14 days before the expiry or termination of the Concession Period, and the following shall apply:

- (a) RfL may (and shall if required by the Operator) give one or more such Transfer Notices for the transfer of the Primary Concession Assets specified in any such Notice;
- (b) the Operator shall transfer to the Successor Operator the property, rights and liabilities specified in the Transfer Notice on the date specified in such Transfer Notice; and
- (c) any Primary Concession Assets which are not specified in the Transfer Notice shall cease to be designated as such 14 days after service of such Transfer Notice.

Supplemental Agreement

6.2 Any Transfer Notice shall impose on the Operator and the Successor Operator an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for:

- (a) the transfer by the Operator to the Successor Operator of the Primary Concession Assets specified in the Transfer Notice; and

- (b) the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Supplemental Agreement.

6.3 The Operator shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

6.4 RfL may require the Operator to pay to any Successor Operator, or may require any such Successor Operator to pay to the Operator, on the day specified in the Transfer Notice such sum as RfL may determine should be so paid having regard to:

- (a) RfL's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Concession Assets being transferred thereunder;
- (b) RfL's estimate of any other sums likely to be paid thereunder;
- (c) the financial condition of the Operator and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
- (d) such other matters as RfL may consider appropriate.

6.5 The Operator shall pay to any such Successor Operator the sum determined by RfL in accordance with paragraph 6.4 on the day specified in the Transfer Notice.

Possession of Concession Assets

6.6 On the day specified in the Transfer Notice, the Operator shall deliver up to RfL (or its nominee) possession of the Primary Concession Assets transferred to the Successor Operator under the Supplemental Agreement.

End of concession audit

6.7 RfL or its representatives may carry out at RfL's cost within the last 18 months of the Concession Period, or at such earlier point as RfL shall reasonably specify, an audit of compliance by the Operator with its asset management and maintenance obligations in this Agreement (the scope of any audit and samples to be selected at RfL's absolute discretion) and any such audit may involve the examination, inspection or testing of works, activities, processes, records, documents or assets on or off the Crossrail Route.

6.8 The Operator shall promptly provide (at its own cost) all such demonstrations and assistance and access to facilities, information, records, assets and documents (including the provision of copies of documents) and personnel as RfL or its representatives may reasonably require in order to discharge their audit function in a proper manner.

6.9 RfL shall, in planning and implementing any audit contemplated by paragraph 6.7, have regard to the obligations of the Operator in providing the Concession Services.

Operator's obligation to remedy defects and failures

6.10 Where the audit by RfL referred to in paragraph 6.7 reveals:

- (a) any defects in the Primary Concession Assets such that the Primary Concession Assets cannot be handed over in the condition specified in paragraph 4 (*Operating Assets*) of Schedule 2.1 (*Obligations in relation to Concession Services*); or

- (b) reveals any other failure by the Operator to comply with its obligations in this Agreement,

then RfL will provide details of any relevant defects and failures to the Operator.

6.11 Upon receipt of such details the Operator shall, so that such matters are completed prior to the Expiry Date, at its own cost remedy all such defects and failures and undertake all such repairs or other rectification works and activities as are required to ensure that the Primary Concession Assets can be handed over on the Expiry Date in a condition which meets the requirements of this Agreement and all other failures are rectified.

6.12 If this Agreement terminates otherwise than as a result of expiry of the Concession Term, the Operator shall (regardless of whether the audit referred to in paragraph 6.7 has commenced and whether the Operator has been provided with details of any defects and failures) remedy any defects and failures and undertake all such repairs or other rectification works and activities as it is reasonably able to undertake before the Expiry Date to ensure that the Primary Concession Assets can be handed over on the Expiry Date in a condition which meets the requirements of this Agreement and all other failures are rectified.

RfL right to rectify

6.13 If at the Expiry Date, the Primary Concession Assets are not handed over in a condition which meets the requirements of this Agreement or the Operator has not complied in full with its obligations in paragraphs 6.11 and 6.12, RfL shall be entitled, without prejudice to any of its other rights or remedies, to perform itself all such repairs or other rectification works and activities as are required to put the Primary Concession Assets into the condition required by this Agreement and ensure all other failures are rectified and the Operator shall reimburse RfL for any cost it incurs in doing so.

