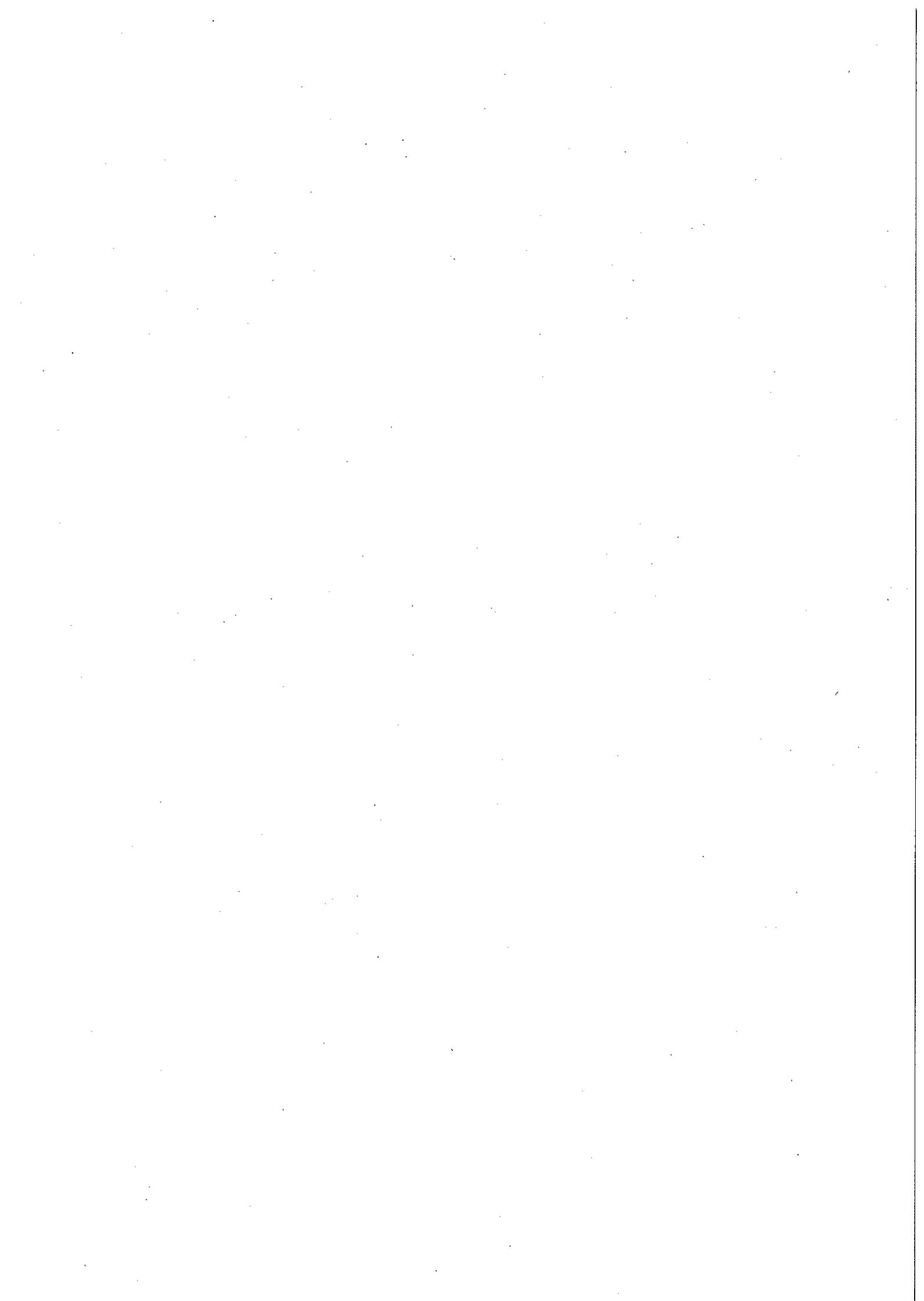


Schedule 13
Open Book Accounting

Open Book Accounting

1. The Maintainer shall maintain on a current and accurate basis, books of account relating to the performance of this Agreement and in so doing shall observe and comply with such accounting conventions, policies and requirements as the Purchaser may from time to time specify after consultation with the Maintainer, provided that these are compatible with generally accepted accounting practice in the UK.
2. In relation to any Change in Law or Change (for the purposes of this Schedule 13, *Eligible Changes*) the Maintainer shall adopt a system of "open book" accounting which permits all components of income, costs, overheads, depreciation, taxes, tax allowances, discounts, provisions, and other financial adjustments and profit in relation to the same to be separately identified and allocated and shall make such information available to the Purchaser.
3. The Maintainer shall further:
 - (a) nominate an individual with specific responsibility for the preparation and maintenance of financial, commercial and management information required under this Agreement; and
 - (b) maintain and provide that information in a form required by this Agreement and provide any summary of that information as reasonably required by the Purchaser.
4. In relation to any Eligible Changes the Maintainer shall afford or procure for the Purchaser (including advisers, consultants and agents acting on behalf of the Purchaser) and any party entitled under any law to audit or review the Agreement such access to such information, books of account, records and documentation (including any stored in electro-magnetic form) and personnel of the Maintainer as relates to such matters and as it or they reasonably consider necessary for the performance of their duties and shall provide copies of the same at the Purchaser's cost on demand.
5. The Purchaser may nominate representatives to undertake any financial or management audit of the Maintainer. These nominees shall be allowed direct access to both the Maintainer's personnel and all management information (including computer stored data and systems). The Maintainer shall at its own expense provide all reasonable support to those nominees in the discharge of their functions.
6. Subject to and in accordance with the provisions of the Agreement, the Purchaser may at any time and on reasonable prior notice undertake any inspection, audit or check of any aspect of the Maintainer's performance of this Agreement as required by the Purchaser, TfL or as may be requested by the National Audit Office or otherwise. The Maintainer shall at its own expense promptly provide all reasonable co-operation in relation to any inspection, audit or check including:
 - (a) making any documents and records available for inspection and at the Purchaser's cost, providing a reasonable number of copies of any documents or records requested and/or granting copying facilities for the purposes of making such copies; and

- (b) complying with the Purchaser's reasonable request for access to personnel engaged in the Maintainer's performance of this Agreement.
- 7. The Maintainer shall keep and operate in an appropriately secure environment, fitted with reliable user authentication and access control mechanisms in accordance with Good Industry Practice, all information technology systems or networks which process financial data where the modification or destruction of such data might give rise to a fraud or financial impropriety. The Maintainer shall consult with the Purchaser on such systems prior to their use in respect of information belonging to the Purchaser and the Maintainer shall implement any systems in relation to the same reasonably required by the Purchaser.
- 8. The Maintainer shall provide such other routine or special written or oral financial and management reports as the Purchaser reasonably considers necessary in respect of a part or the whole of the Maintainer's activities under this Agreement.



**Schedule 14
Health and Safety**

- Appendix 1 TFL Alcohol and Drugs and Workplace Violence Policy**
- Appendix 2 HSE Principles**

1. General

- 1.1 The provisions of this Schedule 14 apply to the obligations of the Maintainer.
- 1.2 The Maintainer shall have responsibility for all health, safety and welfare matters associated with the performance of its obligations under the Agreement including liaison with the Purchaser and industry partners on health and safety matters.

2. Occupational Health and Safety Management System

- 2.1 The Maintainer shall develop, submit to the Purchaser, implement and maintain an occupational health and safety management system (the *OHSOps*) certified at the Maintainer's cost to BS OHSAS 18001 by a UKAS (or equivalent) accredited certification body.
- 2.2 The OHSOps shall cover the full extent of the Maintainer's activities in delivering its obligations under this Agreement. For the avoidance of doubt this includes activities undertaken by the Maintainer all locations on the LO Infrastructure, and at any UK location away from the LO Infrastructure directly related to the performance of the Maintainer's obligations under the Agreement, for instance, support offices and spares warehousing.
- 2.3 The OHSOps shall list and describe all associated working procedures to be developed by the Maintainer in order for the Maintainer to comply with the OHSOps.
- 2.4 The Maintainer shall require its Subcontractors to implement health and safety management systems that comply with the OHSOps. The OHSOps shall define how compliance of Subcontractors' health and safety management systems will be assured.
- 2.5 The OHSOps and associated working procedures shall be consistent with the principles set out in Appendix 2 (*HSE Principles*) as amended from time to time.
- 2.6 The OHSOps shall include a joint safe working plan that identifies areas of interface between the Maintainer, its Subcontractors, the Operator and other parties in performance by the Maintainer of its obligations under the Agreement and sets out the processes for ensuring safe working practices are developed in cooperation and agreement with those parties, implemented and periodically reviewed.
- 2.7 The Maintainer and its employees and contractors shall comply with all health and safety procedures in force at locations where it is performing its obligations under the Agreement but which are not directly managed by the Maintainer (including, but not limited to, the railway control centre, stations, the LO Infrastructure, interim maintenance facilities and stabling).

3. Documentation and Submission

- 3.1 A preliminary OHSOps shall be submitted to the Purchaser for Assurance Acceptance no later than six months after the Commencement Date and a final OHSOps, certified in accordance with paragraph 2.1 shall be submitted no later than six months prior to the Existing Fleet Commencement Date.

- 3.2 Preliminary associated working procedures shall be developed by the Maintainer and submitted to the Purchaser for Assurance Acceptance no later than six months after the Commencement Date. Final associated working procedures shall be submitted by the Maintainer no later than six months prior to the Existing Fleet Commencement Date.
- 3.3 All changes to the OHSOps and associated working procedures shall be submitted to the Purchaser for Assurance Acceptance prior to changes being implemented.

4. Alcohol and Drugs Policy and Workplace Violence Policy

- 4.1 The Maintainer shall implement a workplace violence policy which is consistent with the principles of the TfL Workplace Violence Policy in Appendix 1 (*TfL Alcohol and Drugs Workplace Violence Policy*) as amended from time to time, and the Maintainer and its Subcontractors shall comply with such Maintainer policy. The Maintainer shall submit its workplace violence policy to the Purchaser for Assurance Acceptance no later than six months after the Commencement Date.
- 4.2 The Maintainer shall implement an alcohol and drugs policy which is consistent with the principles of the TfL Alcohol and Drugs Policy in Appendix 1 (*TfL Alcohol and Drugs Workplace Violence Policy*) as amended from time to time, and the Maintainer and its Subcontractors shall comply with such Maintainer policy for the duration of this Agreement. The Maintainer shall submit its alcohol and drugs policy to the Purchaser for Assurance Acceptance no later than six months after the Commencement Date. The Maintainer shall develop working procedures to enforce compliance with its alcohol and drugs policy including unannounced alcohol and drug screening. Such procedures shall be submitted to the Purchaser no later than six months prior to the Existing Fleet Commencement Date.

5. Reporting of Health and Safety Incidents

- 5.1 The OHSOps and associated working procedures shall detail processes to record and report, as a minimum:
- (a) RIDDOR incidents (any category, and which for the avoidance of doubt shall include signals passed at danger, derailments, train-to-train and train-to-buffer stop collisions);
 - (b) interventions from statutory regulatory safety authorities;
 - (c) incidents which result in working time being lost;
 - (d) incidents requiring the application of first aid;
 - (e) incidents which caused damage to property or equipment when under the custody or control of the Maintainer;
 - (f) incidents to which the Maintainer contributed, or witnessed, which although they did not cause injury had the potential to do so (near misses);
 - (g) signals or other stopping points passed by trains when not authorised to do so and when:

- (i) under the control of the Maintainer, or
 - (ii) under the control of the Operator at a Maintenance Facility, the Ilford Depot or Stabling Site and witnessed by the Maintainer;
 - (h) security, crime or workplace violence related incidents at sites managed by the Maintainer, or elsewhere on the LO Infrastructure that affected, or were witnessed by the Maintainer and had the potential to affect the Maintainer or its subcontractors;
 - (i) hours worked by staff employed by the Maintainer undertaking safety critical tasks (as defined in ROGS) as part of its obligations under the Agreement;
 - (j) drugs and alcohol testing metrics (planned and completed percentages) including details of failures; and
 - (k) epidemic/pandemic illnesses affecting staff employed by the Maintainer in the delivery of its obligations under the Agreement.
- 5.2 Data arising from any incident considered in paragraph 5.1 shall be submitted to the Purchaser, in a form to be agreed, in the Maintenance Progress Reports for each Railway Period.
- 5.3 In addition to any statutory duty of the Maintainer to report accidents and incidents to Competent Authorities, the Maintainer shall immediately notify the Purchaser in writing of all incidents considered by paragraph 5.1.
- 5.4 The Maintainer shall:
- (a) ensure the prompt investigations of accidents and incidents caused by the Maintainer or its Subcontractors and provide a copy of an initial investigation report within 48 hours of such incident (or such extended period acceptable by the Purchaser on a case by case basis);
 - (b) permit the Purchaser, the Operator and, to the extent the accident or incident involved or could reasonably have involved another party, a representative of those parties to participate in the Maintainer's investigations;
 - (c) provide any documentation, information and reports reasonably requested by the Purchaser as part of an investigation to an agreed timescale; and
 - (d) respond to all reasonable comments from the Purchaser on investigation reports, within a reasonable timeframe and implement agreed actions.
- 5.5 The Maintainer shall co-operate fully with investigations initiated by the Purchaser, the Operator or Competent Authorities, including access to Maintainer employees for interview and the provision of documents and data (including data derived from on-train systems). The Maintainer shall provide the Purchaser with a copy of all information provided to other parties pursuant to such investigations.

