

Default Interest (calculated from the Termination Date to the date of payment by the Manufacturer); or

- (ii) be reimbursed for all payments made to the Manufacturer in relation to the supply of Units and Equipment (other than in respect of Units and Equipment where title has transferred to the Purchaser pursuant to clause 18 (*Transfer of Title and Risk*)), but without prejudice to the Purchaser's obligation to pay any Milestone Payments not yet paid (if any) in respect of Units or other items of Equipment, title to which has passed to the Purchaser. The amount to be reimbursed by the Manufacturer shall attract Default Interest (calculated from the date of the relevant payment by the Purchaser until the date on which such repayment is made).

3. Termination Indemnity

Subject to clauses 37.5 and 37.6, if this Agreement is terminated at any time between the Commencement Date and the Acceptance of the last Unit as a result of:

- (a) the occurrence of a Manufacturer Event of Default in accordance with clause 30 (*Manufacturer Default*); or
- (b) the occurrence of a Prohibited Act in accordance with clause 34 (*Corrupt Gifts Termination*),

the Manufacturer shall, in addition to any amounts payable pursuant to paragraph 1 or paragraph 2 above, be responsible for and release and indemnify the Indemnified Parties on demand on an after-Tax basis from and against all liability for the costs, losses and expenses suffered or incurred by the Indemnified Parties arising from the termination of this Agreement including, but not limited to:

- (i) the costs of procuring a replacement contract including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to such replacement contract;
- (ii) all other reasonable direct losses, costs and claims of the Indemnified Parties (including but without limitation, project management, legal and other professional costs and fees);
- (iii) costs of redundancy and other demobilisation costs necessary as a result of the Operator operating a smaller fleet (if appropriate);
- (iv) the costs of retraining, re-diagramming and retendering and losses and costs incurred as a result of the Operator operating a smaller fleet (if appropriate);
- (v) the costs of the Purchaser or the Operator procuring replacement Units; and

- (vi) the cost of satisfying any outstanding Preconditions relating to any Units or Equipment retained by or transferred to the Purchaser in accordance with paragraph 2.

4. Consequences of Termination for Purchaser Default/Force Majeure/ Voluntary Termination

4.1 If this Agreement is terminated prior to the Acceptance of all of the Units and all of the Equipment as a result of:

- (a) the occurrence of a Purchaser Event of Default in accordance with clause 31 (*Purchaser Default*); or
- (b) a continuing Force Majeure Event in accordance with clause 32.8; or
- (c) a Voluntary Termination by the Purchaser in accordance with clause 32.12,

the Purchaser shall pay to the Manufacturer the fair value in respect of each partially completed Unit or other item of Equipment (the *Acquired WIP*), (which in respect of any Unit or other item of Equipment which is not complete and ready for delivery as specified in clause 15 (*Delivery and Acceptance of Units and Equipment*) shall be less than the Contract Price for such Unit or items of Equipment) LESS the amount of Milestone Payments made in respect of such Acquired WIP. Where this gives rise to a negative figure, the corresponding positive amount shall be paid by the Manufacturer to the Purchaser.

4.2 The Purchaser may, at its own option, elect whether or not to acquire and take title to any partially completed Units, other items of Equipment.

4.3 Where the Purchaser elects not to acquire and take title to any partially completed Units or other items of Equipment pursuant to paragraph 4.2, the Manufacturer shall account to the Purchaser for the proceeds of any subsequent disposal of any such Units or items of Equipment or subsequently completed Units or items of Equipment after deducting its reasonable costs and expenses in completing the Units or items of Equipment and in effecting disposal.

4.4 If this Agreement is terminated prior to Acceptance of all of the Units and Equipment as a result of a Purchaser Event of Default in accordance with clause 31 (*Purchaser Default*), then in addition to the amounts payable pursuant to paragraph 4.1, the Purchaser shall pay the costs, expenses and other liabilities reasonably and properly incurred by the Manufacturer as a direct result of the termination of this Agreement provided that the Manufacturer shall use all reasonable endeavours to mitigate such costs, expenses and/or other liabilities.

5. Ineffectiveness

If this Agreement is terminated pursuant to clause 33 (*Declaration of Ineffectiveness*), the Purchaser shall pay the Manufacturer:

- (a) all amounts due to the Manufacturer as at the Termination Date in accordance with clause 25 (*Payments and VAT*);

- (b) such sum as represents the cost of labour and materials reasonably and properly incurred or committed on arm's length terms by the Manufacturer as at the Termination Date relating to the provision of the Services; and
- (c) redundancy payments for employees of the Manufacturer that have been or will be reasonably incurred by the Manufacturer as a direct result of termination of this Agreement.

6. Timing of Payment

- 6.1 The Purchaser shall pay to the Manufacturer the amounts payable by the Purchaser pursuant to this Schedule 19 in a lump sum (together with interest thereon calculated in accordance with paragraph 6.2 on or before the date falling 60 Working Days after the Invoice Date).
- 6.2 Any amounts payable by either Party pursuant to this Schedule 19 shall carry Default Interest from the Termination Date to the date of payment by the relevant Party.

7. General

- 7.1 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 19 shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.
- 7.2 The Parties shall each use all reasonable endeavours to mitigate all costs and expenses and other sums claims as part of any termination sums due pursuant to this Schedule 19.
- 7.3 Subject to paragraphs 7.6 to 7.9 (inclusive), the amount of any compensation paid pursuant to this Schedule 19 including the identification and calculation of each element comprised in or to be deducted from it, the ascertainment of any amount or matter requiring to be estimated or anticipated and (where so required by the provisions of this Schedule 19) the reasonableness of any amount or matter shall be as agreed between the Parties or, if they are unable to agree within a period which is reasonable in the light of the amounts and matters requiring to be so identified, ascertained or calculated, as referred to and determined in accordance with the Dispute Resolution Procedure.
- 7.4 If the payment of any part but not all of the amount payable pursuant to this Schedule 19 is disputed then any undisputed element of that amount shall be paid in accordance with this Schedule 19 and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.
- 7.5 Payment of compensation in accordance with this Schedule 19 shall be in full and final settlement of any claims and rights of the Manufacturer against the Purchaser for breaches and/or termination of this Agreement (whether under contract, tort, restitution or otherwise) save for any antecedent liability of the Purchaser which arose prior to the date of termination (but not from the termination itself) to the extent that such liability has not already been taken into account in the calculation of the compensation payable under this Agreement. The compensation payable under this

Schedule 19 shall be the sole remedy of the Manufacturer against the Purchaser on termination of this Agreement and the Manufacturer hereby waives any other right or redress it may have against the Purchaser arising from such termination.

- 7.6 The Purchaser shall be entitled to appoint a suitably qualified independent person (*Independent Auditor*) to audit any or all of the costs, expenses and/or other liabilities incurred by the Manufacturer as a direct result of termination of this Agreement which the Manufacturer is claiming from the Purchaser pursuant to this Schedule 19 and to determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Manufacturer as a direct result of the termination of this Agreement.
- 7.7 Where the Purchaser exercises its rights pursuant to paragraph 7.6 it shall give written notice to the Manufacturer identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Manufacturer shall co-operate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.
- 7.8 the Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decision) to the Manufacturer at the same time as the decision is provided to the Purchaser. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Manufacturer as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Manufacturer.
- 7.9 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Manufacturer, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Manufacturer.
- 7.10 If the Manufacturer disputes any findings of the Independent Auditor such Dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure.

Schedule 20

Pro Forma Certificates

Part A Pro forma certificates

Part B Deed of Novation

Part A Pro forma Certificates

FORM OF PRE-PROVISIONAL ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Pre-Provisional Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Pre-Provisional Acceptance Certificate.
2. This certificate constitutes a Pre-Provisional Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the *[details of Unit(s) receiving a Pre-Provisional Acceptance Certificate]* *[comply/complies]* with each of the Pre-Provisional Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF QUALIFIED PROVISIONAL ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Qualified Provisional Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Qualified Provisional Acceptance Certificate.
2. This certificate constitutes a Qualified Provisional Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of Unit(s) receiving a Qualified Provisional Acceptance Certificate*] [comply/complies] with each of the Provisional Acceptance Criteria subject to the following Preconditions listed in the table below which the Manufacturer is required to satisfy in accordance with the Preconditions Timetable:

	Preconditions	Preconditions Timetable
1.		
2.		

4. Without prejudice to any other conditions to the Final Acceptance of such Unit(s) set out in clause 15.15 of the MSA, Final Acceptance of the Unit(s) to which this certificate relates will not occur until the Manufacturer satisfies the Preconditions set out above.
5. Any Qualified Provisional Acceptance by Rail for London Limited shall be without prejudice to Rail for London Limited's right to make Adjustments under schedule 6 (*Payment Mechanism*) and schedule 5 (*Performance Regime*) of the Train Services Agreement.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF PROVISIONAL ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Provisional Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Provisional Acceptance Certificate.
2. This certificate constitutes a Provisional Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of Unit(s) receiving a Provisional Acceptance Certificate*] [comply/complies] with each of the Provisional Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF FINAL ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Final Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Final Acceptance Certificate.
2. This certificate constitutes a Final Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of Unit(s) receiving a Final Acceptance Certificate*] [comply/complies] with each of the Final Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF FLEET ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Fleet Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Fleet Acceptance Certificate.
2. This certificate constitutes a Fleet Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the Fleet complies with each of the Fleet Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF MANUFACTURER FIT OUT ASSETS ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Manufacturer Fit Out Assets Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Manufacturer Fit Out Assets Acceptance Certificate.
2. This certificate constitutes a Manufacturer Fit Out Assets Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of Manufacturer Fit Out Assets receiving a Manufacturer Fit Out Assets Acceptance Certificate*] [comply/complies] with each of the relevant Equipment Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF SIMULATOR ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Simulator Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Simulator Acceptance Certificate.
2. This certificate constitutes a Simulator Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of Simulator receiving a Simulator Acceptance Certificate*] [comply/complies] with each of the relevant Equipment Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF SPARES ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Spares Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Spares Acceptance Certificate.
2. This certificate constitutes a Spares Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of the Spares tranche(s) receiving a Spares Acceptance Certificate*] [*comply/complies*] with each of the relevant Equipment Acceptance Criteria.

Signed for and on behalf of [*Manufacturer*]

Signature.....

Name.....

Position.....

Date.....

FORM OF SPECIAL TOOLS ACCEPTANCE CERTIFICATE

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Special Tools Acceptance Certificate and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Special Tools Acceptance Certificate.
2. This certificate constitutes a Special Tools Acceptance Certificate under the MSA.
3. We, Rail for London Limited, hereby confirm that, subject to clause 15.27 of the MSA, the [*details of the Special Tool tranche(s) receiving a Special Tools Acceptance Certificate*] [comply/complies] with each of the relevant Equipment Acceptance Criteria.

Signed for and on behalf of **Rail for London Limited**

Signature.....

Name.....

Position.....

Date.....

