

**Schedule 7
Return of Assets**

Part A

Return Condition

Part B

Return Procedures

Part A Return Condition

1. Return

1.1 Upon the implementation of a TSSSA Change or upon the expiry or earlier termination (for whatever reason) of this Agreement, the Maintainer shall, subject to paragraph 1.3, deliver to the Purchaser and/or the Purchaser's nominee, as the Purchaser may direct in accordance with clause 35 (*General Obligations on Termination, TSSSA Change or Expiry*) of this Agreement, the relevant Return Assets at the Return Location, in each case in the applicable Return Condition.

1.2 For the purposes of this Agreement, *Return Assets* means:

- (a) upon the expiry or earlier termination of this Agreement where there has been no prior TSSSA Change:
 - (i) the Accepted Units, the Accepted Equipment, the Standard Services Supplementary Spares and any ancillary rolling stock equipment situated at a Maintenance Facility (including, for the avoidance of doubt, the Ilford A Maintenance Depot) or the Chingford Stabling Site and used by the Maintainer in the provision of the Services, in each case in accordance with the condition described in paragraphs 2 (*Units and Equipment*) and 3 (*Integrated Features*);
 - (ii) the Willesden Depot (including the Fixed Assets and the Depot Moveable Assets), in accordance with condition described in paragraph 4 (*Willessden Depot*); and
 - (iii) all documentation related to such assets described in paragraph 5 (*Documentation*) in accordance with the condition described in that paragraph;
- (b) upon the implementation of a TSSSA Change:
 - (i) the Accepted Units, the Accepted Equipment (excluding Spares) and any ancillary rolling stock equipment situated at a Maintenance Facility (including, for the avoidance of doubt, the Ilford A Maintenance Depot) or the Chingford Stabling Site and used by the Maintainer in the provision of the Services, in each case in accordance with the condition described in paragraphs 2 and 3;
 - (ii) the Willesden Depot (including the Fixed Assets and the Depot Moveable Assets), in accordance with the condition described in paragraph 4; and
 - (iii) all documentation related to such assets described in paragraph 5 in accordance with the condition described in that paragraph; or
- (c) upon the expiry or earlier termination of this Agreement where there has been a prior TSSSA Change, the Spares (in accordance with the condition described in paragraph 2) and any documentation related to the Spares

described in paragraph 5 (in accordance with the condition described in that paragraph),

and the condition described shall in each case be the *Return Condition* in respect of that particular Return Asset.

- 1.3 If an Event of Loss has occurred in relation to a Unit and/or any item of TSA Equipment, the Maintainer shall not be obliged to deliver that asset on the Return Date but shall deliver any documentation described in paragraph 5 (*Documentation*) relating to the relevant asset in accordance with the Return Condition applying to such documentation.
- 1.4 The Parties shall fully co-operate and provide such reasonable assistance to facilitate and give effect to any procedures relating to the Return of the Return Assets in the Return Condition.

2. Units and Equipment

- 2.1 At any inspections of the Return Assets pursuant to Part B (*Return Procedures*) of this Schedule 7 or clauses 34.2 and 34.3:
 - (a) the Purchaser (and/or its representative(s)) shall be entitled to:
 - (i) inspect each item of TSA Equipment, bogies, traction motors, traction equipment cases and gearboxes;
 - (ii) test operationally required facilities including doors, cab display systems, CCTV, heating, ventilation, lighting and incident recorders; and
 - (iii) undertake any other reasonable tests that it believes are necessary to ensure that the Units are returned in the Return Condition;
 - (b) the Maintainer shall, where requested by the Purchaser, power up each Unit to allow examination of the operationally required facilities; and
 - (c) the Maintainer shall make gauges and other relevant equipment available, if required by the Purchaser, to enable full examination of such items such as wheelsets, couplers and any other critical components.