6. Management Structure

- 6.1 In accordance with BS OHSAS 18001 the OHSOps shall define the Maintainer's management structure accountable and responsible for the OHSOps and associated working procedures and for ensuring compliance with those documents.
- 6.2 The Maintainer shall appoint a suitably qualified safety manager (the *Operations Safety Manager*), normally resident at the Maintainer's main site to act on behalf of the Maintainer in all safety matters related to the delivery of the Maintainer's obligations under the Agreement. The role of Operations Safety Manager is a Key Post for the purposes of the Agreement.

7. Review Meetings and Audits

- 7.1 The Maintainer shall attend, on reasonable notice, regular health and safety reviews convened by the Purchaser to monitor safe operation of the railway.
- 7.2 The provisions of this paragraph 7 are without prejudice to the Purchaser's general right of audit pursuant to clause 17 (*Audit Rights*) of the Agreement.
- 7.3 The OHSOps shall contain an audit plan that shall as a minimum comply with the requirements of BS OHSAS 18001.
- 7.4 The audit plan shall be based on the principle of progressive compliance assurance by means of regular inspections and, as minimum, quarterly audits of specific aspects of the OHSOps and associated working procedures. A detailed audit programme shall be submitted to the Purchaser for Assurance Acceptance no later than six months prior to the Existing Fleet Commencement Date.
- 7.5 The quarterly audits shall be carried out at the Maintainer's expense by a suitably qualified independent auditor who, as a minimum shall: (a) be registered with the Institution of Occupational Safety and Health (IOSH); or (b) have equivalent qualifications or experience subject to the Purchaser reasonable approval.
- 7.6 The results of the quarterly audits, including auditor observations, non-conformances and corrective actions, shall be reported by the Maintainer in a quarterly health and safety report (the *Quarterly Health and Safety Report*).
- 7.7 The Quarterly Health and Safety Report shall provide full details of, inter alia, those matters considered in paragraph 5.1 including investigations held, reports published, remedial actions planned and remedial action implementation status.
- 7.8 The Quarterly Health and Safety Report shall report on audits completed versus audits planned, and site inspections completed against inspections planned.
- 7.9 The Maintainer shall develop and submit on an annual basis for the duration of this Agreement, a health and safety report and improvement plan (the *Annual Health and Safety Report and Improvement Plan*) which shall as a minimum include:
- (a) a summary of the year's safety and health statistics;
 - (b) a restatement of the Maintainer's corporate health and safety policy;

- (c) impact of any new or amended Laws (including directions issued by the Secretary of State under existing Legislation);
- (d) safety management reviews carried out by the Maintainer in the year;
- (e) a summary of the quarterly audit reports, including safety incidents and remedial actions;
- (f) a report on the degree to which the Maintainer has achieved its targets set in the previous year's annual improvement plan; and
- (g) an improvement plan for the next year, setting out targets for further reductions in risks related to the Maintainer's activities in delivering its obligations under the Agreement, and how the Maintainer intends to deliver them.

7.10 The Purchaser and, to the extent the review covers activities which could impinge on the safety and welfare of the Operator's staff, the Operator, shall be invited to attend safety management reviews carried out by the Maintainer in compliance with BS OHSAS 18001.

Appendix 1

TfL Alcohol and Drugs and Workplace Violence Policy

1. Alcohol at Work Policy

1.1 Introduction

This policy sets out TfL's approach in respect of any employee whose performance of their duties is, or may be, impaired as a result of drinking alcohol.

1.2 Policy Statement

- (a) The safety of employees and customers is of paramount importance. A major factor in this respect is the ability of those who work for us to carry out their jobs safely, effectively and to the best of their ability. Therefore TfL will operate a zero-tolerance approach to alcohol to minimise any safety risks to customers and its employees. Standards have been set for employees detailing the requirements and responsibilities regarding alcohol, to ensure that their work performance is not affected in any way by the consumption of alcohol.
- (b) TfL are committed to supporting employees who come forward to the Drugs and Alcohol Assessment Treatment Service (*DAATS*) or to their line manager with an alcohol related problem. Where this occurs, employees will be given reasonable support and advice in dealing with the problem. If an employee fails to inform DAATS or their line manager before a breach of this policy, TfL is unlikely to afford any additional support and appropriate action will be taken through the disciplinary procedure. Failure to comply with this policy may lead to action being taken against them. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal.
- (c) Admission of a problem to DAATS under occupational health or to the appropriate manager before the disciplinary process is initiated, offers the employee the protection of the Alcohol at Work Policy. In addition any breaches of this policy which result in disciplinary action, will take full account of any effort made by an individual to seek help with alcohol related problems. DAATS will not normally work with employees who have an outstanding disciplinary as a result of an alcohol problem or a related misconduct. For further information regarding the protection of the Alcohol at Work Policy, please visit the Occupational Health website or contact HR Services.

1.3 Requirements

This document is provided to make all employees of TfL and anyone engaged through a third party working on TfL premises aware that:

- (a) the consumption of alcohol even in small quantities will adversely affect safety, performance, conduct or efficiency;

- (b) it is an employee's responsibility not to come to work if they are under the influence of alcohol. The consumption of alcohol prior to commencing work, whilst at work or during meal/rest breaks in the working day, including meal/rest breaks spent outside TfL/operational premises or when on call, is strictly prohibited and may result in disciplinary action. Where such a breach is deemed to be gross misconduct then that may lead to dismissal;
- (c) in some parts of TfL, where responsibilities may be safety critical, local requirements will also apply. When visiting such areas, local procedures will be brought to the attention of employees and must be complied with;
- (d) TfL aims to encourage employees to come forward to seek help with alcohol-related problems. Any such approach will be treated sensitively and confidentially;
- (e) the consumption of alcohol or serving of alcohol at social events on TfL/operational premises is strictly prohibited, except in designated areas where these premises have a licence to sell and serve alcohol; and
- (f) it is recognised that employees may be required to attend functions on behalf of TfL where alcohol is being served. At such functions employees are permitted to consume a reasonable amount of alcohol. Employees should be mindful of their level of alcohol consumption and are reminded that when representing TfL a high level of conduct and professionalism is expected and that all employment policies and procedures apply. Should an employee bring TfL into disrepute then this may constitute gross misconduct and may result in dismissal.

1.4 Responsibilities

All employees:

- (a) to comply and be familiar with all aspects of this policy and the Disciplinary Policy and Procedure;
- (b) must not bring alcohol onto the premises, the only exception being where alcohol has been purchased during breaks for consumption away from company premises. On these occasions the seal must remain intact;
- (c) to be mindful that some medication may contain alcohol or may cause drowsiness therefore need to inform their manager if they are taking any medication that contains alcohol or may cause drowsiness;
- (d) to seek help if they have an alcohol related problem;
- (e) to avoid colluding with colleagues whose conduct and/or performance is affected by alcohol. If found to be colluding this may lead to disciplinary action;
- (f) to co-operate with unannounced alcohol tests and screening (where appropriate);

- (g) to notify their manager as soon as possible if they have an alcohol related problem; and
- (h) if called upon in an emergency while off duty and having been drinking, to inform the line manager of this. In this event employees cannot give advice or guidance to others.

1.5 All managers and employees with leadership or supervisory roles:

- (a) must ensure that they and employees in their areas of responsibility are familiar with this policy;
- (b) must provide support and apply effective controls and consistent application of this policy within their area of responsibility;
- (c) must ensure that appropriate and fair action is taken to deal with any failure to conform;
- (d) to be aware that some medication may cause drowsiness; and
- (e) to monitor employees who have undergone rehabilitation for alcohol abuse and to ensure compliance with this policy.

Support for those seeking help and advice on an alcohol related problem is available by contacting HR Services or DAATS which is part of occupational health. It is TfL's policy to ensure any approach of this nature is treated sensitively and confidentially. Guidance is also available from occupational health on the drugs that may cause drowsiness and alternatives that will not.

2. Misuse of Drugs and the use of Illegal Substances Policy

2.1 Introduction

This policy sets out TfL's approach in respect of the misuse of drugs and the use of illegal substances, including those drugs medically prescribed or available without a prescription.

2.2 Policy Statement

- (a) The safety of TfL employees and customers is of paramount importance. Indulgence in the misuse of drugs or use of illegal substances can lead to dependency and resultant health problems. Research indicates that the misuse of drugs or use of illegal substances can impair an individual's performance at work and adversely affect the efficiency of an organisation. TfL aims to provide an integrated, safe and secure transport system for its customers by operating a zero tolerance approach to the misuse of drugs or use of illegal substances. Standards have been set for TfL employees detailing the requirements and responsibilities regarding the misuse of drugs and use of illegal substances to ensure that work performance is not affected in any way. The term 'drugs' or 'illegal substances' used in this document are defined by law (Misuse of Drugs Act 1971) in the following ways:

- (i) drugs that are taken for a reason other than for a medically prescribed purpose which includes the use of illegal substances;
 - (ii) drugs which have been prescribed by a registered medical practitioner, e.g. to cure a disease, to ease pain, to help sleep, or to help relieve a psychological condition, including those containing alcohol; and
 - (iii) drugs that can be purchased directly from a registered pharmacist, e.g. pain relieving tablets (Paracetamol) or hay fever relief, including those containing alcohol.
- (b) TfL are committed to supporting employees who come forward to DAATS or to their line manager with a drugs related problem. Where this occurs, employees will be given reasonable support and advice in dealing with the problem. If an employee fails to inform DAATS or their line manager before a breach of this policy, TfL is unlikely to afford any additional support and appropriate action will be taken through the disciplinary procedure.
- (c) Admission of a problem to DAATS under Occupational Health or to the appropriate manager before the disciplinary process is initiated, offers the employee the protection of the Misuse of Drugs and the use of Illegal Substances Policy. In addition, any breaches of this policy, which result in disciplinary action will be dealt with taking full account of any effort made by an individual to seek help with misuse of drugs or misuse of illegal substances related problems. Failure to comply with this policy may lead to action being taken under TfL's Discipline at Work Policy which may be deemed as gross misconduct and result in dismissal. DAATS will not normally work with employees who have an outstanding disciplinary as a result of a misuse of drugs or misuse of illegal substances related problem or a related misconduct. For further information regarding the protection of the Misuse of Drugs and the use of Illegal Substances Policy, please visit the occupational health website or contact HR Services.

2.3 Requirements

This policy aims to ensure that all employees of TfL (and anyone engaged through a third party working on TfL premises) are made aware of their responsibilities regarding the misuse of drugs or the use of illegal substances. With this in mind the provisions of this policy are:

- (a) to make all employees of TfL aware that the misuse of drugs or the misuse of illegal substances, including those medically prescribed or available without a prescription can impair performance, safety, conduct or efficiency;
- (b) to make employees aware that to misuse, possess, consume, store (except for those prescribed and available without prescription), buy or sell (or offer to buy or sell) drugs or illegal substances on TfL premises or to come to work under the influence of drugs or illegal substances will lead to action being taken under the Discipline at Work Policy. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal;

- (c) to encourage employees with drug related problems to voluntarily seek help; and
- (d) to assist any employee who informs TfL of their work performance being impaired by the misuse of drugs or the misuse of illegal substances.