FORM OF CERTIFICATE OF COMMENCEMENT

[To be issued to the Manufacturer on Rail for London Limited's headed notepaper]

Manufacture and Supply Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Manufacturer*) (the *MSA*)

1. Words and expressions defined in the MSA shall have the same meanings when used in this Certificate of Commencement and the provisions of the MSA (including clause 63 (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this Certificate of Commencement.
2. This certificate constitutes a Certificate of Commencement under the MSA.
3. We, Rail for London Limited, hereby:
 - (a) confirm that each of the conditions precedent set out in clause 2.3 of the MSA have been satisfied (or agree to their waiver or deferral, as applicable);
 - (b) acknowledge receipt of your notice dated *[insert date]* confirming that each of the conditions precedent set out in clause 2.4 of the MSA have been satisfied (or waived or deferred by you); and
 - (c) notify you, the Manufacturer, that the Commencement Date under the MSA shall be *[insert date]*.

Signed for and on behalf of Rail for London Limited

Signature.....

Name.....

Position.....

Date.....

Part B Deed of Novation

THIS AGREEMENT is made the _____ day of _____ 20•

BETWEEN:

- (1) **RAIL FOR LONDON LIMITED** (Registered Number 05965930) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (*Purchaser*);
- (2) [**NEW PURCHASER**] (No. [*company number*]) whose registered office is at [*registered office address*] (the *New Purchaser*); and
- (3) **BOMBARDIER TRANSPORTATION UK LIMITED**, (Registered Number 02235994) a company incorporated under the laws of England and Wales whose registered office is at Litchurch Lane, Derby DE24 8AD (*Manufacturer*).

WHEREAS:

- (A) The Purchaser has appointed the Manufacturer to perform the Works under a manufacturing and supply agreement dated [*to be inserted*] (the *MSA*).
- (B) The Purchaser has entered into an agreement with the New Purchaser in respect of the Works.
- (C) The Purchaser, the Manufacturer and the New Purchaser have agreed that from the date of this Agreement, the New Purchaser shall assume the obligations of the Purchaser and that the Manufacturer shall perform its obligations under the MSA in favour of the New Purchaser and that the Purchaser on the one part and the Manufacturer on the other part shall each release the other from any obligations owed by the other to them under the MSA.

NOW IT IS HEREBY AGREED as follows:

1. Novation

- 1.1 The Purchaser hereby releases and discharges the Manufacturer from any and all obligations and liabilities owed to the Purchaser under the MSA.
- 1.2 The Manufacturer undertakes to perform the MSA and to be bound by its terms in every way as if the New Purchaser were, and had been from the inception, a Party to the MSA in lieu of the Purchaser.
- 1.3 The Manufacturer hereby releases and discharges the Purchaser from any and all obligations and liabilities owed to the Manufacturer under the MSA and accepts the obligations and liability of the New Purchaser under the MSA in lieu of the liability of the Purchaser.
- 1.4 Without prejudice to clause 1.2, the Manufacturer warrants to the New Purchaser that it shall be liable for any loss or damage suffered or incurred by the New Purchaser arising out of any negligent act, default or breach by the Manufacturer in the performance of its obligations under the MSA prior to the date of this Agreement. Subject to any limitation of liability in the MSA, the Manufacturer shall be liable for

such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Purchaser (or suffered or incurred to the same extent by the Purchaser).

- 1.5 The Manufacturer acknowledges that fees and expenses properly due to the Manufacturer under the MSA in the sum of £[to be inserted] have, as at the date of this Agreement, been paid by the Purchaser.
- 1.6 The New Purchaser undertakes to perform the MSA and to be bound by its terms in every way as if the New Purchaser were, and had been from the inception, a Party to the MSA in lieu of the Purchaser.

2. Proper Law and Jurisdiction

This Agreement and the rights and obligations of the Parties hereto shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference (whether arising out of or in connection herewith) subject only to the rights of the Parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

3. Contracts (Rights of Third Parties) Act 1999

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written.

The common seal of **RAIL FOR LONDON**)
LIMITED was hereunto affixed in the)
presence of:)

Signature of authorised signatory

Name of authorised signatory

The common seal of [*NEW PURCHASER*])
was hereunto affixed in the presence of:)
)

Signature of authorised signatory

Name of authorised signatory

Executed as a deed by **BOMBARDIER**)
TRANSPORTATION UK LIMITED)
acting by two directors:)

Director

Director

**Schedule 21
Form of Parent Company Guarantee**

[*GUARANTOR*]

RAIL FOR LONDON LIMITED

PARENT COMPANY GUARANTEE

THIS DEED OF GUARANTEE is made on the 201[●]

BETWEEN:

- (1) [GUARANTOR] a company incorporated under the laws of [●] whose registered office is at [●] (the *Guarantor*); and
- (2) **RAIL FOR LONDON LIMITED** (No. 05965930) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the *Purchaser*).

WHEREAS:

- (A) The Guarantor is the parent company of Bombardier Transportation UK Limited (Registered Number 02235994) a company incorporated under the laws of England and Wales whose registered office is at Litchurch Lane, Derby DE24 8AD (the *Manufacturer*).
- (B) The Purchaser and the Manufacturer have agreed to enter into an agreement (the *MSA*) pursuant to which the Manufacturer will design, build, test, commission and supply rolling stock and related equipment for use in the provision of passenger services on certain parts of the LO Infrastructure and provide other related services.
- (C) The Guarantor has agreed, as a condition precedent to the MSA (pursuant to clause 2.3(a) of the MSA), to guarantee the performance by the Manufacturer of its obligations under the MSA on the terms and conditions set out in this Guarantee.

NOW THIS DEED WITNESSES as follows:

1. Definitions And Interpretation

Definitions

1.1 *MSA* has the meaning given to it in recital (B);

Manufacturer has the meaning given to it in recital (A);

Manufacturer's Obligations has the meaning given to it in Clause 2(a)(i) (*Guarantee and Indemnity*); and

Interpretation

1.2 In this Guarantee, except where the context otherwise requires:

- (a) a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- (b) words in the singular shall include the plural and vice versa;
- (c) references to one gender include other genders;
- (d) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or

administrators and references to a *company* shall include Transport for London;

- (e) a reference to a Clause shall be a reference to a clause of this Guarantee;
- (f) if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- (g) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- (h) a reference to includes or including shall mean includes without limitation or including without limitation;
- (i) the contents page and headings in this Guarantee are for convenience only and shall not affect its interpretation;
- (j) references to this Guarantee include this Deed of Guarantee as amended or supplemented in accordance with its terms;
- (k) a reference to the *Guarantor*, the *Purchaser* or the *Manufacturer* includes their respective (and any subsequent) successor(s) in title, and their respective permitted transferee(s) or assignee(s);
- (l) references in this Guarantee to costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar tax properly chargeable therein in any jurisdiction;
- (m) references in this Guarantee to any other agreement or other instrument (other than an enactment or statutory provision) shall be deemed to be references to that agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned;
- (n) references to *otherwise* and words following *other* shall not be limited by any foregoing words where a wider construction is possible; and
- (o) words and expressions defined in the MSA shall, unless otherwise defined in this Guarantee, have the same meaning in this Guarantee.

Deed

- 1.3 The Parties to this Guarantee intend it to take effect as a deed.

2. Guarantee and Indemnity

- (a) In consideration of the Purchaser entering into the MSA with the Manufacturer, the Guarantor irrevocably and unconditionally:

- (i) guarantees to the Purchaser for the benefit of the Purchaser:
 - (A) the proper, complete and punctual performance and observance by the Manufacturer of all of the Manufacturer's obligations, undertakings, duties and responsibilities under the MSA when such obligations, undertakings, duties and responsibilities become due according to the terms of the MSA; and
 - (B) the due and punctual payment and discharge by the Manufacturer of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due, owing or payable to the Purchaser under or arising out of the MSA in accordance with its terms or otherwise by reason of or in consequence of any breach thereof on the part of the Manufacturer (including legal fees, taxes and any other costs, on a full indemnity basis, incurred by the Purchaser in connection with the Purchaser validly and justifiably seeking to enforce any of the above),

(together, the *Manufacturer's Obligations*), and the Guarantor covenants and undertakes with the Purchaser that if and whenever the Manufacturer fails to pay, perform and/or discharge and/or is otherwise in default in respect of any of the Manufacturer's Obligations, the Guarantor shall within five (5) Working Days of being served a written demand by the Purchaser, pay, fully perform and/or discharge or procure the payment, full performance and/or discharge of the Manufacturer's Obligations and make good the failure or other default as if the Guarantor, instead of the Manufacturer, was expressed to be the principal obligor; and
- (ii) agrees with the Purchaser, as a separate, independent, primary and additional obligation (and without prejudice to Clause 2(a)(i), (b) and/or Clause 15 (*Indemnity*)), to indemnify and keep indemnified the Purchaser within 5 Working Days of being served a written demand by the Purchaser and on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising from the Manufacturer failing to pay, fully perform and/or discharge and/or being otherwise in default in respect of any of the Manufacturer's Obligations or as a result of any of the Manufacturer's Obligations being or becoming void, voidable, unenforceable or ineffective as against the Manufacturer for any reason whatsoever whether or not known to the Manufacturer or any other person, and the amount of such losses, damages, costs, claims, liabilities, demands and expenses is the amount which the person suffering it would otherwise have been entitled to recover from the Manufacturer on the assumption that the MSA is not void, voidable, unenforceable or ineffective against the Manufacturer.

- (b) The Guarantor's liability under this Guarantee (including the liability provided for in Clause 15 (*Indemnity*)) shall, notwithstanding the multiple draws under this Guarantee, be limited to the Manufacturer's liability under the MSA (except in relation to any costs incurred in enforcing this Guarantee and any costs incurred pursuant to Clause 14 (*Payments and Interest*) and/or Clause 21 (*Costs*) hereof) such liability to be determined on the assumption that the MSA is not void, voidable, unenforceable or ineffective against the Manufacturer.

3. Principal Obligor

Without prejudice to the Purchaser's rights against the Manufacturer as principal obligor, the Guarantor shall be deemed the principal obligor in respect of its obligations under this Guarantee and not merely a surety and accordingly the Guarantor shall not be discharged nor shall its liability under this Guarantee be affected by any act or thing or means whatsoever by which its said liability would have been discharged or affected if it had not been the principal obligor.

