

SCHEDULE 18

Environmental Indemnities

COMPANY INDEMNITY IN FAVOUR OF THE CONTRACTOR

1.1 The Company agrees with the Contractor, subject to and in accordance with the provisions of this Schedule and in accordance with the manner and procedure set out in Clause 33.5.1, to indemnify the Contractor against:

- (a) Environmental Liabilities which the Contractor may suffer or incur to third parties; and
- (b) the cost incurred by the Contractor of any Remedial Works.

1.2 The Company shall not have any liability under the provisions of this Schedule unless the Contractor gives the Company written notice of any claim hereunder within the period ending five years after the end of the Term or the Licence Period (as the case may be) containing details of the claim supported by (where applicable) a copy of either:

- (a) written notification by or on behalf of a third party to the Contractor of a claim against the Contractor in respect of Environmental Matters; or
- (b) any notice, order, judgement or demand letter requiring any Remedial Works.

1.3 The Company shall not be liable for any claim under the provisions of this Schedule:

- (a) if and to the extent that the claim would not have arisen or is increased as a result of :
 - (i) any voluntary act or omission of the Contractor; or

(ii) any act matter or thing done or omitted to be done by or at the request of or with the approval of the Contractor or its advisers;

and for the avoidance of doubt the reference to "omission of the Contractor" does not cover any failure to carry out remedial or other action in respect of the environmental condition of the Properties existing at the date of this Contract;

- (b) to the extent that the Company is prejudiced by any failure by the Contractor to act in accordance with the terms of this Schedule;
- (c) to the extent that recovery is made or capable of being made by the Contractor under any policy of insurance effected by or for the benefit of the Contractor.

1.4 If the Contractor becomes or is aware of any matter that may give rise to a claim against the Company under the provisions of this Schedule it shall give written notice promptly of the same to the Company and:

- (a) the Contractor shall not make any admission of liability, agreement, settlement or compromise with any third party or any Environmental Regulatory Agency or undertake any Remedial Works without prior consultation with, and the written consent of the Company (which consent shall not be unreasonably withheld or delayed);
- (b) the Contractor shall keep the Company informed about the progress of any negotiations, proceedings or Remedial Works and shall take all such action as the Company may reasonably request;
- (c) the Company (or such person as the Company may nominate) may, at its election, assume and have the conduct and control of any proceedings, negotiations and Remedial Works and the Contractor shall provide all such authorisations and consents and take such action and shall make available to

the Company, its advisers and agents all such information and assistance (including access to the Properties and, to the extent the Contractor has the right to grant the same, to any neighbouring or Adjacent Property and access to any of their employees, property, books, correspondence or other documents or records and the right to copy the same) as may reasonably be requested by the Company to enable the Company, its advisers and agents to conduct effectively such proceedings, negotiations or Remedial Works.

PROVIDED ALWAYS that the Company may not carry out any Remedial Works during the Term or Licence Period (as the case may be) or Licence Period (as the case may be) without the consent of the Contractor save that if the Contractor fails to start any Remedial Works and diligently proceed with the same then the Company may at its discretion on giving one month's written notice (save in the case of emergency) carry out Remedial Works at its own expense.

1.5 The Contractor shall procure that all reasonable steps are taken and all reasonable assistance is given to avoid or mitigate any loss or liability which is likely to give rise to a claim under the provisions of this Schedule, provided that this paragraph 1.5 shall not oblige the Contractor to remove, clean up, remediate, treat, reinstate, abate, contain or ameliorate the presence of any Hazardous Substances unless in the case of the Depot Properties reasonably required by (and at the cost of) the Company or unless in the case of the Depot Properties required as Remedial Works and then in accordance with the terms of this Schedule.

1.6.1 The Contractor agrees that if the Company pays or is likely to pay amounts pursuant to a claim under the provisions of this Schedule or incurs costs in carrying out Remedial Works or steps pursuant to paragraph 1.4(b) of this Schedule and the Contractor has the possibility of recovering any sums of the type referred to in paragraph 1.6.2 it will take all reasonable and practicable steps to recover such sums from third parties or an Environmental Regulatory Agency.

