October 2021

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

[date] [month] [year]

Between

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

and

[Insert name of the Access Beneficiary]

CONTENTS

Clause **Page**

1 INTERPRETATION **1**

1.1 *Definitions* **1**

1.2 *Interpretation* **13**

1.3 *Indemnities* **14**

2 CCOS NETWORK CODE AND THE CCOS OPERATIONAL CODES **14**

2.1 *Incorporation* **14**

2.2 *Compliance by other operators* **14**

3 CONDITIONS PRECEDENT AND DURATION **15**

3.1 *Effective date* **15**

3.2 *Conditions precedent to Clause 5* **15**

3.3 *Obligations to satisfy conditions precedent to Clause 5* **15**

3.4 *Consequences of non-fulfilment of conditions precedent to Clause 5* ... **16**

3.5 *Expiry* **16**

3.6 *Suspension and termination* **16**

4 STANDARD OF PERFORMANCE **16**

4.1 *General standard* **16**

4.2 *Good faith* **17**

5 PERMISSION TO USE **17**

5.1 *Permission to use the Routes* **17**

5.2 *Meaning* **17**

5.3 *Permission under Clauses 5.2(e) and 5.2(f)* **17**

5.4 *Changes to Applicable CCOS Engineering Access Statement and Applicable CCOS Timetable Planning Rules* **18**

5.5 *CCOS Engineering Access Statement, CCOS Timetable Planning Rules and Restrictions of Use* **18**

5.6 *The Services and the Specified Equipment* **18**

5.7 *Performance* **18**

5.8 *Stabling* **18**

6 OPERATION AND MAINTENANCE OF TRAINS AND THE CCOS 18

6.1 *General* **18**

6.2 *Trespass, vandalism and animals* **19**

6.3 *Safety* **19**

7 TRACK CHARGES AND OTHER PAYMENTS 19

8 LIABILITY 20

8.1 *Performance Orders in relation to breach* **20**

8.2 *Compensation in relation to breach* **20**

9 NOT USED 20

10 LIABILITY - OTHER MATTERS 20

10.1 *Train Operator indemnity* **20**

10.2 *RfL(I) indemnity* **20**

11 RESTRICTIONS ON CLAIMS 21

11.1 *Notification and mitigation* **21**

11.2 *Restrictions on claims by RfL(I)* **21**

11.3 *Restrictions on claims by Train Operator* **22**

11.4 *Restriction on claims by both parties* **22**

11.5 *Limitation on liability* **23**

11.6 *Claims Allocation and Handling Agreement* **23**

11.6.1 General *23*

11.6.2 Restriction of application *23*

11.6.3 Accession *23*

11.6.4 Liability for small claims *24*

11.7 *Insurance* **24**

11.7.1 Required insurance *24*

11.7.2 Excess *25*

11.7.3 Evidence of insurance policies *25*

12 GOVERNING LAW 25

13 DISPUTE RESOLUTION 25

13.1 *CCOS ADRR* **25**

13.2 *Unpaid sums* **25**

13.3 *Performance Orders* **26**
13.3.1 Power to order provisional relief *26*
13.3.2 Performance Orders *26*
13.3.3 Duties of arbitrator in relation to Performance Orders *26*
13.4 *Remedies* **27**
13.5 *Exclusion of applications on preliminary points of law* **27**

14 CONFIDENTIALITY AND FREEDOM OF INFORMATION **27**
14.1 *Definitions* **27**
14.2 *Confidential Information* **29**
14.2.1 General obligation *29*
14.2.2 RfL(I) - Affiliates *29*
14.2.3 Train Operator - Affiliates *29*
14.3 *Entitlement to divulge* **29**
14.4 *Return of Confidential Information* **30**
14.5 *Retention or destruction of Confidential Information* **31**
14.6 *Ownership of Confidential Information* **31**
14.7 *Freedom of Information* **31**
14.8 *No publication by Train Operator without consent* **31**
14.9 *Disclosure by Comptroller and Auditor General* **32**
14.10 *CCOS Network Code, Schedule 7 and Schedule 8* **32**

15 ASSIGNMENT AND NOVATION **32**
15.1 *Assignment* **32**
15.2 *Novation* **32**
15.3 *Novation terms* **33**

16 PAYMENTS, INTEREST AND VAT **33**
16.1 *Payment* **33**
16.1.1 No deduction *33*
16.1.2 Delivery of invoices *33*
16.1.3 Content of invoices and other statements of amounts payable *34*
16.1.4 Method of payment *34*
16.2 *Interest* **34**
16.3 *VAT* **34**

16.3.1 Payment of VAT *34*
16.3.2 Reimbursement of VAT *34*
16.3.3 VAT credit note to be issued on repayment *34*

17 FORCE MAJEURE EVENTS **35**
17.1 *Meaning of Force Majeure Event* **35**
17.2 *Nature and extent of relief for Force Majeure* **36**
17.3 *Entitlement to Force Majeure relief* **36**
17.4 *Procedure for claiming relief* **37**
17.5 *Force Majeure Notices and Reports* **37**
17.5.1 Force Majeure Notice *37*
17.5.2 Force Majeure Report *37*
17.5.3 Other information *38*
17.6 *Mitigation* **38**
17.7 *Duration of relief for force majeure* **38**
17.8 *Availability of Performance Order* **38**

18 MISCELLANEOUS **39**
18.1 *Non waiver* **39**
18.1.1 No waiver *39*
18.1.2 Failure or delay in exercising a right or remedy *39*
18.2 *Variations* **39**
18.2.1 Amendments to be in writing and to be approved *39*
18.2.2 Exceptions *39*
18.2.3 No Office of Rail and Road approval needed *39*
18.2.4 Conformed copy of contract *40*
18.3 *Entire contract and exclusive remedies* **40**
18.3.1 Entire contract *40*
18.3.2 Exclusive remedies *40*
18.3.3 Fraud, death and personal injury *40*
18.4 *Notices* **41**
18.4.1 Giving of notices *41*
18.4.2 Right to modify registered company and communication details *41*
18.4.3 Deemed receipt *41*

18.4.4 Copyees ... *42*
18.5 *Counterparts* ... **42**
18.6 *Survival* ... **42**
18.7 *Contracts (Rights of Third Parties) Act 1999* ... **42**
18.7.1 Application to third parties ... *42*
18.7.2 Application to the Office of Rail and Road ... *43*
18.7.3 Application to TfL ... *43*
19 TRANSITION ... **43**
19.1 *Corresponding Rights* ... **43**
19.2 *Previous Access Agreements* ... **44**
19.3 *Definitions* ... **44**
SCHEDULE 1 CONTACT PARTICULARS ... **45**
SCHEDULE 2 THE ROUTES ... **46**
SCHEDULE 3 COLLATERAL AGREEMENTS ... **47**
SCHEDULE 4 COMPENSATION FOR RESTRICTIONS OF USE ... **49**
1 Definitions ... **49**
1.1 *Defined terms* ... *49*
1.2 *Interpretation* ... *51*
1.3 *Suspension Notices* ... *51*
2 Application of this Part ... **51**
2.1 *Entry into effect* ... *51*
2.2 *Applicable CCOS Engineering Access Statement and the CCOS Network Code* ... *51*
2.3 *Operator Restriction of Use* ... *52*
2.4 *RfL(I) payments* ... *52*
3 Compensation for RfL(I) Restrictions of Use ... **52**
4 CCOS Asset Management Plan ... **52**
5 Schedule 8 Application ... **53**
6 Restriction of Use Day and Corresponding Day ... **53**
7 Competent Authority Rate ... **53**
7.1 *Calculations* ... *53*
7.2 *Negotiation of compensation with Competent Authority* ... *54*

7.3 *Notification of Train Operator's Relevant Costs* 54
7.4 *Notification of RfL(I)'s Relevant Costs* 54
7.5 *Compensation received by RfL(I)* 55
8 Payment Procedures 55
8.1 *RfL(I) Restrictions of Use* 55
8.2 *Competent Authority Restrictions of Use* 55
8.3 *Disputes* 56
8.4 *Dispute resolution* 56
8.5 *Payments in the event of a dispute* 57
9 Cap on Compensation 57

SCHEDULE 5 THE SERVICES AND THE SPECIFIED EQUIPMENT 58
1 Definitions 58
2 Passenger Train Slots 61
3 Intervals 67
4 Calling Patterns 73
5 Specified Equipment 75
6 Journey Time Protection 76
7 Provisions applicable to Journey Time protection 78
8 Other rights 81

SCHEDULE 6 EVENTS OF DEFAULT, SUSPENSION AND TERMINATION . 90
1 Events of Default 90
1.1 *Train Operator Events of Default* 90
1.2 *Notification* 91
1.3 *RfL(I) Events of Default* 91
1.4 *Notification* 91
1.5 *Service of a Poor Performance Notice* 91
1.6 *Matters to be satisfied* 92
2 Suspension 92
2.1 *Right to suspend* 92
2.2 *Contents of Suspension Notice* 92
2.3 *Effect of Suspension Notice served by RfL(I)* 93
2.4 *Effect of a Suspension Notice served by the Train Operator* 93
2.5 *Suspension to be proportionate to breach* 94

3 Termination ... 95
3.1 RfL(I)'s right to terminate ... 95
3.2 Train Operator's right to terminate ... 95
3.3 Contents of Termination Notice ... 95
3.4 Effect of Termination Notice ... 96
4 Consequence of termination ... 96
4.1 Directions regarding location of Specified Equipment ... 96
4.2 Failure to comply with directions ... 96
4.3 Evidence of costs ... 96
SCHEDULE 7 TRACK CHARGES AND OTHER PAYMENTS ... 97
Part 1: Interpretation ... 97
1 Definitions ... 97
Part 2: Track Charges ... 100
1 Principal Formula ... 100
2 Investment Recovery Charge (IRC) ... 101
2.1 Calculation of the IRC ... 101
2.2 Indexation of IRC per Service Group ... 102
3 Fixed Costs Charge (FCC) ... 103
3.1 Calculation of the FCC ... 103
3.2 Indexation of the FCC per Service Group ... 104
4 Costs Directly Incurred Charge (CDIC) ... 105
4.1 Calculation of the CDIC ... 105
4.2 Indexation of the CDIC per Service Group ... 105
5 Traction Electricity Charge (EC4T) ... 106
5.1 Application ... 106
5.2 Calculation of the EC4T - Train Operator is the only Access Beneficiary ... 106
5.3 Calculation of the EC4T – Multiple Access Beneficiaries ... 107
5.4 Traction Electricity Charge Adjustment ... 107
6 Further Investment Recovery Charge (FIRC) ... 108
7 Modifications to the Annual Investment Recovery Charge and the Annual Fixed Costs Charge ... 108
Part 3: REVIEW OF THE REVIEW PROVISIONS ... 111
1 Definitions ... 111

2 Review of the Review Provisions ... 112
3 Review Notice ... 113
4 Interim Review ... 113
5 ORR Approval ... 114
6 Review Provisions - Dispute Resolution Procedure ... 115
7 Protected Provisions ... 116
Part 4: PAYMENTS ... 116
1 Payment of Access Charges ... 116
2 Additional Permitted Charges ... 117
3 Payments in the Event of Dispute ... 117
4 Payments, Interest and VAT ... 118
4.1 Payment ... 118
4.2 Interest ... 118
4.3 VAT ... 118
Appendix 1: Track Charges ... 120
SCHEDULE 8 PERFORMANCE REGIME ... 121
1 Interpretation ... 121
1.1 Definitions ... 121
1.2 Interpretation ... 126
1.3 Suspension Notices ... 126
2 Calculation of Unexpected CCOS Journey Time ... 126
3 Calculation of Seconds Late ... 127
4 Calculation of Monitoring Point Seconds Delay and Deemed Seconds Delay ... 127
4.1 Calculation of Seconds Delay ... 127
4.2 Monitoring Point Seconds Delay ... 127
4.3 Deemed Seconds Delay – Cancelled Stops ... 128
4.4 Relationship between Monitoring Points Seconds Delay and Deemed Seconds Delay ... 128
4.5 Services terminated prior to reaching the CCOS ... 128
5 Recording of Performance Information ... 128
5.1 Recording of Seconds Delay, Seconds Lateness and Cancelled Stops ... 128
5.2 Recording of allocated responsibility for Seconds Delay ... 129

5.3 Failed Recording and Monitoring Points ... 129

5.4 Provision of information by Train Operator ... 130

5.5 Notification ... 130

6 Allocation of responsibility for Seconds Delay ... 130

6.1 Assessment of incidents causing Seconds Delay ... 130

6.2 RfL(I) responsibility incidents ... 131

6.3 Train Operator responsibility incidents ... 131

6.4 Other incidents ... 132

6.5 Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: aggregate Monitoring Point Seconds Delay ... 133

6.6 Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: RfL(I) Monitoring Point Seconds Delay.. 133

6.7 Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: Train Operator Monitoring Point Seconds Delay ... 133

6.8 RfL(I) Deemed Seconds Delay at Monitoring Point level ... 133

6.9 Train Operator Deemed Seconds Delay at Monitoring Point level ... 133

7 Statement of allocated responsibility ... 133

7.1 Initial statement ... 133

7.2 Further statement ... 134

7.3 Adjustment statements ... 134

7.4 Disputes about statements of allocated responsibility ... 134

8 Allocation of Seconds Late to RfL(I) ... 135

9 Allocation of Seconds Late to the Train Operator ... 135

10 RfL(I) Performance Sums ... 136

11 Train Operator Performance Sums ... 137

12 Notification of Performance Sums ... 139

12.1 Notification ... 139

12.2 Disputes ... 139

13 Payment procedures ... 139

13.1 Payments and set-off ... 139

13.2 Payments in the event of dispute ... 140

14 Payment rates ... 140

15 Notices 141
16 Disputes 141
17 Review 141
18 Sustained Poor Performance and Poor Performance Notices 143
18.1 Definitions 143
18.2 Indemnities 143
18.3 Determination of Relevant Losses 143
18.4 Restrictions on claims 144
18.5 SPP Indexation 144
18.6 Poor Performance Notice 145
SCHEDULE 9 LIMITATION ON LIABILITY 149
1 Definitions 149
2 Application 150
3 Limitation on RfL(I)'s liability 150
4 Limitation on Train Operator's liability 150
5 Disapplication of limitation 151
6 Exclusion of legal and other costs 151
7 Exclusion of certain Relevant Losses 151
8 Continuing breaches 151
9 Final determination of claims 152

THIS CONTRACT is made the [date] day of [month] [year]

BETWEEN:

(1) **Rail for London (Infrastructure) Limited**, a company registered in England under number 09366341 having its registered office at 5 Endeavour Square, London E20 1JN ("**RfL(I)**"); and

(2) [ ], a company registered in [ ] under number [ ] having its registered office at [ ] (the "**Train Operator**").

WHEREAS:

(A) RfL(I) is the infrastructure manager of the CCOS; and

(B) RfL(I) intends to grant to the Train Operator permission to use certain track comprised in the CCOS on the terms and conditions of this Contract.

IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 *Definitions*

In this Contract unless the context otherwise requires:

"**Access Agreement**"	has the meaning ascribed to it in Part A of the CCOS Network Code;
"**Access Proposal**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Access Regulations**"	means The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;
"**Act**"	means the Railways Act 1993;
"**Affected Party**"	has the meaning ascribed to it in Clause 17.1;
"**Affiliate**"	means, in relation to any company: (a) a company which is either a holding company or a subsidiary of such company; or (b) a company which is a subsidiary of a holding company of which such company

	is also a subsidiary,
	and for these purposes "**holding company**" and "**subsidiary**" have the meanings ascribed to them in section 1159 of the Companies Act 2006;
"**Ancillary Movements**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Applicable CCOS Engineering Access Statement**"	means the CCOS Engineering Access Statement in force in respect of the Routes on the date on which Services may first be operated by the Train Operator under this Contract, as from time to time amended or replaced under Part D of the CCOS Network Code;
"**Applicable Timetable**"	has the meaning ascribed to it in Schedule 8;
"**Applicable CCOS Timetable Planning Rules**"	means the CCOS Timetable Planning Rules in force in respect of the Routes on the date on which Services may first be operated by the Train Operator under this Contract, as from time to time amended or replaced under Part D of the CCOS Network Code;
"**associate**"	has the meaning ascribed to it in section 17 of the Act;
"**CCOS**"	has the meaning ascribed to it in Part A of the CCOS Network Code;
"**CCOS Access Dispute Resolution Rules**" and "**CCOS ADRR**"	have the meaning ascribed to them in Part A of the CCOS Network Code;
"**CCOS Emergency Access Code**"	means the document known as the CCOS Emergency Access Code;
"**CCOS Engineering Access Statement**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**CCOS Network Change**"	has the meaning ascribed to it in Part G of the CCOS Network Code;
"**CCOS Network Code**"	means the document known as the CCOS Network Code as published by RfL(I);

"CCOS Operational Codes"	means the CCOS Emergency Access Code, the CCOS Railway Operational Code and the CCOS Performance Data Accuracy Code;
"CCOS Performance Data Accuracy Code"	means the document known as the CCOS Performance Data Accuracy Code;
"CCOS Railway Operational Code"	means the document known as the CCOS Railway Operational Code;
"CCOS Standards"	means Railway Group Standards;
"CCOS Timetable Planning Rules"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"CCOS Vehicle Change"	has the meaning ascribed to it in Part F of the CCOS Network Code;
"Claims Allocation and Handling Agreement"	means the agreement of that name approved by ORR which is also used by Network Rail in respect of the NR Network;
"Collateral Agreements"	means the agreements and arrangements listed in Schedule 3;
"Commencement Date"	means [date to be added];
"Competent Authority Restriction of Use"	means a Restriction of Use (other than one which constitutes an Extended Disruption under and for the purposes of Part H of the CCOS Network Code): (a) as a result of any Change of Law or any Direction of any Competent Authority other than the ORR; and (b) pursuant to an agreement between RfL(I) and any Competent Authority, to the extent only that the Restriction of Use could otherwise have been required pursuant to a Direction of that Competent Authority;
"Concession Agreement"	means a concession agreement between TfL or a subsidiary of TfL and a person appointed to operate Crossrail services (where applicable, referred to in Schedule 3);

"**Confidential Information**"	means information relating to the affairs of one party to this Contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Contract, or any matter or thing contemplated by this Contract or to which this Contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;
"**Contingent Right**"	means a right under Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in Schedule 5;
"**Contract**"	means this document including all schedules and appendices to it, the CCOS Network Code and the CCOS Operational Codes;
"**Corresponding Day**"	means, in respect of any Day (the "**First Day**"):

(a) a Day which is contained in the same Timetable Period as the First Day and on which the Services scheduled in the New Working Timetable applicable to that Timetable Period are the same as would have been scheduled on the First Day but for Restrictions of Use reflected in the New Working Timetable for the First Day; or

(b) if no Day is found under paragraph (a), then a Day during the equivalent Timetable Period for that time of year in the year immediately preceding the Timetable Period which includes the First Day and on which the Services scheduled in the New Working Timetable applicable to that Timetable Period are the same as would have been scheduled on the First Day but for Restrictions of Use reflected in the New Working Timetable for the First Day; or

(c) if no Day is found under paragraph (a) or (b) above, such other Day as the parties may agree or as may be determined in accordance with paragraph 6 of Schedule 4;

"Day"	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
"Default Interest Rate"	is two per cent. above the base lending rate of the Bank of England as varied from time to time;
"Effective Date"	means the later of the Commencement Date and the date upon which the conditions precedent specified in Clause 3.2 have been satisfied in full;
"Environmental Condition"	has the meaning ascribed to it in Part E of the CCOS Network Code;
"Environmental Damage"	has the meaning ascribed to it in Part E of the CCOS Network Code;
"Event of Default"	means a Train Operator Event of Default or a RfL(I) Event of Default;
"Expiry Date"	means [date to be added];
"Failure to Use Notice"	has the meaning ascribed to it in Part J of the CCOS Network Code;
"Force Majeure Event"	has the meaning ascribed to it in Clause 17.1;
"Firm Right"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"First Opening Date"	means the date on which revenue-earning passenger services first commence on the CCOS;
"Force Majeure Notice"	has the meaning ascribed to it in Clause 17.1;
"Force Majeure Report"	has the meaning ascribed to it in Clause 17.1;
"Full Opening Date"	means the date on which revenue-earning passenger services first commence on the CCOS and which connect to and from both of: (a) the NR Network to the east of Pudding Mill Lane Junction Connection Point; and

(b) the NR Network to the west of Westbourne Park Junction Connection Point;

"Initial Indexation Factor" means $(RPI_{2020}/RPI_{2019})^2$

where:

RPI_{2020} is the RPI published or determined with respect to the month of November 2020; and

RPI_{2019} is the RPI published or determined with respect to the month of November 2019;

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

"Insolvency Event" in relation to either of the parties, has occurred where:

(a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

(b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:

(i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£100,000" or such higher figure as the parties may agree in writing from time to time; and

(ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;

(c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

(d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

(e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

(f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless:

(i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such

order (or application) remains in force or pending; or

(ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"**Liability Cap**"	has the meaning ascribed to it in paragraph 1 of Schedule 9;
"**Licensing Regulations**"	means The Railway (Licensing of Railway Undertakings) Regulations 2005;
"**Longstop Date**"	means the date falling one week after the date of this Contract;
"**Network Rail**"	means Network Rail Infrastructure Limited, a company registered in England under company number 02904587 and having its registered office at 1 Eversholt Street, London NW1 2DN;
"**Network Rail Track Access Contract**"	means the track access contract with Network Rail referred to in paragraph 4 of Schedule 3;
"**New Working Timetable**"	means, in respect of any Day, the version of the Working Timetable for that day provided by RfL(I) in accordance with Condition D2.7.1 of the CCOS Network Code, as amended pursuant to Condition D2.7.4 of the CCOS Network Code;
"**NR Ancillary Movement**"	means a train movement on the CCOS which is necessary or reasonably required for giving full effect to the train movements in relation to which the Train Operator has firm rights granted under the Network Rail Track Access Contract;
"**NR Network**"	means the railway infrastructure of which Network Rail is the facility owner;
"**Office of Rail and Road**"	has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to "**ORR**" shall be construed as references to the Office of Rail and Road;

"**Performance Monitoring System**"	has the meaning ascribed to it in Part B of the CCOS Network Code;
"**Performance Order**"	has the meaning ascribed to it in Clause 13.3.2;
"**Poor Performance Notice**"	means a notice issued by RfL(I) to the Train Operator pursuant to paragraph 1.5 of Schedule 6;
"**Pudding Mill Lane Junction Connection Point**"	means the boundary of the CCOS and the NR Network to the east of Pudding Mill Lane portal;
"**Railway Code Systems**"	means necessary systems within the meaning of the Systems Code;
"**Railway Group Standards**"	means technical standards and operating procedures authorised pursuant to the Railway Group Standards Code issued by Rail Safety and Standards Board Limited and approved by the ORR;
"**Recovery Allowance**"	means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and RfL(I) complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
"**relevant CCOS ADRR Forum**"	means the Forum, having the meaning ascribed to it in the CCOS ADRR, to which a Relevant Dispute is allocated for resolution in accordance with the CCOS ADRR;
"**Railway undertaking licence**"	has the meaning ascribed to the term in section 6(2) of the Act;
"**Relevant Dispute**"	means any difference between the parties arising out of or in connection with this Contract;
"**Relevant Force Majeure Event**"	has the meaning ascribed to it in Clause 17.1;
"**Relevant Losses**"	means, in relation to: (a) a breach of this Contract; or (b) in the case of Clause 10, any of the

matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a "breach" for the purpose of this definition); or