4. Waiver of Defences

The obligations of the Guarantor under this Guarantee will not be affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 4, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or the Purchaser) including:

- (a) any termination, alteration, amendment, variation, novation, supplement, extension or reinstatement to any provision of the MSA or in the extent or nature or method or timing of the Manufacturer's Obligations, or novation of the MSA (in whole or in part), provided that the Guarantor's obligations under this guarantee shall be varied to the extent of any such alteration, amendment, variation, supplement, extension or reinstatement;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Manufacturer or other person or any non presentation or non observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Manufacturer or any other person;
- (d) the granting by the Purchaser of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with, the Manufacturer or any other person (whether expressly or by conduct);
- (e) the granting of any other bond, security or guarantee now or hereafter held by the Purchaser for all or any part of the Manufacturer's Obligations;

- (f) the release or waiver of any such bond, security or guarantee referred to in Clause 4(e) above;
- (g) any claim or enforcement of payment from the Manufacturer or any other person;
- (h) any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or by anything done or omitted which but for this provision might operate to exonerate the Guarantor;
- (i) any delay or forbearance by the Purchaser in exercising its rights or remedies under this Guarantee, or the enforcement or absence of enforcement of this Guarantee;
- (j) the bankruptcy, insolvency, liquidation, winding-up, dissolution, administration or incapacity of (or the appointment of an administrator or receiver of) or the amalgamation, reconstruction, merger, reorganisation or any analogous proceeding relating to the Manufacturer or the Guarantor or any change in status, function, control or ownership of the Manufacturer;
- (k) the illegality, invalidity, unenforceability or frustration of the MSA or any of the Manufacturer's Obligation(s) for any reason, or any defect in any provision of, the MSA or any other security given in relation to the Manufacturer's Obligations;
- (l) any present or future law or regulations purporting to reduce or prejudice any of the Manufacturer's Obligations;
- (m) any other act, event, fact, circumstance or omission which, but for the provisions of this guarantee, and in particular this Clause 4, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this guarantee or any of the rights, powers or remedies conferred upon the Purchaser by this guarantee or by law; and
- (n) anything that the Purchaser may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Guarantor under this Guarantee.

5. Discharge

Notwithstanding any composition, release, arrangement or waiver effected by the Purchaser with the Manufacturer, the Guarantor's liability under this Guarantee shall be discharged only by performance, payment and/or discharge by the Guarantor to the Purchaser in full of the Manufacturer's Obligations from time to time.

6. Continuing Obligations

Continuing Guarantee

- 6.1 This Guarantee shall be a continuing guarantee and shall remain in operation and full force and effect until all the Manufacturer's Obligations (whether actual or contingent) have been duly and completely performed and observed and the

Manufacturer shall have ceased to be under any actual or contingent liability to the Purchaser under the MSA and all obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full.

Future Exercise

- 6.2 No single exercise of any right, power or privilege conferred by this Guarantee shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege, nor shall any failure or delay by the Purchaser in exercising any right, power or privilege under this Guarantee or the MSA operate as a waiver thereof.

Unlimited Demands

- 6.3 The Purchaser is entitled to make any number of demands under this Guarantee.

7. Reinstatement

If any payment by the Manufacturer or Guarantor or any discharge given by the Purchaser (whether in respect of Manufacturer's Obligations or the obligations of the Guarantor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of the Manufacturer and Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Purchaser shall be entitled to recover the value or amount of that security or payment from the Manufacturer or Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

8. Enforcement

This Guarantee may be enforced without taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Manufacturer or any other person, or taking any action to enforce any other security, bond or guarantee held by the Purchaser or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Manufacturer or any person. This Guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security to be held by the Purchaser. The Purchaser's rights hereunder are in addition to and not exclusive of those provided by law (in accordance with Clause 20 (*Rights Cumulative With those at Law*)), in the MSA or in any other document, instrument or agreement executed in connection with the MSA.

9. Non-Competition

Non-competition

- 9.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Manufacturer's Obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under or in accordance with this Guarantee:

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Purchaser (or any trustee or agent on its behalf) or be entitled to any right or contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
- (b) claim, rank, prove or vote as a creditor of the Manufacturer or its estate in competition with the Purchaser (or any trustee or agent on its behalf); or
- (c) receive, claim or have the benefit of any payment, distribution or security from or on account of the Manufacturer, or exercise any rights of set-off as against the Manufacturer.

Trust

- 9.2 The Guarantor shall hold in trust for and forthwith pay or transfer to the Purchaser any payment or distribution or benefit of security received by it either contrary to this Clause 9 or as a result of a direction of the Purchaser under Clause 9.1(b) or 9.1(c).

10. Additional Security

This Guarantee is in addition to and is not in any way prejudice by any other security now or subsequently held by the Purchaser.

11. Retention of This Guarantee

The Purchaser shall be entitled to retain this Guarantee after as well as before the payment or discharge of all of the Manufacturer's Obligations for such period as the Purchaser may determine. At such time as the Guarantor considers that all of the Manufacturer's Obligations and that all of the Guarantor's obligations under this Guarantee have been paid and/or discharged in full as applicable, it may request that the Purchaser provide confirmation in writing of such payment and discharge. The Purchaser shall provide such confirmation in writing if it agrees that all the Manufacturer's Obligations and Guarantor's obligations under this Guarantee have been paid and/or discharged in full in accordance with this Guarantee.

12. Representations and Warranties

Security

- 12.1 The Guarantor warrants that it has not taken or received, and undertakes that until all the Manufacturer's Obligations or other amounts due under this Guarantee have been performed, paid or discharged in full, it will not take or receive, the benefit of any security or encumbrance of any kind from the Manufacturer or any other person in respect of its obligations under this Guarantee.

Representations and Warranties

- 12.2 The Guarantor represents and warrants in favour of the Purchaser that:

- (a) it is duly formed and validly existing under the laws of its jurisdiction of formation and has the full corporate power and authority to own its assets and to carry on its business as is now being conducted by it;

- (b) it has full corporate power and authority to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee;
- (c) this Guarantee constitutes, subject to any general principles of law limiting its obligations, its legal, binding, valid and enforceable obligations;
- (d) the entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with or result in a breach of:
 - (i) any law or regulation or judicial or official order to which the Guarantor is subject; or
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any security or encumbrance of any kind over its assets;
- (e) to the best knowledge and belief of the Guarantor there is no litigation, arbitration or administrative proceedings, in each case current or pending, of or before any court, arbitral body or agency of any country threatened against the Guarantor which separately or in the aggregate, could have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee;
- (f) the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee; and
- (g) without prejudice to the generality of Clause 12.2(c) its:
 - (i) irrevocable submission under this Guarantee to the exclusive jurisdiction of the courts of England;
 - (ii) agreement that this Guarantee is governed by English law; and
 - (iii) agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England will be recognised and be enforceable by the courts of its jurisdiction of incorporation, subject to any provisions of [●] which allow a [●] to refuse to recognise a judgement of a foreign court.

13. Withholdings and Deductions

All payments to be made by the Guarantor under this Guarantee shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or

charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Purchaser under this Guarantee or, if any such withholding or deduction is made in respect of any recovery under this Guarantee, the Guarantor shall pay such additional amount so as to ensure that the net amount received by the Purchaser shall equal the full amount due to it under the provisions of this Guarantee (had no such withholding or deduction been made).

14. Payments and Interest

Payments

- 14.1 (a) All payments by the Guarantor under this guarantee must be made to the Purchaser to its account at a bank in the United Kingdom as the Purchaser may notify the Guarantor on the date of this guarantee or otherwise in any notice of demand served under the terms of Clause 2 (*Guarantee and Indemnity*).
- (b) If a payment under this guarantee is due on a day which is not a Working Day the due date for that payment will instead be the next Working Day.
- (c) If this guarantee does not provide for when a particular payment is due, that payment will be due within thirty (30) Working Days of demand by the Purchaser.

Interest Rate

- 14.2 The Guarantor hereby agrees to pay to the Purchaser, in respect of any amount demanded from it in accordance with this Guarantee, interest at the Default Rate from first demand by the Purchaser of the Manufacturer.

Accrual of Interest

- 14.3 Such interest at the Default Rate shall accrue due on a daily basis from the demand by the Purchaser until actual payment by the Guarantor (both before and after any further demand or judgment or the liquidation of the Guarantor or the Manufacturer).

15. Indemnity

As a separate, independent and additional obligation (and without prejudice to Clause 2 (*Guarantee and Indemnity*)) the Guarantor unconditionally and irrevocably agrees (for the benefit of the Purchaser) to indemnify and keep indemnified the Purchaser within five (5) Working Days of being served a written demand by the Purchaser and on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses which may be suffered or reasonably incurred by the Purchaser and arise from any default or breach by the Guarantor of its obligations under this Guarantee.

16. Assignment/Novation

The Purchaser's Assignment/Novation

- 16.1 The Purchaser may at any time assign, transfer or novate without the consent of the Guarantor, the benefit of and/or its rights and/or obligations under this Guarantee (whether or not accrued), to any person to whom the benefit of the MSA is assigned, transferred or, as applicable, to whom the MSA is novated in accordance with and subject to the terms thereof and the Guarantor shall at its own cost execute such documents and do such other things as the Purchaser may reasonably require in order to facilitate and perfect such assignment, transfer or novation.

Guarantor's Assignment

- 16.2 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee.

17. Severance

If any provision or part of this Guarantee is illegal, void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Guarantee shall continue in full force and effect.

18. No Waiver

The rights and remedies of the Parties to this Guarantee shall not be affected by any failure to exercise or delay or forbearance in exercising any right or remedy or by the giving of any indulgence by one Party to this Guarantee or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties to this Guarantee. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

19. Entire Agreement

Whole Agreement

- 19.1 Each Party confirms that this Guarantee and any other documents referred to in this Guarantee represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

Non-Reliance

- 19.2 Each Party acknowledges that:

- (a) entering into this Guarantee it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Guarantee or any other documents referred to in this Guarantee; and
- (b) neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior

to, and/or in, this Guarantee) save for any liability for fraudulent misrepresentation or fraudulent misstatement.

20. Rights Cumulative With Those At Law

Rights Cumulative

- 20.1 The powers, rights and remedies conferred on the Parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties by law.

Equitable Remedies

- 20.2 Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this Guarantee by any Party shall be available to the Parties and that no proof of special damages shall be necessary for the enforcement of the provisions of this Guarantee

21. Costs

Each Party shall be responsible for their own legal costs in relation to the negotiation and execution of this Guarantee.

22. Language

This Guarantee is executed in English and all communications under this Guarantee shall be made in English.

23. Currency and Exchange Rate

All payments under this Guarantee shall be made in pounds sterling. All risks associated with movements in foreign currency exchange rates and/or the costs of activities performed outside of the United Kingdom shall be borne by the Guarantor.

24. Confidentiality

The Parties hereby agree that the terms of clause 38 (*Confidentiality*) of the MSA shall apply as appropriate to this Guarantee as if set out in this Guarantee in full save that references to *Manufacturer* shall be replaced by *Guarantor* and references to *Agreement* shall be replaced by "Guarantee".

25. Variation

No variation of this Guarantee shall be effective unless it is made by deed and executed by or on behalf of each of the Parties to this Guarantee. The expression *variation* includes supplement, deletion or replacement, however effected.

26. Further Assurance

Each Party to this Guarantee shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Guarantee.

27. Counterparts

This Guarantee may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

28. Contracts (Rights of Third Parties) Act

No provision of this Guarantee is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Guarantee.