7. ASSOCIATED OBLIGATIONS ON TERMINATION

Assistance in Securing Continuity

7.1 In order to facilitate the continuity of the Concession Services on expiry of the Concession Period, the Operator shall take such steps, both before and after the expiry of the Concession Period, as RfL may reasonably require, to assist and advise any Successor Operator in providing and operating the Concession Services.

7.2 In particular, the Operator shall provide any Successor Operator with such records and information relating to or connected with the Concession Services as RfL may reasonably require (other than confidential financial information but including all records relating to the Concession Employees).

Access

7.3 On the expiry of the Concession Period, the Operator shall grant RfL and its representatives such access as RfL may reasonably request to any property owned, leased or operated by the Operator at such time, for the purpose of facilitating the continued provision of the Concession Services.

Key Contracts

7.4 The Operator shall provide such assistance to any Successor Operator as RfL may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor

Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

7.5 In satisfaction of its obligations under paragraph 7.4, the Operator shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Concession Period.

Change of Name

7.6 The Operator shall cease to use any trade marks which are licensed to the Operator under any of the Brand Licences forthwith upon expiry of the Concession Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

7.7 The Operator shall, on the expiry of the Concession Period, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

7.8 Such assignment shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 7.8(a) and the Operator shall indemnify RfL or its nominee, as the case may be, on demand, on an after-tax basis against any Losses suffered or incurred in relation thereto.

7.9 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 7.7 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 7.8 shall apply to any such assignment.

7.10 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 7.

8. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER

8.1 The Operator shall immediately on the expiry of the Concession Period make available to RfL:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the

payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Operator is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and

- (b) information concerning any contract necessary for the continued operation of the Concession Services where a procurement or bidding process has been initiated.

8.2 The Operator agrees that RfL or its agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as it sees fit (for the purposes of continuing the operation of the Concession Services).

9. MAINTENANCE RECORDS

The Operator shall immediately on expiry of the Concession Period provide to RfL:

- (a) records of the status of the maintenance of the Class 315 Fleet;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Concession Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

10. TICKETING ARRANGEMENTS

The Operator shall provide immediately on expiry of the Concession Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) the refund arrangements with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

11. OPERATOR'S INTELLECTUAL PROPERTY

11.1 On the expiry of the Concession Period, the Operator will grant to any Successor Operator licences of any intellectual property which:

- (a) is owned by or licensed to the Operator;
- (b) was not owned by or licensed to it immediately prior to the Start Date;
- (c) has not been designated as a Primary Concession Asset;
- (d) does not represent or constitute a Mark; and

- (e) may, in the reasonable opinion of RfL, be necessary for any Successor Operator to operate the Concession Services on an efficient and economic basis after the expiry of the Concession Period.

11.2 When agreeing the terms on which intellectual property is to be licensed to it, the Operator shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with the remainder of this paragraph 11. The Operator shall not enter into a licence that does not include such a provision without first obtaining RfL's prior written consent (such consent not to be unreasonably withheld).

11.3 Any such licence shall be granted to the relevant Successor Operator for such period as RfL may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Concession Services and shall be free of charge and royalty-free for a period of one month or less.

11.4 If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Concession Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Operator and the relevant Successor Operator are unable to agree such royalty, the Operator shall submit such dispute for resolution in accordance with such dispute resolution rules as RfL may require.

11.5 Any such licence shall be in such form as RfL shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Concession Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;
- (c) contain an assurance from the Operator to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights and an indemnity in favour of the Successor Operator where this assurance proves false and the Successor Operator is in breach of any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Operator provided that it shall not be reasonable for the Operator to require any such trade mark to be used in a manner materially different from its use during the Concession Period.

APPENDIX 1 TO SCHEDULE 18.3**FORM OF TRANSFER NOTICE****TRANSFER NOTICE**

To: [OPERATOR] (the *Operator*)

Attn: [_____]

To: [SUCCESSOR OPERATOR] (the *Successor Operator*)

Attn: [_____]

From: Rail for London Limited
Windsor House
42-50 Victoria Street
London SW1H 0TL (*RfL*)

Date: [Date]

Dear Sirs

Concession Agreement dated [_____] between RfL and the Operator relating to the Crossrail train operating concession (the *Concession Agreement*).