(c) in the case of Schedule 8, any of the matters specified in paragraph 18 of Schedule 8 (a "breach" for the purposes of this definition only),

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

"**Relevant Obligation**" has the meaning ascribed to it in Clause 17;

"**Relevant Year**" means:

(a) a year commencing at 0200 hours on 01 April and ending at 0159 hours on the immediately following 01 April;

(b) in respect of the first Relevant Year, the period from the Effective Date until 0159 hours on the immediately following 01 April; and

(c) in respect of the last Relevant Year, the period ending on the expiry or termination of this Contract and commencing at 0200 hours on the immediately preceding 01 April;

"**Restriction of Use**" means, in respect of any Day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable CCOS Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

(a) a difference between the Applicable Timetable on that Day as compared with the New Working Timetable in respect of that Day; and/or

(b) a difference between the New Working Timetable on that Day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

"**RfL(I) Event of Default**"	has the meaning ascribed to it in paragraph 1.3 of Schedule 6;
"**ROGS**"	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;
"**Rolled Over Access Proposal**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Routes**"	means that part of the CCOS specified in Schedule 2;
"**RPI**"	means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting RfL(I) in no better nor worse position than it would have been had the index not ceased to be published);
"**Rule Book**"	means the CCOS Rule Book;
"**Safety authorisation**"	has the meaning ascribed to it by regulation 2 of the ROGS;
"**Safety certificate**"	has the meaning ascribed to it by regulation 2 of the ROGS;
"**Safety Obligations**"	means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;
"**Secretary of State**"	means the Secretary of State for Transport;
"**Sectional Appendix**"	means the CCOS Sectional Appendix;

"**Services**"	means the railway passenger services specified in Schedule 5;
"**SNRP**"	has the meaning ascribed to it in the Licensing Regulations;
"**Specified Equipment**"	means the railway vehicles which the Train Operator is entitled to use in the provision of Services as specified in paragraph 5.1 of Schedule 5;
"**SPP Threshold**"	means either the RfL(I) SPP Threshold or the Train Operator SPP Threshold (each as defined in paragraph 18 of Schedule 8);
"**Stabling**"	means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this Contract to use on the CCOS, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services and "**Stable**" shall be construed accordingly;
"**Suspension Notice**"	means a notice in writing served by the relevant party on the other party under paragraph 2 of Schedule 6;
"**Systems Code**"	means the document known as the CCOS Railway Systems Code as amended from time to time in accordance with Part C of the CCOS Network Code;
"**Technical Specification for Interoperability**"	has the meaning ascribed to the term "TSI" in The Railways (Interoperability) Regulations 2011;
"**Termination Notice**"	means a notice in writing served by the relevant party on the other party under paragraph 3 of Schedule 6;
"**TfL**"	means the statutory corporation known as "Transport for London" established under the Greater London Authority Act 1999 whose principal office is at 5 Endeavour Square, London, E20 1JN;
"**Timetable Change Date**"	has the meaning ascribed to it in Part D of the CCOS Network Code;

"**Timetable Year**"	has the meaning given to it in Part A of the CCOS Network Code;
"**Track Charges**"	means the charges payable by or on behalf of the Train Operator to RfL(I), as set out in or calculated under Part 2 of Schedule 7;
"**Train**"	means each train operating a Service which is: (a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this Contract; and (b) used to provide services for the carriage of passengers by railway, but excludes any and all trains making an Ancillary Movement or NR Ancillary Movement;
"**Train Consist Data**"	means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;
"**Train Operator Event of Default**"	has the meaning ascribed to it in paragraph 1.1 of Schedule 6;
"**Train Slot**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Value Added Tax**"	means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and "**VAT**" shall be construed accordingly;
"**Westbourne Park Junction Connection Point**"	means the boundary of the CCOS and the NR Network to the west of Royal Oak portal;
"**Working Day**"	has the meaning ascribed to it in Part A of the CCOS Network Code; and
"**Working Timetable**"	has the meaning ascribed to it in Part A of the CCOS Network Code.

1.2 *Interpretation*

In this Contract, unless the context otherwise requires:

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

(b) any one gender includes the other;

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

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

(e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;

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

(g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this Contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;

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

(i) references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;

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

(k) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;

(l) words and expressions defined in the Act, the Access Regulations and the ROGS shall, unless otherwise defined in this Contract, have the same meanings in this Contract;

(m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use;

(n) words and expressions defined in the CCOS Network Code shall have the same meanings in this Contract; and

(o) if there is any conflict of interpretation between this Contract and the CCOS Network Code, the CCOS Network Code shall prevail.

1.3 *Indemnities*

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

2 CCOS NETWORK CODE AND THE CCOS OPERATIONAL CODES

2.1 *Incorporation*

The CCOS Network Code and the CCOS Operational Codes are incorporated in and form part of this Contract.

2.2 *Compliance by other operators*

Except where the ORR has directed otherwise in the exercise of its powers under the Act or the CCOS Network Code, RfL(I) shall ensure that all operators of trains having permission to use any track comprised in the CCOS agree to comply with the CCOS Network Code.

3 CONDITIONS PRECEDENT AND DURATION

3.1 *Effective date*

The provisions of this Contract, other than Clause 5, take effect from the signature of this Contract.

3.2 *Conditions precedent to Clause 5*

Clause 5 shall take effect on the later of the Commencement Date and when the following conditions precedent have been satisfied in full:

(a) to the extent required by the Act and/or the Licensing Regulations, the Train Operator is authorised to be the operator of trains for the provision of the Services by:

(i) a licence granted under section 8 of the Act; and/or

(ii) a Railway undertaking licence and corresponding SNRP;

(b) RfL(I) is authorised by a licence granted under section 8 of the Act to be the operator of that part of the CCOS comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;

(c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects

(save only for the fulfilment of any condition relating to this Contract becoming unconditional);

(d) each of the parties has, as necessary, a valid Safety certificate or Safety authorisation as required by the ROGS and has established and is maintaining a safety management system which meets the requirements of those regulations; and

(e) the provisions of this Contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 *Obligations to satisfy conditions precedent to Clause 5*

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

(a) in the case of RfL(I), the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and

(b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

3.4 *Consequences of non-fulfilment of conditions precedent to Clause 5*

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

(a) this Contract shall lapse save for the obligations contained in Clause 14 which shall continue in force; and

(b) neither party shall have any liability to the other except in respect of any breach of its obligations under this Contract.

3.5 *Expiry*

This Contract shall continue in force until the earliest of:

(a) lapse under Clause 3.4;

(b) the date specified in any Failure to Use Notice terminating all of the Services;

(c) the date on which all of the capacity reserved by the Train Operator is transferred to one or more other train operators as a result of such other train operators demonstrating (in accordance with Part J of the CCOS Network Code) a significantly better use for the capacity reserved by the Train Operator under Schedule 5;

(d) termination under Schedule 6; and

(e) 0159 hours on the Expiry Date.

3.6 *Suspension and termination*

Schedule 6 shall have effect.

4 STANDARD OF PERFORMANCE

4.1 *General standard*

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

(a) network owner and operator (in the case of RfL(I)); and

(b) train operator (in the case of the Train Operator).

4.2 *Good faith*

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

5 PERMISSION TO USE

5.1 *Permission to use the Routes*

RfL(I) grants the Train Operator permission to use the Routes.

5.2 *Meaning*

References in this Contract to permission to use the Routes shall, except where the context otherwise requires, be construed to mean permission:

(a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;

(b) to use the track comprised in the CCOS in order to implement any plan established under Part H of the CCOS Network Code;

(c) to make Ancillary Movements and/or NR Ancillary Movements as set out in paragraph 2.6 of Schedule 5;

(d) to Stable, which shall be treated, for the purposes of Part D of the CCOS Network Code, as the use of a Train Slot;

(e) for the Train Operator and its associates to enter upon that part of the CCOS comprising the Routes, with or without vehicles; and

(f) for the Train Operator and its associates to bring things onto that part of the CCOS comprising the Routes and keep them there,

and such permission is subject, in each case and in all respects to:

(i) the CCOS Network Code;

(ii) the Applicable CCOS Engineering Access Statement;

(iii) the Applicable CCOS Timetable Planning Rules;

(iv) the Rule Book, including the Sectional Appendix; and

(v) the CCOS Standards.

5.3 *Permission under Clauses 5.2(e) and 5.2(f)*

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

(a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of RfL(I), which consent shall not be unreasonably withheld or delayed;

(b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the CCOS when reasonably directed to do so by RfL(I); and

(c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as RfL(I) shall specify.

5.4 *Changes to Applicable CCOS Engineering Access Statement and Applicable CCOS Timetable Planning Rules*

Changes to the Applicable CCOS Engineering Access Statement and the Applicable CCOS Timetable Planning Rules are subject to regulatory protection (including appeals) in accordance with Part D of the CCOS Network Code.

5.5 *CCOS Engineering Access Statement, CCOS Timetable Planning Rules and Restrictions of Use*

Schedule 4 shall have effect.

5.6 *The Services and the Specified Equipment*

Schedule 5 shall have effect.

5.7 *Performance*

Schedule 8 shall have effect.

5.8 *Stabling*

Without prejudice to RfL(I)'s obligations, if any, under Schedule 5 to provide Stabling, RfL(I) shall use reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

6 OPERATION AND MAINTENANCE OF TRAINS AND THE CCOS

6.1 *General*

Without prejudice to the other provisions of this Contract:

(a) the Train Operator shall maintain and operate the Specified Equipment used on the CCOS in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements and/or NR Ancillary Movements;

(b) RfL(I) shall maintain and operate the CCOS in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements and/or NR Ancillary Movements;

(c) the parties shall comply with the Systems Code and, where appropriate, shall use the Railway Code Systems in their dealings with each other in connection with matters provided for in this Contract; and

(d) (without prejudice to paragraph (c)), the Train Operator shall:

(i) provide to RfL(I) such Train Consist Data as shall be necessary to enable RfL(I) to calculate the amount of Track Charges; and

(ii) procure that such data is true and accurate in all respects.

6.2 *Trespass, vandalism and animals*

Without prejudice to the other provisions of this Contract, each of the parties shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to reduce:

(a) trespass;

(b) vandalism; and

(c) intrusions on to the CCOS by animals,

in each case as may affect either the provision of the Services or the Routes.

6.3 *Safety*

In relation to Safety Obligations:

(a) the Train Operator shall comply with any reasonable request by RfL(I) in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of RfL(I)'s Safety Obligations; and

(b) RfL(I) shall comply with any reasonable request by the Train Operator in relation to any aspect of RfL(I)'s operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

7 TRACK CHARGES AND OTHER PAYMENTS

Schedule 7 shall have effect.

8 LIABILITY

8.1 *Performance Orders in relation to breach*

In relation to any breach of this Contract:

(a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and

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

8.2 *Compensation in relation to breach*

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

9 NOT USED

10 LIABILITY - OTHER MATTERS

10.1 *Train Operator indemnity*

The Train Operator shall indemnify RfL(I) against all Relevant Losses resulting from:

(a) a failure by the Train Operator to comply with its Safety Obligations;

(b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by RfL(I) under Part E of the CCOS Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator;

(c) any damage to the CCOS arising directly from the Train Operator's negligence, wilful default or failure to comply with its obligations under this Contract; and

(d) a breach by the Train Operator of this Contract.

10.2 *RfL(I) indemnity*

RfL(I) shall indemnify the Train Operator against all Relevant Losses resulting from:

(a) a failure by RfL(I) to comply with its Safety Obligations;

(b) any Environmental Damage to the CCOS arising directly from the acts or omissions of RfL(I);

(c) any damage to the Specified Equipment or other vehicles or things brought onto the CCOS in accordance with the permission to use granted by this Contract arising directly from RfL(I)'s negligence, wilful default or failure to comply with its obligations under this Contract; and

(d) a breach by RfL(I) of this Contract.

11 RESTRICTIONS ON CLAIMS

11.1 *Notification and mitigation*

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

(a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and

(b) subject to Clause 11.1(c), where practicable given the circumstances, consult with the other party as to the ways in which the circumstances giving rise to that claim and any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders of out of pocket expenses connected with that claim may be prevented, defended, mitigated or restricted and shall take all reasonable steps to prevent, mitigate, defend and restrict any and all of the same and any Relevant Losses connected with that claim; but

(c) shall not be required to exercise any specific remedy available to it under this Contract.

11.2 *Restrictions on claims by RfL(I)*

Any claim by RfL(I) against the Train Operator for indemnity for Relevant Losses:

(a) shall exclude payments to any person (other than the Train Operator) under or in accordance with the provisions of any Access Agreement with such person other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this Contract for such payments for damage to property, in relation to any incident, shall be limited to:

(i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less

(ii) any other compensation which the Train Operator has an obligation to pay for such damage;

(b) shall exclude any Relevant Losses to the extent they result from a cancellation of or a delay in commencement of a Restriction of Use, save where such cancellation or delay is attributable to the Train Operator; and

(c) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which RfL(I) would not have incurred as network owner and operator but for the relevant breach; and

(ii) give credit for any savings to RfL(I) which result or are likely to result from the incurring of such amounts.

11.3 *Restrictions on claims by Train Operator*

Any claim by the Train Operator against RfL(I) for indemnity for Relevant Losses:

(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the RfL(I) SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and

(b) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and

(ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.3A *Relationship with Schedule 4, Schedule 8 and Part G of the CCOS Network Code*

The rights set out in Schedule 4 and Schedule 8 of this Contract and Part G of the CCOS Network Code represent the Train Operator's sole entitlement to any compensation in respect of any damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out-of-pocket expenses arising from or caused by any restriction of use of all or any part of the Routes or any delay, or cancellations to trains (together, the "**Losses**"). The Train Operator undertakes to RfL(I) not to seek to recover any Losses by making any claim or commencing any action or proceedings whatsoever against or otherwise seeking payment in respect of any Losses from RfL(I) otherwise than pursuant to Schedule 4 and Schedule 8 of this Contract or Part G of the CCOS Network Code.

11.4 *Restriction on claims by both parties*

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

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

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

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

(ii) where the breach relates to a modification or amendment to this Contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

11.5 *Limitation on liability*

Schedule 9 shall have effect so as to limit the liability of the parties to one another but:

(a) does not limit any liability arising under Schedule 4, Schedule 7 or Schedule 8 (other than under paragraph 18 of Schedule 8);

(b) in relation to a failure to perform an obligation under the CCOS Network Code, only to the extent (including as to time and conditions) that the CCOS Network Code so provides;

(c) shall not apply to the extent that a party is insured in respect of the Relevant Loss and such Relevant Loss is recoverable from insurance; and

(d) subject to Clause 18.3.3.

11.6 *Claims Allocation and Handling Agreement*

11.6.1 General

Clauses 16 and 17 of the Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

11.6.2 Restriction of application

Except as otherwise expressly provided in this Contract, Clauses 16 and 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this Contract if and to the extent that the giving of any right or remedy as provided for under this Contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

11.6.3 Accession

(a) RfL(I) shall at all times remain a party to and comply with such agreements or arrangements (as amended from time to time) relating to:

(i) the handling of claims against operators of railway assets; and

(ii) the allocation of liabilities among operators of railway assets,

and the Claims Allocation and Handling Agreement shall satisfy the requirements of this Clause.

(b) RfL(I) shall procure that each train operator using the CCOS also becomes party to the same arrangement described in Clause 11.6.3(a).

(c) RfL(I) shall not, in relation to any of the agreements or arrangements described in Clause 11.6.3(a) (the "**relevant claims handling arrangements**"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:

(i) under which RfL(I) agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or

(ii) varying the relevant claims handling arrangements other than as provided for under the terms of the relevant claims handling arrangements.

11.6.4 Liability for small claims

Nothing in this Contract shall affect the application as between the parties of the provisions of the Claims Allocation and Handling Agreement which relate to liability for small claims equal to or below the Threshold (as defined in that agreement).

11.7 *Insurance*

11.7.1 Required insurance

RfL(I) shall take out and maintain in full force and effect and at its own cost, third party liability insurance in accordance with the ORR's guidance on insurance requirements from time to time. Without prejudice to the foregoing, as at the date of this Agreement, RfL(I) shall procure such insurance complies with the following requirements:

(a) it is third party liability insurance;

(b) it has a total cover of not less than £155 million per incident in respect of all liabilities to third parties;

(c) where an aggregate limit of indemnity applies, this limit will be reinstated at least once if the limit is exhausted;

(d) cover is on an 'occurrence' basis;

(e) cover is on a costs exclusive basis;

(f) any other party is included as an insured to the extent that that party is required to be insured or indemnified in any underlying contract or agreement with RfL(I);

(g) cover for any difference between its contractors' or sub-contractors' cover and that required by this Clause 11.7 is provided; and

(h) such insurance is taken out only with insurers duly authorised by the Financial Conduct Authority or an equivalent body.

11.7.2 Excess

Notwithstanding any other Clauses of this contract, RfL(I) shall be liable for any excess or deductible that applies to such insurance policy.

11.7.3 Evidence of insurance policies

Promptly following any request by the Train Operator, and otherwise on each anniversary of the execution of this contract, RfL(I) shall provide to the Train Operator for inspection a broker's letter confirming that the insurance policies specified in Clause 11.7.1 are in place, are in full force and effect and that all premiums payable in respect of such insurance policies have been paid in full.

12 GOVERNING LAW

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

13 DISPUTE RESOLUTION

13.1 *CCOS ADRR*

A Relevant Dispute shall be referred for resolution in accordance with the CCOS Access Dispute Resolution Rules in force at the time of the reference, as modified by this Clause 13, unless:

(a) any Part of the CCOS Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;

(b) any Part of Schedule 4, Schedule 5, Schedule 7 or Schedule 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or

(c) Clause 13.2 applies.

13.2 *Unpaid sums*

If either party fails to pay:

(a) any invoice issued to it under this Contract in respect of Track Charges; or

(b) any other sum which has fallen due in accordance with any provision of this Contract, then:

(i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);

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

(iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.

13.3 *Performance Orders*

13.3.1 Power to order provisional relief

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

13.3.2 Performance Orders

A Performance Order:

(a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and

(b) may be applied for by RfL(I) or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

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

13.3.3 Duties of arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 13.4, where a dispute is allocated in accordance with the CCOS ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement, as defined in the CCOS ADRR, that:

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

(b) if the arbitrator decides that the application is well founded, he shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.4 *Remedies*

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

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

(b) the powers specified in the CCOS ADRR;

(c) the power to make Performance Orders; and

(d) the power to order within the same reference to arbitration any relief specified in Clause 13.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.5 *Exclusion of applications on preliminary points of law*

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

14 CONFIDENTIALITY AND FREEDOM OF INFORMATION

14.1 *Definitions*

In addition to the definitions set out in Clause 1.1 of this Contract, in this Clause 14:

"**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;
"**Greater London Authority**"	means the Greater London Authority, a body corporate established under the Greater London Authority Act 1999;
"**Information**"	means information recorded in any form held by RfL(I);
"**Information Request**"	means a request for any Information under the FOI Legislation;
"**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(I) from time to time;

"**Rail Passengers' Council**"	means the passengers' council established under section 19 of the Railways Act 2005; and
"**TfL Group**"	means TfL and all its subsidiaries from time to time.

14.2 *Confidential Information*

14.2.1 General obligation

Except as permitted by Clause 14.3 and (in the case of RfL(I)) Clause 14.7, RfL(I) and the Train Operator shall hold confidential all Confidential Information during and after the continuance of this Contract and shall not divulge any Confidential Information in any way to any third party without the prior written approval of the other party.

14.2.2 RfL(I) - Affiliates

Except as permitted by Clause 14.3 and Clause 14.7, RfL(I) shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.2.3 Train Operator - Affiliates

Except as permitted by Clause 14.3, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.3 *Entitlement to divulge*

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential

Information without the approval of the other party in the following circumstances:

(a) to the ORR;

(b) to the Secretary of State;

(c) to any Affiliate of either party (including, in the case of RfL(I), to TfL);

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

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

(f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

(g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

(h) to the extent required by the Act, the Licensing Regulations, the Access Regulations, the FOI Legislation, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

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

(j) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant CCOS ADRR Forum, each as defined in the CCOS ADRR);

(k) in the case of RfL(I), to any other infrastructure manager with regard to any access or infrastructure related issue affecting both such infrastructure manager and RfL(I);

(l) in the case of RfL(I), to 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 of officer of any of them (provided such information is 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); and

(m) in the case of RfL(I), on the website of RfL(I) subject to the redaction of any commercially sensitive information or in connection with any consultation process.

14.4 *Return of Confidential Information*

Each of RfL(I) and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

(a) is made on or within two months after the Expiry Date or, if this Contract lapses or is terminated earlier, is made within two months after the date on which this Contract lapses or is terminated;

(b) is reasonable; and

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

14.5 *Retention or destruction of Confidential Information*

If RfL(I) or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 14.4, it may destroy or retain such Confidential Information.

14.6 *Ownership of Confidential Information*

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

14.7 *Freedom of Information*

(a) The Train Operator acknowledges that RfL(I):

(i) is subject to the FOI Legislation and agrees to assist and co-operate with RfL(I) to enable RfL(I) to comply with its obligations under the FOI Legislation; and

(ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining the consent of the Train Operator.

(b) Without limiting Clause 14.7(a), the Train Operator shall transfer to RfL(I) each Information Request relevant to this Contract, the Services or any member of the TfL Group that it receives as soon as reasonably practicable and in any event, within two Working Days of receiving such Information Request.

(c) RfL(I) 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.

(d) The Train Operator shall not itself respond to any person making any Information Request, save to acknowledge receipt, unless expressly authorised to do so by RfL(I).

14.8 *No publication by Train Operator without consent*

(a) Subject to Clause 14.8(c) and whether or not any other restrictions contained in this Clause 14 applies, the Train Operator shall not, and shall procure that its officers and employees 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 subject matter of this Contract or containing any information about any member of the TfL Group (including any information that is confidential by virtue of this Clause 14) without the prior written approval of RfL(I).

(b) RfL(I) shall have absolute discretion in deciding whether to give any consent referred to in Clause 14.8(a).

(c) Clause 14.8(a) shall not apply where Clause 14.3 applies to the Train Operator.

14.9 *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 Contract would not be able to disclose otherwise than under this Clause 14.

14.10 *CCOS Network Code, Schedule 7 and Schedule 8*

Nothing in this Clause 14 restricts the right of RfL(I) to disclose information to which this Clause 14 applies to the extent that it is permitted or required to do so under the CCOS Network Code, Schedule 7 or Schedule 8.

15 ASSIGNMENT AND NOVATION

15.1 *Assignment*

(a) Subject to Clause 15.1(b), neither party may assign, transfer, novate (including a novation under Clause 15.2) or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Contract except to the extent approved by the ORR following consultation with the other party, and subject to the conditions (if any) of the ORR's approval.

(b) RfL(I) may at any time and from time to time on reasonable notice but without obtaining the consent of the Train Operator assign, transfer or create any encumbrance or other security interest over the whole or any part of its rights and/or obligations under this Contract to a third party.

15.2 *Novation*

RfL(I) (and any assignee of all or part of the rights of RfL(I) under this Contract) shall:

(a) agree to the novation of the rights and obligations of the Train Operator under this Contract in favour of another person (including TfL or a subsidiary of TfL or a person nominated by such person) in any circumstances where TfL (or a subsidiary of TfL, as the case may be) requests RfL(I) to participate in such a novation; and

(b) execute such contracts and do such things as TfL (or a subsidiary of TfL, as the case may be) may reasonably request to give effect to the novation.