2.4 Responsibilities

All employees:

- (a) to comply and be familiar with all aspects of this policy and the disciplinary implications resulting from a breach of it;
- (b) to ascertain whether there will be any side effects which may affect work performance as a result of taking medication for a medical problem;
- (c) to advise their manager if taking of medicine, pills or drugs is likely to impair work performance and to seek advice regarding alternatives from occupational health;
- (d) must not consume or use illegal drugs at any time, whether on duty or not, so as to ensure they are not under the influence when reporting for duty, carrying out work for TfL or when on TfL premises;
- (e) must not possess, store (except for those prescribed and available without prescription), or sell drugs or illegal substances on TfL premises or in vehicles, or bring TfL into disrepute by being involved in such activities outside work;
- (f) must not collude with colleagues whose behaviour and performance is affected by the misuse of drugs or the misuse of illegal substances;
- (g) to undergo screening for drugs or illegal substances prior to appointment, transfer or promotion to a post in which they will be classified as safety critical; and
- (h) to notify their manager as soon as possible if they have a misuse of drugs or misuse of illegal substances related problem.

2.5 All managers and/or employees with leadership or supervisory roles:

- (a) must ensure that they and employees in their areas of responsibility are
- (b) provide support and apply effective controls and consistent application of this policy within their area of responsibility;
- (c) must ensure that appropriate fair and consistent action is taken to deal with any failure to conform;
- (d) to identify any developing problems among their staff and to intervene when an employee's performance appears to be affected by the misuse of drugs or the misuse of illegal substances;

- (e) with the support and guidance of a People Management Advisor (*PMA*) Specialist must undertake investigations where an employee's performance appears to be affected by the misuse of drugs or the use of illegal substances;
- (f) in the event of the above, must take appropriate action including the disciplinary policy where necessary. This may include the referral of the employee for counselling and assistance and making arrangements for employees to undergo drugs screening tests with DAATS;
- (g) to take a non-judgemental approach whilst being involved in any investigations to address an issue related to drugs or illegal substances;
- (h) to assist employees on a confidential basis who seek help on a confidential basis to overcome a drugs related problem; and
- (i) to be aware that there are legal implications surrounding the misuse of drugs or the misuse of illegal substances, and that in all cases they should seek further advice from HR Services and occupational health as to the appropriate course of action.

Support for those seeking help and advice on a drug related problem is available through contacting HR Services or DAATS which is part of occupational health. It is TfL's policy to ensure any approach of this nature is treated sensitively and confidentially. Guidance is also available from occupational health on the drugs that may cause drowsiness and alternatives that will not.

3. TfL Workplace Violence Policy

3.1 Introduction

This policy sets out TfL's approach in relation to the potentially damaging effect of workplace violence. "Workplace violence" is defined as "any incident in which persons are abused, threatened or assaulted in circumstances relating to their work involving an explicit or implicit threat to their safety, wellbeing or health". TfL does not condone any form of violence. For the purposes of this policy workplace violence relates to violence occurring between an employee and a third party. In the event of workplace violence occurring between employees this will normally be dealt with under the Bullying & Harassment Policy and/or the Discipline at Work Policy.

3.2 Policy Statement

TfL recognises effects of violence on individuals and the negative outcomes on both work performance and the organisation as a whole. TfL is determined to take action to prevent and deal with these issues. TfL deplores violence to employees and recognises that violence is not an acceptable part of any job. TfL will therefore take all reasonable steps to enable employees to carry out their duties without fear of assault. TfL will take steps to reduce the risk of work-related violence to our employees to a level that is as low as reasonably practicable.

3.3 Requirements

TfL will take the following steps to minimise the risk of workplace violence by:

- (a) maintaining an integrated organisational approach to tackling work related violence;
- (b) ensuring that measures are taken to investigate the causes of work related violence and that incidents are properly investigated, where appropriate in liaison with the Police;
- (c) taking all reasonable steps to support the prosecution of and/or legal action against individuals who assault employees in the work place;
- (d) providing appropriate guidance and training on dealing with work related violence; and
- (e) providing support and counselling through occupational health for TfL employees who have experienced violence at work.

3.4 Responsibilities

All employees:

- (a) wherever possible and practical to avoid situations which may give rise to violent behaviour and to avoid fuelling a situation which may give rise to violent behaviour;
- (b) to report violent incidents immediately to their manager or supervisor and to the Police where appropriate; and
- (c) to provide prompt and accurate information to their manager or supervisor concerning the circumstances regarding the incident to assist the manager in their investigation.

3.5 All managers and employees with leadership or supervisory roles:

- (a) to encourage employees to report violent incidents, to ensure that they are reported to the Police where appropriate and recorded through the Incident Report Form procedure. Incident Report forms can be obtained from source or the local Health & Safety Advisor in your area of work;
- (b) to ensure that work related violence is included within the appropriate risk assessment for each role and department;
- (c) ensure the attendance of all employees at appropriate training courses;
- (d) to oversee investigations into all incidents of work related violence in order to establish their proper cause;
- (e) to arrange counselling, if appropriate, for those employees who have been involved in violent incidents. This should be arranged via occupational health; and
- (f) to ensure that employees who are absent as a result of work related violence are given reasonable support and advice. Absence as a result of workplace violence will not normally contribute to any attendance at work infringements as outlined in the Attendance Policy.

3.6 Director of Group Health, Safety and Environment

To ensure that reporting, investigative and follow-up procedures for work-related violence together with local workplace risk assessments and emergency plans are audited on an ongoing basis.

Appendix 2 HSE Principles

1. Plan improvements in HSE management by:
 - (a) complying with the spirit and the letter of HSE legislation, Approved Codes of Practice, internal HSE management systems and external HSE standards;
 - (b) ensuring the risks to the health and safety of employees, customers, contractors and 3rd parties are systematically managed to as low as is reasonably practicable;
 - (c) setting progressive objectives and targets to improve HSE management and performance in keeping with stakeholder expectations and TfL strategies;
 - (d) taking due account of HSE risks and benefits in decision-making and as an integral part of the business planning process including procurement and major projects;
 - (e) striving to realise environmental benefits, in addition to pollution prevention, with a focus on managing emissions and mitigating the effects of, and adapting to climate change; and
 - (f) actively supporting TfL in delivering environmental strategies on air quality, ambient noise, biodiversity, energy and municipal waste.
2. Implement and operate effective risk control systems by:
 - (a) ensuring employees have the competence and resources to discharge their personal responsibilities for HSE matters and encouraging a positive HSE culture;
 - (b) providing employees with access to services to promote health and wellbeing;
 - (c) providing premises, plant and equipment and systems of work that contribute to a safe and healthy work place and minimise harm to the environment;
 - (d) securing the commitment and involvement of employees in improving HSE management through effective communication and consultation mechanisms;
 - (e) ensuring arrangements with contractors promote and actively support the implementation of this policy; and
 - (f) planning for foreseeable emergency conditions to ensure effective risk controls and resilience arrangements are in place.
3. Monitor HSE performance, taking corrective action where required by:
 - (a) monitoring HSE management system indicators to improve performance;
 - (b) ensuring that root causes are identified in the investigation of incidents; and
 - (c) effective auditing arrangements are in place to provide assurance and to identify and ensure appropriate corrective action where required.

4. Undertake regular management reviews and regularly review the suitability and effectiveness of HSE management, including this policy, and undertake improvement action where appropriate.

Schedule 15
Environment

1. General Requirements

- 1.1 The provisions of this Schedule 15 apply to the obligations of the Maintainer.
- 1.2 Subject as provided in paragraph 1.9 of Schedule 9 (*Maintenance Facilities – Willesden Depot*), the Maintainer shall have responsibility for all environmental matters associated with the performance of its obligations under the Agreement, including liaison with the Purchaser and industry partners on environmental matters.
- 1.3 The Parties each agree to use reasonable endeavours to mitigate any Environmental Liabilities incurred as a result of Contamination.
- 1.4 Each of the Maintainer and the Purchaser shall consult in good faith with respect to mitigating any Maintainer Contamination or Existing Contamination and use reasonable endeavours to facilitate Remedial Action by any party with respect to any Contamination.

2. Environmental Management System

- 2.1 The Maintainer shall develop, submit to the Purchaser implement and maintain an Environmental Management System – Operations Phase (*EMSOps*) certified at the Maintainer's cost to BS EN ISO14001 by a UKAS (or equivalent) accredited certification body together with associated working procedures.
- 2.2 The EMSOps shall cover the full extent of the Maintainer's activities in delivering its obligations under this Agreement. For the avoidance of doubt this includes activities undertaken by the Maintainer at the Maintenance Facilities, the Ilford Depot and Stabling Sites and all locations on the LO Infrastructure and at any UK location away from the LO Infrastructure, the Maintenance Facilities, the Ilford Depot and Stabling Sites directly related to the delivery of the Maintainer's obligations under this Agreement, for instance, support offices and spares warehousing.
- 2.3 The EMSOps shall list and describe all associated working procedures to be followed in order for the Maintainer to comply with the EMSOps.
- 2.4 The EMSOps and associated working procedures shall be consistent with the principles set out in Appendix 2 (*HSE Principles*) to Schedule 14 (*Health & Safety*) as amended from time to time.
- 2.5 For the avoidance of doubt the EMSOps and associated working procedures shall include a policy and processes for the identification, assessment and management of Environmental risks in accordance with ISO 14001.
- 2.6 The Maintainer's EMSOps and associated working procedures shall detail processes to control and reduce the Environmental impact of the Maintainer's activities in carrying out its obligations under this Agreement, including:
 - (a) CO₂ emissions;
 - (b) NO_x and PM₁₀ particulate emissions (e.g. from generators or from road/rail vehicles predominantly used to carry out the Services);

- (c) waste collection and segregation (including consumable train and depot spares, general office and depot waste, and waste removed from trains as part of the Services) and incentives to achieve at least 80 per cent. waste recycling;
 - (d) energy consumption (Maintenance Facilities, Ilford Depot and Stabling Sites);
 - (e) general consumables (e.g. office supplies);
 - (f) water consumption (including train washing equipment and buildings);
 - (g) noise from fixed sources; and
 - (h) noise and vibration from train movement in the Maintenance Facilities, the Chingford Stabling Site and Ilford Depot.
- 2.7 The EMSOps and associated working procedures shall detail strategies and processes to recycle, and, where reasonably practicable, generate from sustainable sources, resources required to carry out its obligations under this Agreement, including waste, energy, paper and water.
- 2.8 The associated working procedures shall include a means of monitoring and reporting data (*Environmental Statistics*) for the matters described in paragraphs 2.6 and 2.7 which shall be reported to the Purchaser on a quarterly basis in accordance with paragraph 7.5.
- 2.9 The EMSOps shall include a plan to encourage employees to use public transport when travelling to and from work (*Green Travel Plan*).
- 2.10 The EMSOps shall include the means by which the Maintainer will apply its environmental strategy to subcontractors and suppliers, and how it will monitor the environmental performance of such parties.
- 3. Documentation and Timing**
- 3.1 The Maintainer shall submit a preliminary EMSOps to the Purchaser no later than six months after the Commencement Date and a final EMSOps certified in accordance with paragraph 2.1 shall be submitted for Assurance Acceptance no later than six months prior to the Existing Fleet Commencement Date.
- 3.2 Preliminary associated working procedures shall be developed by the Maintainer and submitted for Assurance Acceptance no later than six months after the Commencement Date. Final associated working procedures shall be submitted by the Maintainer for Assurance Acceptance no later than six months prior to the Existing Fleet Commencement Date.
- 3.3 All changes to the EMSOps and associated working procedures shall be submitted for Assurance Acceptance prior to changes being implemented.

4. Management Structure

- 4.1 In accordance with ISO 14001 the EMSOps shall define the Maintainer's management structure accountable and responsible for the EMSOps and associated working procedures, and for ensuring compliance with those documents.
- 4.2 The Maintainer shall appoint a suitably qualified environmental manager to act on behalf of the Maintainer in all environmental matters associated with the Services. The environmental manager is a Key Post for the purposes of the Agreement and shall be combined as the Operations Environmental and Security Manager.
- 4.3 The Purchaser shall be invited to attend environmental management reviews carried out by the Maintainer in compliance with ISO 14001.

5. Environmental Audits

- 5.1 The EMSOps shall contain an audit plan that shall as a minimum comply with the requirements of ISO 14001. The audit plan shall be based on the principle of progressive compliance assurance by means of regular inspections and, as a minimum, quarterly audits of specific aspects of the EMSOps and associated working procedures. A detailed audit programme shall be submitted to the Purchaser for Assurance Acceptance no later than six months prior to the Existing Fleet Commencement Date.
- 5.2 The provisions of this paragraph 5 are without prejudice to the Purchaser's general right of audit in accordance with clause 17 (*Audit Rights*) of the Agreement.
- 5.3 The quarterly audits shall be carried out at the Maintainer's expense by a suitable qualified auditor who, as a minimum, shall be registered with the Institute of Environmental Management and Assessment (IEMA).
- 5.4 The results of the quarterly audits including any corrective actions shall be reported by the Maintainer in accordance with paragraph 7.5 below.