Return Condition

- 2.2 In respect of the Units and TSA Equipment, *Return Condition* shall mean compliance with each of the following requirements:
 - (a) Each Unit shall be returned to the Purchaser Fault Free and free from defects (subject to Fair Wear and Tear and reflecting the age of the Unit and consistent with its position in the Maintenance Plan) and shall be in a condition and have all Relevant Approvals which would permit immediate operation of the Unit in Unrestricted Passenger Revenue Earning Service in relation to the LO Infrastructure in accordance with the Operator's Safety Certificate. Any damage to the Units shall have been permanently repaired and certified in accordance with Industry Standards unless arising from a

Purchaser Fault and not authorised as an Additional Service pursuant to Part A (*Maintenance Services*) Schedule 1 (*Maintenance Services*).

- (b) Unless otherwise directed by the Purchaser, each Unit shall be returned in the formation in which it exists immediately prior to the Return Date and, in each case, with all Parts fitted unless otherwise agreed between the Parties. Where termination occurs prior to Fleet Acceptance, the Maintainer shall deliver to the Purchaser those Units which have achieved Provisional Acceptance or Qualified Provisional Acceptance.
- (c) Each Unit and item of TSA Equipment shall have the same design configuration as it had at the date of its Provisional (or Qualified Provisional) Acceptance or Equipment Acceptance (as applicable), save for any Change, Modification or Mandatory Modification (which in each case has been confirmed by a Change Confirmation Notice) (as applicable).
- (d) All Modifications, Mandatory Modifications and any other Changes required to be implemented pursuant to the Agreement shall have been completed and installed on the Units or TSA Equipment to the extent required by Applicable Laws and Standards and any Changes in Law or Change Confirmation Notices in accordance with the programme agreed with the Purchaser and shall be operational and certified as fit for operational use in accordance with all Applicable Laws and Standards.
- (e) Each Unit shall be clean reflecting its position in the cleaning cycle (both interior and exterior) and shall be Fit for Service. All maintenance, refurbishment and repair work (and related examinations and inspections) which the Maintenance Plan contemplates as being carried out on a Unit on or before termination shall have been completed in accordance with the Maintenance Plan, and no such work or examinations or inspections shall have been deferred.
- (f) Each item of TSA Equipment shall be returned to the Purchaser Fault Free and free from defects and in a condition consistent with their having been maintained in accordance with the Maintenance Plan, the Manuals and this Agreement.
- (g) The Spares shall be returned to the Purchaser in the quantities specified in the Spares Inventory (except with the written consent of the Purchaser to deplete any levels of Spares).
- (h) The Software relating to the Special Tools and the Simulator shall be up-to-date with the Units.
- (i) There shall be no outstanding material disputes, claims or proceedings relating to or arising from the condition, possession or operation of any Unit or item of TSA Equipment with any supplier thereof or with any person which would result in a right in rem being created over such Unit or item of TSA Equipment.

- (j) The Units and TSA Equipment shall comply with each of the detailed requirements of paragraph 3 (*Integrated Features*) in each case subject to Fair Wear and Tear and consistent with their position in the Maintenance Plan.

3. Integrated Features

Running Gear, Traction, Braking, Internal and External Doors

- 3.1 Each Unit's running gear, traction equipment, braking equipment and internal and external doors shall be in a functional condition and fit for operational use and in compliance with the Train Technical Requirements. The remaining useful life of each such item of equipment will reflect due performance of the Maintenance Plan and the Maintenance Technical Requirements.

Exteriors

- 3.2 Unit exteriors shall:

- (a) comply with appropriate standards of cleanliness; and
- (b) exhibit no significant damage to paintwork or to the body structure.

Paintwork in respect of colour and gloss levels shall be appropriate to the remaining life of the coating.

Bodywork and Inter Vehicle Gangway Repairs

- 3.3 All bodywork and inter Vehicle gangway repairs to the Units shall have been undertaken to the appropriate structural and coatings standards (where applicable) and in accordance with the Agreement.

Windows

- 3.4 Bodyside and cab windows shall not have any cracks, scratches or chips which exceed the requirements of the Maintenance Plan and the Maintenance Technical Requirements. Any protective film must be complete and in good condition and windows which open shall be operable and closed.

Interiors

- 3.5 Unit interior fittings, surfaces and coverings shall be in a clean condition and clear of defects and damage. The condition of the interior may reflect the age of the Unit interior in terms of wear and the position of the Unit in the Maintenance Plan and "heavy clean" cycle, but in any event none of the soft furnishings shall be torn or slashed.