15.3 *Novation terms*

Any novation under Clause 15.2 shall be on terms that:

(a) the Train Operator shall not be released from:

(i) any accrued but unperformed obligation;

(ii) the consequences of any breach of this Contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or

(iii) any liability in respect of anything done under this Contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and

(b) such other person shall not be required by RfL(I), as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in Clause 15.3(a), but this shall not prevent any such agreement being a term or condition of the novation if required by TfL (or a subsidiary of TfL, as the case may be).

16 PAYMENTS, INTEREST AND VAT

16.1 *Payment*

16.1.1 No deduction

All sums due or payable by either party under this Contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this Contract or in the CCOS Network Code.

16.1.2 Delivery of invoices

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4 or Schedule 8, or under the CCOS Network Code, shall be delivered by hand at, or sent by prepaid first class post to, or sent by email to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and the party making the supply shall issue a VAT invoice for that amount to the payer.

16.1.4 Method of payment

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

16.2 *Interest*

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this Contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3.

16.3 *VAT*

16.3.1 Payment of VAT

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

16.3.2 Reimbursement of VAT

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

16.3.3 VAT credit note to be issued on repayment

Where under this Contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

17 FORCE MAJEURE EVENTS

17.1 *Meaning of Force Majeure Event*

In this Clause 17:

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

"**Force Majeure Event**"	means any of the following events (and any circumstance arising as a direct consequence of any of the following events): (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage; (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure; (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice); (d) nuclear, chemical or biological contamination; (e) pressure waves caused by devices travelling at supersonic speeds; (f) discovery of fossils, antiquities or unexploded bombs; and (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;
"**Force Majeure Notice**"	means a notice given or to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;
"**Force Majeure Report**"	means a report given or to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;
"**Relevant Force Majeure Event**"	means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 17; and
"**Relevant Obligation**"	means an obligation under this Contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 17.

17.2 *Nature and extent of relief for Force Majeure*

Force Majeure relief under this Clause 17:

(a) extinguishes:

(i) the obligation of the Affected Party to perform a Relevant Obligation to the extent that it is prevented from doing so by reason of the Relevant Force Majeure Event; and

(ii) the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but

(b) is not available in respect of:

(i) any obligation to pay money under Schedule 4, Schedule 7 and Schedule 8; or

(ii) any other obligation to do or refrain from doing any other thing provided for in this Contract; and

(c) is only available in relation to a failure to perform an obligation under the CCOS Network Code to the extent (including as to time and conditions) that the CCOS Network Code so provides.

17.3 *Entitlement to Force Majeure relief*

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

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

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

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

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

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

17.4 *Procedure for claiming relief*

Without prejudice to Clause 17.3, an Affected Party is only entitled to claim Force Majeure relief under this Clause 17 if it complies with the obligations to

give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 17.5 and to perform its obligations under Clause 17.6.

17.5 *Force Majeure Notices and Reports*

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

(a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and

(b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

(a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within seven days of service of the Force Majeure Notice; and

(b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

17.5.3 Other information

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

17.6 *Mitigation*

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

(a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and

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

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.6.

17.7 *Duration of relief for force majeure*

The right of an Affected Party to relief under Clause 17.2 shall cease on the earlier of:

(a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and

(b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

17.8 *Availability of Performance Order*

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

18 MISCELLANEOUS

18.1 *Non waiver*

18.1.1 No waiver

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

18.1.2 Failure or delay in exercising a right or remedy

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

18.2 *Variations*

18.2.1 Amendments to be in writing and to be approved

No amendment of any provision of this Contract shall be effective unless:

(a) such amendment is in writing and signed by, or on behalf of, the parties; and

(b) if it is an amendment which requires the ORR's approval under section 22 of the Act, the amendment has been approved by the ORR.

18.2.2 Exceptions

Clause 18.2.1(b) does not apply to amendments of the following kinds:

(a) an amendment made by virtue of a general approval issued by ORR under section 22 of the Act; and

(b) a modification made by virtue of Clause 18.4.2.

18.2.3 No Office of Rail and Road approval needed

Modifications of the following kinds do not require the ORR's approval under section 22 of the Act and so are not subject to Clause 18.2.1(b):

(a) modifications effected by virtue of any of the Schedules to this Contract; and

(b) modifications effected by virtue of the CCOS Network Code,

unless the relevant provision expressly states that it requires the approval of the ORR.

18.2.4 Conformed copy of contract

RfL(I) shall produce and send to the Train Operator and to the ORR a conformed copy of this Contract within 28 days of the making of any amendment or modification to it.

18.3 *Entire contract and exclusive remedies*

18.3.1 Entire contract

Subject to Clause 18.3.3:

(a) this Contract contains the entire agreement between the parties in relation to the subject matter of this Contract;

(b) each party acknowledges that it has not been induced to enter into this Contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature

whatsoever other than as expressly set out in this Contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

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

18.3.2 Exclusive remedies

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

(a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this Contract; and

(b) the remedies provided for in this Contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 Fraud, death and personal injury

Nothing in this Contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

(a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this Contract, in respect of any statement made fraudulently by the other party before the execution of this Contract;

(b) any right which either party may have in respect of fraudulent concealment by the other party;

(c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

(d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 *Notices*

18.4.1 Giving of notices

Any notice to be given under this Contract:

(a) shall be in writing; and

(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or recorded delivery or by email to, the relevant address or email address (as the case may be) set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 Right to modify registered company and communication details

A party shall be entitled to modify in any respect:

(a) the registered name and address details which relate to it and are set out on page one of this Contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this Contract); and

(b) the communication particulars which relate to it and which are set out in Schedule 1,

by giving notice of such modification:

(i) to the other party as soon as reasonably practicable; and

(ii) to the ORR within 14 days of such modification.

18.4.3 Deemed receipt

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

(a) if sent by hand or recorded delivery, at the time of delivery;

(b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and

(c) if sent by email (subject to confirmation of receipt of delivery) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 on the next following Working Day.

18.4.4 Copyees

If Schedule 1 specifies any person to whom copies of notices shall also be sent:

(a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and

(b) such copy notice shall be sent immediately after the original notice.

18.5 *Counterparts*

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

18.6 *Survival*

Those provisions of this Contract which by their nature or implication are required to survive expiry or termination of this Contract (including the provisions of Clauses 1 (Interpretation), 2 (CCOS Network Code) 8 (Liability), 10 (Liability - Other Matters), 11 (Restrictions on Claims); 12 (Governing Law), 13.1 (CCOS ADRR), 13.2 (Unpaid Sums), 14 (Confidentiality and Freedom of Information), 16 (Payments, Interest and VAT), 17 (Force Majeure Events), this Clause 18 (Miscellaneous), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on liability)), shall so survive and continue in full force and effect, together with any other provisions of this Contract necessary to give effect to such provisions.

18.7 *Contracts (Rights of Third Parties) Act 1999*

18.7.1 Application to third parties

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

18.7.2 Application to the Office of Rail and Road

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

18.7.3 Application to TfL

TfL shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Clauses 15.2 and 15.3.

19 TRANSITION

19.1 *Corresponding Rights*

In relation to any Corresponding Right:

(a) any Access Proposal or Rolled Over Access Proposal made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:

(i) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(ii) be deemed to have effect under this Contract as from the Transition Date;

(b) any Train Slot which is the subject of an Access Proposal or Rolled Over Access Proposal referred to in Clause 19.1(a) shall for all purposes be treated as if it had been established in and under this Contract and not the Previous Access Agreement;

(c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:

(i) are made in accordance with Parts D, F, G or H of the CCOS Network Code under the Previous Access Agreement in relation to the CCOS Engineering Access Statement or the CCOS Timetable Planning Rules, Complex Projects Procedure, CCOS Vehicle Change, CCOS Network Change, any other Restrictions of Use or train regulation; and

(ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,

shall:

(A) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(B) be deemed to have effect under this Contract as from the Transition Date; and

(d) in applying Schedule 4, effect shall be given in relation to any Competent Authority Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement.

19.2 *Previous Access Agreements*

Without prejudice to Clause 19.1, on the Transition Date the Previous Access Agreement shall terminate with immediate effect. Such termination shall be without prejudice to accrued rights and obligations under the Previous Access Agreement.

19.3 *Definitions*

In this Clause 19:

"**Corresponding Right**"	means any right of a party under this Contract which: (a) relates to the permission of the Train Operator to use the Routes; and (b) corresponds to a right which: (i) existed under the Previous Access Agreement; and (ii) ceased to have effect under the Previous Access Agreement as from the Transition Date;
"**Previous Access Agreement**"	means the track access agreement dated [ ] between RfL(I) and [ ]; and
"**Transition Date**"	means the date on which this Contract comes into effect for all purposes.

SCHEDULE 1 CONTACT PARTICULARS

1 RfL(I)'s address for service of notices is:

Rail for London (Infrastructure) Limited

5 Endeavour Square

London

E20 1JN

Tel: [ ]
Email: [ ]

All written notices to be marked:

"URGENT: ATTENTION LEGAL DIRECTOR"

and copied to: [ ]

Address: [ ]

Tel: [ ]

Email: [ ]

2 The Train Operator's address for the service of notices is:

[ ]
[ ]

Tel: [ ]
Email: [ ]

All written notices to be marked:

"URGENT: ATTENTION [ ]"

and copied to: [ ]

Address: [ ]

Tel: [ ]
Email: [ ]

SCHEDULE 2 THE ROUTES

1 In order to provide the Services, the Train Operator has permission to use the Routes specified in Column 1 of Table 2.1, Table 2.2 and Table 2.6 of Schedule 5.[1]

2 In order to make Ancillary Movements and/or NR Ancillary Movements, the Train Operator has permission to use any reasonable route on the CCOS.

3 In order to Stable railway vehicles on the CCOS, the Train Operator has permission to use any reasonable location.

4 Use of all Routes is subject to the CCOS Network Code.

[1] RfL(I) note: No diversionary Routes are available on CCOS. Train Operators would need to negotiate alternative arrangements with Network Rail in relation to diversionary Routes (such as via the North London Line).

SCHEDULE 3 COLLATERAL AGREEMENTS

1 A usage agreement between (1) the Train Operator and (2) London Underground Limited granting the Train Operator permission to use the following stations:

[Bond Street;

Farringdon;

Liverpool Street (LUL);

Tottenham Court Road; and

Whitechapel.]

[Delete as applicable.]

2 An access agreement between (1) the Train Operator and (2) RfL(I) granting the Train Operator permission to use the following stations:

[Canary Wharf;

Custom House;

Paddington (CCOS); and

Woolwich.]

[Delete as applicable.]

3 An access agreement between (1) the Train Operator and (2) [relevant counterparty] granting the Train Operator permission to use Abbey Wood station. ***[Delete as applicable.]***

4 An access agreement between (1) the Train Operator and (2) Network Rail granting the Train Operator permission to use Network Rail's track from:

[Pudding Mill Lane Junction Connection Point; and

Westbourne Park Junction Connection Point.[2]]

[Delete as applicable.]

[2] RfL(I) note: The Pudding Mill Lane Junction Connection Point and Westbourne Park Junction Connection Point are each operationally signalled, to allow transition of Services between the CCOS and the NR Network. Abbey Wood is not included here. Whilst there will be a connection between the CCOS and the NR Network at Abbey Wood, it will not be operationally signalled, meaning trains can only move from the CCOS to the NR Network when a Restriction of Use is in place. Accordingly, there is no requirement for an access agreement to be in place relating to the use of Network Rail's track adjoining the CCOS at Abbey Wood.

5 An accession agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement.

6 [A concession agreement between (1) the Train Operator and (2) Rail for London Limited under which the concessionaire undertakes to provide or procure the provision of all or a material part of the Services.]

SCHEDULE 4 COMPENSATION FOR RESTRICTIONS OF USE

1 Definitions

1.1 *Defined terms*

In this Schedule 4, unless the context otherwise requires:

"Aggregate IRC/FCC" means, in respect of any Relevant Year, the aggregate amount of the IRC and the FCC (each as defined in Schedule 7) anticipated as being payable by the Train Operator during that Relevant Year calculated on the basis:

(a) described in Schedule 7; and

(b) that all capacity which is reserved by the Train Operator in Schedule 5 of this Contract is timetabled in the Applicable Timetable;

"CCOS Asset Management Plan" has the meaning ascribed to it in Part 3 of Schedule 7;

"Competent Authority Rate" means the amount payable by RfL(I) to the Train Operator in respect of a Competent Authority Restriction of Use as calculated in accordance with paragraph 7;

"Corresponding Day Timetable" means, in relation to a Corresponding Day, the New Working Timetable applicable to the relevant Timetable Period or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 6;

"Direct Loss" means the aggregate amount of the Train Operator's demonstrable:

(a) (i) bus and taxi hire costs;

(ii) publicity costs;

(iii) train planning and diagramming costs;

(iv) other costs directly related to the organisation and management of the Train Operator's response to a Restriction of Use,

reasonably incurred by the Train Operator as a result of a Restriction of Use, adjusted by:

(A) adding any increase in costs which results from increases in train usage; and

(B) deducting any decrease in costs which results from decreases in train usage,

(b) loss of revenue directly resulting from the Restriction of Use,

but (in each case):

(i) only to the extent that the Train Operator has used reasonable endeavours to mitigate such costs or losses and in any event excluding any consequential losses; and

(ii) not including publicity costs, to the extent that such costs relate to publicity which is similar to publicity undertaken by RfL(I) or an Affiliate of RfL(I) (including TfL) in relation to that Restriction of Use;

"Operator Restriction of Use" means a Restriction of Use of the type referred to in paragraph 2.3;

"Possessions Allowance" means 104 hours Saturday to Sunday planned disruptive possessions in a Timetable Year on the CCOS, the dates and times of such disruptive possessions as may be set out in the Applicable CCOS Engineering Access Statement agreed or determined pursuant to Part D of the CCOS Network Code;

"Relevant Costs" means, in respect of any Competent Authority Restriction of Use, all costs, expenses and losses (including loss of profit, loss of revenue and consequential losses) incurred by RfL(I) and/or any train operator using the CCOS (including the Train Operator) as a consequence of the taking of that Competent Authority

	Restriction of Use (but without double counting);
"**Restriction of Use Day**"	means a Day on which a RfL(I) Restriction of Use is taken or deemed to be taken;
"**RfL(I) Restriction of Use**"	means any Restriction of Use other than an Operator Restriction of Use or a Competent Authority Restriction of Use; and
"**Week**"	means a period commencing at 0200:00 hours on any Sunday and ending at 0159:59 hours on the next following Sunday.

1.2 *Interpretation*

A Restriction of Use shall be deemed to be taken if and to the extent it results in any difference between timetables of the type referred to in the definition of "Restriction of Use". For these purposes, a difference between timetables shall be deemed to be due to a Restriction of Use where the difference was initially the direct result of the Restriction of Use being notified, whether or not the Restriction of Use was subsequently cancelled in whole or in part.

1.3 *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Schedule 6 and not of this Schedule 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

2 Application of this Part

2.1 *Entry into effect*

This Schedule 4 shall apply in respect of Restrictions of Use.

2.2 *Applicable CCOS Engineering Access Statement and the CCOS Network Code*

The provisions of this Schedule 4 shall be without prejudice to:

(a) RfL(I)'s right to take Restrictions of Use under or pursuant to the Applicable CCOS Engineering Access Statement;

(b) the establishment of any amended Working Timetable under Part H of the CCOS Network Code; and

(c) any rights pursuant to the CCOS Network Code that the Train Operator may have to challenge any decision of RfL(I).

2.3 *Operator Restriction of Use*

RfL(I) shall not be obliged to make any payments to the Train Operator for any one or more Restrictions of Use to the extent:

(a) required as a result of any damage to RfL(I) or Environmental Damage which in each case:

(i) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this Contract; and

(ii) RfL(I) demonstrates, is in excess of fair wear and tear arising from use of the CCOS by the Train Operator; or

(b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the CCOS); or

(c) required in connection with a Network Change proposed by the Train Operator under Condition G3; or

(d) that the Restriction of Use is within the Possessions Allowance.

2.4 *RfL(I) payments*

Subject to paragraphs 2.3 and 9, RfL(I) shall make payments to the Train Operator (in accordance with the procedure in paragraph 8) in respect of Restrictions of Use calculated on the following basis:

(a) for each RfL(I) Restriction of Use, in accordance with paragraph 3; and

(b) for each Competent Authority Restriction of Use, in accordance with paragraph 7.

3 Compensation for RfL(I) Restrictions of Use

Subject to paragraphs 2.3 and 9, RfL(I) shall, in respect of each RfL(I) Restriction of Use, pay to the Train Operator the Direct Losses incurred by the Train Operator as a consequence of such RfL(I) Restriction of Use.

4 CCOS Asset Management Plan

4.1 RfL(I) shall provide a copy of the CCOS Asset Management Plan to the Train Operator within 10 Working Days of the Effective Date and shall provide copies of any material changes proposed to the CCOS Asset Management Plan to the Train Operator, identifying where these may result in requirements for Restrictions of Use outside of the Possessions Allowance.

4.2 The Train Operator shall be entitled to review and comment on the CCOS Asset Management Plan and on any proposed material changes to the CCOS Asset Management Plan submitted by RfL(I). RfL(I) shall give reasonable consideration to any such comments, in particular where they relate to possible requirements for a Restriction of Use outside of the Possessions Allowance and shall notify the Train Operator of its response to such comments as soon as reasonably practicable.

5 Schedule 8 Application

If and to the extent that a RfL(I) Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under Schedule 4).

6 Restriction of Use Day and Corresponding Day

(a) If, for the purpose of identifying a Corresponding Day, no Day is found under paragraph (a) or (b) of the definition of "**Corresponding Day**" and the parties have failed to reach agreement on the Corresponding Day by the date falling 8 Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved by submission to the CCOS Access Dispute Resolution Rules.

(b) The relevant Forum's remit shall be that it shall:

(i) reach a decision which is fair and reasonable; and

(ii) identify the Day in either any version of the Working Timetable or any New Working Timetable notified to the Train Operator on or before D-26, in either case which has been produced in accordance with the CCOS Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the First Day (as that term is used in the definition of Corresponding Day) but for Restrictions of Use reflected in the New Working Timetable for the First Day.

7 Competent Authority Rate

7.1 *Calculations*

The Competent Authority Rate shall be calculated as follows:

(a) where any compensation paid to RfL(I) in relation to a Competent Authority Restriction of Use is sufficient to cover the Relevant Costs of all train operators using the CCOS and of RfL(I), the Relevant Costs of the Train Operator in relation to the Competent Authority Restriction of Use; and

(b) where such compensation is not so sufficient, such proportion of that compensation as the Train Operator's Relevant Costs bears to the sum of RfL(I)'s Relevant Costs and the Relevant Costs of all train operators using the CCOS in respect of that Competent Authority Restriction of Use.

7.2 *Negotiation of compensation with Competent Authority*

RfL(I) shall use all reasonable endeavours to negotiate with the relevant Competent Authority a level of compensation in respect of the Competent Authority Restriction of Use which is sufficient to ensure that the Train Operator receives compensation for all of its Relevant Costs. RfL(I) shall from time to time consult with the Train Operator and keep the Train Operator informed in reasonable detail of the progress of such negotiations.

7.3 *Notification of Train Operator's Relevant Costs*

(a) Within 28 days of the end of each Period in which a Competent Authority Restriction of Use is taken, the Train Operator shall supply to RfL(I):

(i) details of its Relevant Costs; and

(ii) reasonable details of any of its Relevant Costs which are not fully determined.

(b) Save to the extent that the Train Operator supplies details of its Relevant Costs under paragraph 7.3(a), such costs shall not be regarded as Relevant Costs.

(c) Within 10 days of determination of any Relevant Costs which are supplied under paragraph 7.3(a)(ii) above as not fully determined, the Train Operator shall serve a supplemental notice on RfL(I), including final details of such Relevant Costs.

7.4 *Notification of RfL(I)'s Relevant Costs*

(a) Within 28 days of receipt of information under paragraph 7.3 above RfL(I) shall supply to the Train Operator:

(i) details of its Relevant Costs; and

(ii) reasonable details of any of its Relevant Costs which are not fully determined.

(b) Save to the extent that RfL(I) supplies details of its Relevant Costs under paragraph 7.4(a), such costs shall not be regarded as Relevant Costs.

(c) Within 10 days of determination of any Relevant Costs details of which are supplied under paragraph 7.4(a)(ii) as not fully determined,

RfL(I) shall serve a supplemental notice on the Train Operator, including final details of such Relevant Costs.

7.5 *Compensation received by RfL(I)*

RfL(I) shall inform the Train Operator of compensation received in respect of each Competent Authority Restriction of Use within 7 days of receipt of the compensation. RfL(I) shall pay the compensation into a segregated account and retain it in such an account until distributed in accordance with paragraph 8.

8 Payment Procedures

8.1 *RfL(I) Restrictions of Use*

(a) Within 10 Working Days after the end of each Period, RfL(I) shall provide to the Train Operator a statement ("**Possessions Statement**") showing:

(i) all RfL(I) Restrictions of Use taken during that Period; and

(ii) all Competent Authority Restrictions of Use taken during that Period,

in sufficient detail to enable the Train Operator to make an informed assessment thereof.

(b) Within 20 Working Days of the receipt of the Possessions Statement, the Train Operator shall notify RfL(I) of any compensation payable to the Train Operator by RfL(I) in respect of the RfL(I) Restrictions of Use identified in the Possessions Statement together with the details of the full amount of Direct Losses incurred by the Train Operator in respect of such Restrictions of Use.

(c) The aggregate liabilities of RfL(I) and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Schedule 4 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by RfL(I) or the Train Operator, as the case may be, within 20 Working Days after the receipt by RfL(I) of the Train Operator's notice in accordance with paragraph 8.1(b).

8.2 *Competent Authority Restrictions of Use*

(a) Where all Relevant Costs have been finally determined under paragraph 7 in respect of a Competent Authority Restriction of Use for which compensation has been received by RfL(I), RfL(I) shall:

(i) forward to the Train Operator a calculation of such sums as are due to the Train Operator in respect of that Restriction of Use; and

(ii) pay to the Train Operator any compensation due in accordance with paragraph 7 in respect of that Restriction of Use:

(A) plus any interest accrued and calculated in accordance with paragraph 4.2 of Part 4 of Schedule 7; and

(B) less any interim payments already made in respect of that Restriction of Use under paragraph 8.2(c),

within 20 Working Days after receipt of such compensation or 20 Working Days after final determination of all Relevant Costs, whichever is the later.

(b) Where RfL(I) has received compensation in respect of a Competent Authority Restriction of Use for which the Relevant Costs have not been fully determined within 20 Working Days of receipt of the compensation, RfL(I) shall within 20 Working Days of receipt of the compensation forward to the Train Operator a statement of:

(i) all Relevant Costs which have been fully determined;

(ii) all Relevant Costs of which RfL(I) is aware and which have not been fully determined;

(iii) interim payments already made under paragraph 8.2(c) in respect of that Competent Authority Restriction of Use; and

(iv) its proposals for making an interim payment in respect of that compensation.

(c) Within 20 Working Days after serving the statement under paragraph 8.2(b), RfL(I) shall make an interim payment to the Train Operator in accordance with its proposals.

8.3 *Disputes*

Within 10 Working Days of receipt of a statement under paragraphs 7.3, 7.4, 8.1 or 8.2, the relevant party shall notify the other party of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the relevant party shall be deemed to have agreed the contents of the statement.

8.4 *Dispute resolution*

The procedure for resolving disputes notified under paragraph 8.3 shall be as follows:

(a) within 5 Working Days of service of any notice under paragraph 8.3, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith (the "**first meeting**");

(b) if, within 5 Working Days of the first meeting, the parties are for any reason still unable to agree the disputed aspects of the statement,

each party shall promptly (and in any event within 5 Working Days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;

(c) within 20 Working Days of the first meeting, the senior officers shall meet with a view to resolving all disputes; and

(d) if no resolution results within 10 Working Days of that meeting, either party may require that the matter be resolved by the submission to the CCOS Access Dispute Resolution Rules.