1. Capitalised terms used and not defined in this Transfer Notice shall have the meaning given to them in the Concession Agreement.
2. Pursuant to paragraph 6.1 of Schedule 18.3 (*Transfer*) to the Concession Agreement, we hereby give you notice that we require the Operator to transfer to the Successor Operator on [_____] (the *Transfer Date*) all of the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
3. The Operator agrees to transfer to the Successor Operator on the Transfer Date the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
4. Each of the Operator and the Successor Operator hereby agrees to (a) enter, on or before the Transfer Date, into an agreement substantially in the form of the Supplemental Agreement attached as Schedule 2 to this Transfer Notice; and (b) comply with its obligations thereunder.
5. On the Transfer Date the [Operator][Successor Operator] shall pay to the [Successor Operator][Operator] the sum of £[_____] which is the estimated transfer price referred to in paragraph 6.3(a) of Schedule 18.3 (*Transfer*) to the Concession Agreement. Such amount shall be paid in accordance with clause 2.3 of the Supplemental Agreement.

Yours faithfully

[Rail for London Limited]

By:.....

Name: []

Title: []

We hereby agree to the terms of this Transfer Notice.

[OPERATOR]

By:.....

Name: []

Title: []

[SUCCESSOR OPERATOR]

By:.....

Name: []

Title: []

Schedule 1 to the Transfer Notice

[List Relevant Concession Assets to be transferred to the Successor Operator]

Schedule 2 to the Transfer Notice

[Form of Supplemental Agreement]

APPENDIX 2 TO SCHEDULE 18.3
FORM OF SUPPLEMENTAL AGREEMENT

Dated _____ **20**[_____]]

[OUTGOING OPERATOR]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer notice dated [_____] given
by Rail for London Limited in respect of
certain property rights and liabilities of
[OUTGOING OPERATOR]

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

This Supplemental Agreement is made on [_____] 20[___]

BETWEEN

- (1) [OUTGOING OPERATOR] whose registered office is at [registered office] (the **Transferor**); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the **Transferee**).

WHEREAS

(A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a concession agreement with Rail for London Limited (**RfL**) dated [_____] (the **Concession Agreement**).

(B) The Concession Agreement terminated on [_____] and the Transferee has been selected by RfL to continue the provision of all or part of such services pursuant either to a concession agreement with RfL or arrangements made with RfL.

(C) The Transferor has agreed to transfer to the Transferee certain property, rights and liabilities of the Transferor.

(D) This Agreement is supplemental to the Transfer Notice and sets out the terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

Business means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

Completion Payment has the meaning ascribed to that term in clause 2.3;

Credit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Debit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Net Asset Statement means the statement to be drawn up pursuant to clause 2.4;

Net Asset Value means the aggregate of the amounts of the Relevant Concession Assets, the Relevant Contract Liabilities, Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Concession Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee in accordance with the Transfer Notice;

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Concession Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 5 (*Novation of Access Agreement on Termination of this Agreement*) and 7.7 of Schedule 18.3 (*Transfer*) to the Concession Agreement;

Relevant Debits and Credits means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of settlement by RSP pursuant to the Ticketing and Settlement Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by RfL;

Season Ticket Fare means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Taxation comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date has the meaning given to it in the Transfer Notice;

Transfer Notice means the notice dated [_____] given by RfL to the Transferor and the Transferee;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning given to it in clause 2.1(a); and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement, unless defined herein, terms and expressions defined in the Concession Agreement shall have the same meaning and the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations.

2. AGREEMENT TO TRANSFER AND TRANSFER PRICE

Agreement to Transfer

2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):

- (a) the Transferor transfers, assigns and conveys to the Transferee each of the Relevant Concession Assets, the Relevant Contract Liabilities, the relevant Debits and Credits and the Relevant Employee Liabilities (together, the *Transferring Assets and Liabilities*); and
- (b) the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.

2.2 Each of the Transferee and the Transferor agrees to enter into and execute and deliver, and procure that any relevant third party enters into and executes and delivers, with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements) and obtain such consents and approvals as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1.

Amount and Payment

2.3 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as set out in the Transfer Notice (the Completion Payment) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 6.2(a) of Schedule 18.3 (*Transfer*) of the Concession Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.7.

Net Asset Statement

2.4 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.5 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.6 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

2.7 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. REFERENCES TO THE REPORTING ACCOUNTANTS

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if the Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. WARRANTY

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Concession Assets are, to the extent they are property or rights, transferring to the Transferee, free and clear of all Security Interests.