Flooring

- 3.6 Floor covering must be free of any damage and may only exhibit wear commensurate with its position in the Maintenance Plan.

Systems and Services

- 3.7 All systems and services fitted to the Units, including interior lighting, heating and air conditioning, passenger information systems and incident records shall be functional and fit for operational service in accordance with the Maintenance Plan and the Maintenance Technical Requirements.

Interior Assemblies

- 3.8 Interior assemblies such as seats, seat cushions, luggage racks, grabpoles, handles and rails, and interior panelling shall be robustly mounted in the correct position, with no defects in the securing mechanisms.

Graffiti

- 3.9 All Units shall be clear of graffiti and no surfaces shall be damaged or discoloured as a result of attempts to remove graffiti.

Fluid Levels

- 3.10 Subject to paragraph 3.11, all fluid levels shall be fully charged.

“Winterised”/“Summerised”

- 3.11 At the option of the Purchaser, the Units shall be fully or partially “winterised” or “summerised” in accordance with the Manuals (including draining of condensate from systems, application of anti-icing substances, checking and recharging and resetting HVAC systems in accordance with the Manuals).

Water tight

- 3.12 All Units shall be water tight and all window seals shall be effective.

Sanding, wheel flange lubrication and friction modifying equipment

- 3.13 All sanding, wheel flange lubrication and (where fitted) rail head friction modifying equipment shall be operational and fully charged with all appropriate fluids.

Lights

- 3.14 All lights shall be functional and each Unit shall be fitted throughout with lights of the correct specification (in accordance with the Train Technical Requirements).

Corrosion

- 3.15 Each Unit shall have been adequately treated for corrosion in accordance with any corrosion prevention programme specified in the Manuals and each Unit shall be free from corrosion.

4. Willesden Depot

Return of Willesden Depot

- 4.1 The Maintainer shall co-operate fully with the Purchaser to secure a safe and orderly Return of the Willesden Depot to the Purchaser (or as the Purchaser shall direct) free

from any Security Interest. The Purchaser shall be entitled to carry out environmental surveys and/or any other surveys it deems reasonably appropriate to determine the condition of the Site.

Return Condition of the Willesden Depot

4.2 The Willesden Depot together with the Fixed Assets and Depot Moveable Assets shall vest in the Purchaser, in a condition which:

- (a) could reasonably be expected of infrastructure and equipment which have been in existence and properly maintained and used for the operation of a depot for a period equal to the period that has elapsed between the commencement of the Willesden Licence Period and the date of expiry or termination of this Agreement; and
- (b) meets all Applicable Laws and Standards.

4.3 Without prejudice to the generality of the foregoing the following criteria shall be considered relevant in determining whether aspects of the Willesden Depot, the Fixed Assets and the Depot Moveable Assets shall be replaced or repaired by the Maintainer prior to Return save that paragraph (c) shall apply only on termination of the Duration by effluxion of time:

- (a) the main civil and structural works shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification. Any shortfalls against the requirement shall be replaced or repaired by the Maintainer to the satisfaction of the Purchaser (acting reasonably);
- (b) limited life and "wear and tear" components and equipment have been replaced by the Maintainer prior to Return in the normal way as and when they failed, wore out, or reached their design life or normal replacement frequency, as part of on-going maintenance activities; and
- (c) major electrical and mechanical components or equipment which have a normal design life (under the duty and conditions of the Willesden Depot) of five or more years shall be repaired, refurbished, or replaced as appropriate prior to Return if their condition indicates that they are unlikely to operate (without recourse to major repair) for a further five years after the end of the Duration.

5. Documentation

5.1 Pursuant to clause 35.4, the Maintainer shall provide to the Purchaser free of charge (to the extent not previously provided) all the documentation and rights to use and copy such documentation required to enable the Purchaser or a third party to continue to operate and maintain the Units and TSA Equipment and the Willesden Depot in a cost effective manner and in accordance with Good Industry Practice and the manner described in this Agreement, and the Maintainer shall ensure that all such records,

methods, plans, strategies, drawings and materials are true, accurate, complete, consolidated, up to date, properly categorised and in a tidy condition.