8.5 *Payments in the event of a dispute*

Where any amount under paragraphs 8.1 or 8.2 is in dispute:

(a) where an invoice has already been issued, a credit note shall be issued in respect of the full amount of such invoice;

(b) an invoice (or revised invoice, as the case may be) shall be issued in respect of the undisputed amount and the undisputed amount shall be paid in accordance with paragraphs 8.1 or 8.2 as the case may be;

(c) an invoice in respect of the disputed amount shall be issued promptly after the dispute is resolved or determined (to the extent that the amount in dispute is adjudged or resolved to be payable) and shall be paid within 20 Working Days of the date of the invoice; and

(d) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

9 Cap on Compensation

The compensation payable by RfL(I) to the Train Operator in respect of any Restriction of Use (excluding any Competent Authority Restriction of Use) in any Relevant Year shall not exceed an amount equal to the Aggregate IRC/FCC in respect of that Relevant Year.

SCHEDULE 5 THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule 5, unless the context otherwise requires:

"**AM Peak**"	means that group of Services Scheduled on any Weekday (excluding Public Holidays) to arrive at Paddington (CCOS) station or Liverpool Street (LUL) station between 0700 hours and 0959 hours;
"**Calling Pattern**"	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
"**Clockface Departures**"	means, in respect of any Service, a pattern whereby departures from the point of origin of that Service, or any specified intermediate point, are fixed at the same number or numbers of minutes past each hour;
"**Exercised**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Journey Time**"	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service (including Pathing Time, station dwell time, performance allowances, engineering recovery allowances and any other allowances as provided for in the Applicable CCOS Engineering Access Statement and the Applicable CCOS Timetable Planning Rules);
"**Journey Time Review Notice**"	has the meaning ascribed to it in paragraph 7.5;
"**Maximum Journey Time**"	means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 4 of Table 6.1;
"**Modification Notice**"	has the meaning ascribed to it in paragraph 7.10;
"**Off-Peak Services**"	means that group of Services Scheduled on any part of a Weekday which are not AM Peak or PM Peak services and "**Off-Peak**" shall be construed accordingly;
"**Passenger Train Slot**"	means a Train Slot intended by the Train Operator to be used for the provision of a Service;

"**Pathing Time**"	means additional time in the schedule of a train between two points, or at a single location, caused by the application of margins required by the CCOS Timetable Planning Rules between trains progressing along or across the same piece of the CCOS;
"**PM Peak**"	means that group of Services Scheduled on any Weekday (excluding Public Holidays) to depart from Paddington (CCOS) station or Liverpool Street (LUL) station between 1600 hours and 1859 hours;
"**Public Holiday**"	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
"**Reduced Regular Calling Pattern**"	has the meaning ascribed to it in paragraph 4.1;
"**Regular Calling Pattern**"	has the meaning ascribed to it in paragraph 4.1;
"**Scheduled**"	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
"**Service Group**"	means any one or more (as the context may require) of the service groups described in this Schedule;
"**Timetable Period**"	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
"**Train Service Code**" **or** "**TSC**"	means the eight character code applied in the Performance Monitoring System and used to identify Services;
"**Weekday**"	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and
"**xx20**"	means, as an example of this notation, 20 minutes past the hour.

1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.

1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to:

(a) departing from the first point at which it is to pick up passengers on the Day in question (where the scheduled departure point of that Train is on the CCOS); or

(b) entry onto the CCOS at a Boundary (as defined in Schedule 8) on the Day in question (where the first point at which it is to pick up passengers is on a network other than the CCOS),

notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2						
Service Group: [nnnn]												
Service description						**Passenger Train Slots**						
From	**To**	**Via**	**Description**	**TSC**	**Timing Load**	**Total Week-day[2]**	**Peak Times[1]**		**Off-Peak times**	**Weekday[1]**	**Satur-day[2]**	**Sunday**
							AM Peak	**PM Peak**				

Notes to Table:

1 Passenger Train Slots listed under the sub-headings "AM Peak", "PM Peak" and "Off Peak" are the constituent parts of, and are not in addition to, those listed under the sub-heading "Total Weekday".

2 The number of Passenger Train Slots on a Public Holiday shall be the same number of Train Slots as the quantum specified in table 2.1 for a Saturday.

[Guidance Notes (to be deleted from the completed contract)

Populate note 1 only if the definition of "Peak Services" in Paragraph 1 has not been populated. If it has, delete notes 1 and 2.

For TOCs with distinct summer and winter services, some Schedule 5 tables could have separate summer and winter versions.

Where rights are not split between Peak and Off-Peak, those columns and footnote 1 should be deleted.

The “Via” column should be used to identify a Firm Right by a specific route where there are alternatives. If not required, use “N/A”.]

Passenger Train Slots

2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the AM Peak, PM Peak and Off-Peak times so listed using any Specified Equipment included in paragraph 5.1 that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the CCOS Network Code.

2.2 [In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:

(a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at [mmm, nnn, lll]; and

(b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at [kkk, jjj, iii] [any other station listed in its Calling Pattern].

2.3 In order to provide through Services the Train Operator has:

(c) Firm Rights to combine Passenger Train Slots at [*nnn*, *mmm and lll*]; and

(d) Contingent Rights to combine Passenger Train Slots at [*kkk*, *jjj and iii*] [all other locations].][3]

[3] RfL(I) Note: Paragraphs 2.2 and 2.3 will be included in a specific track access agreement only if there is a requirement to identify specific services operating from an adjacent infrastructure manager's network to an intermediate point on the CCOS.

Table 2.2: Additional Passenger Train Slots

1					2						
Service Group: [nnnn]											
Service description					**Additional Passenger Train Slots**						
From	**To**	**Via**	**Description**	**TSC**	**Total Week-day**	**Peak Times**		**Off-Peak times**	**Weekday**	**Satur-day**	**Sunday**
						AM Peak	**PM Peak**				

Additional Passenger Train Slots

2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.

2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:

(a) a Contingent Right to call at any station listed in Table 4.1;

(b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and

(c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

Table 2.6: NR Ancillary Movements

1					**2**		
Service Group: [TBC]							
NR Ancillary Movements description					**Quantum**		
From	**To**	**Via**	**Description**	**TSC**	**Weekday**	**Saturday**	**Sunday**
Westbourne Park Junction Connection Point	Abbey Wood						
Abbey Wood	Westbourne Park Junction Connection Point						
Paddington (CCOS)	Pudding Mill Lane Junction Connection Point						
Pudding Mill Lane Junction Connection Point	Paddington (CCOS)						

Ancillary Movements

2.6 The Train Operator has:

(a) Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator under this Contract, including:

(i) movements for the purpose of maintenance of rolling stock to and from maintenance depots;

(ii) movements for driver training purposes; and

(iii) empty stock movements;

(b) Firm Rights to the NR Ancillary Movements specified in Table 2.6; and

(c) Contingent Rights to make other NR Ancillary Movements of Specified Equipment.

2.7 For the purpose of paragraph 2.6, Ancillary Movements and/or NR Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:

(a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or

(b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:

(a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2; and

(b) each relief Passenger Train Slot being allocated the relevant Train Service Code.

2.9 Subject to paragraph 2.10, the entitlement of the Train Operator to Passenger Train Slots on any Public Holiday shall be in accordance with the Passenger Train Slots specified in table 2.1 for a Saturday.

2.10 The CCOS will be closed on 25 December every year and save as otherwise agreed in writing the Train Operator shall not have rights to operate Services on such date.

2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

3 Intervals

Table 3.1: Service Intervals

1					2	3					4				
Service Group [nnnn]															
Service description					**Station where interval applies**	**Interval (minutes)**					**Maximum variation (+/- minutes)**				
From	**To**	**Via**	**Description**	**TSC**		**Peak[1]**	**Off-Peak[2]**		**Satur-day[4]**	**Sun-day[5]**	**Peak[1]**	**Off-Peak[2]**		**Satur-day[4]**	**Sun-day[5]**

Notes to Table:

1 "Peak" means in Table 3.1 [start time] to [end time] and [start time] to [end time].

2 "Off-Peak" means in Table 3.1 [start time] to [end time]

3 Not used.

4 "Saturday" means in Table 3.1 [start time] to [end time]

5 "Sunday" means in Table 3.1 [start time] to [end time]

[Guidance Notes (to be deleted from the completed contract)

These footnotes indicate the period within which the interval is to apply.

If Tables 3.1(a) and 3.1(b) are used for AM Peak and PM Peak services, delete the Peak columns.

For TOCs which do not differentiate between Peak and Off-Peak, those columns should be merged and headed "Weekday".

Where it is intended for services to be capable of being flexed only after the standard departure time, to give repeating "clockface" pattern, a positive only flex should be used in column 4, e.g. +2/-0].

Table 3.1(a): AM Peak Service Intervals

1					**2**			**3**		
Service Group [*nnnn*]										
Service description					**Minimum number of Passenger Train Slots arriving at [*nnnn*] in each specified period [with a maximum variation of +/-[ ] minutes]**			**Minimum interval between Passenger Train Slots arriving at [*nnnn*] in each specified period [with a maximum variation of [ ] minutes]**		
From	**To**	**Via**	**Description**	**TSC**	**[07:00-07:59]**	**[08:00-08:59]**	**[09:00-09:59]**	**[07:00-07:59]**	**[08:00-08:59]**	**[09:00-09:59]**

Notes to Table:

Where application of the permitted variation shown in columns 2 and 3 above causes a Passenger Train Slot to fall within another defined hour or immediately before or immediately after the first and last times respectively shown above, the Train Operator's Firm Rights under paragraphs 3.1 and 3.2 shall be deemed to have been met.

[Guidance Notes (to be deleted from the completed contract)

[for one-off or irregular services within a service group where intervals are not relevant, insert "n/a" in column 3]

Table 3.1b: PM Peak Service Intervals

1					2			3		
Service Group [*nnnn*]										
Service description					**Minimum number of Passenger Train Slots departing from [*nnnn*] in each specified period [with a maximum variation of +/-[ ] minutes]**			**Minimum interval between Passenger Train Slots departing from [*nnnn*] in each specified period [with a maximum variation of -[ ] minutes]**		
From	**To**	**Via**	**Description**	**TSC**	**[16:00-16:59]**	**[17:00-17:59]**	**[18:00-18:59]**	**[16:00-16:59]**	**[17:00-17:59]**	**[18:00-18:59]**

Notes to Table:

Where application of the permitted variation shown in columns 2 and 3 above causes a Passenger Train Slot to fall within another defined hour or immediately before or immediately after the first and last times respectively shown above, the Train Operator's Firm Rights under paragraphs 3.1 and 3.2 shall be deemed to have been met.

[Guidance Notes (to be deleted from the completed contract)

[for one-off or irregular services within a service group where intervals are not relevant, insert "n/a" in column 3]

Service Intervals

3.1 In respect of each Service specified in column 1 of Tables [3.1(a) and 3.1(b),] and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to the minimum number of Passenger Train Slots during the times shown in column 2 of Table 3.1(a) and Table 3.1(b), arriving at the station shown in column 2 of Table 3.1(a) and departing from the station shown in column 2 of Table 3.1(b), being the component parts of, and not additional to, the quanta shown in column 2 of Table 2.1.

3.2 In respect of each Service specified in column 1 of Table 3.1, [3.1(a) and 3.1(b),] and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to:

(a) the interval between Passenger Train Slots shown in column 3 of Table 3.1 from the station shown in column 2 of that Table, being a station of [origin] or an intermediate station;

(b) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(a) arriving at the station shown in that column, being a [destination station or] an intermediate station; and

(c) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(b) departing from the station shown in that column, being a station of [origin] or an intermediate station.

3.3 The Firm Rights specified in paragraphs 3.1 and 3.2 may only be Exercised if the Access Proposal or Rolled Over Access Proposal for each such Service complies with the Regular Calling Pattern or Reduced Regular Calling Pattern and the Specified Equipment is capable of achieving the Timing Load specified for each such Service.

3.4 RfL(I) shall be entitled to vary:

(a) any one or more departures from the station named in column 2 of Table 3.1 and named in column 3 of Table 3.1(b) by up to the number of minutes specified in column 4 of Table 3.1 and column 3 of Table 3.1(b); and

(b) any one or more arrivals at the station named in column 3 of Table 3.1(a) by up to the number of minutes specified in column 3 of Table 3.1(a),

with the effect that the interval between any two or more of such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1, [3.1(a) and 3.1(b),] provided that the cumulative effect of such flexing over a period of [ ] minutes shall not reduce the Train Operator's entitlement to its full quantum of Passenger Train Slots.

4 Calling Patterns

Table 4.1: Calling Patterns

1					**2**	**3**
Service Group [*nnnn*]						
Service description						
Between (or from)	**And (or to)**	**Via**	**Description**	**TSC**	**Regular Calling Pattern**	**Additional stations**

[Guidance Notes (to be deleted from the completed contract)

"All stations" may be used in column 2 if appropriate instead of listing all the individual stations.

Note that this is a bi-directional table; there is no reason to populate it in both directions unless stopping patterns are not mirror image, in which case change the words "Between", "And" to read "From", "To" respectively and insert separate entries for each direction].

Calling Patterns

4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the "**Regular Calling Pattern**") or any subset of the Calling Pattern (the "**Reduced Regular Calling Pattern**").

Additional calls

4.2 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

5 Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5, subject to obtaining any necessary route clearance for the Routes, the Train Operator has Firm Rights to operate the following railway vehicles:

[List here all rolling stock to which Firm Rights are being given].

For the purposes of this Contract the railway vehicles specified in paragraph 5.1 are known as the "**Specified Equipment**".

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the CCOS can from time to time accommodate, subject to a right of RfL(I) to vary the train length in cases where the CCOS cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.

6 Journey Time Protection

Table 6.1: Journey Time Protection

1					**2**	**3**	**4**
Service Group [*nnnn*]							
Service description							
From	**To**	**Via**	**Description**	**TSC**	**Protection Type (MJT)**	**Days of the week**	**Journey Time (in minutes)**

[Guidance Notes (to be deleted from the completed contract)

Services with the same service description can have different Journey Times in Column 4 e.g. "100 with one journey time not exceeding 95" or "100 with 20% not exceeding 110".

Peak and Off-Peak Services may also be given different Journey Times.]

Journey Time protection

6.1 The Train Operator has Firm Rights to Maximum Journey Times under this paragraph 6 only in relation to Passenger Train Slots which are the subject of and comply with Firm Rights under paragraph 2.1 and paragraph 4.1.

6.2 In respect of each Service listed in column 1 of Table 6.1, the Train Operator has Firm Rights to a Journey Time, being a Maximum Journey Time as specified by MJT respectively in column 2, on the days listed in column 3, not exceeding the Journey Time listed in column 4.

6.3 Journey Times specified as Maximum Journey Times shall be increased or decreased (as the case may be) by an amount equal to any:

(a) increase or decrease in the relevant sectional running times applicable as at the date of this Contract;

(b) increase or decrease in the relevant station dwell times applicable as at as at the date of this Contract; and

(c) increase or decrease in the relevant performance allowances, engineering recovery allowances or any other allowances,

as such sectional running times, station dwell times or allowances are established and may change in accordance with the Applicable CCOS Engineering Access Statement and/or the Applicable CCOS Timetable Planning Rules.

7 Provisions applicable to Journey Time protection

Restriction on changes to the CCOS Engineering Access Statement and CCOS Timetable Planning Rules

7.1 Not used.

CCOS Network Change

7.2 If:

(a) in any Timetable Period, 90 per cent. or more of train movements which are Scheduled in that Timetable Period exceed the applicable Scheduled Journey Time; and

(b) the failure of such train movements to achieve those Scheduled Journey Times is attributable to the condition or operation of the CCOS,

then a CCOS Network Change within the meaning of paragraph (iii) of the definition of CCOS Network Change shall be treated as having occurred and the provisions of Part G of the CCOS Network Code shall apply as if such CCOS Network Change had been proposed by RfL(I) and compensation shall be payable to the Train Operator accordingly.

7.3 Not used.

7.4 Not used.

Provisions applicable to Maximum Journey Times

7.5 A Journey Time Review Notice is a notice given to the parties by the ORR:

(a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Table 6.1 as are specified in the notice;

(b) after consultation with the parties, TfL and such other persons as it considers appropriate; and

(c) containing its reasons for giving it.

7.6 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.

7.7 If the parties reach agreement on the variations in question, they shall send a copy of them to the ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.

7.8 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, either party may refer the matter for resolution in accordance with the CCOS ADRR. In such a case,

the parties shall agree in a Procedure Agreement, as defined in the CCOS ADRR, that the relevant CCOS ADRR Forum shall reach a determination that is fair and reasonable on the basis of the following criteria:

(i) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;

(ii) any relevant criteria which may have been published by the ORR; and

(iii) the reasons for the service of the Journey Time Review Notice given by the ORR in that notice.

Requirement for Office of Rail and Road's consent

7.9 Subject to paragraph 7.10, a variation:

(a) not used;

(b) agreed or determined as an outcome of a referral for resolution in accordance with the CCOS ADRR under any of the provisions of this paragraph 7; or

(c) agreed under paragraph 7.7;

shall have effect:

(i) only if the ORR has given its consent to it; and

(ii) from such date as is specified in that consent.

Office of Rail and Road's Modification Notice

7.10 A Modification Notice is a notice given to the parties by the ORR:

(a) specifying the changes which the ORR requires be made to the proposed variations which have been:

(i) not used;

(ii) agreed or determined as an outcome of a referral for resolution in accordance with the CCOS ADRR under any of the provisions of this paragraph 7; or

(iii) specified in an agreement of the kind referred to in paragraph 7.7;

(b) after consultation with the parties, TfL and such other persons as it considers appropriate; and

(c) containing its reasons for giving it.

7.11 If a Modification Notice is given, this Contract will have effect with the variations referred to in paragraph 7.10(a) as modified in accordance with the terms of the notice.

Office of Rail and Road's notice for substitution of date/period

7.12 The ORR shall be entitled, by notice to the parties and TfL, to substitute for any date or period specified in paragraph 7.8, a date which is not more than 180 days later, or a period which is not more than 180 days longer, than that so specified.

Requirements for notice under paragraph 7.12

7.13 No notice under paragraph 7.12 may be given unless:

(a) the ORR has consulted the parties and TfL;

(b) the ORR has taken into account any representations or objections which have been made to it within such period as it has specified for the purpose; and

(c) where the notice is given after the date or the expiry of the period to which it relates, it is given no later than 30 days after such date or expiry.

[Guidance Note (to be deleted from the completed contract)

All rights in this paragraph 8 are for use by exception only and will require justification in each case. Please refer to the relevant sections of the C&P documents]

8 Other rights

Table 8.1: Platform Rights

1					**2**	**3**
Service Group [*nnnn*]						
Service description						
From [or Between]	**To [or And]**	**Via**	**Description**	**TSC**	**Station**	**Platforms**

[Guidance Note (to be deleted from the completed contract)

Only to be used if it is essential that trains run from or to particular platforms – e.g., because of special facilities, such as road access for Motorail services, that are only available on those platforms.]

Platform rights

8.1 Subject to paragraph 8.2, the Train Operator has Firm Rights to have the Services specified in column 1 of Table 8.1, when departing from, calling at or terminating at the station specified in column 2, Scheduled to use the platforms set out in column 3.

8.2 Where the application of paragraph 8.1 would prevent RfL(I) from providing Train Slots to satisfy another train operator's Firm Rights, RfL(I) shall be entitled to vary the platform arrangements specified in Table 8.1 so as to provide the Train Operator with the best available alternative platform arrangements, being alternative platform arrangements which have the least detrimental effect on the Train Operator.

8.3 Not used.

8.4 Not used.

Table 8.3: Departure time ranges

1					2	3	4
Service Group [*nnnn*]							
Service description							
From	**To**	**Via**	**Description**	**TSC**	**Days**	**Station**	**Departure time ranges [xx:yy to xx:zz]**

[Guidance Note (to be deleted from the completed contract)

Only to be used when essential to the business, e.g. for school hours when a limited service is provided. This table may be adapted for Arrival time ranges in a similar format, for the same reasons]

Departure time ranges

8.5 For each Service specified in column 1 of Table 8.3, the Train Operator has Firm Rights, on the Days specified in column 2, to departure times from the station specified in column 3 within the range specified in column 4.

Table 8.4: Stabling facilities

1	2	3
Stabling facility	**Time available [aa:bb to xx:yy]**	**Specified Equipment**

[Guidance Note (to be deleted from the completed contract)

Only to be used when essential for the efficient operation of the business, where the Train Operator is the minority user in the area or there are other specific constraints]

Stabling facilities

8.6 The Train Operator has Firm Rights to use the Stabling facility specified in column 1 of Table 8.4 between the hours specified in column 2 for the purposes of Stabling the Specified Equipment specified in column 3.

8.7 Not used.

Table 8.6: Quantum of Additional Calls

1					**2**	**3**
Service Group [*nnnn*]						
Service description						
Between	**And**	**Via**	**Description**	**TSC**	**Additional Stations**	**Quantum of Additional Calls**

[Guidance Note (to be deleted from the completed contract)

This table should be used only when it is essential to serve stations a limited number of times each day, and there should normally be a linkage between this table and Table 4.1, column 3, "Additional Stations".]

Quantum of additional calls

8.8 The Train Operator has Firm Rights to have Scheduled, in respect of each Service specified in column 1 of Table 8.6, the number of calls specified in column 3 at the station(s) specified opposite that Service in column 2, such stations also being listed as "Additional Stations" in column 3 of Table 4.1.

SCHEDULE 6 EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1 Events of Default

1.1 *Train Operator Events of Default*

The following are Train Operator Events of Default:

(a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services by either;

(i) a Railway undertaking licence and a statement of national regulatory provisions granted by the ORR under the Licensing Regulations; or

(ii) a licence granted under section 8 of the Act unless it is exempt from the requirement to be so authorised under section 7 of the Act;

(b) an Insolvency Event occurs in relation to the Train Operator;

(c) (i) any breach by the Train Operator of this Contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, RfL(I) reasonably considers constitutes a threat to the safe operation of any part of the CCOS;

(d) any Track Charges due by the Train Operator to RfL(I) under this Contract remain unpaid for more than seven days after their due date;

(e) any other amount (other than Track Charges) due by the Train Operator to RfL(I) under this Contract remains unpaid for more than twenty-eight days after its due date, except where liability to pay any such sum is being contested by the Train Operator in good faith and with timely recourse to appropriate means of redress;

(f) any breach of this Contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to RfL(I);

(g) any breach of this Contract or any material breach of any of the Collateral Agreements which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators;

(h) the service of a Poor Performance Notice on the Train Operator; and

(i) where the Train Operator provides services pursuant to a Concession Agreement, termination of the Concession Agreement unless the Train Operator and TfL have entered into another concession agreement on or before the date of such termination.

1.2 *Notification*

The Train Operator shall notify RfL(I) promptly on becoming aware of the occurrence of a Train Operator Event of Default.

1.3 *RfL(I) Events of Default*

The following are RfL(I) Events of Default:

(a) RfL(I) ceases to be authorised to be the operator of that part of the CCOS comprising the Routes by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;

(b) an Insolvency Event occurs in relation to RfL(I);

(c) (i) any breach by RfL(I) of this Contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements or NR Ancillary Movements; and

(d) any breach of this Contract or any material breach of any of the Collateral Agreements by RfL(I) which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 *Notification*

RfL(I) shall notify the Train Operator promptly on becoming aware of the occurrence of a RfL(I) Event of Default.