6. Environmental Investigations

- 6.1 The Maintainer shall not undertake or carry out or commission any physical investigations or excavations at any TSA Facility after the date of this Agreement except to the extent required by Environmental Law or by an Environmental Competent Authority or as approved by the Purchaser (such approval not to be unreasonably withheld).
- 6.2 The Maintainer shall provide the Purchaser with copies of any draft and final reports of Environmental Investigations it obtains in relation to a TSA Facility or any part thereof as soon as reasonably practicable.
- 6.3 To the extent that the Purchaser decides that any Environmental Investigation shall be undertaken by or on behalf of the Purchaser in connection with the entry into of this Agreement for the purposes of establishing the baseline condition of a TSA Facility or part thereof in relation to Contamination:

- (a) prior to the Existing Fleet Commencement Date, the Purchaser shall procure all reasonable site access at the Site and any other TSA Facility (excluding Ilford A Maintenance Depot) and information to facilitate such Environmental Investigation and, if deemed necessary or useful by the Purchaser, the Maintainer shall do the same regarding the Ilford A Maintenance Depot; and
- (b) after the Existing Fleet Commencement Date, the Purchaser shall procure all reasonable site access at each TSA Facility other than the Site or the Ilford A Maintenance Depot and information to facilitate such Environmental Investigation and, if deemed necessary or useful by the Purchaser, the Maintainer shall do the same regarding the Ilford A Maintenance Depot; or
- (c) after the Existing Fleet Commencement Date, the Maintainer shall provide all reasonable access at the Site and information to facilitate such Environmental Investigation.

6.4 The Purchaser shall provide the Maintainer with copies of any draft and final reports of Environmental Investigations it obtains in relation to a TSA Facility or any part thereof as soon as reasonably practicable, and the parties acknowledge and agree that any such reports shall be relevant considerations in the determination as to whether any Contamination is Existing Contamination or Maintainer Contamination.

7. Reporting of Environmental Incidents

7.1 Events or discoveries which put, or could potentially put, the Maintainer in contravention of the EMSOps, planning consents or Applicable Laws and Standards or which are otherwise likely to give rise to Environmental Liabilities for any Indemnified Party, including but not limited to spillages, release or discovery of contaminants, noise or vibration complaints from local residents or notifications from any organisation or Competent Authority (*Environmental Incidents*) shall be immediately notified to the Purchaser in writing.

Notification, etc obligations

7.2 The Maintainer shall provide details of the relevant Environmental Incident and copies of relevant documentation to the Purchaser (and any Indemnified Party likely to incur Environmental Liabilities) as soon as reasonably practicable and in any event within 10 (ten) Working Days of its receipt by the Maintainer, or it becoming available to Maintainer, provided that nothing in this paragraph 7.2 shall oblige the Maintainer to provide information to the Purchaser or an Indemnified Party in respect of which the Maintainer would be entitled to withhold disclosure on the grounds of legal privilege.

7.3 Following receipt by the Purchaser of notification of an Environmental Incident, the Parties shall confer in a timely manner to establish the impact of the Environmental Incident and agree either:

- (a) if the Environmental Incident does not require any Remedial Action pursuant to Environmental Law, the works (if any) or other actions to be carried out to prevent, avoid or mitigate loss, liability or damage arising from such

Environmental Incident, and the Maintainer shall implement such works or actions in accordance with the agreed action plan; or

- (b) if the Environmental Incident does require the carrying out of Remedial Action, the proposed strategy for undertaking such Remedial Action to be submitted to Environmental Competent Authorities in accordance with paragraph 8 (*Remedial Action*).

7.4 The Maintainer shall record all Environmental Incidents in each Railway Period as part of the Maintenance Progress Report.

7.5 The Maintainer shall submit to the Purchaser a quarterly environmental report (the *Quarterly Environmental Report*) in a format to be agreed with the Purchaser which shall include:

- (a) all Environmental Incidents, remedial actions agreed with the Purchaser and implementation status;
- (b) Environmental Statistics relating to the relevant quarter in a format to be agreed with the Purchaser;
- (c) the results of the quarterly audits including any corrective actions; and
- (d) such other environmental information relating to the Services that the Purchaser may reasonably request from time to time.

7.6 The Maintainer shall develop and submit annually an environmental report and improvement plan (the *Annual Environmental Report and Improvement Plan*) which shall as a minimum include:

- (a) a summary of the year's Environmental Statistics;
- (b) a restatement of the Maintainer's corporate environmental policy;
- (c) environmental management reviews carried out by the Maintainer in the year;
- (d) Environmental Incidents and remedial actions;
- (e) a summary of the quarterly audit reports;
- (f) a report on the degree to which the Maintainer has achieved its targets set in the previous year's improvement plan;
- (g) an improvement plan for the following year, setting out targets for further reduction in environmental impact of the Maintainer's activities in delivering its obligations under the Agreement, and how the Maintainer intends to deliver them (including as a minimum those matters included in the Environmental Statistics);
- (h) plans for maintenance and improvement of biodiversity on sites managed by the Maintainer; and
- (i) assessment of the success in delivering the Green Travel Plan.

7.7 The Maintainer shall calculate a benchmark performance for those matters included in the Environmental Statistics no later than six months prior to the Existing Fleet Commencement Date, against which the performance of the Maintainer's obligations during the first Contract Year shall be compared in the first Annual Environmental Report and Improvement Plan.

8. Remedial Action

8.1 If the Maintainer is or becomes liable at any time to carry out any Remedial Action pursuant to Environmental Law then it shall:

(a) (to the extent reasonably practicable in the circumstances) pursuant to paragraph 8.3 discuss with and seek to agree any proposed strategy for undertaking such Remedial Action to the Purchaser for approval (such approval not to be unreasonably withheld or delayed) prior to submitting the proposed Strategy to Environmental Competent Authorities; and

(b) carry out or select suitably qualified third parties to carry out any Remedial Action and provide the Purchaser with copies of any terms of appointment of any third party(ies) who are carrying out such Remedial Action as soon as reasonably practicable and in any event within 10 (ten) Working Days of agreement of the same.

8.2 The Maintainer shall keep the Purchaser informed of the progress of the discussion and agreement of any remediation strategy with Environmental Competent Authorities and shall, to the extent reasonable in the circumstances, take into account the Purchaser's reasonable requests for amendments to the remediation strategy. The Maintainer shall, to the extent reasonable, ensure that it has obtained the written approval of the Purchaser to any Remediation Strategy (such approval not to be unreasonably withheld or delayed) prior to any Remedial Action commencing.

8.3 In carrying out any Remedial Action the Maintainer shall, and shall procure that any Subcontractor shall, comply with all Environmental Laws and/or the requirements of any Environmental Competent Authority.

8.4 The Maintainer shall ensure that any Remedial Action carried out by or on behalf of the Maintainer is completed to the satisfaction of the Environmental Competent Authorities and that any third party carrying out Remedial Action on behalf of the Maintainer provides a written completion statement to the Maintainer stating that it has carried out the Remedial Action in accordance with the Remediation Strategy and Environmental Laws in force at the date at which the Remedial Action is carried out. The Maintainer shall provide a copy of the completion statement(s) to the Purchaser as soon as reasonably practicable.

9. Agreement on Liabilities

9.1 The Parties agree that the costs of carrying out remedial action in respect of Environmental Incidents shall be borne in accordance with the provisions of clause 37.3(e) and paragraph 1.9 of Schedule 9 (*Maintenance Facilities - Willesden Depot*).

- 9.2 The Parties agree that the provisions of clause 37.3(e), paragraph 1.9 of Schedule 9 (*Maintenance Facilities - Willesden Depot*) and paragraph 4.1 shall together operate as an "agreement on liabilities" (in accordance with the "Defra Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance, dated April 2012", or any replacement thereof for the purposes of the Part IIA of the Environmental Protection Act 1990) and that in the event any Remedial Action is required, they will jointly provide written notification to the relevant Environment Competent Authority of the apportionment of liabilities set out in such provisions and the Parties' continuing wish that the Environment Competent Authority give effect to it in allocating and/or apportioning any such liabilities in accordance with those provisions.

**Schedule 16
Maintainer Confidential Information**

Column 1 Maintainer Confidential Information	Column 2 For period ending on date
1. Price breakdowns, including any financial models and supporting documents relating to this Agreement to the extent this reveals information about the Maintainer's, any of its Affiliates' costs, rates, build ups, forecasts and/or profit levels.	Duration of the Agreement
2. Information obtained from the Maintainer relating to risks and pricing of the same to the extent this reveals information about the Maintainer's or any of its Affiliates' costs, rates, build ups, forecasts and/or profit levels.	Duration of the Agreement
3. Personal information relating to any of the Maintainer's employees or employees of any Subcontractors to the extent it contains information exempt as personal data under section 40 of the Freedom of Information Act 2000 but without prejudice to the rights of access under the DPA.	Duration of the Agreement

Schedule 17
Dispute Resolution Procedure

1. Dispute

Any Dispute shall be resolved in accordance with this Schedule 17.

2. Senior Representatives

2.1 Written notice of any Dispute must be given by any Party to the other Party (the *Second Party*). This notice (the *Dispute Referral Notice*) shall:

- (a) contain a concise statement of the Dispute and a statement of the remedy or remedies which are sought;
- (b) enclose copies of all correspondence and documentation relevant to the Dispute; and
- (c) state that it is a Dispute Referral Notice given under this Schedule 17.

2.2 A managing representative of both Parties, in each case of appropriate seniority and experience and with appropriate decision-making authority (the *Senior Representatives*), shall meet within seven days of the receipt of any Dispute Referral Notice by the Second Party to:

- (a) discuss the matters set out in the Dispute Referral Notice; and
- (b) attempt in good faith to resolve the Dispute described in the Dispute Referral Notice.

2.3 If the Senior Representatives resolve the Dispute, they shall issue a joint written statement of resolution within 7 days of the meeting referred to in paragraph 2.2. This joint statement shall be binding upon the Parties.

2.4 If the Senior Representatives are unable to resolve the Dispute within 14 days of the meeting referred to in paragraph 2.2, either Party may escalate the Dispute as follows:

- (a) if the Dispute is an Expert Dispute, in accordance with paragraph 3 (*Expert determination*) of this Schedule 17; or
- (b) if the Dispute is not an Expert Dispute, in accordance with paragraph 4 (*Adjudication*) of this Schedule 17.

3. Expert determination

3.1 Subject to paragraph 2 (*Senior Representatives*), if a Dispute is an Expert Dispute, either Party may give written notice to the other Party of its intention to refer the Dispute to expert determination in accordance with this paragraph 3. Such notice shall set out with adequate specificity the issue or issues to be investigated and resolved by the Expert (the *Notice of Dispute*).

3.2 The Parties shall use reasonable endeavours to agree upon an Expert. If such agreement is not reached within eight days of receipt of the Notice of Dispute (or within such further time as the Parties may agree), either Party may apply to the London Court of International Arbitration (*LCIA*) to appoint an Expert, such

appointment to be effected as quickly as possible and in any event within six days of the application to the LCIA.

- 3.3 Where the Expert has been appointed by the LCIA, the Parties shall, in the absence of direct agreement with the Expert, refer the terms of the remuneration of the Expert to the LCIA to be settled and binding upon the Parties by agreement between the LCIA and the Expert (provided that the level of the Expert's fees shall not exceed the level originally proposed to the Parties by the Expert following his appointment by the LCIA).
- 3.4 Forthwith upon the agreement or determination of the Expert's terms of appointment and remuneration between the Expert and the Parties, the Expert shall confirm his acceptance of the appointment (the *Notice of Appointment*).
- 3.5 Within seven days of receipt of the Notice of Appointment, the referring Party shall serve on the Expert and the other Party a written submission which sets out the nature of its case and appends the supporting documentation which it considers relevant to the Expert Dispute. The submission shall, at a minimum:
 - (a) set out with adequate specificity the issue or issues to be investigated and resolved by the Expert;
 - (b) be accompanied by any correspondence between the Parties that discusses the issues and the Parties' attempts to resolve them; and
 - (c) be accompanied by any relevant contractual documents, specifications and/or any technical documents or other data relevant to an initial understanding of the issue.
- 3.6 The other Party may, within seven days of receipt of a submission pursuant to paragraph 3.5, serve on the Expert and the referring Party a submission in reply setting out its response to the referring Party's submission, clarifying or adding to the issues to be investigated and appending any additional supporting documentation upon which it wishes to rely.
- 3.7 The role of the Expert shall be to investigate using his professional skill and experience the issues raised by the Dispute and to determine for himself the correct answer to any disagreement or issue that is required to be resolved between the parties to the Expert Dispute. The Expert shall not act in a judicial or quasi-judicial capacity, but instead will act on his own behalf and seek to determine on a wholly independent and objective basis his view of the correct answer or solution to any issues raised by the parties. The Expert shall act as an expert and not as an arbitrator or adjudicator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert, his decision or the procedure by which he reached his decision.
- 3.8 The Parties agree and acknowledge that they shall act reasonably and co-operate promptly with the Expert, and shall provide (or, where applicable, shall use reasonable endeavours to procure that others provide) the Expert with such assistance and documentation as the Expert reasonably requires for the purpose of reaching his decision.