- 5.2 The documentation shall be in the form prescribed by Schedule 8 (*Contract Management*) or in such other format as approved in advance by the Purchaser.
- 5.3 The documentation referred to in paragraph 5.1 shall include (without limitation):
- (a) any Technical Document or other document which is required to be provided in accordance with the provisions of the Agreement (including any document in draft form at the time of termination);
 - (b) full particulars of all Units and TSA Equipment, items of plant, materials and equipment ordered, procured or provided by the Maintainer for the performance of its obligations under the Agreement (including those assets listed in the Depot Assets Register, the terms on which they were procured and their location and condition);
 - (c) originals or (if the originals are unavailable for reasons beyond the control of the Maintainer) copies of all Unit design descriptions, drawings, manufacturers' or suppliers' documentation, instructions, specifications and brochures for Units which have been completed or which have been acquired for incorporation into the Units (including Manuals or any preparatory materials therefor and details of any Modifications to the Units);
 - (d) maintenance history information in respect of the TSA Equipment;
 - (e) the Spares Inventory;
 - (f) recent Faults including repeat Faults (in the preceding three months);
 - (g) complete information on any corrosion or structural repairs undertaken;
 - (h) history of major Modifications, Refurbishments and replacements to the Units for the Duration;
 - (i) known minor defects on Return caused by a Purchaser Fault where the Purchaser has not authorised repair as an Additional Service pursuant to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);
 - (j) the originals or (if the originals are unavailable for reasons beyond the Maintainer's control) copies of all agreements in force at the date of termination for the supply to the Maintainer in relation to this Agreement of any goods, materials or services and/or for the execution of any works;
 - (k) full particulars of all rights, obligations, guarantees, warranties or other commitments of any kind which the Purchaser may be entitled to require to be assigned to it pursuant to clauses 35.2 and 35.3;
 - (l) other than as provided for pursuant to the Escrow Agreement, the Software and the originals of all the current licences and other materials and agreements relating to the IPR licensed by the Maintainer under clauses 16.4

and 16.5 of this Agreement and by the Manufacturer under clauses 29.3, 29.4, 29.5 and 29.17 of the MSA;

- (m) the originals of all Relevant Approvals for the operation, maintenance, renewal or upgrading of the Services, the Units, the TSA Equipment or the Willesden Depot in accordance with this Agreement including all consents required pursuant to Environmental Laws;
- (n) details of current regulations and standards governing the Units, the Equipment and the Willesden Depot and their operation;
- (o) copies of all notices, orders etc served by any Competent Authority or third party under any Applicable Laws and Standards;
- (p) statutory inspection records for the entire Duration;
- (q) inspection records for at least the previous five years;
- (r) safety procedures;
- (s) any special working instructions;
- (t) maintenance computer system users manual; and
- (u) the Maintainer's staff training records.

For the Willesden Depot

- (v) Depot Asset Register;
- (w) Depot Asset Management Plan and Depot Operations;
- (x) history of major renovations, refurbishments or works affecting the Willesden Depot for the duration of the Maintenance Period;
- (y) routine maintenance job catalogue, showing job descriptions, work instructions, and frequencies;
- (z) maintenance records and operating manuals for the Willesden Depot; and
- (aa) the Maintainer's and the Depot Operator's staff training records.

6. Willesden Depot Interim Inspection

6.1 Without limiting any other provision of the Agreement, on or after the commencement of the Willesden Licence Period, the Purchaser may carry out an interim inspection of the Willesden Depot. The Purchaser shall carry out the inspection for the purposes of confirming that the Willesden Depot, together with the Fixed Assets and the Depot Moveable Assets, are in a condition which:

- (a) could reasonably be expected of infrastructure and equipment which have been in existence and properly maintained and used for the operation of a depot (in accordance with Good Industry Practice including in accordance with the Depot Asset Management Plan) for a period equal to the period that

has elapsed between the commencement of the Licence Period and the date of inspection; and

(b) meets all Applicable Laws and Standards.