5. INTEREST

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern (*TOGC*) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.

6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.

6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Concession Assets, Relevant Contract Liabilities, the relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.4 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the

Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.

6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

- (a) preserve those records in such manner and for such periods as may be required by law; and
- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

Transfer Regulations

7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Notice are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “time of transfer” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer’s contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor’s failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
 - (i) the Transferor’s rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of

employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or

- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to RfL under Schedule 18.1 (*Continuity of Services*) of the Concession Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the Undisclosed Employee) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms *mutatis mutandis* as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and (c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to their detriment or any of them occurring on or after the Transfer Date;

- (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to RfL under Schedule 18.3 (*Transfer*) of the Concession Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two Business Days from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF THE
[*TRANSFEROR*]

DIRECTOR:

DIRECTOR/SECRETARY:



SIGNED FOR AND ON
BEHALF OF THE
[*TRANSFeree*]

DIRECTOR:

DIRECTOR/SECRETARY:



SCHEDULE TO THE SUPPLEMENTAL AGREEMENT**Net Asset Statement**

1. The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with international accounting standards and such that the Transferring Assets and Liabilities are valued on the following basis:
2. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$\frac{(C - D) \times A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to TfL's Customer Charter;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
- (c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to TfL's Customer on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

3. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

4. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$\frac{(C - D) \times A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

5. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement)

which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 to the extent such Adjustment Amounts relate to a period after the Transfer Date.

6. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement excluding rights and liabilities valued under paragraphs 2 to 5 inclusive shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

7. Any Ticket Equipment supplied by RfL under the terms of the Concession Agreement shall be valued at nil.

8. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 19
CONTINUATION OF CROSSRAIL CONCESSION

Schedule 19: Continuation of Crossrail Concession

SCHEDULE 19

Continuation of Crossrail Concession

1. CONTINUATION OF TERM

Up to two-year continuation at RfL's discretion

1.1 RfL may, in its sole discretion, not less than nine months before the Initial Expiry Date, notify the Operator that this Agreement shall continue after the Initial Expiry Date on the terms set out in this Agreement up to and including two years after the Initial Expiry Date.

1.2 If RfL serves such notice, this Agreement shall continue on its terms until the date specified in the notice issued pursuant to paragraph 1.1, unless otherwise terminated in accordance with its terms.

Continuation for Additional Seven Reporting Periods

1.3 RfL's rights pursuant to paragraph 1.4 shall apply regardless of when this Agreement is scheduled to terminate.

1.4 If RfL gives notice to the Operator not less than three months before:

- (a) the Initial Expiry Date; or
- (b) if this Agreement is continued beyond the Initial Expiry Date in accordance with paragraph 1.1, the date on which this Agreement is due to expire following such continuation,

(and RfL shall be entitled to serve such notice in either such circumstances) in which case, this Agreement shall continue after such date on the terms set out in this Agreement for not less than one and not more than seven Reporting Periods, as RfL may stipulate in such notice.

2. KEY CONTRACTS

The Operator shall enter into any and all Key Contracts which are necessary for this Agreement to continue or be extended in accordance with this Schedule 19.

SCHEDULE 20
OTHER PROVISIONS

Schedule 20:

Other Provisions

SCHEDULE 20

Other Provisions

1. RIGHTS CUMULATIVE

The rights of RfL under this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under the general Law. The exercise of such rights shall not limit RfL's right to make payment adjustments, claim damages in respect of contraventions of this Agreement or pursue any available remedies under general Law.

2. DISPUTES UNDER THIS AGREEMENT

Escalation procedure

2.1 RfL and the Operator shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement (a *Dispute*) before taking any further action.

2.2 If the Dispute is not settled through discussion between the Concession Manager and the Contract Manager within a period of seven Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) (*Senior Personnel*) of each of the parties for resolution.

2.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either party may, subject to paragraphs 2.8 and 2.9, propose by notice (a *Dispute Notice*) to the other party that a structured mediation or negotiation be entered into with the assistance of a mediator.

Principles of mediation

2.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of any Dispute Notice, either party may apply to the Centre for Effective Dispute Resolution (*CEDR*) in London to appoint a mediator. The costs of that mediator shall be divided equally between the parties or as the parties may otherwise agree in writing.