29. Notices

Requirement for notice in writing

- 29.1 Any notice, consent, approval, certificate or determination to be given or issued by any person under this Guarantee shall be deemed a *notice* and shall be in writing unless otherwise specified and the words *notify*, *consent*, *approve*, *certify* and *determined* shall be construed accordingly.

Service of notices

- 29.2 (a) Subject to Clause 29.2(b), any notice made under or in connection with the matters contemplated by this Guarantee shall be deemed duly given if delivered personally or sent by email or by prepaid first-class post or by airmail if posted to or from a place outside the United Kingdom in accordance with the requirements of this Clause 29.

- (b) Notices shall be served:

- (c) If to the Purchaser to:

Rail for London Limited
Overground House
125 Finchley Road
Swiss Cottage
London NW3 6HY
Attention: Philip Clarke
Email: PhilClarke@Tfl.gov.uk

If to the Guarantor to:

[●]

Attention: [●]

Fax: [●]

Time of service

- 29.3 A notice shall be deemed to have been received:

- (a) if delivered by hand, at the time when the notice is left at the address of the Party to be served;
- (b) if sent by first-class post, on the Working Day next following the day of posting or, if the day of posting was not a Working Day, the Working Day next following the first Working Day after the day of posting;
- (c) if sent by airmail, five Working Days after the day of posting; and
- (d) if sent by email, upon receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation),

provided that if, in accordance with the above provision, any such notice would otherwise be deemed to be given or made after 5.00 p.m. such notice shall be deemed to be given or made at 9.00 a.m. on the next Working Day. For the purposes of this clause, all times are to be read as local time in the place of deemed receipt.

Change of details

29.4 A Party may notify the other Party to this Guarantee of a change to its name, relevant addressee, postal address or email address to update the information in Clause 29.2(b) provided that such notification shall only be effective:

- (a) on the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date falling five Working Days after notice of any such change has been given.

30. Governing Law and Jurisdiction

Governing Law

30.1 This Guarantee and any non-contractual obligations arising out of it or in connection with it shall be governed by, and construed in accordance with, English law.

Exclusive Jurisdiction

- 30.2 (a) For the benefit of the Purchaser and subject to Clause 30.2(b), the Parties irrevocably agree that the courts of England are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in any way relating to this guarantee or its formation (*Proceedings*) and for the purpose of enforcement of any judgment against its property or assets.
- (b) Nothing in this clause shall (or shall be construed so as to) limit the right of the Purchaser to take Proceedings against the Guarantor in the courts of any country in which the Guarantor has assets or in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

Forum

- 30.3 Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

Service of Process

- 30.4 (a) Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints [●] whose registered office is at [●], United Kingdom as its agent for service of process in relation to any proceedings before the English courts in connection with this Guarantee and agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.
- (b) The Purchaser agrees that the documents which commence any Proceedings and any other documents required to be served in relation to those Proceedings may be served on it at its address specified above or such other address in the United Kingdom as notified in accordance with Clause 29 (*Notices*) from time to time.

Final Determination

- 30.5 The Parties acknowledge and agree that any final determination, where all rights of appeal have been exhausted or expired, of the Manufacturer's liability in respect of an issue to which this guarantee applies, will be conclusive evidence of the Guarantor's liability under this guarantee with respect to such issue or issues.

IN WITNESS of which the Guarantor and the Purchaser have executed and delivered this Guarantee as a Deed the day and year first above written.

The common seal of)
RAIL FOR LONDON LIMITED)
was hereunto affixed in the presence of:)

Signature of authorised signatory

Name of authorised signatory

EXECUTED as a DEED)
by **[GUARANTOR]**)
in the presence of:)

Signature

Signature of witness

Name of witness

Address of witness

Occupation of witness

Schedule 22

Software Escrow Agreements

Part A Manufacturer Escrow Agreement

Part B Subcontractor Escrow Agreement

Part A Manufacturer Escrow Agreement

Single Licensee Distributor Software Escrow Agreement (Owner Deposits)

Date:

Owner: Bombardier Transportation UK Limited

Agreement Number [●]

Notice: The parties to this Agreement are obliged to inform NCC Group of any changes to the Package or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Package).

Escrow Agreement Dated:

BETWEEN:

- (1) **BOMBARDIER TRANSPORTATION UK LIMITED** whose registered office is at Litchurch Lane, Derby DE24 8AD (CRN: 02235994) (*Owner*);
- (2) **RAIL FOR LONDON LIMITED** a company registered in England whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (CRN: 05965930) (*Licensee*); and
- (3) **NCC GROUP ESCROW LIMITED** a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester, M1 7EF, England (CRN: 3081952) (*NCC Group*).

BACKGROUND:

- (A) The Licensee has been granted a licence to use the Package which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the software package is the confidential information and intellectual property of the Owner or a third party.
- (C) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

AGREEMENT:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1. Definitions and Interpretation

- 1.1 In this Agreement the following terms shall have the following meanings:

Agreement means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

Confidential Information means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

Full Verification means the tests and processes forming NCC Group's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Material.

Independent Expert means a suitably qualified and independent solicitor or barrister.

Integrity Testing means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Material.

Intellectual Property Rights mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know

how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

Licence Agreement means, as the context requires, the Manufacture and Supply Agreement and / or the Train Services Agreement as applicable, under which the Licensee was granted a licence to use the Package.

Manufacture and Supply Agreement means the agreement with such title under which the Licensee was granted a licence to use the Package.

Material means the Source Code of the Package and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

Order Form means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

Package means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement details of which are set out in schedule 1.

Release Purposes means the purposes of understanding, maintaining, modifying and correcting the Package exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

Source Code means the computer programming code of the Package in human readable form.

Third Party Material means Source Code which is not the confidential information and intellectual property of the Owner or the Licensee.

Train Services Agreement means the agreement with such title under which the Licensee was granted a licence to use the Package.

1.2 This Agreement shall be interpreted in accordance with the following:

- (a) headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- (b) all references to clauses and schedules are references to clauses and schedules of this Agreement;
- (c) all references to a party or parties are references to a party or parties to this Agreement; and
- (d) capitalised terms used and not defined in this Agreement shall have the meaning ascribed to such terms in the Licence Agreement.

2. Owner's Duties and Warranties

2.1 The Owner shall:

- (a) deliver a copy of the Material to NCC Group as soon as reasonably practicable after its creation and in any event within 28 days of the commencement of the Agreed Testing Programme;
- (b) deliver a further copy of the Material to NCC Group:
 - (i) each time that there is a change to the Package; and
 - (ii) on the occurrence of the events listed in clause 29.17(e) of the Manufacture and Supply Agreement;
- (c) ensure that each copy of the Material deposited with NCC Group comprises the Source Code of the latest version of the Package used by the Licensee;
- (d) deliver to NCC Group a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material to ensure that the integrity of the Material media is maintained;
- (e) deliver a replacement copy of the Material to NCC Group within 14 days of a notice given to it by NCC Group under the provisions of clause 4.1(c);
- (f) deliver with each deposit of the Material the following information:
 - (i) details of the deposit including the full name of the Package (i.e. the original name as set out under Appendix 1 (*The Package*) together with any new names given to the Package by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - (ii) password/encryption details required to access the Material;
- (g) deliver with each deposit of the Material the following technical information (where applicable):
 - (i) documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - (ii) software design information (e.g. module names and functionality); and
 - (iii) name and contact details of employees with knowledge of how to maintain and support the Material; and
- (h) if required by the Licensee, deposit a backup copy of the object code of any third party software package required to access, install, build or compile or otherwise use the Material.

2.2 The Owner warrants to both NCC Group and the Licensee at the time of each deposit of the Material with NCC Group that:

- (a) other than any third party object code referred to in clause 2.1(h) or any Third Party Material, it owns the Intellectual Property Rights in the Material;
- (b) in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by NCC Group;
- (c) in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);
- (d) the Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1(h)) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Package; and
- (e) in respect of any third party object code that the Owner, at its option, or, at the request of the Licensee, deposits with NCC Group in conjunction with the Material pursuant to clause 2.1(h), it has the full right and authority to do so.

3. Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Group of any change to the Package that necessitates a replacement deposit of the Material.
- 3.2 In the event that the Material is released under clause 6 the Licensee shall:
 - (a) keep the Material confidential at all times, on the basis set out in the Licence Agreement;
 - (b) use the Material only for the Release Purposes;
 - (c) not disclose the Material to any person save: (i) such of the Licensee's employees or contractors who need to know the same for the Release Purposes; and (ii) as permitted by the Licence Agreement. In the event that Material is disclosed to its employees or contractors, the Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 3.2 or otherwise as set out in the Licence Agreement;
 - (d) hold all media containing the Material in a safe and secure environment when not in use; and
 - (e) forthwith destroy the Material should the Licensee cease to be entitled to use the Package under the terms of the Licence Agreement.
- 3.3 In the event that the Material is released under clause 6 (*Release Events*), it shall be the responsibility of the Licensee to obtain the necessary licences to utilise the object code of any third party material deposited by the Owner pursuant to clause 2.1(h).

4. NCC Group's Duties

4.1 NCC Group shall:

- (a) at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
- (b) inform the Owner and the Licensee of the receipt of any deposit of the Material by sending to both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10 (*Integrity Testing and Full Verification*); and
- (c) notify the Owner and the Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

4.2 In the event of failure by the Owner to deposit any Material with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensee of the Owner's failure to deposit any Material.

4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8 (*Confidentiality*).

4.4 NCC Group has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

5. Payment

5.1 The parties shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in Appendix 2 (*NCC Group's Fees*). NCC Group's fees as published are exclusive of value added tax.

5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.