- 3.9 The Expert shall make his determination as expeditiously as reasonably practicable and in any event within 28 days of service of the Notice of Appointment or such other time as may be agreed between the Parties. The Expert shall provide, at the same time as his determination, a written set of conclusions including reasons for such conclusions, to the Parties.
- 3.10 Subject to paragraph 5.1(a), the Expert's determination shall be final and binding upon the Parties save in respect of:
- (a) error on a point of law which any Party reasonably believes materially affects the Expert's determination;
 - (b) fraud;
 - (c) manifest error; or
 - (d) matters outside the Expert's jurisdiction.

For the avoidance of doubt, the Parties may only challenge the Expert's determination on the basis of the grounds set out in this paragraph 3.10.

- 3.11 Subject to paragraph 3.12:
- (a) where the Expert has been appointed by the LCIA, the appointment fee of the LCIA shall be shared equally between the Parties, and if one Party pays the whole of the fee, the other Party shall pay its share of the fee upon demand; and
 - (b) the Expert's fees and any costs reasonably and properly incurred by him in arriving at his determination shall be shared between the Parties.

3.12 The Expert may direct that any legal costs and expenses incurred by a Party in respect of the determination and/or Expert Dispute shall be paid by the other Party to the determination and/or Expert Dispute on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs.

3.13 All matters concerning the process and result of the determination by the Expert, including but not limited to any documentation provided by the relevant Parties, to the extent that they are not otherwise in the public domain, shall be treated as confidential.

4. Adjudication

4.1 Save where this Agreement explicitly provides that a Dispute should be referred for resolution as an Expert Dispute under the Dispute Resolution Procedure, and subject to paragraph 2 (*Senior Representatives*), either Party may give the other notice of intention to refer the Dispute to adjudication in accordance with this paragraph 4.

4.2 When giving its notice of intention to refer the Dispute, the referring Party shall propose an adjudicator and the Parties shall use reasonable endeavours to agree an adjudicator. If agreement is not reached within eight days of receipt by the non-referring Party of the notice of intention to refer to Dispute, either Party shall have the

right to apply to the LCIA, directing it to nominate an independent adjudicator within six days. Any legally qualified adjudicator nominated pursuant to this paragraph 4.2 must be Queen's Counsel.

- 4.3 Once appointed pursuant to paragraph 4.2, such adjudicator shall be the *Adjudicator* for the purposes of this Agreement and the Dispute shall be deemed to have been referred to the Adjudicator for the purposes of this paragraph 4.
- 4.4 The Party referring the Dispute to the Adjudicator shall within seven days of the appointment of the Adjudicator provide its written submission upon the Dispute to be considered by the Adjudicator with a copy by letter to the other Party. Any submission from the other Party to be considered by the Adjudicator shall be provided within seven days from the first submission. The Parties shall comply with any request of the Adjudicator in relation to the Dispute.
- 4.5 Any communication between the Party and the Adjudicator shall be in writing and communicated contemporaneously also to the other Party. Communication by email shall constitute valid written communication for the purposes of this Schedule 17.
- 4.6 In any event, the Adjudicator shall provide to both Parties his written decision on the Dispute within 28 days of the reference (or such longer period as the Parties may agree after the reference). The Adjudicator shall have the power to extend the period of 28 days by up to 14 days, with the consent of the Party which referred the Dispute.
- 4.7 Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until the Dispute is finally determined by the Courts in accordance with paragraph 5.2 or by the agreement of the Parties, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision. Either Party may apply to any appropriate court for enforcement of the Adjudicator's decision. The following shall not be treated as a Dispute for the purposes of this Schedule 17:
 - (a) any form of enforcement of the Adjudicator's decision;
 - (b) any form of challenge to the enforcement of the Adjudicator's decision; and
 - (c) any dispute arising out of or in connection with such enforcement or challenge referred to in (a) and (b) above.
- 4.8 The Adjudicator shall have the power to correct his decision so as to remove a clerical or typographical error arising by accident or omission, provided that such correction is notified to the Parties in writing within 7 days of the date upon which the Adjudicator provided his written decision to the Parties.
- 4.9 The Adjudicator's fees and expenses of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. The Parties may agree, after notice of intention to refer the Dispute has been given, to allocate their own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 4.10 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to

arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

- 4.11 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall, subject to any limitation in this Agreement:
- (a) have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement; and
 - (b) have complete discretion as to how to conduct the adjudication, save that the Adjudicator may not amend the time periods prescribed by paragraph 4.6 without the consent of both Parties.
- 4.12 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 41 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.
- 4.13 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

5. Reference to Court

- 5.1 If:
- (a) one of the Parties is dissatisfied with the Expert's determination solely on the basis of any of the grounds set out in paragraph 3.10.
 - (b) one of the Parties is dissatisfied with the decision after the Adjudicator notifies his decision; or
 - (c) the Adjudicator has not notified his decision and the time provided by paragraph 4.6 has expired,

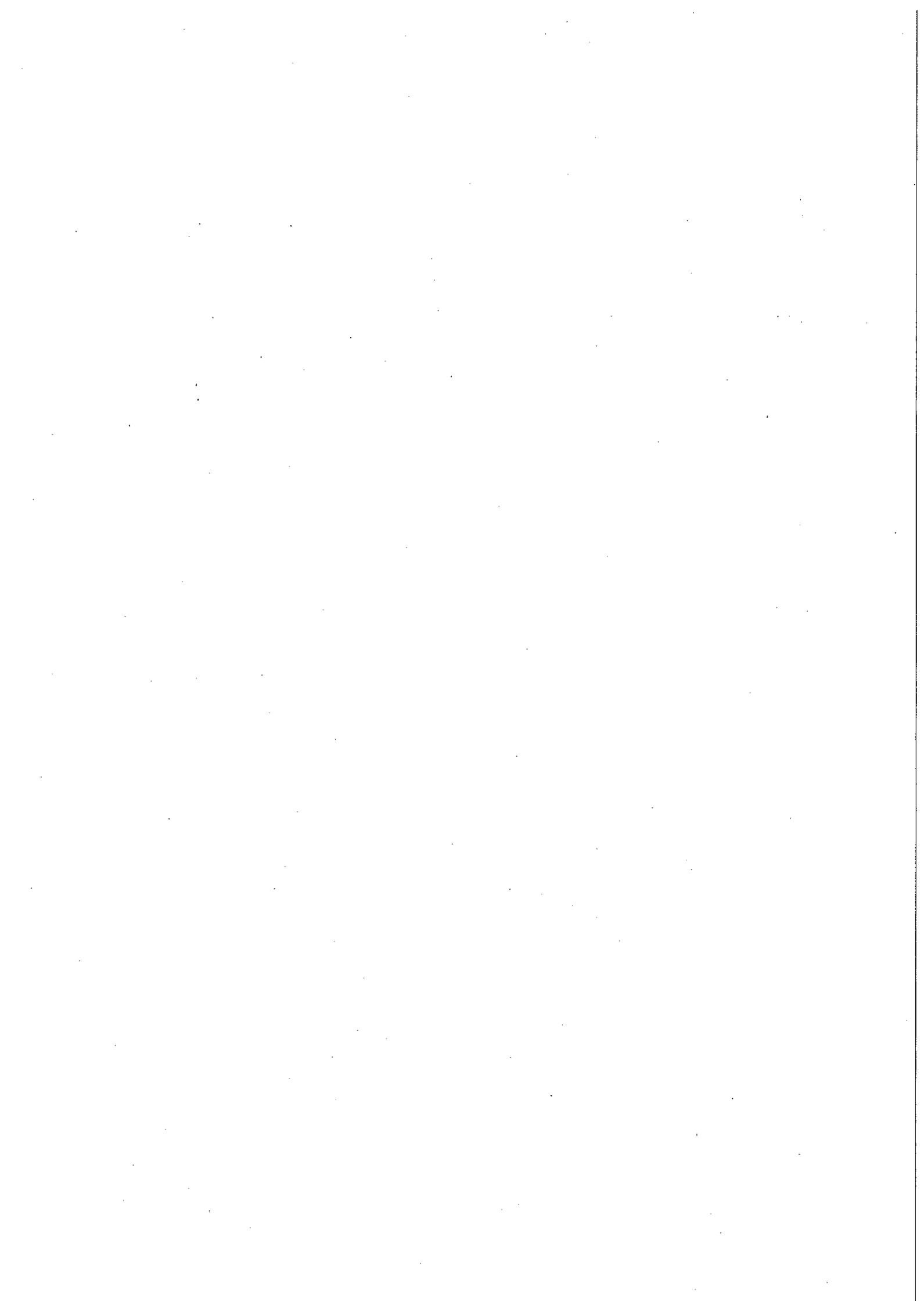
then either Party may within 35 days of receipt of the Expert or Adjudicator's decision (as appropriate), notify the other Party of its intention to refer the Dispute to the Courts of England and Wales (the *Courts*) for final determination. In any event, such proceedings shall be initiated within 90 days of receipt of the Expert's determination or Adjudicator's decision (as appropriate).

- 5.2 For the avoidance of doubt, if a Party fails to so notify the other Party pursuant to paragraph 5.1 above, it will be taken to have waived its right to refer the matter to the Courts and the Expert's determination or Adjudicator's decision (as appropriate) will be final and binding. Otherwise, the Courts shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the Adjudicator's

decision and, where appropriate, to order financial compensation to be paid by one Party to the other.

6. Continuing Obligations and Rights

- 6.1 Unless the Agreement has already been repudiated or terminated, the Parties shall continue to comply with, observe and perform all of their obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule 17 and shall give effect forthwith to every Expert's determination or Adjudicator's decision (as appropriate) and the Courts delivered under this Schedule 17. The provisions of this Schedule 17, shall continue to apply to any Dispute notwithstanding the repudiation or termination of this Agreement.
- 6.2 No Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief or for other equitable relief as a result of the provisions of this Schedule 17 nor shall this Schedule 17 apply in respect of any circumstances where such remedies are sought.



Schedule 18
Termination Payments

REDACTED

1. Maintainer Default or Corrupt Gifts Termination

Termination Indemnity

1.1 If this Agreement is terminated at any time between the Commencement Date and the Expiry Date as a result of:

- (a) a Maintainer Event of Default in accordance with clause 30 (*Maintainer Default*); or
- (b) the occurrence of a Prohibited Act in accordance with clause 33 (*Corrupt Gifts Termination*),

the Maintainer shall 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) Losses incurred in the temporary hiring of rolling stock if the Units are unavailable as a result of the failure by the Maintainer to carry out the Maintainer Obligations;
- (ii) Losses incurred in completing outstanding work of the Maintainer;
- (iii) 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; and
- (iv) Losses relating to any additional staffing or personnel costs reasonably and properly incurred by reason of the termination of this Agreement, to the extent not covered by paragraph (iii) above;
- (v) Losses relating to additional running, testing, stabling, re-diagramming and depot costs reasonably and properly incurred by reason of the termination of this Agreement; and
- (vi) 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).

Termination Liability Caps

1.2 (a) The Maintainer's liability pursuant to paragraph 1.1 shall, subject to paragraph 1.2(b) below, not exceed:

- (i) prior to and including the date which is the tenth anniversary of the Scheduled Commencement Date, [REDACTED] (Indexed by RPI); and
- (ii) after the date which is the tenth anniversary of the Scheduled Commencement Date, [REDACTED] (Indexed by RPI).

- (b) The limitation in paragraph 1.2(a) shall not apply to any liability of the Maintainer to the Indemnified Parties arising as a result of or in connection with any matter set out in clause 38.3 excluding clause 38.3(a)(iv).