2.5 Where a Dispute is referred to mediation under paragraph 2.4, the parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

2.6 If the parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the parties' authorised representatives, shall be final and binding on the parties.

2.7 If either party refuses at any time to participate in the mediation procedure and in any event if the parties fail to reach agreement on the Dispute within 40 Business Days of the service of the relevant Dispute Notice, either party may commence proceedings.

Reasonable determinations by RfL

2.8 Where this Agreement provides that RfL may reasonably determine any matter and a Dispute has arisen in relation to whether RfL has been reasonable in making any such determination, the matter shall not be capable of referral to mediation under paragraph 2.3,

but the Operator shall be entitled to challenge that determination on the basis that it is unreasonable. RfL's determination shall prevail unless and until it is agreed or found to have been unreasonable.

Dispute Resolution Rules

2.9 Where either party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of RfL under applicable Law, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

2.10 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between RfL and the Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Continuing obligations and rights

2.11 The Operator and RfL shall continue to comply with their respective obligations under this Agreement without delay while any Dispute is being resolved pursuant to this paragraph 2.

2.12 Neither party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this paragraph 2, nor shall this paragraph 2 apply in respect of any circumstances where such remedies are sought.

3. DISPUTES UNDER OTHER AGREEMENTS

3.1 The Operator shall notify RfL of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Operator's ability to comply with its obligations under this Agreement or on the provision of the Concession Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

3.2 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

3.3 The Operator shall provide such further details of any dispute referred to in paragraph 3.1 as RfL may reasonably request from time to time.

4. NOTICES

Notices

4.1 Any notice, notification or other communication under or in connection with the matters specified in Schedule 17.4 (*Termination and Expiry*), Schedule 19 (*Continuation of Crossrail Concession*) or any dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party.

4.2 Any other notice, notification or other communication under or in connection with this Agreement not specifically referred to in paragraph 4.1 shall be in writing and shall be delivered:

- (a) in accordance with paragraph 4.1; or
- (b) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Concession Manager as appropriate.

Name: Rail for London Limited
 Address: 42-50 Victoria Street, London, SW1H 0TL
 E-mail: To be advised to the Operator by RfL from time to time
 Attention: Head of Concessions

Name: MTR Corporation (Crossrail) Limited
 Address: Providence House, Providence Place, Islington, London, N1 0NT
 E-mail: To be advised to RfL by the Operator from time to time
 Attention: Managing Director

Deemed Receipt

4.3 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Business Days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a “delivered” confirmation (provided that the sender shall not be required to produce a “read” confirmation).

5. ASSIGNMENT

5.1 The Operator shall not without the prior written consent of RfL assign, transfer or otherwise dispose of, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Operator to receive monies under a Supplemental Agreement).

5.2 The Operator hereby agrees that RfL may without the Operator's consent, assign, transfer or otherwise dispose of any of its rights and obligations under this Agreement to any other member of the TfL Group.

6. SET-OFF

6.1 Save as otherwise expressly provided under this Agreement or required by law, all sums payable under this Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

6.2 Notwithstanding paragraph 6.1, RfL may by making an Other Adjustment, set-off any amount owed to it which is due and payable by the Operator under or in relation to the Transaction Documents, against any amount owed by RfL to the Operator under or in relation to those agreements.

6.3 If an amount is unascertained or unliquidated, RfL may, acting reasonably, estimate such amount and set-off in respect of the estimated amount, in which case, when the amount is ascertained or liquidated, RfL or the Operator shall make a payment to the other (as appropriate) by way of Other Adjustment in respect of any amount by which the ascertained or liquidated amount differs from the estimated amount.

7. MISCELLANEOUS PROVISIONS

Waivers

7.1 Either party may at any time waive any obligation of the other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

7.2 No waiver by either party of any default by the other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any 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 such right or remedy or the exercise of any other right or remedy.

Time Limits

7.3 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

7.4 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that

extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

7.5 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Rights of Third Parties

7.6 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in paragraphs 7.7 to 7.10 inclusive.

7.7 Each of LUL, TfL, any other member of the TfL Group and CRL may, to the same extent as if it were a party, enforce and rely on any provision of this Agreement where any such member is expressed to have a right in respect of any such provision, but subject to paragraph 7.9.