5.3 All invoices are payable within 30 days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of 2% per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6. Release Events

6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Material to a duly authorised officer of the Licensee if any of the following events (*Release Event(s)*) occur:

- (a) if the Owner is a company:

- (i) an order is made for the winding up of the Owner, the Owner passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Owner is appointed; or
- (ii) an order is made for the appointment of an administrator of the Owner or an administrator of the Owner is appointed; or
- (iii) the Owner enters into a compromise or arrangement with creditors; or
- (iv) the Owner has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
- (v) the Owner is dissolved; or
- (b) if the Owner is an individual:
 - (i) the Owner enters into a compromise or arrangement with creditors; or
 - (ii) the Owner is declared bankrupt; or
 - (iii) the Owner dies; or
- (c) if the Owner is a partnership:
 - (i) any of the partners in the Owner are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - (ii) the Owner is wound up or dissolved; or
 - (iii) the Owner enters into a compromise or arrangement with creditors; or
 - (iv) a partnership administration order is made in respect of the Owner; or
- (d) any similar or analogous proceedings or event to those in clauses 6.1(a) to 6.1(c) above occurs in respect of the Owner within any jurisdiction outside England; or
- (e) the Owner ceases to carry on its business or the part of its business which relates to the Package; or
- (f) the Owner assigns its rights to the Intellectual Property Rights in the Material to a third party (*Assignee*) and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Licensee by failing to enter into either:
 - (i) a novation agreement with the Licensee and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee on terms reasonably satisfactory to the Licensee; or

- (ii) a new escrow agreement with the Licensee for the Package which offers the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee,

provided that if the Assignee offers to enter into a novation or new escrow agreement on terms reasonably satisfactory to the Licensee within 60 days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within 30 days of such offer being notified to the Licensee, there shall be no Release Event under this clause; or

- (g) the Owner or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Package under the Licence Agreement or any maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Licensee to the Owner within a reasonable period; or
- (h) the Owner at any time unreasonably refuses to carry out, or to consent to the Licensee or its nominee carrying out, whether during or after the termination or expiry of the Licence Agreement:
 - (i) any of the Owner's obligations under the Licence Agreement (including after termination or expiry of the Licence Agreement, any obligation which was previously covered by the Licence Agreement); or
 - (ii) any Modification,

in each case excluding the manufacture of entire Units (such refusal to include any proposal by the Owner to the Licensee or its nominee to carry out any such works or services at an unreasonably high price); or

- (i) the carrying out of any rectification or other works or services pursuant to clauses 11.6 or 14 (*Maintainer's Obligations and Third Parties*) of the Train Services Agreement or clause 21 (*Right of the Purchaser to Authorise Work by Others*) of the Manufacture and Supply Agreement or in any other circumstances where the Owner is failing to carry out its obligations under the Licence Agreement; or
- (j) breach of this Agreement by the Owner which has not been remedied within 30 days of the Owner being notified of the same by the Licensee; or
- (k) termination or expiry of the Licence Agreement or the occurrence of a TSSSA Change.

6.2 The Licensee must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration (**Declaration**) made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event that the Licence Agreement and any maintenance agreement, if relevant, for the Package was still valid and effective up to

the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as NCC Group shall reasonably require.

- 6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:
- (a) NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
 - (b) unless within 14 days after the date of despatch of the Declaration by NCC Group, NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,

NCC Group will release the Material to the Licensee for its use for the Release Purposes.

- 6.4 Upon receipt of the counter-notice from the Owner under clause 6.3(b), NCC Group shall send a copy of the counter-notice and any supporting evidence to the Licensee by courier or other form of guaranteed delivery.
- 6.5 Upon receipt by the Licensee of the counter-notice from NCC Group or, in any event, within 90 days of despatch of the counter-notice by NCC Group, the Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within 90 days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1(a) to 6.1(e) or 6.1(g) to 6.1(k), a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.
- 6.8 Without prejudice to the foregoing, if the Owner instructs NCC Group to release the Material to the Licensee at any time in a written format which is acceptable to NCC Group and which has been signed by an authorised officer of the Owner, NCC Group will do so in a timely manner without following the release process set out in this clause 6.2 to 6.7. NCC Group shall be fully entitled to rely and act upon such written instructions in good faith and release the Material and shall not be required to independently verify any statements contained in such instructions or the authorisation of the relevant officer of the Owner. The Owner shall indemnify, defend, release and hold harmless NCC Group and its officers, agents, sub-contractors and employees against all loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded in respect of any claims, actions and suits brought by the Licensee, the Owner and/or a third party

against NCC Group as a result of NCC Group acting in accordance with this clause 6, except in the case of gross negligence or wilful misconduct by NCC Group.

7. Disputes

- 7.1 NCC Group shall notify the Owner of the Licensee's request for dispute resolution. Unless the Owner or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Owner or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, NCC Group shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within 5 working days of the appointment of the Independent Expert, the Owner and the Licensee shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within 14 days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Owner, Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 If the Independent Expert's decision is in favour of the Licensee, NCC Group is hereby authorised to release and deliver the Material to the Licensee within 5 working days of the decision being notified by the Independent Expert to the parties.
- 7.5 The parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8. Confidentiality

- 8.1 The Material shall remain at all times the confidential and intellectual property of its owner.
- 8.2 In the event that NCC Group releases the Material to the Licensee, the Licensee shall be permitted to use the Material only for the Release Purposes, and otherwise as set out in the Licence Agreement.
- 8.3 NCC Group agrees to keep all Confidential Information relating to the Material and/or the Package that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9. Intellectual Property Rights

- 9.1 The release of the Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Group. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10. Integrity Testing and Full Verification

- 10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Material received by NCC Group under this Agreement.
- 10.2 As soon as practicable after the Material has been deposited with NCC Group, NCC Group shall apply its Integrity Testing processes to the Material.
- 10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification. Subject to clause 10.4, NCC Group's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Group in carrying out the Full Verification processes shall be payable by the requesting party.
- 10.4 If the Material fails to satisfy NCC Group's Full Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.
- 10.5 Should the Material deposited fail to satisfy NCC Group's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2 (*Owner's Duties and Warranties*). If the Owner fails to make such deposit of the new, corrected or revised Material, NCC Group will issue a report to the Licensee detailing the problem with the Material as revealed by the relevant tests.

11. NCC Group's Liability

- 11.1 Nothing in this clause 11 excludes or limits the liability of NCC Group for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence; or
 - (c) any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Without prejudice to clauses 11.1(a) to 11.1(c) (inclusive), the following provisions set out the entire financial liability of NCC Group (including any liability for the acts or omissions of its employees, agents and subcontractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

- 11.2 NCC Group shall not be liable for any loss or damage caused to the other parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited to £2,500,000 (two million five hundred thousand pounds).
- 11.3 Subject to clause 11.1, NCC Group shall not be liable to the other parties for any:
- (a) indirect, consequential and/or special loss or damage;
 - (b) loss of profit (direct or indirect);
 - (c) loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
 - (d) loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);
 - (e) loss of anticipated saving or loss of margin (in each case whether direct or indirect);
 - (f) wasted management, operational or other time (in each case whether direct or indirect);
 - (g) loss or damage arising out of any failure by the Owner to keep full and up to date back-ups and security copies of any Materials delivered under this Agreement; and/or
 - (h) liability of any of the other parties to third parties (whether direct or indirect), arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.
- 11.4 NCC Group shall not be liable in any way to the Owner or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration

or any other document furnished to it pursuant to and in accordance with this Agreement.

- 11.5 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner or the Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

12. Indemnity

- 12.1 Save for any claim falling within the provisions of clauses 11.1 or 11.2, the Owner and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Owner and the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.
- 12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Material as contemplated under this Agreement.

13. Term and Termination

- 13.1 This Agreement shall continue until terminated in accordance with this clause 13.
- 13.2 If the Owner or the Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within 30 days. If the Licensee has not paid its invoice by the expiry of the 30 day notice period, this Agreement will automatically immediately terminate. If the Owner has not paid its invoice by the expiry of the 30 day notice period, NCC Group will give the Licensee a period of 15 days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the 15 day optional payment period given to the Licensee, this Agreement will automatically immediately terminate. Any amounts owed by the Owner but paid by the Licensee will be recoverable by the Licensee direct from the Owner as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery. If any such debt is not discharged by the Owner to the Licensee within 60 days of payment by the Licensee to NCC Group, pursuant to this clause then there will be a Release Event under clause 6.1.

- 13.3 Upon termination under the provisions of clause 13.2, for 30 days from the date of termination NCC Group will make the Material available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such 30 day period NCC Group will destroy the Material.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving 30 days written notice to the Owner and the Licensee. In that event, the Owner and the Licensee shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within 14 days of delivery of such notice, the Owner or the Licensee shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Owner and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Material to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Material to the Owner.
- 13.5 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group. Upon such termination, NCC Group will return the Material to the Owner.
- 13.6 If all of the Intellectual Property Rights in the Material have been assigned to a third party and the proviso in clause 6.1(f) applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall destroy the Material.
- 13.7 The Owner may only terminate this Agreement with the written consent of the Licensee.
- 13.8 This Agreement shall automatically immediately terminate upon release of all of the Material to the Licensee in accordance with clause 6 (*Release Events*).
- 13.9 If this Agreement is superseded and replaced by a new agreement in respect of the Material, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Material to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Material.
- 13.10 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.10 to 13.12 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.11 On and after termination of this Agreement, the Owner and/or the Licensee (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.

- 13.12 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14. General

- 14.1 A party shall notify the other parties to this Agreement, within 30 days of its occurrence, of any of the following:

- (a) a change of its name, registered office, contact address or other contact details; and
- (b) any material change in its circumstances that may affect the validity or operation of this Agreement.

- 14.2 Within 14 days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Material, the Owner shall notify:

- (a) NCC Group and the Licensee of such assignment and the identity of the Assignee; and
- (b) the Assignee of the provisions of clause 6.1(f).

- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

- 14.4 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Package and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.

- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:

- (a) if delivered by hand or courier, at the time of delivery;
- (b) if sent by first class recorded delivery (airmail if overseas), 2 business days after posting (6 days if sent by airmail);
- (c) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

- 14.6 The Owner and the Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.

- 14.7 NCC Group shall be entitled to transfer or assign this Agreement upon written notice to both the Owner and the Licensee.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.
- 14.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of **BOMBARDIER TRANSPORTATION UK LIMITED**

Signature.....

Name.....

Position.....

Date.....

Signed for and on behalf of **NCC GROUP ESCROW LIMITED**

Signature.....

Name.....

Position.....

Date.....

The common seal of **RAIL FOR LONDON**)
LIMITED was hereunto affixed in the presence)
of:)

Signature.....

Name.....

Appendix 1
The Package

The software package known as [*Service Provider to complete*] or any other name(s) as may be given to it by the Owner from time to time.

Appendix 2
NCC Group's Fees

	DESCRIPTION	OWNER	LICENSEE
1.	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter) And	100%	Nil
2.	Scheduled Update Fee (2 and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
3.	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
4.	Release Fee (plus NCC Group's reasonable expenses)	Nil	100%

Additional fees will be payable to NCC Group by the Owner (unless otherwise agreed between the parties) for the following where applicable:

- A Storage Fee for deposits in excess of 1 cubic foot (physical deposits) or uploads of more than 10 files (electronic deposits);
- B Any novation or replacement of this Agreement at the request of the Owner;
- C Integrity Testing Fee for deposits consisting of more than 5 physical media items or 10 electronic files.

Part B Subcontractor Escrow Agreement

Single Licensee Distributor, Staggered Release Software Escrow Agreement

Date: [•]

Owner: [•]

Agreement Number [•]

Notice: The parties to this Agreement are obliged to inform NCC Group of any changes to the Package or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Package).

Escrow Agreement Dated:

BETWEEN:

- (1) [Ownername] whose registered office is at [registered office address] (CRN: [company number]) (*Owner*);
- (2) **BOMBARDIER TRANSPORTATION UK LIMITED** whose registered office is at Litchurch Lane, Derby DE24 8AD (CRN: 02235994) (*Distributor*);
- (3) **RAIL FOR LONDON LIMITED** a company registered in England whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (CRN: 05965930) (*Licensee*); and
- (4) **NCC GROUP ESCROW LIMITED** a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester, M1 7EF, England (CRN: 3081952) (*NCC Group*).