1.6.2 If the Company pays to the Contractor an amount pursuant to a claim under the provisions of this Schedule or incurs costs in carrying out Remedial Works or steps pursuant to paragraph 1.4(b) of this Schedule and the Contractor subsequently recovers by way of cash payment, discount, credit, government grant or otherwise from a third party an amount which (net of any reasonable expenses and tax liability directly relating to the recovery) would have reduced or eliminated the amount payable by the Company in respect of the claim had it been received before satisfaction of such claim or which would have met or partially met such costs incurred by the Company, the Contractor shall as the case may be either forthwith repay to the Company so much of the amount paid by the Company as is equal to the amount by which such claim would have been reduced or, if the claim would have been eliminated, the full amount so paid or forthwith pay to the Company such sums as it recovers equal to the costs incurred by the Company or such lesser amount as is recovered.

1.7 Payment or discharge of any claim shall, to the extent of such payment or discharge satisfy and preclude any other claim which is capable of being made in respect of the same subject matter to the extent that there would otherwise be double recovery for the same loss.

1.8 In relation to any claim or alleged claim under the provisions of this Schedule and without prejudice to the validity of the claim or alleged claim in question, the Contractor shall allow the Company, its advisers and agents to investigate the matter or circumstances alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim pursuant to the terms of this Schedule and shall make available to the Company, its advisers and agents, all such property, information and assistance (including access to the Properties and (to the extent that the Contractor has any right to grant the same) access to any neighbouring property or Adjacent Property) and access to any of their books, correspondence or other

documents or records and the right to copy the same, making available employees and directors to give assistance) as the same may reasonably be requested by the Company for this purpose **PROVIDED ALWAYS** that the Company is to maintain as confidential and not disclose at any time to any person or body (unless lawfully required to do so) any information obtained pursuant to this paragraph 1.8 except as may be authorised by the Contractor in writing (such authorisation not to be unreasonably withheld or delayed)

COVENANTS BY THE CONTRACTOR FOR THE BENEFIT OF THE COMPANY

2.1 The Contractor covenants with the Company to carry out or comply with the obligations set out in this paragraph 2 during each Term and Licence Period.

2.2 The Contractor shall inform the Company in writing immediately:

- (a) of any proceeding or other legal or administrative action which is pending or threatened seeking the suspension, revocation or variation or limitation of any Environmental Approval or seeking to impose any obligation including penalty, fine, sanction or order requiring clean up applicable under such Environmental Approval or under Environmental Laws;
- (b) of any facts or circumstances which will or are likely to result in any such Environmental Approval being suspended, revoked, materially varied or limited or which may prejudice their renewal;
- (c) of any appeal by the Contractor which is either pending or being contemplated in respect of the refusal of or conditions contained in any Environmental Approval or any action taken by the Contractor in respect of any Environmental Approval;
- (d) of any notice, order, judgment or demand letter requiring the taking of remedial or other action (including, without limitation, the withdrawal of any

permission, licence or authority) in relation to Environmental Matters of any events, conditions, circumstances, activities, practices, instances, actions or plans which interfere with or prevent compliance or which give rise to any common law or statutory or administrative liability or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation related to Environmental Matters;

- (e) of any spill, leakage, discharge, emission, injection, escape, release or deposit (whether to water, land, sewage systems or air or a combination of these) of any Hazardous Substances on the Properties or if caused or knowingly permitted by the Contractor near the Properties or from the Properties into the Environment which is capable of causing harm to humans, flora or fauna other than those Hazardous Substances released as permitted under the Environmental Approvals or Environmental Laws;
- (f) of the results of any Environmental Audit carried out at or on the Properties or in relation to any of the activities envisaged under this Contract.

2.3 Within 6 months after the date of this Contract, the Contractor shall to provide the Company with a copy of the Contractor's current written environmental protection policy and a statement of the operation objectives and management arrangements giving effect to that policy.