7.8 Any Successor Operator or potential Successor Operator nominated by RfL and notified to the Operator for the purposes of this paragraph 7.8 may enforce and rely on the provisions of Schedule 18 (*Continuity, Restrictions on Dealings and Transfer*) to the same extent as if it were a party, but subject to paragraphs 7.9 and 7.10.

7.9 This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 7.7 or 7.8.

7.10 Any person nominated under paragraph 7.8 shall only be entitled to enforce and rely on Schedule 18 to the extent determined by RfL (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 18, any legal proceedings in relation thereto must be commenced within one year of the expiry of the Concession Period and any such person shall not be entitled to enforce or rely on Schedule 18 to the extent that it has consented to any particular act or omission of the Operator which may constitute a contravention of Schedule 18 or has been afforded a reasonable opportunity to indicate to the Operator that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by RfL unless otherwise agreed).

RfL's Consent or Approval

7.11 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of RfL, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) RfL shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

Performance by TfL Group

7.12 The Operator agrees that performance by any member of the TfL Group of any obligation of RfL under this Agreement shall constitute good and valid discharge of such obligation.

8. ENFORCEMENT COSTS

The Operator shall compensate RfL for all reasonable costs incurred by RfL as a result of the Operator failing to perform its obligations under this Agreement in accordance with their terms in the exercise of RfL's rights under Schedule 17 (*Remedies, Termination and Expiry*).

9. CURRENCY

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, RfL may, by reasonable notice to the Operator and the Operator may by reasonable notice to RfL, elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

10. ARM'S LENGTH DEALINGS

10.1 The Operator shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms.

10.2 Within four Reporting Periods of the end of each Concession Year, and to the extent that the Operator submits to RfL the calculations pursuant to paragraph 2.1 of Schedule 11.4 (*Profit Share*), at the same time as those calculations are submitted, the Operator shall provide RfL with details of any new, amended or replacement contracts or other arrangements to which the Operator has become party during that Concession Year with any of its Parent or Affiliates that, when aggregated with any other such contracts or arrangements to which the Operator is a party, have a value in excess of £[REDACTED].

SCHEDULE 21

LIST OF DOCUMENTS IN THE AGREED TERMS

Schedule 21: List of Documents in the Agreed Terms

SCHEDULE 21**LIST OF DOCUMENTS IN THE AGREED TERMS**

Abbreviation	Document in the agreed terms
<i>ACA</i>	Advertising Concession Agreement
<i>ATG</i>	Alternative Timetable Guidance
<i>CSSM</i>	Customer Satisfaction Survey Methodology
<i>CSSQ</i>	Customer Satisfaction Survey Questionnaire
<i>DoS</i>	Deed of Subleases
<i>EDF</i>	Equality and Diversity Framework
<i>ETIBC</i>	ETI Base Code
<i>FM</i>	Financial Model
<i>GATA</i>	Greater Anglia Transfer Agreement
<i>INA</i>	Ilford Novation Agreement
<i>MSSM</i>	Mystery Shopper Survey Methodology
<i>MSSQ</i>	Mystery Shopper Survey Questionnaire
<i>OM</i>	Operational Models
<i>OSPOA</i>	Operator Stations Power of Attorney
<i>PCM</i>	Passenger Count Methodology
<i>QPRM</i>	Quality Performance Regime Methodology
<i>ROA</i>	Record of Assumptions
<i>SIS</i>	Station & Staff Information Survey
<i>SL</i>	Station Lease
<i>SLC0</i>	Service Level Commitment 0
<i>SLC1</i>	Service Level Commitment 1
<i>SLC2</i>	Service Level Commitment 2
<i>SLC3</i>	Service Level Commitment 3
<i>SLC4</i>	Service Level Commitment 4
<i>SLC4(315)</i>	Service Level Commitment 4 (Class 315s Retained)
<i>SLC5</i>	Service Level Commitment 5
<i>SLC5(315)</i>	Service Level Commitment 5 (Class 315s Retained)
<i>SLNTR</i>	Periodic SLNT Report

Abbreviation	Document in the agreed terms
<i>SUA</i>	Station Usage Agreement
<i>TQTM</i>	Ticket Queuing Time Methodology
<i>TTSM</i>	Ticketless Travel Survey Methodology

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2014

RAIL FOR LONDON LIMITED

and

MTR CORPORATION (CROSSRAIL) LIMITED

CROSSRAIL

CONCESSION AGREEMENT



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