1.5 *Service of a Poor Performance Notice*

If the Train Operator Performance Sums (as defined in Schedule 8) payable by the Train Operator pursuant to Schedule 8 exceeds the Train Operator SPP Threshold (as defined in paragraph 18 of Schedule 8) in either:

(a) any two (2) consecutive Periods; or

(b) any four (4) Periods in any consecutive rolling period of thirteen (13) Periods,

RfL(I) shall be entitled to serve a Poor Performance Notice on the Train Operator, provided that:

(i) if each of the matters set out in paragraph 1.6 are satisfied; and

(ii) unless there are significant, serious and short-term implications for the operation of the CCOS,

the presumption shall be that RfL(I) will not exercise its entitlement to serve a Poor Performance Notice on the Train Operator.

1.6 *Matters to be satisfied*

For the purposes of paragraph 1.5(b)(i), the following are the matters to be satisfied:

(a) the Train Operator has:

(i) identified the issue or fault which is causing the poor performance; and

(ii) explained the reasons for the Train Operator SPP Threshold (as defined in paragraph 18 of Schedule 8) being exceeded;

(b) the Train Operator and RfL(I) have agreed:

(i) a plan by which the Train Operator has set out the steps proposed to remedy the matters described in paragraph (a) and to ensure that the Train Operator SPP Threshold (as defined in paragraph 18 of Schedule 8) is not exceeded in future; and

(ii) the time period within which the Train Operator proposes to implement the steps described in (i);

(c) the Train Operator implements the plan agreed pursuant to paragraph (b) in accordance with its terms; and

(d) the plan agreed pursuant to paragraph (b) is remedying (in accordance with the plan) the issue or fault which is causing the poor performance.

2 Suspension

2.1 *Right to suspend*

2.1.1 RfL(I) may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

2.1.2 The Train Operator may serve a Suspension Notice where a RfL(I) Event of Default has occurred and is continuing.

2.2 *Contents of Suspension Notice*

A Suspension Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) the date and time at which suspension is to take effect;

(c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the CCOS;

(d) in the case of a Suspension Notice served on RfL(I), details of any necessary suspension of the Services; and

(e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

(i) the steps reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, seven days shall be a reasonable grace period).

2.3 *Effect of Suspension Notice served by RfL(I)*

Where RfL(I) has served a Suspension Notice on the Train Operator:

(a) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;

(b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from RfL(I) to the Train Operator under paragraph 2.5.4;

(c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and

(d) service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the CCOS Network Code.

2.4 *Effect of a Suspension Notice served by the Train Operator*

Where the Train Operator has served a Suspension Notice on RfL(I):

(a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;

(b) in relation to Services suspended by the Suspension Notice, the Train Operator shall be entitled to an abatement or refund (as the case may be):

(i) on a daily basis;

(ii) of such proportion of the Annual Investment Recovery Charge, Annual Fixed Costs Charge, Additional Slot Investment Recovery Charge and Additional Slot Fixed Costs Charge (as those terms are defined in Schedule 7 and as the case may be); which

(iii) is attributable to the Passenger Train Slots (as that term is defined in Schedule 5) not run on any day due to the suspension (when compared with the number of Passenger Train Slots timetabled for

the Corresponding Day to that day (as that term is defined and determined in accordance with paragraph 6 of Schedule 4));

(c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to RfL(I) under paragraph 2.5.4; and

(d) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the CCOS Network Code.

2.5 *Suspension to be proportionate to breach*

2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of the Train Operator Events of Default shall be proportionate to the breach and, so far as reasonably practicable, apply only to the:

(a) railway vehicles;

(b) Services (and the Ancillary Movements and NR Ancillary Movements);

(c) Routes; and

(d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.

2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the RfL(I) Events of Default shall be proportionate to the breach and, so far as reasonably practicable, apply only to the:

(a) railway vehicles;

(b) Services (and the Ancillary Movements and NR Ancillary Movements);

(c) Routes; and

(d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant RfL(I) Rail Event of Default relates.

2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:

(a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and

(b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension

Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3 Termination

3.1 *RfL(I)'s right to terminate*

RfL(I) may serve a Termination Notice on the Train Operator:

(a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;

(b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;

(c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or

(d) where the Train Operator Event of Default specified in a Suspension Notice served by RfL(I) is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.2 *Train Operator's right to terminate*

The Train Operator may serve a Termination Notice on RfL(I):

(a) where RfL(I) fails to comply with its obligations under paragraph 2.5.3;

(b) where the RfL(I) Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or

(c) where the RfL(I) Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.3 *Contents of Termination Notice*

A Termination Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and

(c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:

(i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay

Track Charges or other amounts due, seven days is a reasonable grace period).

3.4 *Effect of Termination Notice*

Where RfL(I) or the Train Operator has served a Termination Notice on the other:

(a) the service of the Termination Notice shall not affect the parties' continuing obligations under this Contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);

(b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and

(c) this Contract shall terminate on the later of:

(i) the date and time specified in the Termination Notice for this Contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and

(ii) the date on which a copy of the Termination Notice is given to the ORR.

4 Consequence of termination

4.1 *Directions regarding location of Specified Equipment*

Immediately before, upon or following termination or expiry of this Contract, the Train Operator shall comply or procure compliance with all reasonable directions given by RfL(I) concerning the location of the Specified Equipment.

4.2 *Failure to comply with directions*

If the Train Operator fails to comply with any directions given under paragraph 4.1, RfL(I) shall be entitled to remove from the CCOS or Stable any Specified Equipment left on the CCOS or to instruct a third party to do so and any reasonable costs incurred by RfL(I) in taking such steps shall be paid promptly by the Train Operator.

4.3 *Evidence of costs*

RfL(I) shall provide such evidence of such costs as are referred to in paragraph 4.2 as the Train Operator shall reasonably request.

SCHEDULE 7 TRACK CHARGES AND OTHER PAYMENTS

PART 1: INTERPRETATION

1 Definitions

1.1 In this Schedule 7, unless the context otherwise requires:

"**Additional Slot Fixed Costs Charge**"	means, in respect of each Service Group set out in column A of Appendix 1, the FCC per Further Passenger Train Slot, as specified in column E of Appendix 1;
"**Additional Slot Investment Recovery Charge**"	means, in respect of each Service Group set out in column A of Appendix 1, the IRC per Further Passenger Train Slot, as specified in column C of Appendix 1;
"**Annual Fixed Costs Charge**"	means, in respect of: (a) each Service Group set out in column A of Appendix 1; and (b) the number of Passenger Train Slots set out for such Service Group in tables 2.1 and 2.2 of Schedule 5, the aggregate FCC for that Service Group imposed by RfL(I) under this Contract for the 13 Periods in a Relevant Year, as specified in column D of Appendix 1;
"**Annual Investment Recovery Charge**"	means, in respect of: (a) each Service Group set out in column A of Appendix 1; and (b) the number of Passenger Train Slots set out for such Service Group in tables 2.1 and 2.2 of Schedule 5, the aggregate IRC for that Service Group imposed by RfL(I) under this Contract for the 13 Periods in a Relevant Year, as specified in column B of Appendix 1;
"**CDIC**" or "**Costs Directly Incurred Charge**"	means the cost directly incurred charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 4 of Part 2 of this Schedule 7;

"**Control Period**"	means: (a) the Initial Period; and (b) thereafter, each subsequent period of five successive Relevant Years commencing at the moment which immediately succeeds the expiry of the previous control period and expiring on the fifth anniversary of the expiry of the previous control period (or as otherwise reset as part of an Interim Review, provided always that such reset period cannot exceed five successive Relevant Years);
"**EC4T**" or "**Traction Electricity Charge**"	means the traction electricity charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 5 of Part 2 of this Schedule 7;
"**Exercise**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**FCC**" or "**Fixed Costs Charge**"	means the fixed costs charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 3 of Part 2 of this Schedule 7;
"**Flexing Right**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Further Investment Recovery Charge**"	means the further investment recovery charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 6 of Part 2 of this Schedule 7;
"**Further Passenger Train Slot**"	means, in respect of a Service Group, any Day and within the AM Peak, PM Peak and Off-Peak times listed in Schedule 5, a Passenger Train Slot which is operated by the Train Operator and which exceeds the number of Passenger Train Slots set out for such Service Group in tables 2.1 and 2.2 of Schedule 5 of this Contract;
"**Further Train Slot Fixed Costs Charge**"	means the further train slot fixed costs charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 3.1.3 of Part 2 of this Schedule 7;
"**Further Train Slot Investment Recovery Charge**"	means the further train slot investment recovery charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 2.1.3 of Part 2 of this Schedule 7;
"**IRC**" or "**Investment Recovery Charge**"	means the investment recovery charge imposed by RfL(I) under this Contract, calculated in accordance with paragraph 2 of Part 2 of this Schedule 7;
"**Infrastructure**	means the meters located at Westbourne Park and Pudding Mill Lane which measure the utilisation of traction electricity by all

Meters"	users of the CCOS in each tariff band set out in the List of Tariffs;
"**Initial Period**"	means the period from and including the First Opening Date until and including the 31st March immediately following the third anniversary of the First Opening Date;
"**Interim Review**"	means the process set out in paragraphs 4.2 to 4.4 of Part 3 of this Schedule 7, which RfL(I) may initiate in the circumstances set out in paragraph 4.1 of Part 3 of this Schedule 7;
"**List of Tariffs**"	means the list of tariffs for traction electricity published by RfL(I) from time to time;
"**kWh**"	means kilowatt hours;
"**Material Charges Change**"	means: (a) a significant physical modification to the CCOS; or (b) an increase or decrease of not less than 10% in the number of timetabled train movements on the CCOS (relative to the number of train movements on the CCOS at the commencement of the Control Period);
"**Passenger Train Slot**"	has the meaning ascribed to it in Schedule 5 of this Contract;
"**Period**"	means each consecutive period of 28 days during the term of this Contract commencing at 0200 hours on 01 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 14 days on reasonable prior notice from RfL(I) to the Train Operator;

"**Review Provisions**"	means: (a) the value of the Annual Investment Recovery Charge set out in column B of Appendix 1; (b) the value of the Additional Slot Investment Recovery Charge set out in column C of Appendix 1; (c) the value of the Annual Fixed Costs Charge set out in column D of Appendix 1; (d) the value of the Additional Slot Fixed Costs Charge set out in column E of Appendix 1; (e) the value of the CDIC per Passenger Train Slot set out in column F of Appendix 1; (f) the value of the Further Investment Recovery Charge set out in column G of Appendix 1; (g) Schedule 4 (other than the cap on liability set out in paragraph 9 of Schedule 4); and (h) Schedule 8, and the relevant figures set out in Schedule 4 and Schedule 8 to this Contract to the extent that such figures are affected by the review of any of the above provisions, together with any necessary consequential changes, including to Schedule 4, paragraph 1 of Part 1 of Schedule 7, paragraph 1 of Part 2 of Schedule 7, Part 4 of Schedule 7 and Schedule 8;
"**Service Group**"	means a collection of Services contained within a Service Group specified in Schedule 5 of this Contract; and
"**Traction Electricity Charge Adjustment**"	means the adjustment to the EC4T as calculated in accordance with paragraph 5.4 of Part 2 of this Schedule 7.

PART 2: TRACK CHARGES

1 Principal Formula

The Train Operator shall pay to RfL(I) the Track Charges in respect of each Period p in accordance to the following formula:

$$TC_p = AIRC_p + FTSIRC_p + AFCC_p + FTSFCC_p + CDIC_p + EC4T_p + EA_t + FIRC_p$$

where:

TC_p is the Track Charges in respect of Period p;

$AIRC_p$ is the proportion of the Annual Investment Recovery Charge in respect of Period p, calculated in accordance with paragraph 2.1.2 and invoiced by RfL(I) in advance in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

$FTSIRC_p$ is the Further Train Slot Investment Recovery Charge in respect of Period p, calculated in accordance with paragraph 2.1.3 and invoiced by RfL(I) in arrears in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

$AFCC_p$ is the proportion of the Annual Fixed Costs Charge in respect of Period p, calculated in accordance with paragraph 3.1.2 and invoiced by RfL(I) in advance in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

$FTSFCC_t$ is the Further Train Slot Fixed Costs Charge in respect of Period p, calculated in accordance with paragraph 3.1.3 and invoiced by RfL(I) in arrears in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

$CDIC_p$ is the Costs Directly Incurred Charge in respect of Period p, calculated in accordance with paragraph 4 and invoiced by RfL(I) in arrears in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

$EC4T_p$ is the Traction Electricity Charge in respect of Period p, calculated in accordance with paragraph 5.2 or 5.3 (as the case may be) and invoiced by RfL(I) in arrears in accordance with paragraph 1.1 of Part 4 of this Schedule 7;

EA_t is the Traction Electricity Charge Adjustment in respect of Relevant Year t, calculated in accordance with paragraph 5.4 and invoiced by RfL(I) in arrears in accordance with paragraph 1.1 of Part 4 of this Schedule 7; and

$FIRC_p$ is the Further Investment Recovery Charge in respect of Period p, calculated in accordance with paragraph 6 and invoiced by RfL(I) in advance in accordance with paragraph 1.1 of Part 4 of this Schedule 7.

2 Investment Recovery Charge (IRC)

2.1 *Calculation of the IRC*

2.1.1 The Annual Investment Recovery Charge in a Relevant Year t ($AIRC_t$) shall be derived from the following formula:

$$\mathrm{AIRC_t} = \sum_{\mathrm{i}} \mathrm{I_{it}} \qquad \mathrm{t} \geq 2021$$

where for the Relevant Year t:

I_{it} is the Annual Investment Recovery Charge for each Service

Group *i*; and

$\sum_i$ is the summation across each Service Group.

2.1.2 The proportion of the Annual Investment Recovery Charge payable in respect of Period p (*AIRC*$_p$) shall be calculated as follows:

$$AIRCp = \frac{AIRCt}{13}$$

where *AIRC*$_t$ is the Annual Investment Recovery Charge in Relevant Year t calculated pursuant to paragraph 2.1.1, provided that if the Train Operator commences provision of the Services partway through a Period, the value of *AIRC*$_p$ shall be adjusted by reference to the number of Days remaining in the Period as a proportion of the total number of Days in that Period.

2.1.3 The Further Train Slot Investment Recovery Charge payable in respect of Period p (*FTSIRC*$_p$) shall be calculated as follows:

$$FTSIRC_p = \sum_i ASIRC_i \times FPTS_i$$

where for Period p:

$\sum_i$ is the summation across each Service Group *i;*

$ASIRC_i$ is the Additional Slot Investment Recovery Charge for that Service Group *i;* and

$FPTS_i$ is the number of Further Passenger Train Slots in a Service Group operated by the Train Operator in respect of Period p.

2.2 *Indexation of IRC per Service Group*

From the Principal Change Date occurring in December 2021 until 31 March 2022 (in each case, inclusive), the Annual Investment Recovery Charge and Further Train Slot Investment Recovery Charge for each Service Group i shall be derived from the following formula:

$$I_{i,2021} = IIF \times I_{i,2020}$$

where:

IIF is the Initial Indexation Factor; and

$I_{i,2020}$ is the Annual Investment Recovery Charge or the Further Train Slot Investment Recovery Charge (as the case may be) per Service Group i set on 1 April 2020 as set out in columns B and C of Appendix 1 to this Schedule 7.

With effect from the Relevant Year commencing on 1 April 2022 (and 1 April in each Relevant Year thereafter) the Annual Investment Recovery Charge and Further Train Slot Investment Recovery Charge for each Service Group shall

be indexed. Prior to the commencement of each such Relevant Year, RfL(I) shall calculate the indexed Annual Investment Recovery Charge and Further Train Slot Investment Recovery Charge and such charges shall have effect from the first day of the applicable Relevant Year to which the calculation relates.

Indexation of the Annual Investment Recovery Charge and Further Train Slot Investment Recovery Charge per Service Group set on 1 April in any Relevant Year t for Service Group i shall be derived from the following formula:

$$I_{i,t} = \frac{RPI_{t-1}}{RPI_{t-2}} I_{i,t-1} \qquad t \geq 2022$$

where:

RPI_{t-1} is the RPI published or determined with respect to the month of November in Relevant Year *t – 1*;

RPI_{t-2} is the RPI published or determined with respect to the month of November in Relevant Year *t – 2*; and

$I_{i,t-1}$ is the Annual Investment Recovery Charge or the Further Train Slot Investment Recovery Charge (as the case may be) per Service Group i set on 1 April of Relevant Year *t - 1*.

3 Fixed Costs Charge (FCC)

3.1 *Calculation of the FCC*

3.1.1 The Annual Fixed Costs Charge in a Relevant Year *t* ($AFCC_t$) shall be derived from the following formula:

$$AFCC_t = \sum_i F_{it} \qquad t \geq 2021$$

where for the Relevant Year *t*:

F_{it} is the Annual Fixed Costs Charge for each Service Group *i*; and

$\sum_i$ is the summation across each Service Group.

3.1.2 The proportion of the Annual Fixed Costs Charge payable in respect of Period p ($AFCC_p$) shall be calculated as follows:

$$AFCCp = \frac{AFCCt}{13}$$

where $AFCC_t$ is the Annual Fixed Costs Charge in Relevant Year *t* calculated pursuant to paragraph 2.1.1, provided that if the Train Operator commences provision of the Services partway through a Period, the value of $AFCC_p$ shall be adjusted by reference to the

number of Days remaining in the Period as a proportion of the total number of Days in that Period.

3.1.3 The Further Train Slot Fixed Costs Charge payable in respect of Period p (*FTSFCC*$_p$) shall be calculated as follows:

$$FTSFCC_p = \sum_i \quad ASFCC_i \times FPTS_i$$

where for Period p:

$\sum_i$ is the summation across each Service Group i;

$ASFCC_i$ is the Additional Slot Fixed Costs Charge for that Service Group i; and

$FPTS_i$ is the number of Further Passenger Train Slots in a Service Group operated by the Train Operator in respect of Period p.

3.2 *Indexation of the FCC per Service Group*

From the Principal Change Date occurring in December 2021 until 31 March 2022 (in each case, inclusive), the Annual Fixed Costs Charge and the Further Train Slot Fixed Costs Charge for each Service Group i shall be derived from the following formula:

$$F_{i,2021} = IIF \times F_{i,2020}$$

where:

IIF means the Initial Indexation Factor; and

$F_{i,2020}$ is the Annual Fixed Costs Charge or the Further Train Slot Fixed Costs Charge (as the case may be) per Service Group i set on 1 April 2020 as set out in columns D and E of Appendix 1 to this Schedule.

With effect from the Relevant Year commencing on 1 April 2022 (and 1 April in each Relevant Year thereafter) the Annual Fixed Costs Charge and the Further Train Slot Fixed Costs Charge for each Service Group shall be indexed. Prior to the commencement of each such Relevant Year, RfL(I) shall calculate the indexed the Annual Fixed Costs Charge and the Further Train Slot Fixed Costs Charge and such charges shall have effect from the first day of the applicable Relevant Year to which the calculation relates.

Indexation of the Annual Fixed Costs Charge and the Further Train Slot Fixed Costs Charge per Service Group i set on 1 April in any Relevant Year t shall be derived from the following formula:

$$F_{i,t} = \frac{RPI_{t-1}}{RPI_{t-2}} F_{i,t-1} \qquad t \geq 2022$$

where:

RPI_{t-1} is the RPI published or determined with respect to the month of November in Relevant Year *t – 1;*

RPI_{t-2} is the RPI published or determined with respect to the month of November in Relevant Year *t – 2;* and

$F_{i,t-1}$ is the Annual Fixed Costs Charge or the Further Train Slot Fixed Costs Charge (as the case may be) per Service Group i set on 1 April of Relevant Year *t – 1.*

4 Costs Directly Incurred Charge (CDIC)

4.1 *Calculation of the CDIC*

The CDIC in Period p (*CDIC*$_p$) shall be derived from the following formula:

$$CDIC_p = \sum_i C_{it} \times M_{it}$$

where for Period p:

M_{it} is the total number of Passenger Train Slots for each Service Group i which are operated by the Train Operator in Period p;

C_{it} is the CDIC per Passenger Train Slot for each Service Group i as specified in column F of Appendix 1; and

$\sum$ is the summation across each Service Group.

4.2 *Indexation of the CDIC per Service Group*

From the Principal Change Date occurring in December 2021 until 31 March 2022 (in each case, inclusive), the CDIC per Passenger Train Slot for each Service Group i shall be derived from the following formula:

$$C_{i,2021} = IIF \times C_{i,2020}$$

where:

IIF is the Initial Indexation Factor; and

$C_{i,2020}$ is the CDIC per Passenger Train Slot set on 1 April 2020 for each Service Group i as set out in column F of Appendix 1 to this Schedule

With effect from the Relevant Year commencing on 1 April 2022 (and 1 April in each Relevant Year thereafter) the CDIC per Passenger Train Slot for each Service Group shall be indexed. Prior to the commencement of each such Relevant Year, RfL(I) shall calculate the indexed CDIC and the indexed CDIC shall have effect from the first day of the applicable Relevant Year to which the calculation relates.

Indexation of the CDIC per Passenger Train Slot set on 1 April in any Relevant Year t for Service Group i shall be derived from the following formula:

$$C_{i,t} = \frac{RPI_{t-1}}{RPI_{t-2}} C_{i,t-1} \qquad t \geq 2022$$

where:

RPI_{t-1} is the RPI published or determined with respect to the month of November in Relevant Year *t – 1;*

RPI_{t-2} is the RPI published or determined with respect to the month of November in Relevant Year *t – 2; and*

$C_{i,t-1}$ is the CDIC per Passenger Train Slot set on 1 April of Relevant Year *t - 1* for each Service Group i.

5 Traction Electricity Charge (EC4T)

5.1 *Application*

If:

5.1.1 the Train Operator is the only Access Beneficiary who has exercised access rights and uses traction current on the CCOS, paragraph 5.2 shall apply; or

5.1.2 the Train Operator and other Access Beneficiaries have exercised access rights and use traction current on the CCOS, paragraphs 5.3 and 5.4 shall apply.

5.2 *Calculation of the EC4T - Train Operator is the only Access Beneficiary*

5.2.1 If the Train Operator is the only Access Beneficiary who has exercised access rights and uses traction current on the CCOS, RfL(I) shall be entitled to calculate the Traction Electricity Charge ($EC4T_p$) in period p in accordance with the following formula:

$$EC4T_p = \sum \quad ET_{jt} \times EC_{jp}$$

where for Period p:

ET_{jt} is the amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator on the CCOS in tariff band j defined in the List of Tariffs and in Relevant Year t;

EC_{jp} is the consumption of traction current (in kWh) by railway vehicles operated by or on behalf of the Train Operator on the CCOS, in tariff band j and in Period p, as recorded by the Infrastructure Meters; and

$\sum$ is the summation across all tariff bands.

5.2.2 As soon as reasonably practicable following the date of this Contract RfL(I), in consultation with the Train Operator, shall:

(a) prepare a set of traction electricity rules relating to the consumption of traction electricity by railway vehicles on the CCOS; and

(b) propose and seek to agree with the Train Operator such amendments to this Contract as may be necessary to incorporate the traction electricity rules referred to in paragraph 5.2.2(a),

provided that any such amendments to this Contract shall be subject to the approval of the ORR.