2.4 The Contractor shall not deposit, treat, keep or dispose of any Waste Radioactive Substances or Hazardous Substances in on or under the Properties in a manner which creates any Environmental Liability or which breaches any Environmental Laws or Environmental Approvals.

2.5.1 (Unless as provided by and subject to paragraph 1) in the event that the Contractor is liable for breach of any Environmental Laws or is liable for breach of any Environmental Approval or is liable in relation to any Environmental Matter, the

Contractor shall carry out forthwith all necessary works and other actions to prevent mitigate or remedy such breaches or to remove, clean up, remedy, treat, reinstate, abate, contain or ameliorate the presence of Hazardous Substances or any other Environmental Liabilities **PROVIDED ALWAYS** that the Company shall be notified in advance of any action proposed under this paragraph 2.5.1 and the Contractor shall notify the Company in writing forthwith upon completion of any such works or actions.

2.5.2 (Unless as provided by and subject to paragraph 1) the Contractor shall take such additional or other action apart from carrying out Remedial Works as the Company may reasonably direct in the event of legal action or regulatory action or threatened legal action or regulatory action in relation to an Environmental Matter or alleged breach by the Contractor of Environmental Laws or Environmental Approvals by either an Environmental Regulatory Authority or a third party.

2.6 Every five years after the date of this Contract, the Contractor shall appoint Environmental Consultants to carry out an Environmental Audit (which shall be limited to a Stage 1 Environmental Audit unless the Environmental Consultants report that a fuller audit is required) of the Depot Properties and such other of the Properties as the Company shall reasonably request at the joint expense of the Company and the Contractor or in the case of an emergency or as reasonably required by the Company at the expense of the Company.

2.7 The Contractor shall not hinder or obstruct or allow any member of its staff to hinder or obstruct the Company or its Environmental Consultants or its other professional advisers in the event that the Company exercises its powers under paragraph 4.

2.8 The Contractor shall obtain all Environmental Approvals necessary for the business of the Contractor required under the Environmental Laws in connection with

the use of the Properties and the business of the Contractor and/or the matters referred to in this Contract and the Depot Leases and to ensure that such approvals remain in full force and effect.

JOINT ENVIRONMENTAL AUDIT

3. Prior to the end of each Term and Licence Period, the Company and the Contractor will appoint Environmental Consultants to carry out the Joint Environmental Audit in connection with the Properties for the purpose of establishing potential, actual or continuing Environmental Liabilities and/or liability to carry out Remedial Works hereunder.

4. THE COMPANY'S POWERS IN RELATION TO ENVIRONMENTAL MATTERS DURING THE TERM

4.1 If the Company reasonably believes that the Contractor is in breach of any Environmental Law or Environmental Approval or that there is or may be a liability in relation to any Environmental Matter at or associated with any or all of the Properties or the business of the Contractor then the Company may, for the purposes of:

- (a) ascertaining whether the Contractor is complying with the Environmental Laws and the Environmental Approvals;
- (b) quantifying and assessing the Contractor's liability or the Company's liability in relation to any Environmental Matter or any breach of the Environmental Laws or the Environmental Approvals;
- (c) ascertaining what action if any is required to be taken by the Contractor to remedy or prevent any actual breach by the Contractor of the Environmental Laws or the Environmental Approvals;
- (d) (if the Company so elects and subject to the proviso in paragraph 1.4) carrying out any steps to rectify any conditions which have given or may give rise to

any Environmental Liabilities or in respect of which any Remedial Works may be required by any Environmental Regulatory Agency;

at any reasonable time, exercise or authorise environmental consultants or other professional advisers acting on its behalf to exercise the following powers in relation to the Properties:

- (i) to enter any part of the Properties which the Company reasonably believes it is necessary for it or its environmental consultants or other professional advisers to enter ;
- (ii) to take with it or them any workmen, equipment or materials reasonably required for any purpose for which the power of entry is being exercised;
- (iii) to carry out such tests and inspections (and to make such recordings), as may in the circumstances be reasonably necessary;
- (iv) to direct where reasonable that any, or any part, of the Properties which the Contractor (or its environmental consultants or other professional advisers) has power to enter, or anything in or on the Properties, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any test or inspection;
- (v) to take samples of any organisms, articles or substances found in or on any Properties and of the air, water or land in, on, or in the vicinity of, the Properties; and
- (vi) in the case of anything found in or on any Properties, which reasonably appears to it or to its environmental consultants or other professional advisers to contain or to have contained any Hazardous Substance or any other thing which has caused or is likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or

destroy it unless this is necessary) and to take possession of it and detain it for so long as is necessary for the purposes of examining it and dismantling it or subjecting it to any process or test and to ensure that it is not tampered with before the examination of it is completed;

- (vii) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Contract or it is necessary for the Company or its environmental consultants or other professional advisers to see for the purposes of any test or inspection under this subsection and to inspect, and take copies of, or of any entry in, the records;
- (viii) to require any person employed by the Contractor to afford the Company or its environmental consultants or other professional advisers such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the Company or its environmental consultants or other professional advisers to exercise any of the powers conferred on them by this clause;
- (ix) where the Company or its environmental consultants or its other professional advisers propose to exercise the powers conferred by paragraphs 4.1(i) to (ix):
 - (aa) to cause anything which is to be done by virtue of those powers to be done in the presence of the Contractor's officer in charge of the Property in question or such other person nominated by the Contractor; and
 - (bb) to supply the Contractor with copies of all data, results, findings and reports resulting therefrom **PROVIDED ALWAYS** that neither the Company nor its environmental consultants shall owe a duty of care in respect of the same to the Contractor.

PROVIDED ALWAYS that nothing in this Schedule shall oblige the Company to carry out any such tests, sampling, monitoring or other investigations or such steps or to assume control of Remedial Works.

4.2. In the event that:

- (a) the Company is liable for breach of any Environmental Laws or Environmental Approval or in relation to any Environmental Matter; and
- (b) the Contractor is liable under paragraph 6.1;

the Company shall have the power to appoint Environmental Consultants to carry out an Environmental Audit at the expense of the Contractor and to require the Contractor to carry out works to remove, clean up, remedy, treat, reinstate, abate, contain, or ameliorate the presence of Hazardous Substances or any other Environmental Liabilities **PROVIDED ALWAYS** that:

- (i) the Company reasonably believes that the Company has or might have Environmental Liability as a result of anything caused or knowingly permitted by the Contractor; and
- (ii) the said Environmental Liability is not already being addressed by the Contractor; and
- (iii) the said Environmental Liability is one which has arisen after the commencement of the Term or Licence Period (as the case may be) and is not an Environmental Liability in respect of which the Company has indemnified the Contractor

and, as an ancillary power thereto, the Company and the Environmental Consultants shall have the power to enter on the Properties to carry out the Environmental Audit and to carry out necessary works.

COVENANTS BY THE COMPANY FOR THE BENEFIT OF THE CONTRACTOR

5.1 The Company covenants with the Contractor on the terms set out in this paragraph 5.

5.2.1 The Company, if it exercises its powers under paragraph 4, shall exercise the same in accordance with the following provisions of this paragraph 5.2.

5.2.2 The Company shall maintain as confidential and not disclose at any time (unless lawfully required to do so) to any person or body (including any Environmental Regulatory Authority) any data, documents, reports or other information provided to the Company or its environmental consultants by the Contractor or by any employee agent or consultant of the Contractor in connection with these matters except as may be authorised by the Contractor in writing (such authorisation not to be unreasonably withheld or delayed) **PROVIDED ALWAYS** that in the event of any threat of lawful inspection or lawful seizure or any lawful requirement arising under which the Company may be compelled to make any such disclosure the Company shall notify the Contractor forthwith of the circumstances of the lawful threat or requirement and is to object to such threat and refrain from such disclosure (at the Contractor's expense) for the maximum period of time allowed by law in order that the Contractor may make any application to the Court or take other action to protect the confidentiality of the Contractor.