BACKGROUND:

- (A) The Distributor has been granted a licence to use the Package which comprises computer programs and the right to grant sub-licences to use the Package.
- (B) The Licensee has been granted a licence to use the Package which comprises computer programs.
- (C) Certain technical information and/or documentation relating to the software package is the confidential information and intellectual property of the Owner or a third party.
- (D) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Distributor in order for it to continue to exercise its rights under the Distribution Agreement.
- (E) The Owner and the Distributor acknowledge that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (F) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Distributor and the Licensee should certain circumstances arise.

AGREEMENT:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1. Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

Agreement means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

Confidential Information means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

Distribution Agreement means the agreement under which the Distributor was granted a licence to use the Package and the right to grant sub-licences to use the Package.

Full Verification means the tests and processes forming NCC Group's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Material.

Independent Expert means a suitably qualified and independent solicitor or barrister.

Integrity Testing means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Material.

Intellectual Property Rights mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

Licence Agreement means, as the context requires, the Manufacture and Supply Agreement and / or the Train Services Agreement as applicable, under which the Licensee was granted a licence to use the Package.

Manufacture and Supply Agreement means the agreement with such title under which the Licensee was granted a licence to use the Package.

Material means the Source Code of the Package and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 (*Owner's Duties and Warranties*) of this Agreement.

Order Form means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

Package means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Distributor under the Distribution Agreement and to the Licensee under the Licence Agreement details of which are set out in Appendix 1 (*The Package*).

Release Purposes means the purposes of understanding, maintaining, modifying and correcting the Package exclusively for and on behalf of the Distributor together with such other purposes (if any) as are permitted under the Distribution Agreement and for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

Source Code means the computer programming code of the Package in human readable form.

Third Party Material means Source Code which is not the confidential information and intellectual property of the Owner or the Distributor or the Licensee.

Train Services Agreement means the agreement with such title under which the Licensee was granted a licence to use the Package.

1.2 This Agreement shall be interpreted in accordance with the following:

- (a) headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- (b) all references to clauses and schedules are references to clauses and schedules of this Agreement;
- (c) all references to a party or parties are references to a party or parties to this Agreement; and
- (d) capitalised terms used and not defined in this Agreement shall have the meaning ascribed to such terms in the Licence Agreement.

2. Owner's Duties and Warranties

2.1 The Owner shall:

- (a) deliver a copy of the Material to NCC Group as soon as reasonably practicable after its creation and in any event within 28 days of the commencement of the Agreed Testing Programme;
- (b) deliver a further copy of the Material to NCC Group:
 - (i) each time that there is a change to the Package; and
 - (ii) on the occurrence of the events listed in clause 29.17(e) of the Manufacture and Supply Agreement.
- (c) ensure that each copy of the Material deposited with NCC Group comprises the Source Code of the latest version of the Package used by the Distributor and the Licensee;
- (d) deliver to NCC Group a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material to ensure that the integrity of the Material media is maintained;
- (e) deliver a replacement copy of the Material to NCC Group within 14 days of a notice given to it by NCC Group under the provisions of clause 4.1(c);
- (f) deliver with each deposit of the Material the following information:
 - (i) details of the deposit including the full name of the Package (i.e. the original name as set out under Appendix 1 (*The Package*) together with any new names given to the Package by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and

- (ii) password/encryption details required to access the Material;
- (g) deliver with each deposit of the Material the following technical information (where applicable):
 - (i) documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - (ii) software design information (e.g. module names and functionality); and
 - (iii) name and contact details of employees with knowledge of how to maintain and support the Material; and
- (h) if required by the Distributor and/or the Licensee, deposit a backup copy of the object code of any third party software package required to access, install, build or compile or otherwise use the Material.

2.2 The Owner warrants to NCC Group, the Distributor and the Licensee at the time of each deposit of the Material with NCC Group that:

- (a) other than any third party object code referred to in clause 2.1(h) or any Third Party Material, it owns the Intellectual Property Rights in the Material;
- (b) in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by NCC Group;
- (c) in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);
- (d) the Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1(h)) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Package; and
- (e) in respect of any third party object code that the Owner, at its option, or, at the request of the Distributor and/or the Licensee, deposits with NCC Group in conjunction with the Material pursuant to clause 2.1(h), it has the full right and authority to do so.

3. Distributor's and Licensee's Responsibilities and Undertakings

3.1 The Distributor and/or the Licensee shall notify NCC Group of any change to the Package that necessitates a replacement deposit of the Material.

3.2 In the event that the Material is released under clause 6 (*Release Events*) to the Distributor or to the Licensee (as the case may be), the Distributor or the Licensee shall:

- (a) keep the Material confidential at all times, on the basis set out in the Licence Agreement;
- (b) use the Material only for the Release Purposes;
- (c) not disclose the Material to any person save (i) such of the Distributor's and the Licensee's (as appropriate) employees or contractors who need to know the same for the Release Purposes; and
- (d) as permitted by the Licence Agreement. In the event that Material is disclosed to its employees or contractors, the Distributor and the Licensee (as appropriate) shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 3.2 or otherwise as set out in the Licence Agreement;
- (e) hold all media containing the Material in a safe and secure environment when not in use; and
- (f) in the case of the Distributor, forthwith destroy the Material should the Distributor cease to be entitled to use the Package under the terms of the Distribution Agreement; and
- (g) in the case of the Licensee, forthwith destroy the Material should the Licensee cease to be entitled to use the Package under the terms of the Licence Agreement.

3.3 In the event that the Material is released under clause 6 (*Release Events*), it shall be the responsibility of the Distributor and the Licensee (as appropriate) to obtain the necessary licences to utilise the object code of any Third Party Material deposited by the Owner pursuant to clause 2.1(h).

4. NCC Group's Duties

4.1 NCC Group shall:

- (a) at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
- (b) inform the Owner, the Distributor and the Licensee of the receipt of any deposit of the Material by sending to all parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10 (*Integrity Testing and Full Verification*); and
- (c) notify the Owner, the Distributor and the Licensee if it becomes aware at any time during the term of this Agreement that the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

- 4.2 In the event of failure by the Owner to deposit any Material with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Distributor and the Licensee of the Owner's failure to deposit any Material.
- 4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8 (*Confidentiality*).
- 4.4 NCC Group has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

5. Payment

- 5.1 The parties shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in Appendix 2 (*NCC Group's fees*). NCC Group's fees as published are exclusive of value added tax.
- 5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.
- 5.3 All invoices are payable within 30 days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of 2% per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6. Release Events

- 6.1 Subject to: (i) clauses 6.1 to 6.8 inclusive and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Material to a duly authorised officer of the Distributor if any of the following events (*Release Event(s)*) occur:

(a) if the Owner is a company:

- (i) an order is made for the winding up of the Owner, the Owner passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Owner is appointed; or
- (ii) an order is made for the appointment of an administrator of the Owner or an administrator of the Owner is appointed; or
- (iii) the Owner enters into a compromise or arrangement with creditors; or
- (iv) the Owner has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
- (v) the Owner is dissolved; or

- (b) if the Owner is an individual:
 - (i) the Owner enters into a compromise or arrangement with creditors; or
 - (ii) the Owner is declared bankrupt; or
 - (iii) the Owner dies; or
- (c) if the Owner is a partnership:
 - (i) any of the partners in the Owner are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - (ii) the Owner is wound up or dissolved; or
 - (iii) the Owner enters into a compromise or arrangement with creditors; or
 - (iv) a partnership administration order is made in respect of the Owner; or
- (d) any similar or analogous proceedings or event to those in clauses 6.1(a) to 6.1(c) above occurs in respect of the Owner within any jurisdiction outside England; or
- (e) the Owner ceases to carry on its business or the part of its business which relates to the Package; or
- (f) the Owner assigns its rights to the Intellectual Property Rights in the Material to a third party (*Assignee*) and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Distributor and the Licensee by failing to enter into either:
 - (i) a novation agreement with the Distributor and the Licensee and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee on terms reasonably satisfactory to the Distributor and the Licensee; or
 - (ii) a new escrow agreement with the Distributor and the Licensee for the Package which offers the Distributor and the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Distributor and the Licensee,

provided that if the Assignee signs a novation or new escrow agreement on terms reasonably satisfactory to the Distributor and the Licensee within 60 days of all parties' knowledge of the assignment and the Distributor or the Licensee fails to sign the new agreement within 30 days of being notified of the signature of the novation or the new agreement by the Assignee, there shall be no Release Event under this clause, or

- (g) the Owner or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Package under the Distribution Agreement or any

maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Distributor to the Owner within a reasonable period.

- 6.2 The Distributor must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration (**Declaration**) made by an officer of the Distributor declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Distribution Agreement and any maintenance agreement, if relevant, for the Package was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as NCC Group shall reasonably require.
- 6.3 Upon receipt of a Declaration from the Distributor claiming that a Release Event has occurred:
- (a) NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
 - (b) unless within 14 days after the date of despatch of the Declaration by NCC Group, the Owner delivers to NCC Group a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred, or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof NCC Group will release the Material to the Distributor for its use for the Release Purposes.
- 6.4 If the Material is released to the Distributor under the provisions of clause 6.1 the Distributor will be solely responsible for the performance of its own and such of the Owner's obligations contained in this Agreement as are consistent with the continued operation of this Agreement.
- 6.5 Upon receipt of the counter-notice from the Owner under clause 6.3, NCC Group shall send a copy of the counter-notice and any supporting evidence to the Distributor by courier or other form of guaranteed delivery.
- 6.6 Upon receipt of the counter-notice by the Distributor or, in any event, within 90 days of despatch of the counter-notice by NCC Group, the Distributor may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.
- 6.7 If, within 90 days of despatch of the counter-notice by NCC Group to the Distributor, NCC Group has not been informed by the Distributor that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Distributor will be deemed to be no longer valid and the Distributor shall be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.
- 6.8 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1(a) to 6.1(e) and 6.1(g), a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice the Distributor's right to release of the Material and its use for the Release Purposes.