5.3 *Calculation of the EC4T – Multiple Access Beneficiaries*

If the Train Operator and other Access Beneficiaries have exercised access rights and use traction electricity on the CCOS, RfL(I) shall be entitled to calculate the Traction Electricity Charge ($EC4T_p$) in period p in accordance with the following formula:

$$EC4T_p = \sum ET_{jt} \times \left(OTMC_{jp} - OTMR_{jp}\right) \times (1 + DSLF)$$

where:

ET_{jt} is the amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator on the CCOS in tariff band j defined in the List of Tariffs and in Relevant Year t;

$OTMC_{jp}$ is the consumption of traction current (in kWh) by railway vehicles operated by or on behalf of the Train Operator on the CCOS, in tariff band j and in Period p, as recorded by the On-Train Meters in Period p;

$OTMR_{jp}$ is the amount of traction current (in kWh) recorded by the On-Train Meters as having been regenerated by railway vehicles operated by or on behalf of the Train Operator on the CCOS, in tariff band j and in Period p;

$\sum$ is the summation across all tariff bands; and

DSLF is the distribution system loss factor for the CCOS published by RfL(I) from time to time.

5.4 *Traction Electricity Charge Adjustment*

If the Train Operator and other Access Beneficiaries have exercised access rights and use traction electricity on the CCOS, RfL(I) shall be entitled to

calculate the Traction Electricity Charge Adjustment (EA_t) in Relevant Year t in accordance with the following formula:

$$EA_t = (ERt \ - \ AEC4T_t) \times \frac{TOEC4Tt}{ERt} \qquad t \geq 2021$$

where:

EA_t is the Traction Electricity Charge Adjustment in respect of Relevant Year t;

ER_t is the total actual cost of traction current to RfL(I) in Relevant Year t;

$AEC4T_t$ is the aggregate of the Traction Electricity Charge payable by the Train Operator and the traction electricity charges payable by other Access Beneficiaries using the CCOS under a track access contract with RfL(I) in Relevant Year t; and

$\mathrm{TOEC4T_t}$ is the aggregate of the Traction Electricity Charge payable by the Train Operator in Relevant Year t.

The Traction Electricity Charge Adjustment shall be payable once each year only.

6 Further Investment Recovery Charge (FIRC)

6.1 The Further Investment Recovery Charge payable in respect of Period p ($FIRC_p$) shall be calculated as follows:

$$FIRC_p = \sum_i \ ASFIRC_i \times FPTS_i$$

where for Period p:

$\sum_i$ is the summation across each Service Group;

$ASFIRC_i$ is the Further Investment Recovery Charge per Passenger Train Slot for that Service Group set out in column G of Appendix 1; and

$FPTS_i$ is the number of Passenger Train Slots in a Service Group operated by the Train Operator in respect of Period p.

6.2 RfL(I) may not levy a Further Investment Recovery Charge unless such charge has been approved by the ORR.

6.3 Unless otherwise specified by the ORR, the Further Investment Recovery Charge shall be indexed in a manner which is consistent with the indexation of the Annual Investment Recovery Charge.

7 Modifications to the Annual Investment Recovery Charge and the Annual Fixed Costs Charge

7.1 RfL(I) and the Train Operator acknowledge and agree that:

7.1.1 as a consequence of:

(a) the number of Passenger Train Slots set out in Schedule 5 of this Contract; and

(b) the level of specificity given to those Passenger Train Slots in Schedule 5 of this Contract,

depending on the way in which the Train Operator Exercises its rights to Passenger Train Slots, the available capacity on the CCOS may be reduced to a greater extent than the number of Passenger Train Slots to which the Train Operator has Firm Rights or Contingent Rights;

7.1.2 if a new train operator proposes to commence passenger rail services on the CCOS, RfL(I) may be entitled to use its Flexing Right in accordance with Part D of the CCOS Network Code to allocate capacity to such new train operator, which may impact on the allocation of capacity to the Train Operator; and

7.1.3 in the circumstances contemplated by paragraph 7.1.2 and provided no additional available capacity on the CCOS is allocated by RfL(I), it is not intended that RfL(I) should recover any more than the Aggregate Annual Investment Recovery Charge or the Aggregate Annual Fixed Costs Charge.

7.2 If, following the date of this Contract:

(a) a new train operator commences passenger rail services on the CCOS; and

(b) such passenger rail services have not resulted in additional available capacity on the CCOS being allocated because RfL(I) has used its Flexing Right,

the following shall apply:

(i) RfL(I) shall adjust the values of the Annual Investment Recovery Charge and the Annual Fixed Costs Charge for the applicable Service Groups in Appendix 1 to reflect the number of extra services attributable to the new train operator; so that

(ii) RfL(I) is able to recover an amount equal to the Aggregate Annual Investment Recovery Charge and the Aggregate Annual Fixed Costs Charge from all train operators using the CCOS.

RfL(I) and the Train Operator shall promptly enter into an amendment to this Contract to incorporate the adjusted values of the Annual Investment Recovery Charge and the Annual Fixed Costs Charge for such Service Groups in columns B and D of Appendix 1 (and such amendment shall be subject to the approval of the ORR).

7.3 If:

(a) an amendment to this Contract has been made in the circumstances contemplated by paragraph 7.2;

(b) any train operator subsequently either:

(i) ceases to operate passenger rail services on the CCOS; or

(ii) operates fewer passenger rail services on the CCOS,

the following shall apply:

(A) RfL(I) shall adjust the values of the Annual Investment Recovery Charge and the Annual Fixed Costs Charge for the applicable Service Groups in Appendix 1 to reflect the reduced number of services; so that

(B) RfL(I) can recover an amount equal to the Aggregate Annual Investment Recovery Charge and the Aggregate Annual Fixed Costs Charge from all train operators using the CCOS.

RfL(I) and the Train Operator shall promptly enter into an amendment to this Contract to incorporate the adjusted values of the Annual Investment Recovery Charge and the Annual Fixed Costs Charge for such Service Groups in columns B and D of Appendix 1 (and such amendment shall be subject to the approval of the ORR).

7.4 In this paragraph 7:

"**Aggregate Annual Fixed Costs Charge**" means the aggregate of:

(a) the Annual Fixed Costs Charge payable by the Train Operator under this Contract; and

(b) the equivalent of the Annual Fixed Costs Charge payable by any other train operator under any other track access agreement with RfL(I) in respect of the CCOS,

calculated without taking into account the proposed adjustment of the number of passenger rail services operating on the CCOS; and

"**Aggregate Annual Investment Recovery Charge**" means the aggregate of:

(a) the Annual Investment Recovery Charge payable by the Train Operator under this Contract; and

(b) the equivalent of the Annual Investment Recovery Charge payable by any other train operator under any other track access agreement with RfL(I) in respect of the CCOS,

calculated without taking into account the proposed adjustment

of the number of passenger rail services operating on the CCOS.

PART 3: REVIEW OF THE REVIEW PROVISIONS

1 Definitions

1.1 In addition to the definitions set out in Part 1 of this Schedule 7, in this Part 3 of Schedule 7, unless the context otherwise requires:

"**CCOS Asset Management Plan**" means the plan setting out the operations, inspection, maintenance, repair and renewal plans to be undertaken by RfL(I), together with the related maintenance standards, in order to deliver the CCOS Asset Management Strategy over the relevant Control Period;

"**CCOS Asset Management Policy**" means the RfL(I) policy that the CCOS is in a good state of repair and condition and achieves performance levels consistent with RfL(I)'s objectives for the CCOS set out in the Sponsors' Requirements (as defined in Schedule 8);

"**CCOS Asset Management Strategy**" means, in relation to the CCOS, the costed strategy (on the basis of efficient delivery) developed by RfL(I) (and as modified from time to time) for:

(a) the discharge of its obligations as to the maintenance, repair and renewal of the CCOS under this Contract or any other obligations owed by RfL(I) for which it is not otherwise remunerated under this Contract including the CCOS Asset Management Plan and CCOS Renewals Plan;

(b) the discharge of any obligations binding on RfL(I) as to the state, condition and safe operation of the CCOS which it is otherwise obliged to deliver to the extent these are different from or in addition to (a) above; and

(c) achieving or working towards the CCOS Asset Management Policy,

in each case over the Control Period to which it relates;

"**CCOS Renewals Plan**" means RfL(I)'s plan defining the rolling renewal and replacement of and investment in the CCOS by RfL(I) to deliver the CCOS Asset Management Strategy;

"**Change in Circumstances**" means, in respect of the CCOS:

(a) the occurrence of a Material Charges Change;

(b) any material change in the CCOS Asset Management Strategy (other than as a result of a change in law) affecting the CCOS which was not reasonably foreseeable by RfL(I) at the time the relevant CCOS

Asset Management Strategy was prepared,

in each case, which will result in a decrease or increase in the cost of delivering the CCOS Asset Management Strategy;

"**Interim Review Notice**"	has the meaning given to it in paragraph 4.2;
"**Periodic Review**"	means a planned review of the Review Provisions in accordance with this Part 3 prior to the commencement of each Subsequent Control Period;
"**Principal Change Date**"	has the meaning given to it in Part A of the CCOS Network Code;
"**Review Notice**"	has the meaning given to it in paragraph 3.1; and
"**Subsequent Control Period**"	means: (a) the Control Period immediately following the Initial Period; and (b) each successive Control Period thereafter.

2 Review of the Review Provisions

2.1 Subject to paragraph 2.2, and without prejudice to Part G of the CCOS Network Code, RfL(I) shall be entitled, in addition to the process for preparing the CCOS Asset Management Strategy for the CCOS, to review the Review Provisions:

2.1.1 as part of a Periodic Review; and

2.1.2 in accordance with an Interim Review following the occurrence of a Change in Circumstances.

2.2 RfL(I) shall:

2.2.1 subject to paragraph 2.2.2, only be entitled to review and modify paragraphs (a) to (f) (inclusive) of the definition of Review Provisions pursuant to paragraph 2.1 and paragraph 4 to ensure that there are sufficient funds to comply with the CCOS Asset Management Strategy (which includes, in each case, an entitlement to review and modify any associated cost of capital); and

2.2.2 (in the case of paragraphs (a), (b) and (f) of the definition of Review Provisions) also be entitled to review the cost of capital assumption in the calculation of the value of the Annual Investment Recovery Charge, Additional Slot Investment Recovery Charge and/or Further Investment Recovery Charge (as the case may be).

2.3 If RfL(I) proposes to modify the Review Provisions with effect from the commencement of a Subsequent Control Period as part of a Periodic Review

in accordance with paragraph 2.1, RfL(I) shall, at least 130 Business Days prior to the commencement of that Subsequent Control Period, provide the Train Operator (and each other train operator using the CCOS) with:

2.3.1 the proposed CCOS Asset Management Strategy;

2.3.2 the proposed modification(s) to each of the Review Provisions; and

2.3.3 an explanation of the calculation of each of paragraphs (a) to (f) (inclusive) of the Review Provisions.

2.4 For the purposes of the review of the Review Provisions to be undertaken by RfL(I) prior to (and having effect at the start of) the Control Period immediately following the Initial Period, RfL(I) shall:

2.4.1 take into account how the actual costs and expenses for the Initial Period differ from the modelled costs and expenses in respect of that Initial Period; and

2.4.2 consider what amendments may be required to the CCOS Asset Management Strategy to better deliver the CCOS Asset Management Policy as a result of RfL(I)'s experience during the Initial Period.

3 Review Notice

3.1 As part of each Periodic Review, RfL(I) shall, at least 65 Business Days prior to the commencement of a Subsequent Control Period from which the modification to the Review Provisions will take effect, give written notice (a "**Review Notice**") to the Train Operator and each other train operator using the CCOS, specifying each of the Review Provisions for the first Relevant Year in the next Subsequent Control Period.

3.2 If:

3.2.1 the Train Operator and each other train operator using the CCOS do not, in accordance with paragraph 6, object to the modification of any of the Review Provisions within 30 days of notification in accordance with paragraph 2.3.2; or

3.2.2 following the referral of the matter to the disputes resolution process set out in paragraph 6, it is determined that any of the Review Provisions should be modified,

RfL(I) shall promptly notify the Train Operator in writing of each of the modified Review Provisions for the Subsequent Control Period.

3.3 Subject to paragraph 5, any modification to the Review Provisions in accordance with this paragraph 3 shall have effect on and from the first day of the Subsequent Control Period.

4 Interim Review

4.1 RfL(I) shall be entitled to initiate an Interim Review at any time following the occurrence of a Change in Circumstances.

4.2 On or prior to RfL(I) initiating an Interim Review following the occurrence of a Change in Circumstances, RfL(I) shall promptly give written notice (an "**Interim Review Notice**") to the Train Operator and each other train operator using the CCOS stating:

4.2.1 that it intends to initiate an Interim Review;

4.2.2 full details of the relevant Change in Circumstances which has resulted in RfL(I) initiating an Interim Review; and

4.2.3 the proposed changes to the CCOS Asset Management Strategy and/or CCOS Asset Management Plan and/or CCOS Renewals Plan and/or any modifications to any of the Review Provisions which RfL(I) proposes as a result of the occurrence of the Change in Circumstances.

4.3 If:

4.3.1 the Train Operator and each other train operator using the CCOS do not, in accordance with paragraph 6, object to the modification of any of the Review Provisions within 30 days of notification in accordance with paragraph 4.2; or

4.3.2 following the referral of the matter to the disputes resolution process set out in paragraph 6, it is determined that any of the Review Provisions should be modified,

RfL(I) shall promptly notify the Train Operator in writing of any of the modified Review Provisions for that Control Period.

4.4 Subject to paragraph 5, any modification to the Review Provisions notified to the Train Operator and each other train operator using the CCOS pursuant to paragraph 4.3 shall take effect from the first day of the Period immediately succeeding the date of the notice.

5 ORR Approval

5.1 Following service of a Review Notice or an Interim Review Notice (as the case may be), RfL(I) shall promptly submit to the ORR for its approval the proposed amendments to this Contract and/or any document incorporated into this Contract (including the CCOS Network Code).

5.2 If the ORR approves the proposed amendments to this Contract and/or any document incorporated into this Contract (including the CCOS Network Code), such proposed amendments shall be made and shall become effective in accordance with the terms of the ORR's approval.

5.3 If the ORR declines to approve the proposed amendments to this Contract and/or any document incorporated into this Contract (including the CCOS Network Code), RfL(I) shall repeat the process set out in this Part 3 of Schedule 7.

6 Review Provisions - Dispute Resolution Procedure

6.1 Without prejudice to RfL(I)'s and the Train Operator's respective rights under the Act and the Access Regulations, if the Train Operator (or any other train operator using the CCOS) reasonably believes that:

6.1.1 the changes to the CCOS Asset Management Strategy, CCOS Asset Management Plan and/or CCOS Renewals Plan proposed by RfL(I) in accordance with paragraphs 2.3 or 4.2 (as the case may be) are outside the scope of the CCOS Asset Management Policy; and/or

6.1.2 the proposed changes to any of paragraphs (a) to (f) (inclusive) of the definition of Review Provisions do not reflect cost-efficient delivery by RfL(I) in undertaking the CCOS Asset Management Strategy; and/or

6.1.3 the proposed cost of capital assumption in the calculation of the value of the Annual Investment Recovery Charge, Additional Slot Investment Recovery Charge and/or Further Investment Recovery Charge (as the case may be) is not an assumption which a reasonable infrastructure manager of a network equivalent to the CCOS could reasonably make; and/or

6.1.4 the proposed changes to either of paragraphs (g) or (h) of the definition of Review Provisions do not incentivise RfL(I) to meet the CCOS Asset Management Policy,

then the Train Operator shall promptly notify RfL(I) and any other train operators using the CCOS and the matter shall be referred to Arbitration in accordance with the CCOS ADRR in force at the relevant time to determine that:

(a) the changes proposed by RfL(I) to the CCOS Asset Management Strategy, CCOS Asset Management Plan and/or CCOS Renewals Plan in accordance with paragraphs 2.3 or 4.2 (as the case may be) are within the scope of the CCOS Asset Management Policy; and/or

(b) the proposed changes to any of paragraphs (a) to (f) (inclusive) of the definition of Review Provisions do reflect cost-efficient delivery by RfL(I) in undertaking the CCOS Asset Management Strategy; and/or

(c) the proposed cost of capital assumption in the calculation of the value of the Annual Investment Recovery Charge, Additional Slot Investment Recovery Charge and/or Further Investment Recovery Charge (as the case may be) is an assumption which a reasonable infrastructure manager of a network equivalent to the CCOS could reasonably make; and/or

(d) the proposed changes to either of paragraphs (g) or (h) of the definition of Review Provisions do incentivise RfL(I) to meet the CCOS Asset Management Policy,

or

(e) which changes proposed by RfL(I) to the CCOS Asset Management Strategy, CCOS Asset Management Plan and/or CCOS Renewals Plan in accordance with paragraphs 2.3 or 4.2 (as the case may be) are outside the scope of the CCOS Asset Management Policy; and/or

(f) which changes should be made to any of paragraphs (a) to (f) (inclusive) of the definition of Review Provisions to reflect cost-efficient delivery by RfL(I) in undertaking the CCOS Asset Management Strategy; and/or

(g) what cost of capital assumption a reasonable infrastructure manager of a network equivalent to the CCOS would reasonably make in the calculation of the value of the Annual Investment Recovery Charge, Additional Slot Investment Recovery Charge and/or Further Investment Recovery Charge (as the case may be); and/or

(h) which changes should be made to either of paragraphs (g) or (h) of the definition of Review Provisions to incentivise RfL(I) to meet the CCOS Asset Management Policy,

and such determination will be binding on RfL(I), the Train Operator and each other train operator using the CCOS.

7 Protected Provisions

7.1 The ORR may not as part of a Periodic Review or an Interim Review:

(a) determine that changes must be made to paragraphs 2 to 7 of this Part 3; or

(b) determine any matter not referred to within the definition of Review Provisions.

PART 4: PAYMENTS

1 Payment of Access Charges

1.1 RfL(I) shall issue one or more invoices to the Train Operator:

(a) at least 28 days prior to the commencement of a Period, *p*, in respect of:

(i) the proportion of the Annual Investment Recovery Charge;

(ii) the proportion of the Annual Fixed Costs Charge; and

(iii) the Further Investment Recovery Charge,

in each case payable in respect of such Period p;

(b) within 28 days of the end of a Period, p, in respect of:

(i) the Further Train Slot Investment Recovery Charge;

(ii) the Further Train Slot Fixed Costs Charge;

(iii) the CDIC; and

(iv) the EC4T;

in each case payable in respect of such Period p;

(c) within 28 days of the end of the Period in which RfL(I) calculates the Traction Electricity Charge Adjustment in respect of the Traction Electricity Charge Adjustment in the previous Relevant Year,

together with, in the case of each of the Track Charges, a detailed statement describing the derivation of each such sum and separate itemisation of the charges and information referred to in such invoice.

1.2 The Train Operator shall pay or procure the payment to RfL(I) of all sums invoiced pursuant to paragraph 1.1 within 28 days of the date of the invoice.

2 Additional Permitted Charges

2.1 Either party shall be required to pay to the other (in accordance with this Contract) any Additional Permitted Charges comprising:

(a) amounts payable to or by RfL(I) as are specified in, or calculated in accordance with, Schedule 4;

(b) such amounts payable to or by RfL(I) as are specified in, or calculated in accordance with, Schedule 8; and

(c) such amounts payable to or by RfL(I) pursuant to any provision of the CCOS Network Code.

RfL(I) shall issue an invoice to the Train Operator within 28 days following the end of each Period in respect of any Additional Permitted Charges relating to such Period together with a detailed statement describing the derivation of each such sum and separate itemisation of the charges and information referred to in such invoice.

2.2 RfL(I) or the Train Operator (as the case may be) shall pay or procure the payment to the other party of all sums invoiced pursuant to paragraph 2.1 within 28 days of the date of the invoice.

3 Payments in the Event of Dispute

3.1 Where any amount payable under this Schedule 7 is in dispute:

(a) where an invoice has already been issued, a credit note shall be issued in respect of the full amount of such invoice;

(b) an invoice (or revised invoice, as the case may be) shall be issued in respect of the undisputed amount and the undisputed amount shall be paid in accordance with paragraph 4;

(c) an invoice in respect of the disputed amount shall be issued promptly after the dispute is resolved or determined (to the extent that the

amount in dispute is adjudged or resolved to be payable) and shall be paid within 28 days of the date of the invoice; and

(d) the disputed amount shall carry interest (accrued daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

4 Payments, Interest and VAT

4.1 *Payment*

(a) All sums due or payable by either party under this Contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in this Contract or in the CCOS Network Code.

(b) All invoices issued under this Schedule 7, or statements of amounts payable under Schedule 4 or Schedule 8 or the CCOS Network Code, shall be delivered by hand at, or sent by prepaid first class post to, the address for service for the recipient specified in Schedule 1 to this Contract and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

(c) Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and the party making the supply will issue a VAT invoice for that amount to the payer.

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

4.2 *Interest*

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this Contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with paragraph 4.1(b) or paragraph 4.1(c).