5.2.3 The Company shall exercise its powers in such a manner as to cause as little disturbance as possible to the Contractor.

5.2.4 The Company shall not unnecessarily or unreasonably alter or interfere with any materials or apparatus or property in on over or under the Properties without the express permission of the Contractor (such permission not to be unreasonably withheld or delayed) and in the event that such permission is given the Company shall exercise all due care and shall at its own cost make good any damage caused as a

result of any such necessary or reasonable alteration or interference so far as is reasonably practicable.

5.2.5 While at the Properties the Company shall ensure that its employees and agents comply with the Environmental Laws and relevant Health and Safety Regulations and comply with any directions of any Environmental Regulatory Agency and any reasonable directions of the Contractor relating to Site safety, security, traffic or other matters.

5.2.6 The Company shall (save in the case of emergency) give the Contractor at least seven days' prior written notice of its intention to exercise any of its powers.

5.2.7 The Company shall not exercise any of its powers unless it is (in the reasonable opinion of the Company) necessary for it to do so.

5.2.8 In relation to Properties and to Adjacent Properties, the Company shall inform the Contractor in writing upon being made aware of the same:

- (a) of any proceeding or other legal or administrative action which is pending or threatened seeking the suspension, revocation or variation or limitation of any Environmental Approval or seeking to impose any obligation including penalty, fine, sanction or order requiring clean up applicable under such Environmental Approval or under Environmental Laws;
- (b) of any facts or circumstances which will or are likely to result in any such Environmental Approval being suspended, revoked, materially varied or limited or which may prejudice their renewal;
- (c) of any appeal by the Company which is either pending or being contemplated in respect of the refusal of or conditions contained in any Environmental Approval or any action taken by the Company in respect of any Environmental Approval;

- (d) of any notice, order, judgment or demand letter requiring the taking of remedial or other action (including, without limitation, the withdrawal of any permission, licence or authority) in relation to Environmental Matters of any events, conditions, circumstances, activities, practices, instances, actions or plans which interfere with or prevent compliance or which give rise to any common law or statutory or administrative liability or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation related to Environmental Matters;
- (e) of any spill, leakage, discharge, emission, injection, escape, release or deposit (whether to water, land, sewage systems or air or a combination of these) of any Hazardous Substances on the Properties (except the Depot Properties) or Adjacent Properties or (if caused or knowingly permitted by the Company) on the Depot Properties or near the Adjacent Properties into the environment which is capable of causing harm to humans, flora or fauna other than those Hazardous Substances released as permitted under the Environmental Approvals or Environmental Laws;
- (f) of the results of any environmental audit carried out on behalf of the Company at or on the Properties or Adjacent Properties **PROVIDED ALWAYS** that the Company has obtained the consent (which it has made reasonable endeavours to obtain) of any third party connected with any such environmental audit to release the results to the Contractor.

5.2.9 The Company shall not deposit, treat, keep or dispose of any Waste, Radioactive Substances or Hazardous Substances in on or under the Properties or the Adjacent Properties in a manner which creates any Environmental Liability or which breaches any Environmental Laws or Environmental Approvals **PROVIDED ALWAYS** that in the event that a third party is in occupation of an Adjoining Property at the date

of this Contract the Company's obligation shall be limited to using its reasonable endeavours to ensure that the said third party complies with this covenant.

5.2.10 (Unless as provided by and subject to paragraph 6) in the event that the Company is liable for breach of any Environmental Laws or Environmental Approval or in relation to any Environmental Matter, the Company shall carry out forthwith all necessary works and other actions to prevent mitigate or remedy such breaches or to remove, clean up, remedy, treat, reinstate, abate, contain or ameliorate the presence of Hazardous Substances or any other Environmental Liabilities in connection with the Properties or the Adjacent Properties **PROVIDED ALWAYS** that the Contractor shall be notified in advance of any action proposed under this paragraph 5.2.10 and the Company shall notify the Contractor in writing forthwith upon completion of any such works or actions