6.9 Subject to: (i) clauses 6.9 to 6.15 inclusive and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Material to a duly authorised officer of the Licensee if any of the following Release Events occur:

- (a) if the Distributor is a company:
 - (i) an order is made for the winding up of the Distributor, the Distributor passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Distributor is appointed; or
 - (ii) an order is made for the appointment of an administrator of the Distributor or an administrator of the Distributor is appointed; or
 - (iii) the Distributor enters into a compromise or arrangement with creditors; or
 - (iv) the Distributor has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
 - (v) the Distributor is dissolved; or
- (b) if the Distributor is an individual:
 - (i) the Distributor enters into a compromise or arrangement with creditors; or
 - (ii) the Distributor is declared bankrupt; or
 - (iii) the Distributor dies; or
- (c) if the Distributor is a partnership:
 - (i) any of the partners in the Distributor are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - (ii) the Distributor is wound up or dissolved; or
 - (iii) the Distributor enters into a compromise or arrangement with creditors; or
 - (iv) a partnership administration order is made in respect of the Distributor; or
- (d) any similar or analogous proceedings or event to those in clauses 6.9(a) to 6.9(c) above occurs in respect of the Distributor within any jurisdiction outside England; or
- (e) the Distributor ceases to carry on its business or the part of its business which relates to the Package; or
- (f) the Distributor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or

modification of the Package under the Licence Agreement or any maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Licensee to the Distributor within a reasonable period; or

- (g) if the Distributor fails to apply for release on the occurrence of the Release Events listed in clauses 6.1(a) to 6.1(g) the Licensee can apply for release within a reasonable period; or
- (h) the Distributor at any time unreasonably refuses to carry out, or to consent to the Licensee or its nominee carrying out, whether during or after the termination or expiry of the Licence Agreement:
 - (i) any of the Distributor's obligations under the Licence Agreement (including after termination or expiry of the Licence Agreement, any obligation which was previously covered by the Licence Agreement); or
 - (ii) any Modification,in each case excluding the manufacture of entire Units (such refusal to include any proposal by the Distributor to the Licensee or its nominee to carry out any such works or services at an unreasonably high price); or
- (i) the carrying out of any rectification or other works or services pursuant to clauses 11.6 or 14 of the Train Services Agreement or clause 21 of the Manufacture and Supply Agreement or in any other circumstances where the Distributor is failing to carry out its obligations under the Licence Agreement; or
- (j) termination (but only where as a result of breach of this Agreement by the Owner or the Distributor) or expiry of this Agreement in circumstances where it is not replaced immediately on substantially the same terms as this Agreement with the Licensee at substantially the same price for the Licensee; or
- (k) termination or expiry of the Licence Agreement or the occurrence of a TSSSA Change; or
- (l) for the avoidance of doubt, should the Owner instruct NCC Group to release the Material to the Distributor and/or the Licensee at any time in a written format which is acceptable to NCC Group and which has been signed by an authorised officer of the Owner, NCC Group will do so in a timely manner without following the process set out in this clause 6. The Owner shall indemnify NCC Group fully against any claim brought against NCC Group by the Distributor and/or the Licensee or any third party for acting in accordance with this clause 6.9(l).

- 6.10 The Licensee must notify NCC Group of the Release Event specified in clause 6.9 by delivering to NCC Group a Declaration made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event that the Licence Agreement and any maintenance agreement, if

relevant, for the Package was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as NCC Group shall reasonably require.

6.11 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:

- (a) NCC Group shall submit a copy of the Declaration to the Owner and the Distributor by courier or other form of guaranteed delivery; and
- (b) unless within 14 days after the date of despatch of the Declaration by NCC Group,
 - (i) NCC Group receives a counter-notice signed by a duly authorised officer of the Distributor stating that in their view no such Release Event has occurred, or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof; or
 - (ii) NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that the Owner will assume directly:
 - (A) the rights and obligations of the Distributor under this Agreement and shall accordingly enter into a new escrow agreement to reflect the new arrangement within 30 days from the date of such counter-notice; and
 - (B) any maintenance obligations of the Distributor under any maintenance agreement with the Licensee or under the Licence Agreement on reasonable commercial terms; or
 - (iii) NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that the Owner:
 - (A) has appointed a new distributor who will assume the rights and obligations of the Distributor under this Agreement, the Licence Agreement and any maintenance agreement on reasonable commercial terms; and
 - (B) the new distributor shall accept the obligations of the Distributor by signing and delivering to NCC Group a new escrow agreement on the same terms and conditions as are contained in this Agreement within 30 days of such counter-notice,

NCC Group will release the Material to the Licensee for its use for the Release Purposes.

6.12 Upon receipt of the counter-notice from the Owner and/or Distributor under clause 6.11 NCC Group shall send a copy of the counter-notice and any supporting evidence to the Licensee by courier or other form of guaranteed delivery.

- 6.13 Upon receipt by the Licensee of the counter-notice from NCC Group or, in any event, within 90 days of despatch of the counter-notice by NCC Group, the Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.
- 6.14 If, within 90 days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.
- 6.15 For the avoidance of doubt, where a Release Event has occurred under clauses 6.9(a) to 6.9(l), a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.

7. Disputes

- 7.1 NCC Group shall notify the Owner of the Distributor's request for dispute resolution and the Owner and the Distributor of the Licensee's request for dispute resolution. Unless the Owner, the Distributor or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Owner, the Distributor or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, NCC Group shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within 5 working days of the appointment of the Independent Expert, the relevant parties shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within 14 days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Owner, the Distributor, the Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 If the Independent Expert's decision is in favour of the Distributor or the Licensee (as appropriate), NCC Group is hereby authorised to release and deliver the Material to the Distributor or the Licensee (as appropriate) within 5 working days of the decision being notified by the Independent Expert to the parties.
- 7.5 The parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8. Confidentiality

- 8.1 The Material shall remain at all times the confidential and intellectual property of its owner.
- 8.2 In the event that NCC Group releases the Material to the Distributor or the Licensee, the Distributor or the Licensee shall be permitted to use the Material only for the Release Purposes, and otherwise as set out in the Licence Agreement.
- 8.3 NCC Group agrees to keep all Confidential Information relating to the Material and/or the Package that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9. Intellectual Property Rights

- 9.1 The release of the Material to the Distributor or the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Group. The Owner, the Distributor and the Licensee shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10. Integrity Testing and Full Verification

- 10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Material received by NCC Group under this Agreement.
- 10.2 As soon as practicable after the Material has been deposited with NCC Group, NCC Group shall apply its Integrity Testing processes to the Material.
- 10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification. Subject to clause 10.4, NCC Group's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Group in carrying out the Full Verification processes shall be payable by the requesting party.
- 10.4 If the Material fails to satisfy NCC Group's Full Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.
- 10.5 Should the Material deposited fail to satisfy NCC Group's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2 (*Owner's Duties and Warranties*). If the Owner fails to make

such deposit of the new, corrected or revised Material, NCC Group will issue a report to the Distributor and the Licensee detailing the problem with the Material as revealed by the relevant tests.

11. NCC Group's Liability

11.1 Nothing in this clause 11 excludes or limits the liability of NCC Group for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence; or
- (c) any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- (d) Without prejudice to clauses 11.1(a) to 11.1(c) (inclusive), the following provisions set out the entire financial liability of NCC Group (including any liability for the acts or omission of its employees, agents and sub-contractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

11.2 NCC Group shall not be liable for any loss or damage caused to the other parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited to £2,500,000 (two million five hundred thousand pounds).

11.3 Subject to clause 11.1, NCC Group shall not be liable to the other parties for any:

- (a) indirect, consequential and/or special loss or damage;
- (b) loss of profit (direct or indirect);
- (c) loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- (d) loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);
- (e) loss of anticipated saving or loss of margin (in each case whether direct or indirect);

- (f) wasted management, operational or other time (in each case whether direct or indirect);
 - (g) loss or damage arising out of any failure by the Owner to keep full and up to date back-ups and security copies of any Materials delivered under this Agreement; and/or
 - (h) liability of any of the other parties to third parties (whether direct or indirect), arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.
- 11.4 NCC Group shall not be liable in any way to the Owner, the Licensee or the Distributor for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 11.5 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner, the Licensee or the Distributor to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.
- 12. Indemnity**
- 12.1 Save for any claim falling within the provisions of clause 11.1 or 11.2, the Owner, the Distributor and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Owner and/or the Distributor and/or the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.
- 12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Material as contemplated under this Agreement.
- 13. Term and Termination**
- 13.1 This Agreement shall continue until terminated in accordance with this clause 13.

- 13.2 If the Owner, the Distributor or the Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within 30 days. If the Licensee has not paid its invoice by the expiry of the 30 day notice period, this Agreement will automatically immediately terminate. If the Owner or the Distributor has not paid its invoice by the expiry of the 30 day notice period, NCC Group will give the Licensee a period of 30 days to pay the Owner's or Distributor's invoice. If the Owner's or Distributor's invoice has not been paid by the expiry of the 30 day optional payment period given to the Licensee, this Agreement will automatically immediately terminate. Any amounts owed by the Owner or the Distributor but paid by the Licensee will be recoverable by the Licensee direct from the relevant party as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.
- 13.3 Upon termination under the provisions of clause 13.2, for 30 days from the date of termination NCC Group will make the Material available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such 30 day period NCC Group will destroy the Material.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving 30 days written notice to the Owner, the Distributor and the Licensee. In that event the Owner, the Distributor and the Licensee shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within 14 days of delivery of such notice, the Owner, the Distributor or the Licensee shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Owner, the Distributor and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Material to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Material to the Owner.
- 13.5 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group. Upon such termination, NCC Group will return the Material to the Owner.
- 13.6 If all of the Intellectual Property Rights in the Material have been assigned to a third party and the proviso in clause 6.1(f) applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner, the Distributor and the Licensee and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall destroy the Material.
- 13.7 The Owner and/or the Distributor may only terminate this Agreement with the written consent of the Licensee.
- 13.8 This Agreement shall automatically immediately terminate upon release of the Material to the Licensee in accordance with clause 6 (*Confidentiality*).

- 13.9 If this Agreement is superseded and replaced by a new agreement in respect of the Material, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Material to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Material.
- 13.10 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.10 to 13.12 (inclusive) and 14 shall continue in full force after termination of this Agreement and the provisions of clauses 6.9(k) and 7 shall continue in full force and effect until such time as the Material has been released to the Licensee by NCC Group.
- 13.11 On and after termination of this Agreement, the Owner and/or the Distributor and/or the Licensee (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 13.12 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.
- 14. General**
- 14.1 A party shall notify the other parties to this Agreement, within 30 days of its occurrence, of any of the following:
- (a) a change of its name, registered office, contact address or other contact details; and
 - (b) any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within 14 days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Material, the Owner shall notify:
- (a) NCC Group, the Distributor and the Licensee of such assignment and the identity of the Assignee; and
 - (b) the Assignee of the provisions of clause 6.1(f).
- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Package and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall

be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:

- (a) if delivered by hand or courier, at the time of delivery;
- (b) if sent by first class recorded delivery (airmail if overseas), 2 business days after posting (6 days if sent by airmail);
- (c) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

- 14.6 The Owner, the Distributor and the Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.
- 14.7 NCC Group shall be entitled to transfer or assign this Agreement upon written notice to the Owner, the Distributor and the Licensee.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of

the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.

- 14.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clauses 6.7 and 6.14, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of [Ownername]

Signature.....

Name.....

Position.....

Date.....

Signed for and on behalf of **BOMBARDIER TRANSPORTATION UK LIMITED**

Signature.....

Name.....

Position.....

Date.....

Signed for and on behalf of **NCC GROUP ESCROW LIMITED**

Signature.....

**Manufacture and Supply Agreement
EXECUTION VERSION**

Name.....

Position.....