2. Voluntary Termination or Termination for Purchaser Default or Force Majeure or Major Depot Change

- (a) If this Agreement is terminated on or after the Operating Date as a result of:
 - (i) a Purchaser Event of Default in accordance with clause 31 (*Purchaser Default*); or
 - (ii) Purchaser voluntary termination in accordance with clause 26.1; or
 - (iii) Purchaser voluntary termination in accordance with clause 26.4(b)(ii); or
 - (iv) Force Majeure in accordance with clause 29.7; or
 - (v) the Purchaser exercising its right to terminate this Agreement under clause 26.3; or
- (b) if this Agreement is terminated prior to the Operating Date or Existing Fleet Commencement Date pursuant to clause 26.4(a),

then

- (c) the Purchaser shall pay to the Maintainer:
 - (i) all amounts due to the Maintainer as at the Termination Date in accordance with clause 19 (*Payments*);
 - (ii) such sum as represents the cost of labour and materials reasonably and properly incurred or committed on arm's length terms by the Maintainer as at the Termination Date relating to the provision of the relevant Services;
 - (iii) redundancy payments for employees of the Maintainer that have been or will be reasonably incurred by the Maintainer as a direct result of termination of this Agreement and in whole or in part; and
 - (iv) where the Purchaser exercises its right of termination in connection with a Major Depot Change pursuant to clause 26.3, the Purchaser shall pay an additional amount equivalent to the net profit the Maintainer was predicted to earn pursuant to the Base Case Maintenance Model for the 36 months following the date of termination, as identified in the Base Case Maintenance Model.

3. Ineffectiveness

If this Agreement is terminated pursuant to clause 32 (*Declaration of Ineffectiveness*), the Purchaser shall pay the Maintainer:

- (a) all amounts due to the Maintainer as at the Termination Date in accordance with clause 19 (*Payments*);
- (b) such sum as represents the cost of labour and materials reasonably and properly incurred or committed on arm's length terms by the Maintainer as at the Termination Date relating to the provision of the Services; and
- (c) redundancy payments for employees of the Maintainer that have been or will be reasonably incurred by the Maintainer as a direct result of termination of this Agreement.

4. Insurance Proceeds

- 4.1 Save to the extent already deducted or otherwise taken into account in calculating any amount payable pursuant to this Schedule 18, any amount payable by the Purchaser pursuant to this Schedule 18 shall be reduced by the amount of any sums that are received by the Maintainer on or before the date on which the first payment is made under paragraph 5 (*Timing of Payment*), under any of the policies of insurance that the Maintainer is obliged to maintain in accordance with this Agreement provided that there shall be no such reduction under this paragraph 4.1 in respect of insurance proceeds that the Maintainer is obliged to pay to a third party:
- 4.2 The Maintainer shall, prior to the Purchaser making a payment pursuant to this Schedule 18, assign to the Purchaser its rights to any further sums (other than those sums of the nature referred to in the proviso to paragraph 4.1), which are or may be recoverable by the Maintainer under the insurance policies referred to in paragraph 4.1 after the date of the first payment to be made by the Purchaser under paragraph 5 (*Timing of Payment*).

5. Timing of Payment

- 5.1 The Purchaser shall pay to the Maintainer the amounts payable pursuant to this Schedule 18 in a lump sum (together with interest thereon calculated in accordance with paragraph 5.2 on or before the date falling 60 Working Days after the Invoice Date).
- 5.2 Any amounts payable by either Party pursuant to this Schedule 18 shall carry interest calculated at the Default Rate from the Termination Date to the date of payment by the relevant Party.

6. General

- 6.1 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 18 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.
- 6.2 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 18.

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- 6.3 Subject to paragraphs 6.6 to 6.10 (inclusive), the amount of any compensation paid pursuant to this Schedule 18 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 18) 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.
- 6.4 If the payment of any part but not all of the amount payable pursuant to this Schedule 18 is disputed then any undisputed element of that amount shall be paid in accordance with this Schedule 18 and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.
- 6.5 Payment of compensation in accordance with this Schedule 18 shall be in full and final settlement of any claims and rights of the Maintainer 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 any Project Document. The compensation payable under this Schedule 18 shall be the sole remedy of the Maintainer against the Purchaser on termination of this Agreement and the Maintainer hereby waives any other right or redress it may have against the Purchaser arising from such termination.
- 6.6 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 Maintainer as a direct result of termination of this Agreement which the Maintainer is claiming from the Purchaser pursuant to this Schedule 18 and to determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Maintainer as a direct result of the termination of this Agreement.
- 6.7 Where the Purchaser exercises its rights pursuant to paragraph 6.6 it shall give written notice to the Maintainer 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 Maintainer shall co-operate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.
- 6.8 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decision) to the Maintainer 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 Maintainer as a direct result of termination of this Agreement the Purchaser shall not be obliged to pay such amount to the Maintainer.

- 6.9 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 Maintainer, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Maintainer.
- 6.10 If the Maintainer disputes any findings of the Independent Auditor such Dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure.

**Schedule 19
Pro Forma Certificates**

Part A Pro forma certificates

FORM OF CERTIFICATE OF COMMENCEMENT

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

Train Services Agreement dated __ July 2015 and made between Rail for London Limited and Bombardier Transportation UK Limited (the *Maintainer*) (the *TSA*)

1. Words and expressions defined in the TSA shall have the same meanings when used in this Certificate of Commencement and the provisions of the TSA (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 TSA.
3. We, Rail for London Limited, hereby:
 - (a) confirm that each of the conditions precedent set out in clause 2.3 of the TSA 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 TSA have been satisfied (or waived or deferred by you); and
 - (c) notify you, the Maintainer, that the Commencement Date 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 (the *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 [●]) a company incorporated under the laws of [●] whose registered office is at [●] (the *Maintainer*).

WHEREAS:

- (A) The Purchaser has appointed the Maintainer to perform the Services and other obligations (the *Services*) under a train services agreement dated __ July 2015 (the *TSA*).
- (B) The Purchaser has entered into an agreement with the New Purchaser in respect of the Services.
- (C) The Purchaser, the Maintainer 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 Maintainer shall perform its obligations under the TSA in favour of the New Purchaser and that the Purchaser on the one part and the Maintainer on the other part shall each release the other from any obligations owed by the other to them under the TSA.

NOW IT IS HEREBY AGREED as follows:

1. Novation

- 1.1 The Purchaser hereby releases and discharges the Maintainer from any and all obligations and liabilities owed to the Purchaser under the TSA.
- 1.2 The Maintainer undertakes to perform the TSA 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 TSA in lieu of the Purchaser.
- 1.3 The Maintainer hereby releases and discharges the Purchaser from any and all obligations and liabilities owed to the Maintainer under the TSA and accepts the obligations and liability of the New Purchaser under the TSA in lieu of the liability of the Purchaser.
- 1.4 Without prejudice to clause 1.2, the Maintainer 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 Maintainer in the performance of its obligations under the TSA prior to the date of this Agreement.

Subject to any limitation of liability in the TSA, the Maintainer 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 Maintainer acknowledges that fees and expenses properly due to the Maintainer under the TSA 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 TSA 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 TSA 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:)

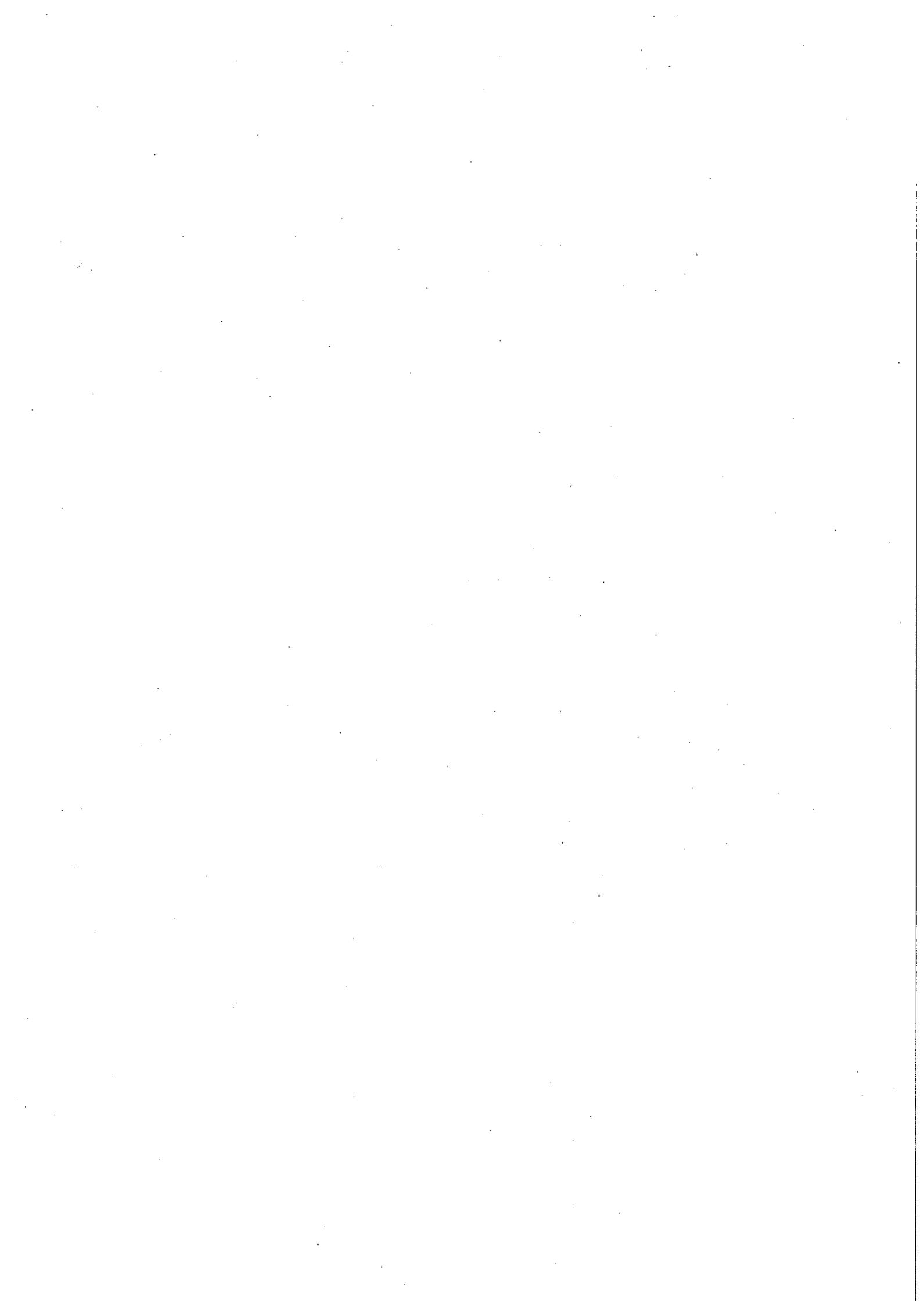
Signature of authorised signatory

Name of authorised signatory

EXECUTED as a DEED by)
BOMBARDIER TRANSPORTATION)
UK LIMITED)
acting by two directors:)

Director

Director



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Schedule 20
TSA Performance Bond

1. TSA Performance Bond

Initial TSA Performance Bond

- 1.1 The Maintainer shall, at its own cost, prior to Provisional Acceptance or Qualified Provisional Acceptance of the first Unit, procure the issue of a TSA Performance Bond from the TSA Performance Bond Provider (a *TSA Performance Bond*) in favour of the Purchaser for an initial TSA Performance Bond Amount of £ [REDACTED] (Indexed by RPI) (the *Initial TSA Performance Bond Amount*).

TSA Performance Bond Provider

- 1.2 The TSA Performance Bond procured pursuant to paragraph 1.1 must:
- (a) be issued by a financial institution which either:
 - (i) has a long-term credit rating of "A+" or better from Standard and Poor's Rating Services or the equivalent rating from any other agency of equivalent international reputation which rates the TSA Performance Bond Provider; or
 - (ii) at the Purchaser's absolute discretion, has a long-term credit rating of less than "A+" from Standard and Poor's Rating Services or equivalent rating from any other agency of equivalent international reputation which rates the TSA Performance Bond Provider; and
 - (b) have an expiry date which is no less than 12 months from the date of issue of the TSA Performance Bond.