4.3 *VAT*

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

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

(c) Where under this Contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

APPENDIX 1: TRACK CHARGES

A	B	C	D	E	F	G
Service Group	**Annual Investment Recovery Charge (£)**	**Additional Slot Investment Recovery Charge (£) (per Further Passenger Train Slot used)**	**Annual Fixed Costs Charge (£)**	**Additional Slot Fixed Costs Charge (£) (per Further Passenger Train Slot used)**	**Costs Directly Incurred Charge (£) (per Passenger Train Slot used)**	**Further Investment Recovery Charge (£) (per Passenger Train Slot used)**
Westbourne Park Junction Connection Point – Pudding Mill Lane Junction Connection Point						
Pudding Mill Lane Junction Connection Point – Westbourne Park Junction Connection Point						
Westbourne Park Junction Connection Point – Abbey						

Wood						
Abbey Wood - Westbourne Park Junction Connection Point						
Westbourne Park Sidings – Pudding Mill Lane Junction Connection Point						
Pudding Mill Lane Junction Connection Point – Westbourne Park Sidings						
Westbourne Park Sidings – Abbey Wood						
Abbey Wood – Westbourne Park Sidings						

SCHEDULE 8 PERFORMANCE REGIME

1 Interpretation

1.1 *Definitions*

In this Schedule 8 and its Appendices, unless the context otherwise requires:

"Actual CCOS End Time" means, in relation to a Service, the time recorded in the Performance Monitoring System at which the Train operating that Service either:

(a) triggers the Monitoring Point closest to the exit point from the CCOS onto the NR Network at a Boundary (if the destination point of that Train operating that particular Service is on a network other than the CCOS); or

(b) triggers the Monitoring Point closest to the destination point of the Service operated by that Train (if the destination point of that Train operating that particular Service is on the CCOS);

"Actual CCOS Start Time" means, in relation to a Service, the time recorded in the Performance Monitoring System at which the Train operating that Service either:

(a) triggers the Recording Point closest to the entry point to the CCOS from the NR Network at a Boundary (if the starting point of that Train operating that particular Service was on a network other than the CCOS); or

(b) triggers the Recording Point closest to the starting point of the particular Service operated by that Train (if the starting point of that Train operating that particular Service is on the CCOS);

"Actual CCOS Journey Time" means, in respect of a Service, the difference in seconds between the Actual CCOS Start Time and the Actual CCOS End Time;

"Applicable Timetable" means, in respect of a Day, that part of the Working Timetable in respect of that Day which is required to be drawn up in accordance with Condition D2.1.1 of the CCOS Network Code as at 2200 hours on the Day prior to that Day, and which is applicable to the Trains operating the Services;

"Bi-Annual Timetable" means, in respect of any Day or any Period, the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that Day or the last Day of that

Period respectively;

"**Boundary**" means either the Westbourne Park Junction Connection Point or the Pudding Mill Lane Junction Connection Point (as the context may require);

"**Cancelled Stop**" means, in relation to a Service scheduled in the Applicable Timetable, failure of the Train operating that Service to stop to set down or pick up passengers at one or more CCOS Stations in accordance with the Applicable Timetable;

"**Cap**" means, in relation to the Monitoring Point and a particular Service Group, the cap in respect of a Service in that Service Group specified in column F of Appendix 1;

"**CCOS Station**" means each of the stations on the CCOS set out in column A of Appendix 2;

"**Deemed Seconds Delay**" means an amount calculated in accordance with paragraph 4.3;

"**Expected CCOS End Time**" means, in relation to a Service, the time set out in the Applicable Timetable at which the Train operating that Service is Scheduled to either:

(a) trigger the Monitoring Point closest to the exit point from the CCOS onto the NR Network at a Boundary (if the destination point of that Train operating that particular Service is on a network other than the CCOS); or

(b) trigger the Monitoring Point closest to the destination point of the Service operated by that Train (if the destination point of that Train operating that particular Service is on the CCOS);

"**Expected CCOS Start Time**" means, in relation to a Service, the time set out in the Applicable Timetable at which the Train operating that Service is Scheduled to either:

(a) trigger the Recording Point closest to the entry point to the CCOS from the NR Network at a Boundary (if the starting point of that Train operating that particular Service is on a network other than the CCOS); or

(b) trigger the Recording Point closest to the starting point of the Service operated by that Train (if the starting point of that Train operating that particular Service is on the CCOS);

"**Expected CCOS Journey Time**" means, in respect of a Train, the difference in seconds between the Expected CCOS Start Time and the Expected CCOS End Time;

"**Initial Benchmarking Period**"	means the period from and including 0200 on the Full Opening Date until (but excluding) 0200 on the date which falls two years immediately following the Full Opening Date;
"**Initial Rebenchmarking Implementation Date**"	means, in respect of the Initial Benchmarking Period, the 01 April immediately following the expiry of the Initial Benchmarking Period;
"**Matters Subject to Rebenchmarking**"	means: (a) the figures set out in columns B to F of Appendix 1; (b) the value of Deemed Seconds Delay in respect of each CCOS Station set out in Appendix 2 of this Schedule 8; (c) the RfL(I) SPP Threshold; and (d) the Train Operator SPP Threshold;
"**Material Performance Change**"	means: (a) any of the following: (i) a significant physical modification to the CCOS, unless (in the case of a review notice served by RfL(I)) the same was caused by a failure of RfL(I) to properly maintain the CCOS in accordance with this Contract; (ii) a physical modification to the CCOS due to an inherent defect in the construction of the CCOS unless (in the case of a review notice served by RfL(I)) the same was caused by a failure of RfL(I) to properly maintain the CCOS in accordance with this Contract; (iii) an increase or decrease of not less than ten per cent. (10%) of timetabled train movements on the CCOS in any hour (on average) (as reflected in the Working Timetable); (iv) a significant change in the performance and reliability of the Train Operator's rolling stock unless (in the case of a review notice served by the Train Operator) the same was caused by a failure of the Train Operator to properly maintain the rolling stock; (v) the entering into of a track access agreement in respect of the CCOS with a train operator, the effect of which is material in the context

of the operation or effect of any performance regime which applies to the CCOS; or

(vi) a material change or material anticipated change in the performance of the NR Network which impacts or is reasonably expected to impact on the interfaces between the CCOS and the NR Network,

which (in any case) has or RfL(I) reasonably expects to have a material impact on the performance and reliability of the CCOS;

(b) a change or anticipated change in the performance regime applicable to any other train operator under a track access agreement with RfL(I), the effect of which is material in the context of the operation or effect of any performance regime which applies to the CCOS;

(c) the occurrence of a Periodic Review;

"**Monitoring Point**" means, in relation to a Train operating a Service, a point listed in column H of Appendix 1 as a point to be used for recording the lateness of Services operated by Trains in accordance with paragraph 3, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point and/or a Recording Point for the same Train for a Service being operated in the opposite direction and/or for other Services;

"**Monitoring Point Seconds Delay**" means an amount calculated in accordance with paragraph 4.2;

"**Performance Sum**" means the RfL(I) Performance Sum or the Train Operator Performance Sum, as the context may require;

"**Period**" has the meaning ascribed to it in Schedule 7;

"**Periodic Review**" has the meaning ascribed to it in Part 3 of Schedule 7;

"**Planned Incident**" means an incident to the extent that:

(a) it was a Restriction of Use notified in accordance with the Applicable CCOS Engineering Access Statement by RfL(I) to the Train Operator; or

(b) there is a Recovery Allowance in respect of that incident;

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

"**Rebenchmarking Implementation** means:

Date"	(a) the Initial Rebenchmarking Implementation Date; and (b) following the occurrence of a Material Performance Change, such date as may be agreed as part of the process under Part C of the CCOS Network Code;
"**Recording Point**"	means a point at which RfL(I) records Services operated by Trains using the Performance Monitoring System;
"**RfL(I) Performance Sum**"	means, in relation to a Service Group, a sum of money which RfL(I) is liable to pay to the Train Operator under this Schedule 8, as calculated in accordance with paragraph 10;
"**RfL(I) SPP Threshold**"	means £[TBC][4] per Period (as indexed in accordance with paragraph 18.5);
"**RfLPP**"	has the meaning ascribed to it in paragraph 10.1
"**Scheduled**"	has the meaning ascribed to it in Schedule 5;
"**Seconds Delay**"	means, in relation to: (a) a Train within a particular Service Group; and (b) a Monitoring Point relating to that Service Group, the delay at that Monitoring Point, calculated in accordance with paragraph 4;
"**Seconds Late**"	means, in relation to a Day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 3;
"**Service Group**"	means a collection of Services contained within the service groups specified in column A of Appendix 1;
"**Sponsors' Requirements**"	means the document setting out the requirements of the Secretary of State and TfL for the Crossrail project, including the CCOS;
"**Subsidiary Change Date**"	has the meaning ascribed to it in Part D of the CCOS Network Code;
"**Train Operator Performance Sum**"	in relation to a Service Group, a sum of money which the Train Operator is liable to pay to RfL(I) under this Schedule 8, as calculated in accordance with paragraph 11;
"**Train Operator SPP Threshold**"	means £[TBC][5] per Period (as indexed in accordance with paragraph 18.5);

[4] This value will be defined on a Train Operator by Train Operator basis.

[5] This value will be defined on a Train Operator by Train Operator basis.

"**TPP**"	has the meaning ascribed to it in paragraph 11.1; and
"**Unexpected CCOS Journey Time**"	means, in relation to: (a) a Train within a particular Service Group; and (b) the Monitoring Point relating to that Service Group, the unexpected journey time at that Monitoring Point, calculated in accordance with paragraph 2.

1.2 *Interpretation*

For the purposes of this Schedule 8:

1.2.1 a Train shall be treated as forming a Service only in one Service Group;

1.2.2 events in respect of a Service operated by a Train shall be treated as occurring on the Day on which the Train operating that Service is scheduled in the Applicable Timetable either to:

(a) depart from the first point at which it is to pick up passengers (where the scheduled departure point of that Train is on the CCOS); or

(b) enter onto the CCOS at a Boundary (where the first point at which it is to pick up passengers is on a network other than the CCOS);

1.2.3 save as otherwise provided, each final calculation of seconds shall be accurate to three decimal places; and

1.2.4 reference to Appendices 1 and 2 to this Schedule 8 and to the definitions of RfL(I) SPP Threshold and Train Operator SPP Threshold shall be to Appendices 1 and 2 and to the definitions of RfL(I) SPP Threshold and Train Operator SPP Threshold as may be amended from time to time pursuant to the terms of this Contract.

1.3 *Suspension Notices*

Whenever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

1.3.1 neither RfL(I) nor the Train Operator shall be allocated any responsibility for those effects; and

1.3.2 those effects shall not be regarded as causing any Seconds Late or Seconds Delay or Cancelled Stops.

2 Calculation of Unexpected CCOS Journey Time

The Unexpected CCOS Journey Time of a Service shall be calculated as follows:

UACJT = ACJT – ECJT

where:

UACJT means the Unexpected CCOS Journey Time in respect of that Service;

ACJT means the Actual CCOS Journey Time in respect of that Service; and

ECJT means the Expected CCOS Journey Time in respect of that Service,

provided that if UACJT is a negative number it shall be deemed to be zero.

3 Calculation of Seconds Late

The Seconds Late at a Monitoring Point on a Day shall be derived from the following formula:

Seconds Late = $\sum L$

where:

L in respect of a Service, is the lesser of:

(a) the Unexpected CCOS Journey Time; and

(b) the Cap,

Σ is the sum across all Services in the relevant Service Group which are scheduled in the Applicable Timetable to pass that Monitoring Point on that day and which do pass that Monitoring Point.

4 Calculation of Monitoring Point Seconds Delay and Deemed Seconds Delay

4.1 *Calculation of Seconds Delay*

The Seconds Delay in respect of a Service shall be calculated as follows:

SD = MPSD + DSD

where:

SD is the Seconds Delay in respect of that Service;

MPSD is the Monitoring Point Seconds Delay in respect of that Service when the Train operating that Service triggers the Monitoring Point, calculated in accordance with paragraph 4.2; and

DSD is the Deemed Seconds Delay in respect of that Service and that Monitoring Point, calculated in accordance with paragraph 4.3.

4.2 *Monitoring Point Seconds Delay*

Subject to paragraph 4.4, the Monitoring Point Seconds Delay in respect of a Service when a Train operating that Service triggers the Monitoring Point shall be equal to the number of seconds (rounded down to the nearest whole second) of Unexpected CCOS Journey Time, provided that any Monitoring

Point Seconds Delay which arise from a single incident or a series or related incidents and which are less than 30 seconds in aggregate shall be deemed to be zero.

4.3 *Deemed Seconds Delay – Cancelled Stops*

Subject to paragraph 4.4, in relation to a Service operated by a Train which experiences one or more Cancelled Stops, the Deemed Seconds Delay shall be the deemed number of seconds set out in column B of Appendix 2 in respect of each CCOS Station at which the Service operated by a Train fails to stop to set down or pick up passengers.

4.4 *Relationship between Monitoring Points Seconds Delay and Deemed Seconds Delay*

If a Service operated by a Train enters the CCOS at a Boundary or commences a particular Service on the CCOS but fails (as applicable) to:

4.4.1 trigger the Monitoring Point closest to the exit point from the CCOS onto the NR Network at a Boundary (if the destination point of that Train operating that particular Service is on a network other than the CCOS); or

4.4.2 trigger the Monitoring Point closest to the destination point of the Service operated by that Train (if the destination point of that Train operating that particular Service is on the CCOS),

for any reason (including a malfunction of the Train) subject to the Cap, the Seconds Delay shall include all of the Monitoring Point Seconds Delay (including any additional seconds required to remove the Train from the CCOS) and the Deemed Seconds Delay in respect of any Cancelled Stops.

4.5 *Services terminated prior to reaching the CCOS*

If a Service scheduled in the Applicable Timetable to be operated by a Train on the CCOS is not actually operated (including where it is terminated on a network other than the CCOS before it reaches the CCOS) it shall be disregarded for all purposes in this Schedule 8.

5 Recording of Performance Information

5.1 *Recording of Seconds Delay, Seconds Lateness and Cancelled Stops*

Without prejudice to its obligations under Part B of the CCOS Network Code, RfL(I) shall use the Performance Monitoring System to record for each Day in respect of each Service operated by a Train scheduled in the Applicable Timetable:

5.1.1 the time at which the Train operating that Service passes each Monitoring Point;

5.1.2 each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;

5.1.3 the time at which the Train operating that Service triggers each Recording Point;

5.1.4 the Seconds Delay (including both the Deemed Seconds Delay and the Monitoring Point Seconds Delay) for that Service operated by that Train at the Monitoring Point in respect of that Service;

5.1.5 where the Monitoring Point Seconds Delay which that Service operated by that Train has accrued since either:

(a) the Recording Point closest to the entry point to the CCOS from the NR Network at a Boundary (if the starting point of that Train operating that particular Service was on a network other than the CCOS); or

(b) the Recording Point closest to the starting point of the Service operated by that Train (if the starting point of that Train operating that particular Service is on the CCOS),

(as the case may be) are greater than or equal to thirty seconds:

(i) the incident(s) causing each second of any delay included in Monitoring Point Seconds Delay; and

(ii) those Monitoring Point Seconds Delay for which RfL(I) is unable to identify a cause.

The provisions of this Schedule 8 which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the CCOS Performance Data Accuracy Code.

5.2 *Recording of allocated responsibility for Seconds Delay*

RfL(I) shall, for each Day and for each Service scheduled in the Applicable Timetable, record separately in the Performance Monitoring System those Monitoring Point Seconds Delay and Deemed Seconds Delay caused to a Train operating that Service by incidents:

5.2.1 for which RfL(I) is allocated responsibility in accordance with paragraph 6.2;

5.2.2 for which the Train Operator is allocated responsibility in accordance with paragraph 6.3;

5.2.3 for which neither party is allocated responsibility, in accordance with paragraph 6.4;

5.2.4 for which no cause can be identified; and

5.2.5 which are Planned Incidents.

5.3 *Failed Recording and Monitoring Points*

Without prejudice to its obligations under Part B of the CCOS Network Code, RfL(I) shall use all reasonable endeavours:

5.3.1 to restore as soon as reasonably practicable any failed Recording Point or Monitoring Point;

5.3.2 pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains operating such Services for the purposes of this Schedule 8.

5.4 *Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as RfL(I) may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Seconds Delay that may arise and shall provide such information to RfL(I) promptly after such information first becomes available to the Train Operator.

5.5 *Notification*

RfL(I) shall promptly notify the Train Operator upon RfL(I) becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraphs 5.1 and 5.2. Any such information shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains operating the Services for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. RfL(I) shall institute such recording as soon as it is reasonably able following receipt of the notification from RfL(I) and will provide RfL(I) with the resulting information no later than 1700 two Working Days following the Day on which it was recorded.

6 Allocation of responsibility for Seconds Delay

6.1 *Assessment of incidents causing Seconds Delay*

6.1.1 In assessing the cause of any Seconds Delay there shall be taken into account all incidents contributing thereto including:

(a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and

(b) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train operating a Service, the incident(s) giving rise to that late running.

6.1.2 The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains operating the Services and any failure to take such steps shall be regarded as a separate incident.

6.1.3 RfL(I) shall identify:

(a) in respect of each incident recorded under paragraph 5.1.5 as causing Monitoring Point Seconds Delay, the extent to which that incident caused each of the Monitoring Point Seconds Delay; and

(b) in respect of each incident recorded under paragraph 5.1.2, the extent to which that incident caused the Cancelled Stop.

6.1.4 So far as RfL(I) is reasonably able to do so, it shall identify whether responsibility for incidents causing Seconds Delay is to be allocated to RfL(I) or to the Train Operator or to neither party in accordance with the following provisions of this paragraph 6.

6.2 *RfL(I) responsibility incidents*

Responsibility for Seconds Delay on a Day caused by incidents for which RfL(I) is allocated responsibility pursuant to this paragraph 6.2 shall be allocated to RfL(I). Unless and to the extent otherwise agreed, RfL(I) shall be allocated responsibility for an incident other than a Planned Incident if that incident is caused wholly or mainly:

6.2.1 by breach of RfL(I) of any of its obligations under this Contract; or

6.2.2 (whether or not RfL(I) is at fault) by circumstances within the control of RfL(I) in its capacity as the infrastructure manager of the CCOS; or

6.2.3 (whether or not RfL(I) is at fault) by any act, omission or circumstances originating from or affecting the CCOS (including its operation) including, subject to paragraph 6.3.1(a), any incident in connection with rolling stock on the CCOS for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this Contract.

6.3 *Train Operator responsibility incidents*

Responsibility for Seconds Delay on a Day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 6.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident:

6.3.1 is caused wholly or mainly:

(a) by breach by the Train Operator of any of its obligations under this Contract; or

(b) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains (whether such circumstances occur on the CCOS or on a network other than the CCOS and including any Seconds Delay which are caused to other train operators by a Train which is being tested and any Seconds Delay caused by a Train operating a Service which is not accepted onto the NR Network at the time scheduled in the Applicable Timetable); or

(c) (whether or not the Train Operator is at fault) by any act, omission or circumstances originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation and whether occurring on the CCOS or on a network other than the CCOS) including any such act, omission or circumstances originating in connection with or at any station (other than in connection with signalling under the control of RfL(I) at that station or physical works undertaken by RfL(I) at that station), any light maintenance depot or any network other than the CCOS; or

6.3.2 causes Seconds Delay to rolling stock operated by or on behalf of another train operator.

6.4 *Other incidents*

Neither RfL(I) nor the Train Operator shall be allocated responsibility for:

6.4.1 any incident caused by an act, omission or circumstances originating in connection with or at a station which:

(a) is an act, omission or circumstance which affects the CCOS, or its operation, and prevents a Train operating a Service entering or passing through a station at the time it is scheduled to do so; and

(b) prevents the access of passengers through the station to or from the Train operating the Service;

6.4.2 any identified incident in respect of which RfL(I) and the Train Operator are equally responsible and for which neither RfL(I) nor the Train Operator is allocated responsibility under paragraphs 6.2 or 6.3;

6.4.3 Seconds Delay on any Day caused by incidents for which no cause can be identified (as recorded under paragraph 5.2.3);

6.4.4 any Seconds Delay which are experienced by a Train which is being tested; or

6.4.5 any Seconds Delay caused by:

(a) the Train operating the Service triggering the Recording Point closest to the entry point to the CCOS from the NR Network at a Boundary at a time which is earlier than the time which that Train operating that Service is scheduled to trigger that Recording Point in the Applicable Timetable; and

(b) RfL(I) taking steps to regulate that Train operating that Service so that it triggers the Recording Point closest to:

(i) the exit point from the CCOS onto the NR Network at a Boundary (if the destination point of that Train operating that particular Service is on a network other than the CCOS); or

(ii) the destination point of the Service (if the destination point of that Train operating that particular Service is on the CCOS),

(as the case may be) at the time which that Train operating that Service is scheduled to trigger that Recording Point in the Applicable Timetable.

6.5 *Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: aggregate Monitoring Point Seconds Delay*

In respect of a Service Group, the aggregate Monitoring Point Seconds Delay on a Day shall be the aggregate of all Monitoring Point Seconds Delay recorded under paragraphs 5.2.1 and 5.2.2 in respect of all Services in that Service Group scheduled in the Applicable Timetable.

6.6 *Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: RfL(I) Monitoring Point Seconds Delay*

In respect of a Service Group, the Monitoring Point Seconds Delay on a Day allocated to RfL(I) shall be the aggregate of any Monitoring Point Seconds Delay allocated to RfL(I) under paragraph 5.2.1.

6.7 *Allocation of responsibility for Monitoring Point Seconds Delay at Service Group level: Train Operator Monitoring Point Seconds Delay*

In respect of a Service Group, the Monitoring Point Seconds Delay on a Day allocated to the Train Operator shall be the aggregate of any Monitoring Point Seconds Delay allocated to the Train Operator under paragraph 5.2.2.

6.8 *RfL(I) Deemed Seconds Delay at Monitoring Point level*

In respect of a Monitoring Point, the Deemed Seconds Delay on a Day allocated to RfL(I) shall be the aggregate of any Deemed Seconds Delay allocated to RfL(I) under paragraph 5.2.1.

6.9 *Train Operator Deemed Seconds Delay at Monitoring Point level*

In respect of a Monitoring Point, the Deemed Seconds Delay on a Day allocated to the Train Operator shall be the aggregate of any Deemed Seconds Delay allocated to the Train Operator under paragraph 5.2.2.

7 Statement of allocated responsibility

7.1 *Initial statement*

For each Day, RfL(I) shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

7.1.1 the allocation of responsibility for incidents made by RfL(I) under paragraph 6; and

7.1.2 a summary for each Service Group showing:

(a) the aggregate Seconds Delay recorded under each category set out in paragraph 5.2; and

(b) a list of the Seconds Delay (in each case broken down by incident) recorded as the responsibility of:

(i) RfL(I);

(ii) the Train Operator; or

(iii) none of the above.

7.2 *Further statement*

If RfL(I) has reasonable grounds to believe that any further incident was the responsibility of the Train Operator, RfL(I) or neither party but was not shown as such in the information made available in accordance with paragraph 7.1, then RfL(I) may, within 7 days after the last Seconds Delay caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 7.1.

7.3 *Adjustment statements*

If Condition B3.3 of the CCOS Network Code (Adjustment to prior results) applies in respect of all of part of a Period, then:

7.3.1 RfL(I) shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period;

7.3.2 any such adjusting statement shall be treated as if it were a statement under paragraph 12.1; and

7.3.3 subject to paragraph 13.2, an adjusting payment shall be payable within 28 days of RfL(I)'s statement.

7.4 *Disputes about statements of allocated responsibility*

7.4.1 Except to the extent that it has, within two Working Days of receipt, notified RfL(I) in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 7.1, 7.2 or 7.3, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.

7.4.2 The parties shall attempt to resolve disputes notified in accordance with paragraph 7.4.1 as follows:

(a) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and

(b) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management shall use all reasonable endeavours to negotiate a resolution of the dispute.

7.4.3 Negotiations under paragraph 7.4.2(b) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 7.4.1 occurred.

8 Allocation of Seconds Late to RfL(I)

In respect of each Monitoring Point, the Seconds Late at that Monitoring Point on a Day allocated to RfL(I) (the "**SLRfL**") shall be calculated according to the following formulae:

8.1 if MPSD is greater than zero:

$$SLRfL = \left[\frac{MPSDRfL}{MPSD} \times MPSL\right] + DSDRfL$$

8.2 if MPSD is equal to zero:

SLRfL = (0.5 x MPSL) + DSDRfL

where:

MPSL	is the aggregate Seconds Late at that Monitoring Point on that Day for all Services in that Service Group, calculated in accordance with paragraph 3;
MPSD	is the aggregate Monitoring Point Seconds Delay at that Monitoring Point on that Day in respect of that Service Group, calculated in accordance with paragraph 6.5;
MPSDRfL	is that part of such MPSD which is allocated to RfL(I) in accordance with paragraph 6.6; and
DSDRfL	is the aggregate Deemed Seconds Delay at that Monitoring Point which is allocated to RfL(I) in accordance with paragraph 6.8.

9 Allocation of Seconds Late to the Train Operator

In respect of each Monitoring Point, the Seconds Late at that Monitoring Point on a Day allocated to the Train Operator (the "**SLTO**") shall be calculated according to the following formulae:

9.1 if MPSD is greater than zero:

$$SLTO = \left[\frac{MPSDTO}{MPSD} \times MPSL\right] + DSDTO$$

9.2 if MPSD is equal to zero:

SLTO = (0.5 x MPSL) + DSDTO

where:

MPSL is the aggregate Seconds Late at that Monitoring Point on that Day for all Services in that Service Group, calculated in accordance with paragraph 3;

MPSD is the aggregate Monitoring Point Seconds Delay at that Monitoring Point on that Day in respect of that Service Group, calculated in accordance with paragraph 6.5;

MPSDTO is that part of such MPSD which is allocated to the Train Operator in accordance with paragraph 6.7; and

DSDTO is the aggregate Deemed Seconds Delay at that Monitoring Point which is allocated to the Train Operator in accordance with paragraph 6.9.