5.2.11 The Company shall take such additional or other action apart from carrying out Remedial Works as the Contractor may reasonably direct in the event of legal action or regulatory action or threatened legal action or regulatory action in relation to an Environmental Matter or alleged breach by the Company of Environmental Laws or Environmental Approvals at the Adjacent Property by either an Environmental Regulatory Authority or a third party **PROVIDED ALWAYS** that in the event that a third party is in occupation of the Properties or the Adjacent Properties at the date of this Contract the Company's obligations shall be limited to using its reasonable endeavours to ensure that the said third party complies with the obligations set out in paragraphs 5.2.10 and this paragraph 5.2.11.

LIABILITY OF THE CONTRACTOR TO INDEMNIFY THE COMPANY

6.1 The Contractor agrees with the Company, subject to and in accordance with the provisions of this Schedule, to indemnify the Company and the Company Employees within 14 days of demand against:

- (a) all Environmental Liabilities which the Company may suffer or incur to third parties arising during the Term or Licence Period (as the case may be) attributable to any act matter or thing done or omitted to be done by the Contractor during the Term or Licence Period (as the case may be); and
- (b) the cost incurred by the Company of any Remedial Works attributable to any act matter or thing done or omitted to be done by the Contractor during the Term or Licence Period (as the case may be);

and for the avoidance of doubt the expression "omitted to be done" in relation to the Contractor in paragraph 6.1 shall not include any failure of the Contractor to carry out any remedial or other action in respect of the environmental condition of the Properties existing at the date of this Contract and in respect of the Sidings, Out-Station Properties and Accommodation Properties act, matter, thing done or omitted to be done by the Contractor does not include any act or matter or omission which was not caused by the Contractor.

6.2 The Contractor shall not have any liability under this Schedule unless the Company gives the Contractor written notice of any claim hereunder within a period ending 5 years after the end of the Term or Licence Period (as the case may be) containing details of the claim supported by (where applicable) a copy of either:

- (a) written notification by or on behalf of a third party to the Company of a claim against the Company in respect of Environmental Matters;
- (b) any notice, order, judgement or demand letter requiring any Remedial Works.

6.3 The Contractor shall not be liable under the provisions of this Schedule:

- (a) if and to the extent that the claim would not have arisen or is increased as a result of :

(i) any voluntary act or omission of the Company; or

(ii) any act matter or thing done or omitted to be done by or at the request of or with the approval of the Company or its advisers;

and for the avoidance of doubt the reference to "omission of the Company" does not cover any failure to carry out remedial or other action in respect of the environmental condition of the Properties after the end of the Term or Licence Period (as the case may be);

(b) to the extent that the Contractor is prejudiced by any failure by the Company to act in accordance with the terms of this Schedule;

(c) to the extent that recovery is made or capable of being made by the Company under any policy of insurance effected by or for the benefit of the Company.

6.4 If the Company becomes or is aware of any matter that may give rise to a claim against the Contractor under the provisions of this Schedule it shall give written notice promptly of the same to the Contractor and:

(a) the Company shall not make any admission of liability, agreement, settlement or compromise with any third party or any Environmental Regulatory Agency or undertake any Remedial Works without prior consultation with, and the written consent of the Contractor (which consent shall not be unreasonably withheld or delayed);

(b) the Company shall keep the Contractor informed about the progress of any negotiations, proceedings or Remedial Works and shall take all such action as the Contractor may reasonably request;

(c) the Contractor (or such person as the Contractor may nominate) may, at its election, assume and have the conduct and control of any proceedings,

negotiations and Remedial Works and the Company shall provide all such authorisations and consents and take such action and shall make available to the Contractor, its advisers and agents all such information and assistance (including access to the Properties and, to the extent the Company has the right to grant the same, to any neighbouring or Adjacent Property and access to any of their employees, property, books, correspondence or other documents or records and the right to copy the same) as may reasonably be requested by the Contractor to enable the Contractor, its advisers and agents to conduct effectively such proceedings, negotiations or Remedial Works.

and the Company shall procure that all reasonable steps are taken and all reasonable assistance is given to avoid or mitigate any loss or liability which is likely to give rise to a claim under the provisions of this Schedule, provided that this paragraph 6.4 shall not oblige the Company to remove, clean up, remediate, treat, reinstate, abate, contain or ameliorate the presence of any Hazardous Substances unless reasonably required by (and at the cost of) the Contractor or unless required as Remedial Works and then in accordance with the terms of this Schedule.