6.2 Without prejudice to the generality of the foregoing, the following criteria shall be considered relevant in determining whether aspects of the Willesden Depot, the Fixed Assets and the Depot Moveable Assets shall be replaced or repaired by the Maintainer following inspection in accordance with paragraph 3.11 of Schedule 9 (*Maintenance Facilities – Willesden Depot*):

- (a) the main civil and structural works shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification. Any shortfalls against the requirement shall be replaced or repaired by the Maintainer to the satisfaction of the Purchaser (acting reasonably);
- (b) limited life and “wear and tear” components and equipment have been replaced by the Maintainer prior to inspection in the normal way as and when they failed, wore out, or reached their design life or normal replacement frequency, as part of ongoing maintenance activities; and
- (c) major electrical and mechanical components or equipment shall have been repaired, refurbished or replaced as appropriate.

Part B Return Procedures

1. Establishment of Return procedures

1.1 Without prejudice to clauses 14 (*Maintainer obligations and third parties*) and 17 (*Audit Rights*), either:

- (a) at least 24 months, but not more than 30 months, prior to the Expiry Date; or
- (b) promptly following the delivery by the Purchaser of either a notice of voluntary termination pursuant to clause 26.1 or a TSSSA Change Notice pursuant to clause 27.1,

the Parties shall establish a committee comprising two appropriately qualified and experienced representatives of each Party who shall be responsible for agreeing procedures and programmes to ensure that the Return Assets are delivered to the Purchaser in accordance with Part A (*Return Condition*) of this Schedule 7 with the least inconvenience and disruption to Train Services.

1.2 The procedures and programmes for delivering the Return Assets to the Purchaser upon the Expiry Date shall include as a minimum the following activities:

- (a) examination of maintenance records and delay statistics by the Purchaser;
- (b) a detailed inspection and report of the Units, the TSA Equipment and the Maintenance Facilities (including any Fixed Assets and Depot Moveable Assets) by the Purchaser or an appointed representative at least 12 months prior to the Expiry Date;
- (c) corrective actions and equipment replacements required to be implemented by the Maintainer prior to the Expiry Date;
- (d) follow-up inspections and joint progress reviews of the above actions at least at three monthly intervals;
- (e) examination by the Purchaser of the relevant Technical Documents, Spares Inventory, maintenance facilities, documentation and training proposals 12 months prior to the Expiry Date; and
- (f) corrective actions needed to rectify any deficiencies found under paragraph 1.2(e).

1.3 The procedures and programmes for handing over the Return Assets upon a voluntary termination of this Agreement or the implementation of a TSSSA Change shall include as a minimum the following activities to ensure compliance with the Return Condition:

- (a) examination of maintenance records and delay statistics by the Purchaser;
- (b) a detailed inspection and report of the Units, the TSA Equipment and the Maintenance Facilities (including any Fixed Assets and Depot Moveable Assets) by the Purchaser or an appointed representative at least nine months