Demands

- 1.3 (a) Where this Agreement is terminated due to the occurrence of a Maintainer Event of Default, the Purchaser shall be entitled to make a demand under the TSA Performance Bond for the TSA Performance Bond Amount, which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Maintainer for application in or towards amounts due to the Purchaser following termination for Maintainer Event of Default as provided for in this Agreement.
- (b) Where this Agreement terminates other than as contemplated by paragraph 1.3(a) (save where it terminates due to a Purchaser Event of Default), or expires, the Purchaser shall be entitled to make a demand under the TSA Performance Bond in respect of any amounts which the Maintainer is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser.
- (c) Where the Maintainer is liable to pay to the Purchaser (whether by way of indemnity or otherwise), and has failed to pay to the Purchaser, any amounts due and payable pursuant to this Agreement (other than as provided for in paragraphs 1.3(a) and 1.3(b)), the Purchaser shall be entitled to make demand under the TSA Performance Bond in respect of such amounts.

- (d) In the event of any breach by the Maintainer of the terms of this Agreement, the Purchaser shall be entitled to make a demand under the TSA Performance Bond in respect of any amounts due to the Purchaser (or to which it is entitled) as a result of such breach.

1.4 Without prejudice to its rights under paragraph 1.3, the Purchaser shall be entitled to make a demand under the TSA Performance Bond if any of the circumstances described in paragraph 2 (*Defect in the TSA Performance Bond*) arise.

Increases in TSA Bond Amount

1.5 (a) The Maintainer shall be obliged on each anniversary of the Commencement Date to ensure that the TSA Performance Bond Amount is increased by way of being Indexed by RPI, as evidenced by the receipt by the Purchaser of a certificate in the form set out in Appendix 1 to the TSA Performance Bond (Certificate of increase in TSA Bond Amount).

(b) If the Purchaser has not received a certificate evidencing the requisite increase in the TSA Performance Bond Amount in accordance with this paragraph 1.5, the Purchaser shall, in accordance with clause 19.2(d), be entitled to retain from any Service Payments which would otherwise be due and payable, such amounts as the Purchaser considers appropriate up to the amount of the requisite increase in the TSA Performance Bond Amount. The Purchaser shall pay such retained amounts (without any interest on such amounts) to the Maintainer following receipt of the required certificate evidencing the requisite increase in the TSA Performance Bond Amount.

Decreases in the TSA Bond Amount

1.6 (a) On the date which is the tenth anniversary of the Scheduled Commencement Date the Purchaser shall issue a certificate in the form set out in Appendix 2 to the TSA Performance Bond and the TSA Performance Bond Amount shall (following indexation in accordance with paragraph 1.5) reduce by the amount of £ [REDACTED] (which shall not be indexed).

(b) No later than 10 Working Days after each anniversary of the date which is the tenth anniversary of the Scheduled Commencement Date, the Purchaser shall issue a certificate in the form set out in Appendix 2 to the TSA Performance Bond, and the TSA Performance Bond Amount under the TSA Performance Bond (following indexation in accordance with paragraph 1.5) will on each such occasion be reduced by an amount equal to £ [REDACTED] (which shall not be indexed), save that on the twentieth anniversary of the Acceptance of the final Unit, the TSA Performance Bond Amount under the TSA Performance Bond shall be reduced to zero.

2. Defect in the TSA Performance Bond

Maintenance of TSA Performance Bond

2.1 Subject only to the express provisions of this Schedule 20, the Maintainer shall procure the continuing validity and effectiveness of the TSA Performance Bond until

the date on which the TSA Performance Bond Amount under the TSA Performance Bond has been reduced to zero in accordance with this Schedule 20 (the **TSA Bond Step-Down Date**). The Maintainer shall provide at least 30 Working Days' advance notice of the expiry of the TSA Performance Bond before the TSA Bond Step-Down Date. The Maintainer shall promptly notify the Purchaser upon becoming aware of the occurrence of a TSA Performance Bond Event or of a TSA Performance Bond Provider Downgrade.

TSA Performance Bond Event or TSA Performance Bond Provider Downgrade

2.2 Without prejudice to paragraph 2.4, where either a TSA Performance Bond Event or a TSA Performance Bond Provider Downgrade occurs, the Maintainer shall either:

- (a) deliver to the Purchaser another TSA Performance Bond for the then current TSA Performance Bond Amount in replacement for the then current TSA Performance Bond which complies with the requirements of this Agreement in accordance with the process set out in paragraph 3.2; or
- (b) procure that alternative cash collateral or other security acceptable to the Purchaser in an amount equal to the TSA Performance Bond Amount from time to time is made available to the Purchaser on such terms and conditions as the Purchaser shall, in its absolute discretion, consider appropriate,

and, if the Maintainer fails to deliver such replacement TSA Performance Bond or replacement security by no later than:
 - (i) 30 Working Days following the occurrence of the TSA Performance Bond Event or TSA Performance Bond Provider Downgrade; or
 - (ii) if earlier, the appropriate time limit in accordance with paragraph 3.2 below,

the Purchaser shall be entitled to make demand under the TSA Performance Bond for the TSA Performance Bond Amount at that time, and the provisions of paragraphs 2.5 and 2.6 shall apply to any amounts that are received from the TSA Performance Bond Provider as a result of such demand.

Expiry of the TSA Performance Bond

2.3 Where the TSA Performance Bond will expire before the TSA Bond Step-Down Date, the Maintainer shall either:

- (a) extend the term of the TSA Performance Bond (or replace it with another TSA Performance Bond for the TSA Performance Bond Amount at the time of expiry, in accordance with the procedure set out in paragraph 3.2), in each case with a validity period of not less than 12 months; or
- (b) procure that alternative cash collateral or other security acceptable to the Purchaser in an amount equal to the TSA Performance Bond Amount from time to time is made available to the Purchaser on such terms and conditions as the Purchaser shall, in its absolute discretion, consider appropriate,

and, if the Maintainer fails to deliver such replacement or extended TSA Performance Bond or replacement security by no later than 10 Working Days prior to the expiry of the then current TSA Performance Bond, the Purchaser shall be entitled to make demand under the TSA Performance Bond for the TSA Performance Bond Amount at that time (on terms that such demand shall be deemed to be withdrawn if the validity period of the TSA Performance Bond is extended for at least 12 months), and the provisions of paragraphs 2.5 and 2.6 shall apply to any amounts that are received from the TSA Performance Bond Provider as a result of such demand.

Insolvency Event of the TSA Performance Bond Provider

- 2.4 If there is an Insolvency Event in relation to the TSA Performance Bond Provider then, notwithstanding the other provisions of this Schedule 20, including the Maintainer's obligation to replace the TSA Performance Bond, the Purchaser shall immediately be entitled to make demand under the TSA Performance Bond for the total amount of the TSA Performance Bond at that time, and the provisions of paragraphs 2.5 and 2.6 shall apply to any amounts that are received from the TSA Performance Bond Provider as a result of such demand.

Treatment of Bond proceeds

- 2.5 Any amount that the Purchaser receives from the TSA Performance Bond Provider as a result of a demand made in accordance with this paragraph 2 shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Maintainer for application in or towards amounts in respect of which the Purchaser would have been entitled to make any demand under the TSA Performance Bond. Any interest accruing in such account and any balance remaining at the TSA Bond Step-Down Date or earlier termination of this Agreement or such other date as the Purchaser shall determine following application by the Purchaser in accordance with this paragraph 2.5 shall, subject to the Purchaser's rights of set-off in clause 55 (*Set Off*), belong to the Maintainer. If the Maintainer subsequently delivers a replacement or extended TSA Performance Bond complying with the provisions of this Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Maintainer and the Purchaser shall promptly take such steps as are reasonably requested by the Maintainer to ensure release of such balance to the Maintainer.

Maintainer Event of Default

- 2.6 The receipt of any amounts by the Purchaser from the TSA Performance Bond Provider as a result of a demand made in accordance with this paragraph 2 shall be treated as alternative cash collateral acceptable to the Purchaser in pro tanto satisfaction of the Maintainer's obligation to provide the TSA Performance Bond in accordance with this Schedule 20, and if the circumstances described in paragraphs 2.2, 2.3 or 2.4 arise and the Purchaser elects to make a demand under the TSA Performance Bond in accordance with the terms of the relevant provision, no Maintainer Event of Default under clause 30.1(m) or (n) shall arise unless and until the TSA Performance Bond Provider notifies the Purchaser that it will not satisfy the

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demand in full (and the Maintainer has not taken the applicable action under paragraphs 2.2(a) or (b) or paragraphs 2.3(a) or (b) by such time).

3. Replacement of TSA Performance Bond

Maintainer Substitution of TSA Performance Bond

3.1 Following the provision of the TSA Performance Bond, the Maintainer may request that the Purchaser accept a replacement TSA Performance Bond in substitution for the then current TSA Performance Bond and the provisions of paragraph 3.2 shall apply. The Purchaser shall not unreasonably refuse such request if the replacement TSA Performance Bond complies with all the requirements of this Agreement. If a replacement TSA Performance Bond is procured pursuant to this paragraph 3.1, the Purchaser shall return the existing TSA Performance Bond to the Maintainer once it has received the substitute TSA Performance Bond.

Substitute of TSA Performance Bond Provider

3.2 Where a replacement TSA Performance Bond is to be provided pursuant to this Schedule 20, the procedure in this paragraph 3.2 shall apply.

- (a) The substitute TSA Performance Bond Provider must either:
 - (i) have a long-term credit rating of "A+" or better from Standard and Poor's Rating Services or the equivalent rating from any other agency of equivalent international reputation which rates the TSA Performance Bond Provider; or
 - (ii) at the Purchaser's absolute discretion, have a long-term credit rating of less than "A+" from Standard and Poor's Rating Services or equivalent rating from any other agency of equivalent international reputation which rates the TSA Performance Bond Provider.
- (b) Within 10 Working Days of the TSA Performance Bond Provider Downgrade, TSA Performance Bond Event or the Purchaser's receipt of notice of expiry pursuant to paragraph 2.1, the Maintainer will provide the Purchaser with a list of potential TSA Performance Bond Providers.
- (c) If the Purchaser consents (at its absolute discretion) to any such potential TSA Performance Bond Provider(s) the Maintainer will procure a TSA Performance Bond from such institution:
 - (i) if the replacement is required as a result of a TSA Performance Bond Provider Downgrade or TSA Performance Bond Event, within 5 Working Days of such consent; or
 - (ii) if the replacement is required as a result of the impending expiry of the TSA Performance Bond, within 10 Working Days of such consent.
- (d) If the Purchaser does not consent to any of the potential TSA Performance Bond Providers it shall within 5 Working Days of receipt of the list from the

Maintainer pursuant to paragraph 3.2(b) provide the Maintainer with an alternative list of potential TSA Performance Bond Providers.

- (e) The Maintainer shall use all reasonable endeavours to obtain a TSA Performance Bond from the list of potential TSA Performance Bond Providers notified pursuant to paragraph 3.2(d) and the Maintainer shall within 10 Working Days of receipt of the list of the Purchaser's potential TSA Performance Bond Providers either procure a TSA Performance Bond from such a TSA Performance Bond Provider or provide the Purchaser with details of the process the Maintainer went through to ascertain whether it could procure a TSA Performance Bond from such institutions.
- (f) If the Purchaser does not either:
 - (i) consent to a potential TSA Performance Bond Provider suggested by the Maintainer pursuant to paragraph 3.2(b) within 5 Working Days of receipt of such list; or
 - (ii) provide an alternative list pursuant to paragraph 3.1, within 5 Working Days of receipt of the list from the Maintainer pursuant to paragraph 3.2(b),

the Purchaser will be deemed to have accepted that a TSA Performance Bond provided by any of the potential TSA Performance Bond Providers suggested by the Maintainer pursuant to paragraph 3.2(b) is acceptable and the Maintainer must provide a TSA Performance Bond from any such potential TSA Performance Bond Providers within 10 Working Days of the Purchaser receiving the list provided by the Maintainer pursuant to paragraph 3.2(b).

Purchaser Right to Change the TSA Performance Bond Provider

- 3.3 (a) At any time, the Purchaser may request that the Maintainer replaces the TSA Performance Bond with a TSA Performance Bond from any of the alternative financial institutions provided on a list given by the Purchaser to the Maintainer (the *Alternative Suppliers*).
- (b) The Maintainer shall use all reasonable endeavours to obtain a TSA Performance Bond from the Alternative Suppliers and shall within 10 Working Days of receipt of the list of Alternative Suppliers:
- (i) confirm which (if any) of the Alternative Suppliers will provide a TSA Performance Bond which complies with this Agreement;
 - (ii) notify the Purchaser of the incremental cost of provision of a TSA Performance Bond which complies with this Agreement provided that the Maintainer shall use all reasonable endeavours to mitigate any such incremental cost and shall provide evidence of such incremental cost on an Open Book Basis; and
 - (iii) for any of the Alternative Suppliers that will not provide such a TSA Performance Bond, details of the process the Maintainer went through to ascertain if such a bond was available.