6.5.1 The Company agrees that if the Contractor pays or is likely to pay amounts pursuant to a claim under the provisions of this Schedule or incurs costs in carrying out Remedial Works or steps pursuant to paragraph 6.4(b) and the Company has the possibility of recovering any sums of the type referred to in paragraph 6.5.2 it will take all reasonable and practicable steps to recover such sums from third parties or an Environmental Regulatory Agency.

6.5.2 If the Contractor pays to the Company an amount pursuant to a claim under the provisions of this Schedule or incurs costs in carrying out Remedial Works or steps pursuant to paragraph 6.4(b) and the Company subsequently recovers by way of cash payment, discount, credit, government grant or otherwise from a third party an amount which (net of any reasonable expenses and tax liability directly relating to the

recovery) would have reduced or eliminated the amount payable by the Contractor in respect of the claim had it been received before satisfaction of such claim or which would have met or partially met such costs incurred by the Contractor, the Company shall as the case may be either repay to the Contractor so much of the amount paid by the Contractor as is equal to the amount by which such claim would have been reduced or, if the claim would have been eliminated, the full amount so paid or pay to the Contractor such sums as it recovers equal to the costs incurred by the Contractor or such lesser amount as is recovered. The Contractor shall be entitled to make a claim for any amount payable to it under this paragraph 6.5.2 in accordance with the procedure set out in Clause 33.5.2.

6.6 Payment or discharge of any claim shall, to the extent of such payment or discharge satisfy and preclude any other claim which is capable of being made in respect of the same subject matter to the extent that there would otherwise be double recovery for the same loss.

6.7 In relation to any claim or alleged claim under this paragraph 6 and without prejudice to the validity of the claim or alleged claim in question, the Company shall allow the Contractor, its advisers and agents to investigate the matter or circumstances alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim pursuant to the terms of this Schedule and shall make available to the Contractor, its advisers and agents, all such property, information and assistance (including access to the Properties and (to the extent that the Company has any right to grant the same) access to any neighbouring or Adjacent Property) and access to any of their books, correspondence or other documents or records and the right to copy the same, making available employees and directors to give assistance) as the same may reasonably be requested by the Contractor for this purpose **PROVIDED ALWAYS** that the Contractor is to maintain as confidential and not disclose at any time to any person or body (unless lawfully required to do so) any information

obtained pursuant to this paragraph 6.7 except as may be authorised by the Company in writing (such authorisation not to be unreasonably withheld or delayed).

7. The Company and the Contractor acknowledge that their respective obligations under the provisions of this Schedule shall not be released or diminished by the receipt by the other party or any of its advisers of any documents or materials whether supplied in the course of discussion leading up to this Contract or pursuant to the provisions of this Schedule or any independent enquiry, survey or investigation which may be made or carried out by or for the other party.

8. In determining liability under paragraph 1.1 and/or under paragraph 6.1 it is agreed that (unless the contrary is proved) until the date three years after the date of completion of the relevant Depot Lease, Outstation Licence, Sidings Licence or Accommodation Licence or, in the case of the Depot, Final Completion of the Enabling Works (whichever shall be the later) the Company shall be liable under paragraph 1 and the Contractor shall be presumed not to be liable under paragraph 6 subject to the provisions of paragraphs 1.2 to 1.8.

9. Nothing in this Contract shall oblige the Contractor to take out any insurance covering claims, losses, liabilities or any other matter connected with or resulting from the environmental condition of the Properties at the date of this Contract.