- prior to the Voluntary Termination Date or the TSSSA Commencement Date (as applicable);
- (c) corrective actions and equipment replacements required to be implemented by the Maintainer prior to the Voluntary Termination Date or the TSSSA Commencement Date (as applicable);
 - (d) follow-up inspections and joint progress reviews of the above actions at least at monthly intervals;
 - (e) the examination by the Purchaser of the relevant Technical Documents, Spares Inventory, maintenance facilities, documentation and training proposals four months prior to the Voluntary Termination Date or the TSSSA Commencement Date (as applicable); and
 - (f) corrective actions needed to rectify any deficiency in the aspects examined in accordance with paragraph 1.3(e).
- 1.4 The Maintainer shall provide (at its cost) safe access to the facilities for the inspections of the Return Assets to be carried out by the Purchaser and/or its suitably qualified representatives. The Maintainer shall also be entitled to have a representative present at such inspections.
- 2. Maintainer's obligation to remedy defects and retention**
- 2.1 If any of the Return Assets fails to meet the Return Condition following the inspections and procedures carried out pursuant to paragraph 1 (*Establishment of return procedures*), the Maintainer shall, so that such matters are completed prior to the termination or expiry of this Agreement or the TSSSA Commencement Date (as applicable), at its own cost remedy all such defects and undertake all such repairs as are required to ensure that the Return Assets can be returned on termination or expiry of this Agreement or on the TSSSA Commencement Date (as the case may be) in the Return Condition.
- 2.2 The Purchaser shall, on and from the date that is 18 Railway Periods prior to the Expiry Date or nine Railway Periods prior to the Voluntary Termination Date or the TSSSA Commencement Date (as applicable), be entitled to withhold from the next following Service Payment (or, if that amount of that Service Payment is insufficient, the next Service Payments as necessary) an aggregate amount equal to the estimated likely costs of remedying all defects referred to in paragraph 2.1 and carrying out of all such repairs, until such defects have been remedied and repairs carried out to the reasonable satisfaction of the Purchaser. The aggregate of such retained Service Payment shall be placed by the Purchaser in an interest bearing deposit account in its name (the *Retention Account*).
- 2.3 The amounts of the Service Payment placed in the Retention Account pursuant to this paragraph 2 shall be released to the Maintainer on a stage payment basis as and when the Maintainer carries out repairs or remedies defects to the reasonable satisfaction of the Purchaser, with the intention that the amount held in the Retention Account from time to time shall not exceed the estimated likely cost of carrying out the necessary repairs or remedying the outstanding defects referred to in this paragraph 2.

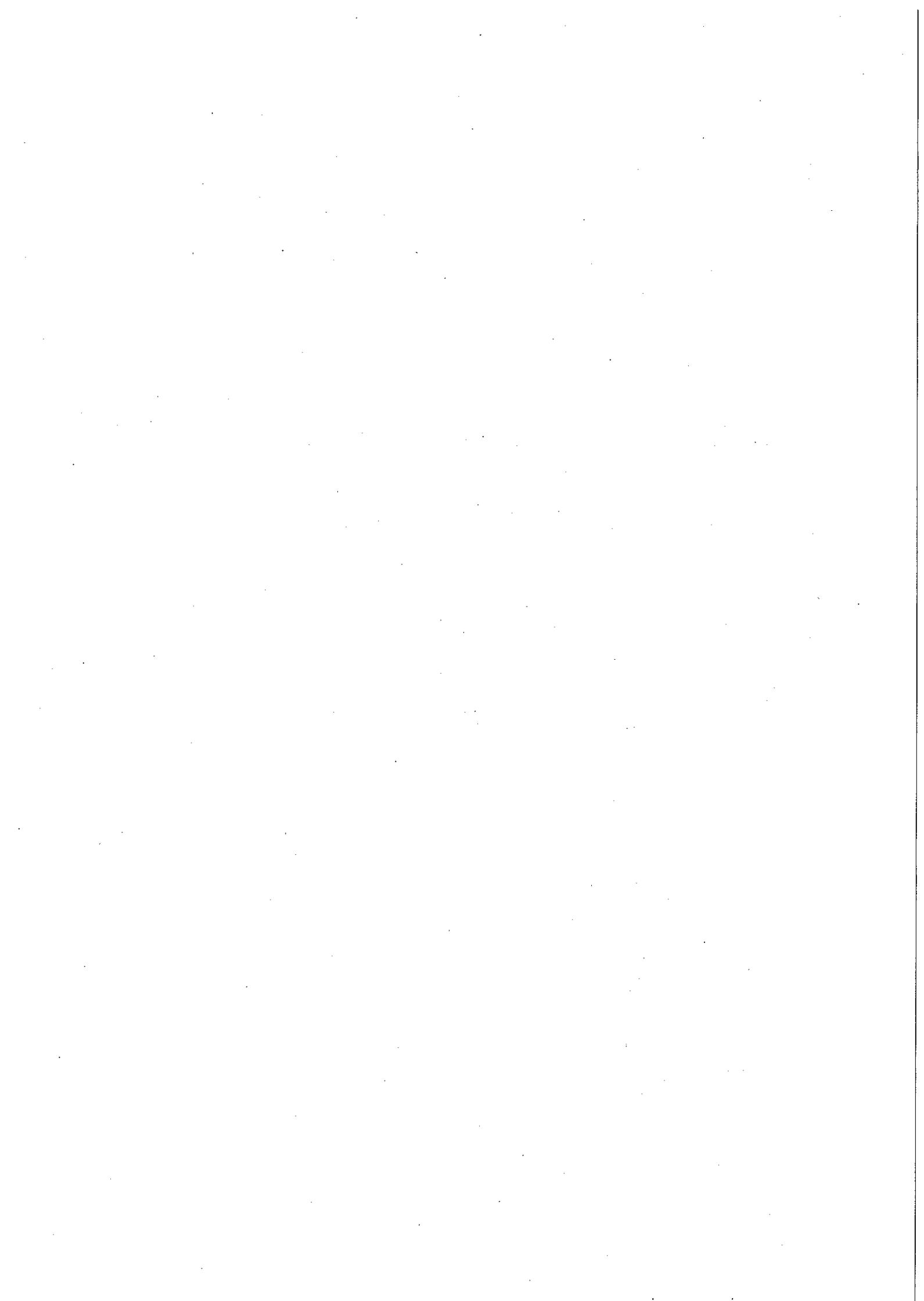
- 2.4 If on the Return Date the necessary remedial and repair works have not been undertaken by the Maintainer, the Purchaser shall be entitled to carry out such works and meet its costs incurred out of the monies in the Retention Account. If there are insufficient amounts in the Retention Account to meet the costs so incurred by the Purchaser, the Maintainer shall reimburse the balance of those costs to the Purchaser (in the event of an early termination of this Agreement, such reimbursement
- 2.5 The balance of monies in the Retention Account (if any) shall be paid to the Maintainer upon the completion of such remedial and repair works.