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- (c) The Purchaser will, within 10 Working Days of receipt of the information pursuant to paragraph 3.3(b), confirm which of the Maintainer's proposals are acceptable.
- (d) If the Purchaser confirms any of the Maintainer's proposals are acceptable the Maintainer shall procure a TSA Performance Bond from the approved Alternative Suppliers within 10 Working Days of such confirmation.
- (e) If the Purchaser does not provide a confirmation pursuant to paragraph 3.3(c) above the existing TSA Performance Bond will remain in place.
- (f) If a TSA Performance Bond is procured pursuant to this paragraph 3.3:
 - (i) the Purchaser shall return the existing TSA Performance Bond to the Maintainer once it has received the new TSA Performance Bond; and
 - (ii) the Service Payments shall be adjusted to take account of any increase in the cost of the provision of the new TSA Performance Bond as evidenced in accordance with paragraph 3.3(b)(ii).

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Appendix 1
Form of TSA Performance Bond

To: Rail for London Limited (*the Purchaser*)

Overground House
125 Finchley Road
Swiss Cottage
London
NW3 6HY

Copy: Bombardier Transportation UK Limited (*the Maintainer*)

TSA Performance Bond No []

1. We have been informed that our customer, the Maintainer, and you the Purchaser have entered into the Train Services Agreement dated __ July 2015 for, amongst other things, the provision of maintenance and related services in connection with rolling stock used for passenger services on the London Overground Network (*the Train Services Agreement* or *TSA*).
2. The terms of the TSA require that the obligations of the Maintainer under the TSA are supported by this TSA Performance Bond in your favour.
3. In consideration of the aforesaid, we, [●], hereby irrevocably undertake to pay to you any amount you may claim from us upon receipt of your first demand in writing (*Demand*) but not exceeding £[●], which amount may be varied from time to time in accordance with the terms of this TSA Performance Bond by delivery of certificates in the form specified in either Appendix 1 (*Certificate of Increase in TSA Bond Amount*) or Appendix 2 (*Certificate of Decrease in TSA Bond Amount*) (*the TSA Bond Amount*),

provided that:

- (a) our liability under this TSA Performance Bond is limited to an amount or amounts in aggregate not exceeding the TSA Bond Amount from time to time;
- (b) any claim hereunder shall be accompanied by your statement that the amount claimed is due by reason of (i) a breach by the Maintainer of the terms of the TSA, (ii) the termination of the TSA due to the occurrence of a Maintainer Event of Default, or (iii) non-payment by the Maintainer of sums due to the Purchaser under the terms of the TSA; and
- (c) the TSA Bond Amount will decrease by an amount set out in the certificate of decrease on each occasion that a certificate in the form set out in Appendix 2 (*Certificate of Decrease in TSA Bond Amount*) is delivered to us by you; and
- (d) our liability under this TSA Performance Bond in respect of any claim is limited to an amount not exceeding the TSA Bond Amount at the date of such

claim less any and all amounts previously claimed and paid under this TSA Performance Bond.

4. This TSA Performance Bond shall be valid for Demands received in accordance with this TSA Performance Bond until the date which is the earlier to occur of:
 - (a) the date on which you deliver to us an original certificate in the form set out in Appendix 2 (*Certificate of Decrease in TSA Bond Amount*) which reduces the TSA Bond to zero; and
 - (b) [*insert date*],

(the *Expiry Date*) whereupon you shall return this TSA Performance Bond to the Maintainer. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this TSA Performance Bond is returned to us.

5. There shall be no limit to the number of Demands that may be made hereunder.
6. We covenant, warrant and represent that we are duly authorised to enter into, deliver and perform this TSA Performance Bond and that it constitutes a valid, binding and enforceable obligation on us in accordance with its terms.
7. We shall make payment to you immediately upon service of your Demand:
 - (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand, the respective rights and/or obligations and/or liabilities of the Purchaser and the Maintainer under the TSA, the authenticity of any written Demand made by the Purchaser or the authority of the persons signing any written Demand by the Purchaser which, as between ourselves and you, shall be conclusive; and
 - (b) notwithstanding any dispute between the Maintainer and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of your Demand without any rights on our part to raise any objections, irrespective of the validity of the effectiveness of the TSA and the obligations arising thereunder and irrespective of the underlying facts or their significance under the TSA.
8. All sums payable under this TSA Performance Bond shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law. If we are required by law to make any deduction or withholding, the amount payable by us hereunder shall be increased to such amount as shall ensure that you receive a net amount equal to the amount which would have been received in absence of such deduction or withholding.
9. Our obligations hereunder shall be direct, primary, irrevocable obligations and shall not be discharged, prejudiced or adversely affected by any of the following:

- (a) any time, waiver, release, indulgence or forbearance which the Purchaser or its agents or representatives may grant to the Maintainer or that the Maintainer may grant to the Purchaser;
 - (b) any amendment or modification to the TSA;
 - (c) any invalidity, illegality or unenforceability in or of the terms of any agreement or other commitment to which the Maintainer is or may become a party, including (without limitation) any invalidity in the TSA, or the avoidance, termination or other revocation of or loss of rights under the TSA;
 - (d) any disability, incapacity, change in ownership or change in status of the Maintainer;
 - (e) an Insolvency Event in relation to, or a change in the constitution of, the Maintainer;
 - (f) any breach of the TSA by any party thereto; or
 - (g) by any other matter or thing which in the absence of this provision would or might have that effect.
10. No failure or delay by the Purchaser in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
11. Our rights and obligations under this TSA Performance Bond may not be assigned or transferred save with your prior written consent.
12. This TSA Performance Bond may be assigned or charged by you to any person to whom you are entitled to assign the TSA in accordance with the TSA.
13. This TSA Performance Bond may not be amended, varied or supplemented in any manner whatsoever without the prior written consent of the Purchaser and us, other than in accordance with its express terms.
14. This TSA Performance Bond is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758 (the *Rules*) save that:
- (a) in the case of any conflict between the Rules and the provisions of this TSA Performance Bond, the provisions of this Performance Bond shall take precedence; and
 - (b) Article 15 of the Rules shall be varied to enable the Purchaser to claim under this TSA Performance Bond in all circumstances set out in proviso (b) to paragraph 3 above.
15. Words and phrases defined in the TSA shall have the same meanings in this TSA Performance Bond unless inconsistent with the context.
16. Each of the provisions of this TSA Performance Bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this TSA

Performance Bond, and in such event the remaining provisions of this TSA Performance Bond shall continue to have full force and effect.

17. This TSA Performance Bond and any non-contractual obligations arising out of it shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this TSA Performance Bond and any matter arising from it.
18. [We agree that [●] whose address is [●] is appointed as our agent for service of process in relation to any proceedings before the English court in connection with this TSA Performance Bond.]²

Executed as a Deed this [●] day of [●] 201[●].

² Required only if the Bond provider is a non-UK entity.

Appendix 1 to the TSA Performance Bond

Certificate of Increase in TSA Bond Amount

To: Rail for London Limited

Date: []

**TSA Performance Bond No. [] issued in favour of Rail for London Limited (the
TSA Performance Bond)**

Dear Sirs;

We refer to the TSA Performance Bond. Terms defined in the TSA Performance Bond have the same meaning in this Certificate.

We have been requested by our customer, [*Insert Maintainer's name*], to increase the TSA Bond Amount under the TSA Performance Bond.

We notify you that with immediate effect, the TSA Bond Amount for the purposes of the TSA Performance Bond is increased from £[•] to £[•].

Yours faithfully

Authorised Signatory

Appendix 2 to the TSA Performance Bond

Certificate of Decrease in TSA Bond Amount

To: [TSA Performance Bond Provider]

Date: []

**TSA Performance Bond No. [] issued in favour of Rail for London Limited (the
TSA Performance Bond)**

Dear Sirs,

We refer to the TSA Performance Bond. Terms defined in the TSA Performance Bond have the same meaning in this Certificate.

We notify you that the TSA Bond Amount will be reduced by £[•]³ to £[•] with immediate effect.

Yours faithfully

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

Name..... Date

Position: Purchaser Contract Manager

³ This is the amount determined in accordance with the relevant provision of paragraph 1.6 of Schedule 20 of the TSA.

Schedule 21
Form of Parent Company Guarantee

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[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 [*Insert details of the Maintainer*] (Registered Number [●]) whose registered office is at [●] (the *Maintainer*).
- (B) The Purchaser and the Maintainer have agreed to enter into an agreement (the *TSA*) pursuant to which the Maintainer will provide maintenance and related services and supply certain spares to the Purchaser in connection with the rolling stock used in the provision of passenger services on certain parts of the LO Infrastructure.
- (C) The Guarantor has agreed, as a condition precedent to the TSA (pursuant to clause 2.3(a) of the TSA), to guarantee the performance by the Maintainer of its obligations under the TSA on the terms and conditions set out in this Guarantee.

NOW THIS DEED WITNESSES as follows:

1. Definitions And Interpretation

Definitions

TSA has the meaning given to it in recital (B);

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

Maintainer's Obligations has the meaning given to it in clause 2 (*Guarantee and Indemnity*).

Interpretation

1.1 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

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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 *Maintainer* 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 TSA shall, unless otherwise defined in this Guarantee, have the same meaning in this Guarantee.

Deed

1.2 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 TSA with the Maintainer, 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 Maintainer of all of the Maintainer's obligations, undertakings, duties and responsibilities under the TSA when such obligations, undertakings, duties and responsibilities become due according to the terms of the TSA; and

(B) the due and punctual payment and discharge by the Maintainer 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 TSA in accordance with its terms or otherwise by reason of or in consequence of any breach thereof on the part of the Maintainer (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 *Maintainer's Obligations*), and the Guarantor covenants and undertakes with the Purchaser that if and whenever the Maintainer fails to pay, perform and/or discharge and/or is otherwise in default in respect of any of the Maintainer'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 Maintainer's Obligations and make good the failure or other default as if the Guarantor, instead of the Maintainer, 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 Maintainer failing to pay, fully perform and/or discharge and/or being otherwise in default in respect of any of the Maintainer's Obligations or as a result of any of the Maintainer's Obligations being or becoming void, voidable, unenforceable or ineffective as against the Maintainer for any reason whatsoever whether or not known to the Maintainer 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 Maintainer on the assumption that the TSA is not void, voidable, unenforceable or ineffective against the Maintainer.

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

3. Principal Obligor

Without prejudice to the Purchaser's rights against the Maintainer 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 it 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 TSA or in the extent or nature or method or timing of the Maintainer's Obligations, or novation of the TSA (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 Maintainer 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 Maintainer 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 Maintainer 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 Maintainer'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 Maintainer 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 Maintainer or the Guarantor or any change in status, function, control or ownership of the Maintainer;
- (k) the illegality, invalidity, unenforceability or frustration of the TSA or any of the Maintainer's Obligation(s) for any reason, or any defect in any provision of, the TSA or any other security given in relation to the Maintainer's Obligations;
- (l) any present or future law or regulations purporting to reduce or prejudice any of the Maintainer'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 Maintainer, 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 Maintainer's Obligations from time to time.

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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 Maintainer's Obligations (whether actual or contingent) have been duly and completely performed and observed and the Maintainer shall have ceased to be under any actual or contingent liability to the Purchaser under the TSA 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 TSA 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 Maintainer or Guarantor or any discharge given by the Purchaser (whether in respect of Maintainer'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 Maintainer 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 Maintainer 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 Maintainer 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 Maintainer 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 TSA or in any other document, instrument or agreement executed in connection with the TSA.

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 Maintainer'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 Maintainer 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 Maintainer, or exercise any rights of set-off as against the Maintainer.

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 prejudiced 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 Maintainer's Obligations for such period as the Purchaser may determine. At such time as the Guarantor considers that all of the Maintainer'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 Maintainer'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 Maintainer'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 Maintainer 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 Maintainer.

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 Maintainer).

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 TSA is assigned, transferred or, as applicable, to whom the TSA 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 41 (*Confidentiality*) of the TSA shall apply as appropriate to this Guarantee as if set out in this Guarantee in full save that references to *Maintainer* 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:

If to the Purchaser to:

Rail for London Limited
Overground House
125 Finchley Road
Swiss Cottage
London NW3 6HY
Attention: [REDACTED]
Email: [REDACTED]

If to the Guarantor to:

[●]

Attention: [●]

Email: [●]

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 Maintainer'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