Date.....

The common seal of **RAIL FOR LONDON**)
LIMITED was hereunto affixed in the presence)
of:)

Signature.....

Name.....

Appendix 1
The Package

The software package known as [*Owner/Distributor to complete*] or any other name(s) as may be given to it by the Owner (or the Distributor on behalf of the Owner) from time to time.

Appendix 2
NCC Group's Fees

	DESCRIPTION	OWNER	DISTRIBUTOR	LICENSEE
1.	Distributor Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	Nil	Nil	100%
2.	Licensee Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	Nil	Nil	100%
3.	Scheduled Update Fee (2nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	Nil	100%	Nil
4.	Unscheduled Update Fee (per unscheduled deposit)	Nil	100%	Nil
5.	Distributor Release Fee (plus NCC Group's reasonable expenses)	Nil	100%	Nil
6.	Licensee Release Fee (plus NCC Group's reasonable expenses)	Nil	Nil	100%

Additional fees will be payable to NCC Group by the Licensee (unless otherwise agreed between the parties) for the following where applicable:

- (a) Storage Fee for deposits in excess of 1 cubic foot (physical deposits) or uploads or more than 10 files (electronic deposits);
- (b) Any novation or replacement of this Agreement at the request of the Owner, the Distributor or the Licensee;
- (c) Integrity Testing Fee for deposits consisting of more than 5 physical media items or 10 electronic files.

Schedule 23 of the Manufacture and Supply Agreement Dated on or around the 1st July 2015.

Financial Close Protocol

as completed and initialled for the purposes of contract identification.

OPTION A. PRICE AND MILESTONES ADJUSTED TO A 100% GBP PRICE – BLOOMBERG OPTION

It is agreed that:

1. The file "Financial Closing Spreadsheet FINAL Version 2" (the *FCS* or the *Financial Closing Spreadsheet*) is to be used to calculate the following amounts in accordance with clause 2.7(b) of the MSA:
 - a. the adjusted Maximum IO Required APB Amount to be included in paragraph 1.6 of Part A (*Advance Payment Bond*) of Schedule 10;
 - b. the adjusted Milestone Payments to be included in column 3 of the table set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10;
 - c. the increases in the Required APB Bond Amount to be included in column 4 of the table set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10; and
 - d. the adjusted contract price items and the adjusted Total Contract Price to be included in the table in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10 of the Agreement.
2. The forward FX rates will be based on interpolations to the specific payment dates identified.
3. These interpolations will be done in Excel using Bloomberg functions.
4. Bombardier takes the risk of moving rates between the moment the 'Real Time Update' box is ticked and the moment that TfL confirms that the rates are acceptable.
5. The conference call will be recorded by TfL.
6. The conference call is planned to start at 10.00 UK time, 2nd July 2015 although time to be agreed between the parties.
7. If the conference call starts later than 13:00 UK time then 30 minutes notice will be given prior to commencement of the call.
8. The latest the call can commence is 14:00 hrs UK time, after which time the call will take place on the next working day at 10:00 UK time.

PROCEDURE

1. Conference Call is open and will be chaired by [REDACTED]
2. Roll Call to confirm all parties present.
3. Confirmation that the spreadsheet "Financial Closing Spreadsheet FINAL version x" (where x is version number representing the sequential reference of the dry run) is open by both parties.

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4. The parties confirm the real time auto refresh is turned on. Both parties then confirm that BB FRD screens are open for EUR & SEK with autorefresh on.
 - a. Screen: FRD
 - b. Currency Pairs: GBP [REDACTED] & GBP [REDACTED]
 - c. Spot Source: BGNL
 - d. Forward Source: BGNL
 - e. Bid-Ask: Bid rates, i.e. buying the foreign currencies, selling GBP
 - f. The spot rates for GBP [REDACTED] and GBP [REDACTED] are then quoted by each party
5. Bombardier Treasury [REDACTED] will lead a countdown for the uncheck box in Excel along with the auto refresh taken off on BB to stop live updates. Each box will be unchecked on the word "now" following the sequence in point 6.
6. The sequence of the uncheck / autorefresh is :
 - i. In the BB FRD screen, for GBP [REDACTED] uncheck the 'Auto Refresh' box, 3,2,1,now
 - ii. In the BB FRD screen, for GBP / [REDACTED] uncheck the 'Auto Refresh' box, 3,2,1,now
 - iii. In Excel, uncheck the 'Real-Time Updates' box, 3,2,1 now.
 - iv. Both parties to confirm that BB screen shots for GBP [REDACTED] and GBP [REDACTED] have been saved.
7. Both Parties will verify the value in Cell AA12 in the Financial Closing Spreadsheet Final version x "(where x is version number representing the sequential reference of the dry run), in worksheet 'Appendix 1 Revised Milestones'.
8. Verification of the spot bid rates by the parties – Verbally called out by Bombardier Treasury and repeated and confirmed by TfL nominated individual from worksheet 'Bloomberg Rates' in the Financial Closing Spreadsheet Final version x "(where x is version number representing the sequential reference of the dry run). If the spot rates cannot be confirmed then the process is to start again from point 3.
9. The forward points are then agreed with Bombardier Treasury calling out the bid rate differences to 2 decimal places and TfL representative repeating and confirming from worksheet 'Bloomberg Rates' in the Financial Closing Spreadsheet Final version x "(where x is version number representing the sequential reference of the dry run).
10. If there are any differences between Bombardier Treasury and TfL during the verification process in Steps 7 to 9 then the variations are noted verbally by the TfL representative and Bombardier's forward points are retained in the spreadsheets. TfL can at this point either (i) accept all of the variations noted, and the process continues; or (ii) request that, for one or more of the variations, the spreadsheet input is amended to a stated TfL figure which is agreed by Bombardier Treasury, and the process continues; or (iii) the process will start again from point 3 or (iv) the process will start again from point 1 if necessary to start on the next Business Day.
11. Once spot and forward points are verified the worksheet will automatically interpolate for each payment date, and calculate a revised contract price in cell AA12 in the Financial Closing Spreadsheet Final version x "(where x is version number representing the sequential reference of the dry run), in worksheet 'Appendix 1 Revised Milestones'

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12. This revised contract price will be called out by Bombardier Treasury (digit by digit) and repeated and confirmed by TfL's representative. This will be the revised contract value in GBP from the Financial Closing Spreadsheet Final version x (where x is version number representing the sequential reference of the dry run), cell AA12 in worksheet 'Appendix 1 Revised Milestones'. Bombardier Treasury will then confirm the values in Column E of the worksheet 'Appendix 2 Part B' for the specific prices for the items in Appendix 2 (Total Contract Price) to Part B (Milestones) of Schedule 10 (Milestones and Security) of the Agreement. If TfL cannot verify the revised contract price then the process will start again from point 3 or from point 1 if necessary to start on the next Business Day. The spreadsheet will be saved as 'Financial Closing Spreadsheet Final version y' (where y is version number representing the sequential reference of the next dry run or Final if approved on the day set aside for financial close) by Bombardier Treasury who will remove the Bloomberg formulae by copying and pasting all values in the 'Bloomberg Rates' worksheet as well as cells AB24:AC305 in the 'Appendix 1 Revised Milestones' worksheet. Bombardier Treasury will then email this spreadsheet to BT Derby [REDACTED] for final verification along with the BB screenshots.
13. Within 15 minutes of receipt of the mail from point 12 BT Derby [REDACTED] will verify the spreadsheet and email BT's confirmation of the revised price and milestone values along with the Financial Closing Spreadsheet Final version y (where y is version number representing the sequential reference of the next dry run or Final if approved on the day set aside for financial close) and the BB screenshots to TfL nominated representative.
14. Within 15 minutes of receipt of the email from point 13 TfL will confirm or advise that they do not accept the revised contract price back to BT Derby [REDACTED] and BT Treasury [REDACTED] by email. In the instance where TfL do not accept the revised contract price then TfL are to advise BT Derby when the process is proposed to start again or that they are adopting Option B of Schedule 23 (Financial Closing Protocol).

FINALISATION OF SCHEDULE 10

15. As soon as possible after step 14 has been completed, the Purchaser shall prepare and send to the Manufacturer for review, a new Schedule 10 as completed with
- the adjusted Maximum IO Required APB Amount in paragraph 1.6 of Part A (Advance Payment Bond);
 - the adjusted Milestone Payments in column 3 of Appendix 1 (Schedule of Milestones) to Part B (Milestones)¹;
 - the adjusted amounts reflecting the increases in the Required APB Bond Amount in column 4 of the table set out in Appendix 1 (Schedule of Milestones) to Part B (Milestones) of Schedule 10; and
 - the adjusted contract price items and the adjusted Total Contract Price in the table in Appendix 2 (Total Contract Price) to Part B (Milestones),

¹ Parties agree that consequential changes will be made to the amount of Total Payments in the last row of the Schedule of Milestones.

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in each case as verified and confirmed in accordance with steps 12 and 14 above.

16. As soon as possible thereafter, the Manufacturer shall verify the new Schedule 10, as completed in accordance with step 15, and confirm its agreement per e-mail to RfL. To the extent that in the opinion of the Manufacturer the proposed revised Schedule 10 contains any factual errors, the Manufacturer will inform the Purchaser thereof and the Parties will amend such new Schedule 10 to duly reflect the amounts verified and confirmed in accordance with steps 12 and 14 above.
17. Once the new Schedule 10, as completed in accordance with step 15, has been agreed, such Schedule 10 shall be initialled by the Purchaser and the Manufacturer via one or more duly authorised signatories. Each Party irrevocably agrees that such revised Schedule 10 will replace the existing Schedule 10 and shall be deemed the only effective and valid Schedule 10 with effect as from the date of signing of the Agreement.

CONTACT NAMES

1. BT Contacts are:

BT Derby

[REDACTED]

BT Treasury

[REDACTED]

TfL Nominated Representative

TfL Treasury

[REDACTED]

CONFERENCE DETAILS

Conference Details To be used for the Call:

Conference Call Number:

Toll Number:

Toll Free Number:

Passcode

[REDACTED]

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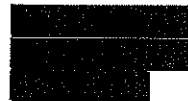
Back Up Conference Details To Be Used Only If There Are Any Problems With The Above Conference Details:

Conference Call Number:

Toll Number:

Toll Free Number:

Passcode



Option B: Hedging Rights Process

1. The Purchaser shall procure that TfL confirm that it elects to utilise its hedging powers.
2. The FCS shall be updated and sent to the Purchaser for approval.
3. The Purchaser either approves the FCS or if not then the Purchaser informs Manufacturer of any discrepancies in the FCS.
4. If approved, an updated Schedule 10 with amended prices will be sent to the Purchaser for approval. These will include Milestone Payments in Appendix 1 to Part B of Schedule 10 split into the relevant currencies to be paid by the Purchaser. The Manufacturer will invoice any VAT payable on the foreign currencies in GBP at the prevailing rate at the VAT point (as evidenced by Bloomberg screenshots).

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