10 RfL(I) Performance Sums

10.1 In respect of a Service Group, the RfL(I) Performance Sum (the "**RfLPS**") for each Period shall be calculated according to the following formula:

RfLPS = (RfLPP – RfLWASL) x BF x RfLPR

where:

RfLPP is the RfL(I) Performance Benchmark for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

RfLWASL is the aggregate for all Monitoring Points in the Service Group of the weighted average seconds late allocated to RfL(I) in accordance with the following formula:

$$RfLWASL = \sum \frac{SLRfL \times MPW}{SP}$$

where:

Σ is the sum across all Monitoring Points in the Service Group;

SLRfL is the Seconds Late allocated to RfL(I) in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

MPW is the weighting attributable to that Monitoring Point, as specified in column I of Appendix 1; and

SP is the aggregate number of Services in that Service Group which are scheduled to pass that Monitoring Point in the Applicable Timetable in that Period for which either:

(a) a pass is recorded in accordance with paragraph 5.1.1; or

(b) a Cancelled Stop is recorded in accordance with paragraph 5.1.2,

except that if SP = 0 for any Monitoring Point it shall be deemed that $\frac{SLRfL \times MPW}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum MPW \times \frac{PBP}{PBBA}$$

where:

Σ is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column I of Appendix 1;

PBP is the aggregate number of Services in that Service Group which are scheduled to pass that Monitoring Point in the Applicable Timetable in that Period; and

PBBA is the average number of Services per day in that Service Group which are scheduled to pass that Monitoring Point in the Bi-annual Timetable in respect of that Period except that if PBBA = 0 for any Monitoring Point it shall be deemed that $MPW \times \frac{PBP}{PBBA}$ shall equal zero; and

RfLPR is the relevant RfL(I) Payment Rate for that Service Group specified in column C of Appendix 1 as indexed in accordance with paragraph 14.

10.2 Where RfLPS is less than zero, RfL(I) shall pay the amount of the RfLPS to the Train Operator. Where RfLPS is greater than zero, the Train Operator shall pay that amount to RfL(I).

11 Train Operator Performance Sums

11.1 In respect of a Service Group, the Train Operator Performance Sum (the "**TOPS**") for each Period shall be calculated according to the following formula:

TOPS = (TPP – TOWASL) x BF x TOPR

where:

TPP means the Train Operator Performance Benchmark for the Service Group specified in column D of Appendix 1;

TOWASL is the aggregate for all Monitoring Points in the Service Group of the weighted average seconds late allocated to the Train Operator in accordance with the following formula:

$$TOWASL = \sum \frac{SLTO \ \times MPW}{SP}$$

where:

Σ is the sum across all Monitoring Points in the Service Group;

SLTO is the Seconds Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 9;

MPW is the weighting attributable to that Monitoring Point, as specified in column I of Appendix 1; and

SP is the aggregate number of Services in that Service Group which are scheduled to pass that Monitoring Point in the Applicable Timetable in that Period for which either:

(a) a pass is recorded in accordance with paragraph 5.1.1; or

(b) a Cancelled Stop is recorded in accordance with paragraph 5.1.2,

except that if SP = 0 for any Monitoring Point it shall be deemed that $\frac{\mathrm{SLTO} \times \mathrm{MPW}}{\mathrm{SP}}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum MPW \ \times \frac{PBP}{PBBA}$$

where:

Σ is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column I of Appendix 1;

PBP is the aggregate number of Services in that Service Group which are scheduled to pass that Monitoring Point in the Applicable Timetable in that Period; and

PBBA is the average number of Services per day in that Service Group which are scheduled to pass that Monitoring Point in the Bi-annual Timetable in respect of that Period except that if PBBA = 0 for any Monitoring Point it shall be deemed that $MPW \times \frac{PBP}{PBBA}$ shall equal zero; and

TOPR is the relevant Train Operator Payment Rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with paragraph 14.

11.2 Where TOPS is less than zero, the Train Operator shall pay the amount of the TOPS to RfL(I). Where TOPS is greater than zero, RfL(I) shall pay that amount to the Train Operator.

12 Notification of Performance Sums

12.1 *Notification*

Within 14 days after the end of each Period, RfL(I) shall provide the Train Operator with a statement for each Service Group for that Period showing:

12.1.1 any Performance Sums for which RfL(I) or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of RfL(I)) as the Train Operator may reasonably require; and

12.1.2 any matter referred to in paragraph 7.1 which the Train Operator has disputed in accordance with paragraph 7.4 and which is still in dispute.

12.2 *Disputes*

Within 14 days after receipt by the Train Operator of a statement required under paragraph 12.1, the Train Operator shall notify RfL(I) of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 7. Such disputes and any matter referred to in paragraph 12.1.2 shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

13 Payment procedures

13.1 *Payments and set-off*

13.1.1 In respect of any and all Performance Sums for which RfL(I) and the Train Operator are liable in any Period, the aggregate of such liabilities of RfL(I) and the Train Operator shall be set off against each other. The

balance shall be payable by RfL(I) or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.

13.1.2 Subject to paragraph 13.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

13.2 *Payments in the event of dispute*

13.2.1 Where any sum which is payable under this paragraph 13 is in dispute:

(a) where an invoice has already been issued, a credit note shall be issued in respect of the full amount of such invoice;

(b) an invoice (or revised invoice, as the case may be) shall be issued in respect of the undisputed amount and the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;

(c) an invoice in respect of the disputed balance (or such part of it as has been agreed or determined to be payable) shall be issued promptly following the end of the Period in which the dispute is resolved or determined and shall be paid or set off (as the case may be) within 35 days after the end of such Period; and

(d) from the date at which such balance would, but for the dispute, have been due to be paid or set off, the disputes balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate.

14 Payment rates

14.1 Each payment rate in columns C and E of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$Rt = R_{t-1} \times [1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}}]$$

where:

Rt	is the relevant rate in the Relevant Year t;
R_{t-1}	is the relevant rate in the Relevant Year t-1;
RPI_{t-1}	means the RPI published or determined with respect to the month of November in Relevant Year t-1; and
RPI_{t-2}	means the RPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2021, R_t shall have the relevant value specified in the relevant column (either E or I) of

Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t-1} shall have the same value.

15 Notices

All notices under this Schedule 8 shall be given in accordance with Clause 18.4.

16 Disputes

16.1 If any dispute is notified under paragraph 12.2 it shall be resolved according to the following procedure:

16.1.1 within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

16.1.2 if, for any reason, within seven days of the meeting referred to in paragraph 16.1.1, the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officers of each party;

16.1.3 within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and

16.1.4 if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the CCOS ADRR.

17 Review

17.1 Appendices 1 and 2 to this Schedule 8 and the definitions of RfL(I) SPP Threshold and Train Operator SPP Threshold are the Matters Subject to Rebenchmarking. The Matters Subject to Rebenchmarking may be recalibrated in accordance with this paragraph 17:

17.1.1 to reflect the operation of Services on the CCOS during the Initial Benchmarking Period; and

17.1.2 following the occurrence of a Material Performance Change.

17.2 Within:

17.2.1 four (4) months of the expiry of the Initial Benchmarking Period; or

17.2.2 twelve (12) months of the occurrence of a Material Performance Change,

(as the case may be), RfL(I) shall be entitled to require that the Matters Subject to Benchmarking are recalibrated in accordance with this paragraph 17 by submitting a Proposal for Change pursuant to Part C of the CCOS Network Code. The purpose of any such Proposal for Change shall be to

determine what changes, if any, should be made to the Matters Subject to Benchmarking in such circumstances to achieve RfL(I)'s objectives for the CCOS set out in the Sponsors' Requirements.

17.3 RfL(I) and the Train Operator acknowledge and agree that:

17.3.1 any recalibration of the Matters Subject to Rebenchmarking in relation to this Contract may affect other train operators under other track access contracts; and

17.3.2 those effects (and any consequential changes required to those other track access contracts) will need to be taken into account as part of such recalibration exercise.

17.4 Following the Matters Subject to Rebenchmarking being revised in accordance with Part C of the CCOS Network Code and subject to paragraph 17.5:

17.4.1 Appendices 1 and 2 to this Schedule 8 and the definitions of RfL(I) SPP Threshold and Train Operator SPP Threshold shall be deemed to have been amended to reflect such revised values from the Rebenchmarking Implementation Date:

17.4.2 the calculations of the Performance Payments previously undertaken pursuant to this Schedule 8 shall be repeated using the revised Matters Subject to Rebenchmarking in substitution for the original Matters Subject to Rebenchmarking with effect from the first Period to commence on or after the date on which the changes to this Contract take effect; and

17.4.3 RfL(I) shall notify the Train Operator within 35 days after the end of the Period in which this Contract is amended of the amount of any payment required from either party to the other to take account of the repeated calculations and the provisions of paragraphs 12, 13 and 16 shall apply in respect of those amounts.

17.5 Without prejudice to RfL(I)'s and the Train Operator's respective rights under the Act and the Access Regulations, if the Train Operator (or any other train operator using the CCOS) reasonably believes that:

17.5.1 a Material Performance Change has not occurred; and/or

17.5.2 the proposed changes to the Matters Subject to Benchmarking do not achieve RfL(I)'s objectives for the CCOS set out in the Sponsors' Requirements,

then that Train Operator shall promptly notify RfL(I) and any other train operators using the CCOS and the matter shall be referred to Arbitration in accordance with the CCOS ADRR in force at the relevant time to determine that:

(a) a Material Performance Change has occurred; and/or

(b) the proposed changes to the Matters Subject to Benchmarking do achieve RfL(I)'s objectives for the CCOS set out in the Sponsors' Requirements;

or

(c) a Material Performance Change has not occurred; and/or

(d) which changes to the Matters Subject to Benchmarking should be made to the Matters Subject to Benchmarking do achieve RfL(I)'s objectives for the CCOS set out in the Sponsors' Requirements,

and, subject to Clause 17.6, such determination will be binding on RfL(I), the Train Operator and each other train operator using the CCOS.

17.6 Any amendments to the Matters Subject to Rebenchmarking shall take effect only when it has been approved by the ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 17 the parties shall ensure that the ORR is furnished with such amendment and such information and evidence as the ORR requires to decide whether or not to approve the amendment.

18 Sustained Poor Performance and Poor Performance Notices

18.1 *Definitions*

In this paragraph 18, unless the context otherwise requires:

"**SPP Indexation Figure**"	means the figure calculated in accordance with paragraph 18.5.2.

18.2 *Indemnities*

18.2.1 Subject to Clause 11, RfL(I) shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the RfL(I) Performance Sums payable by RfL(I) in respect of any Period exceeds the relevant RfL(I) SPP Threshold.

18.2.2 Subject to Clause 11, the Train Operator shall indemnify RfL(I) against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Train Operator Performance Sums payable by the Train Operator in respect of any Period exceeds the relevant Train Operator SPP Threshold.

18.2.3 Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to:

(a) (in the case of paragraph 18.2.1) the position the Train Operator would have been in had RfL(I) met the RfLPP; or

(b) (in the case of paragraph 18.2.2) the position RfL(I) would have been in had the Train Operator met the TPP.

18.3 *Determination of Relevant Losses*

Subject to paragraph 18.4, the liability of a party under paragraph 18.2 for sustained poor performance ("**SPPL**") shall be determined in accordance with the following formula:

SPPL = RL – PS

where:

RL means the party's Relevant Losses arising as a direct result of Seconds Delay and Cancelled Stops during the relevant Period, in each case insofar as these do not arise as a result of an incident for which that party is allocated responsibility pursuant to paragraph 6.2 or 6.3 (as the case may be); and

PS means:

(a) (in the case of RfL(I) indemnifying the Train Operator) the sum of all values of RfLPS (as defined in paragraph 10) to be calculated by deducting the sum of all values of RfLPS for which the Train Operator is liable from the sum of all values of RfLPS for which RfL(I) is liable in each case in respect of the relevant Period; or

(b) (in the case of the Train Operator indemnifying RfL(I)) the sum of all values of TOPS (as defined in paragraph 11) to be calculated by deducting the sum of all values of TOPS for which RfL(I) is liable from the sum of all values of TOPS for which the Train Operator is liable in each case in respect of the relevant Period.

18.4 *Restrictions on claims*

A party shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18 if and to the extent that it has previously recovered those Relevant Losses, whether under this paragraph 18 or otherwise.

18.5 *SPP Indexation*

18.5.1 The values of RfL(I) SPP Threshold and Train Operator SPP Threshold shall be multiplied by the SPP Indexation Figure for the Relevant Year.

18.5.2 The SPP Indexation Figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left[1 + \frac{(RPI_{t-1} - RPI_{2020})}{RPI_{2020}}\right] \times IIF$$

where:

$SPPI_t$	means the SPP Indexation Figure in Relevant Year t;
RPI_{t-1}	means the RPI published or determined with respect to the month of November in Relevant Year t-1;
RPI_{2020}	means the RPI published or determined with respect to the month of November 2020; and
IIF	means the Initial Indexation Factor.

18.6 *Poor Performance Notice*

RfL(I) shall be entitled to serve a Poor Performance Notice on the Train Operator where paragraph 1.5 of Schedule 6 applies.

19 Delays under Network Rail Track Access Contract

19.1 *Definitions*

In this paragraph 19, unless the context otherwise requires:

"**Paragraph 11 Statement"**	means the statement of any Performance Sums for which Network Rail or the Train Operator is liable which is provided by Network Rail to the Train Operator under paragraph 11.1 of schedule 8 of the Network Rail Track Access Contract;
"**NR Minutes Delay**"	has the meaning ascribed to "Minutes Delay" in the Network Rail Track Access Contract;
"**NR TPP**"	has the meaning ascribed to "Train Operator Performance Point" in the Network Rail Track Access Contract;
"**NR TPS**"	has the meaning ascribed to "Train Operator Performance Sum" in the Network Rail Track Access Contract; and
"**NR TPS Reclaim Amount**"	has the meaning given to it in paragraph 19.2.

19.2 *Delays caused by RfL(I)*

If, in respect of a Service operated by a Train:

19.2.1 the number of Monitoring Point Seconds Delay when it triggers the Monitoring Point closest to the exit point from the CCOS onto the NR Network at a Boundary is equal to or greater than 180;

19.2.2 RfL(I) is allocated responsibility for such Monitoring Point Seconds Delay pursuant to paragraph 6.2 as a consequence of those Monitoring Point Seconds Delay being caused by an incident for which RfL(I) is allocated responsibility;

19.2.3 such Monitoring Point Seconds Delay do not arise as a consequence of such Service operated by such Train triggering the Recording Point closest to the entry point to the CCOS from the NR Network at a Boundary later than it is scheduled in the Applicable Timetable to trigger such Recording Point;

19.2.4 such Service operated by such Train triggers the Monitoring Point closest to the exit point from the CCOS onto the NR Network at least 3 minutes later than it is scheduled in the Applicable Timetable to trigger such Monitoring Point;

19.2.5 such Service operated by such Train causes NR Minutes Delay;

19.2.6 the sole cause of such NR Minutes Delay is the matters referred to in paragraphs 19.2.1, 19.2.2 and 19.2.4; and

19.2.7 the Train Operator is allocated responsibility for such NR Minutes Delay under the terms of the Network Rail Track Access Contract,

then, subject to paragraph 19.3, RfL(I) shall pay to the Train Operator an amount equal to the demonstrable proportion of the NR TPS (having taken into account the NR TPP) that the Train Operator is required to pay to Network Rail under the Network Rail Track Access Contract that directly and demonstrably results from the matters referred to in paragraphs 19.2.1 to 19.2.7 (inclusive) (the "**NR TPS Reclaim Amount**").

19.3 *Conditions*

Any payment by RfL(I) to the Train Operator under paragraph 19.2 shall be subject to the following conditions:

19.3.1 any claim for payment of the NR TPS Reclaim Amount under paragraph 19.2 shall be made by the Train Operator within 14 days of the Paragraph 11 Statement being issued by Network Rail (and RfL(I) shall not be liable to make any payment of NR TPS Reclaim Amount to the Train Operator pursuant to paragraph 19.2 if such claim is received by RfL(I) after such date);

19.3.2 the Train Operator shall notify RfL(I) in accordance with Clause 18.4 that it seeks a payment from RfL(I) pursuant to paragraph 19.2 and setting out the NR TPS Reclaim Amount sought;

19.3.3 at the same time as providing the notice pursuant to paragraph 19.3.1, the Train Operator shall provide all reasonable evidence demonstrating that each of paragraphs 19.2.1 to 19.2.7 (inclusive) have been met and how it has calculated the NR TPS Reclaim Amount sought; and

19.3.4 the Train Operator shall promptly provide such further evidence as RfL(I) may reasonably require to demonstrate to RfL(I)'s reasonable satisfaction that each of paragraphs 19.2.1 to 19.2.7 (inclusive) have been met and that the NR TPS Reclaim Amount sought is consistent

with the requirements for calculating such payment in paragraph 19.2.

19.4 If RfL(I) is:

19.4.1 reasonably satisfied that each of paragraphs 19.2.1 to 19.2.7 (inclusive) have been met and the NR TPS Reclaim Amount sought by the Train Operator is consistent with the requirements of this paragraph, it shall notify the Train Operator, who shall be entitled to issue an invoice to RfL(I) in respect of the TPS Reclaim Amount and Clause 16 shall apply;

19.4.2 not reasonably satisfied that each of paragraphs 19.2.1 to 19.2.7 (inclusive) have been met and the NR TPS Reclaim Amount sought by the Train Operator is consistent with the requirements of this paragraph, it shall notify the Train Operator, giving reasons why it has reached such conclusion. Within 14 days of RfL(I) issuing such notice, the Train Operator shall be entitled to notify RfL(I) of any aspects of such notice which it disputes, giving reasons for each such dispute and the dispute shall be resolved in accordance with paragraph 16.

19.5 Nothing in this paragraph 19 shall entitle the Train Operator to recover more than once in respect of the same loss, taking into account any payment that the Train Operator may also be entitled to under this Schedule 8 and the other provisions of this Contract.

Appendix 1

Performance Benchmarks and Payment Rates

A	B	C	D	E	F	G	H	I
	RfL(I)		Train Operator					
Service Group	**Performance Benchmark**	**Payment Rate**	**Performance Benchmark**	**Payment Rate**	**Cap**	**Service Code**	**Monitoring Point**	**Weighting**
Westbourne Park Junction Connection Point – Pudding Mill Lane Junction Connection Point							Pudding Mill Lane Junction	1.0
Pudding Mill Lane Junction Connection Point – Westbourne Park Junction Connection Point							Westbourne Park Junction	1.0

Westbourne Park Junction Connection Point – Abbey Wood							Abbey Wood station	1.0
Abbey Wood – Westbourne Park Junction Connection Point							Westbourne Park Junction	1.0
Westbourne Park Sidings – Pudding Mill Lane Junction Connection Point							Pudding Mill Lane Junction	1.0
Pudding Mill Lane Junction Connection Point – Westbourne Park Sidings							Westbourne Park Sidings Junction	1.0
Westbourne Park Sidings							Abbey Wood	1.0

– Abbey Wood							station	
Abbey Wood – Westbourne Park Sidings							Westbourne Park Sidings Junction	1.0

* RfL(I) Performance Benchmark (column B) and Train Operator Performance Benchmark (column D) are the average delta lateness per Train expressed in seconds.

Appendix 2

Deemed Seconds Delay

A	B
Station	**Deemed Seconds Delay**
Abbey Wood	
Bond Street	
Canary Wharf	
Custom House	
Farringdon	
Liverpool Street	
Paddington (CCOS)	
Tottenham Court Road	
Whitechapel	
Woolwich	

SCHEDULE 9 LIMITATION ON LIABILITY

1 Definitions

In this Schedule

"**Liability Cap**" means:

(a) in relation to the first Relevant Year, the sum calculated in accordance with the following formula:

$$C_{FRY} = C_{BL} \times [D_{RCY}/365.25]$$

where:

(i) C_{FRY} is the Liability Cap in the first Relevant Year;

(ii) C_{BL} has the meaning given to it in paragraph (b); and

(iii) D_{RCY} is the number of days in the first Relevant Year from (and including) the Effective Date until (and including) the immediately succeeding 31 March);

(b) in relation to the second Relevant Year, the sum calculated in accordance with the following formula:

$$C_{SRY} = C_{BL} \times [RPI_{SY}/RPI_1]$$

where:

(i) C_{SRY} is the Liability Cap in the second Relevant Year;

(ii) C_{BL} means £10,000,000 (ten million pounds sterling);

(iii) RPI_{SY} is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the second Relevant Year; and

(iv) RPI_1 is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the month in which the Effective Date occurred; and

(c) in relation to any subsequent Relevant Year (except for the final Relevant Year), the sum calculated in accordance with the following formula:

$$C_n = C_{n-1} \times [RPI_n/RPI_{n-1}]$$

where:

(i) C_n is the Liability Cap in the nth subsequent Relevant Year;

(ii) C_{n-1} is the Liability Cap in the immediately preceding Relevant Year;

(iii) RPI_n is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the Relevant Year n; and

(iv) RPI_{n-1} is the value of RPI_{SY} in the immediately preceding Relevant Year; and

(d) in relation to the final Relevant Year, the sum calculated in accordance with the following formula:

$$C_{LRY} = CPC \times [D_{LRY}/365.25]$$

where:

(i) C_{LRY} is the Liability Cap in the final Relevant Year;

(ii) CPC is the amount the Liability Cap would have been if the final Relevant Year was a full Relevant Year, being the value of C_n for the full Relevant Year calculated in accordance with paragraph (c); and

(iii) D_{LRY} is the number of days in the final Relevant Year from (and including) the 01 April in that Relevant Year until (and including) the Expiry Date (or, if earlier the date of termination of this Contract).

2 Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

3 Limitation on RfL(I)'s liability

In relation to any claim for indemnity made by the Train Operator:

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

(b) to the extent that its liability for such claims exceeds the Liability Cap for such Relevant Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and RfL(I) shall have no further liability for it.

4 Limitation on Train Operator's liability

In relation to any claims for indemnity made by RfL(I):

(a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any

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

(b) to the extent its liability for such claims exceeds the Liability Cap for such Relevant Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

5 Disapplication of limitation

To the extent that any Relevant Losses:

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

(b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

(i) shall not be subject to the limitation of liability in Schedule 9; and

(ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Relevant Year for the purposes of the limitations of liability in this Schedule 9.

6 Exclusion of legal and other costs

The limits on the parties' liabilities provided for in this Schedule 9 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7 Exclusion of certain Relevant Losses

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

8 Continuing breaches

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

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

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

(c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9 Final determination of claims

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

IN WITNESS whereof the duly authorised representatives of RfL(I) and the Train Operator have executed this Contract on the date first above written.

Signed by .....

Print name .....

Duly authorised for and on behalf of

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

Signed by .....

Print name .....

Duly authorised for and on behalf of

[NAME OF TRAIN OPERATOR]

VERSION CONTROL

	Date	Summary of amendment(s)
1	October 2017	Final template published.
2	April 2018	Change of registered office of TfL entities to 55 Broadway.
3	April 2018	Poor Performance Notice provisions moved from Schedule 8 to Schedule 6, together with consequential amendments.
4	March 2020	Amendments in light of the announced delay to the Crossrail project (and therefore delayed opening of the CCOS). Incorporating, where appropriate, Control Period 6 amendments to the Network Rail Track Access Contract. Recognition that the Western boundary of the CCOS with the Network Rail network will be at Westbourne Park Junction (as opposed to Portobello Junction) consistent with the Connection Agreement with Network Rail.
5	March 2020	Change of registered office of TfL entities to 5 Endeavour Square.
6	October 2021	Amendments which were the subject of a consultation in June 2021 covering in particular changes to the defined term used to refer to connection points with the NR Network, the potential for NR Ancillary moves where the CCOS is used to facilitate services only operating on NR's network and changes resulting from the UK's departure from the EU.