3. Failure to agree on Return procedures

If the Parties fail to reach agreement in respect of any of the procedures, programmes and requirements to be carried out pursuant to paragraph 1 (*Establishment of return procedures*) by the date which is:

- (a) 20 months prior to the Expiry Date; or
- (b) following the delivery by the Purchaser of either a notice of voluntary termination pursuant to clause 26.1 or a TSSSA Change Notice pursuant to clause 27.1, 10 months prior to the Voluntary Termination Date or the TSSSA Commencement Date,

or, if (in any case) either Party disagrees with any findings following inspections and the corrective actions to be taken, either Party may refer the matter as an Expert Dispute for resolution pursuant to the Dispute Resolution Procedure which shall decide the appropriate course of action to be taken so as to meet the requirements of this Agreement.



**Schedule 8
Contract Management**

Appendix 1 Key Posts

Appendix 2 Table of Assurance Acceptance Submissions

1. Contract Managers

- 1.1 The Purchaser shall appoint a person to be its contract manager and authorise that person to act as the Purchaser's representative for all purposes of this Agreement (the *Purchaser Contract Manager*). The Purchaser shall notify the Maintainer in writing of the Purchaser Contract Manager's appointment or, where appropriate, the revocation of any such appointment. The Maintainer shall only be bound by such an appointment or revocation of any such appointment of the Purchaser Contract Manager where it has been given the relevant written notice by the Purchaser of such appointment or revocation. The Purchaser shall endeavour to give one month's written notice to the Maintainer (or such other period as the Purchaser may consider appropriate) of any replacement of the Purchaser Contract Manager. As at the date of this Agreement the Purchaser Contract Manager is [REDACTED]
- 1.2 The Purchaser Contract Manager shall exercise such rights, powers, discretion, functions or options provided for in this Agreement on behalf of the Purchaser and, subject to paragraph 1.1 and the requirements for Purchaser Termination Notices and certain notices pursuant to the Change Procedure to be countersigned by a person authorised by the Purchaser, the Purchaser Contract Manager shall have full authority to act on behalf of the Purchaser for the purposes of this Agreement and the Maintainer shall in all such matters look to the Purchaser Contract Manager as if such party were the Purchaser.
- 1.3 The Maintainer shall appoint a person to be its contract manager and authorise that person to act as the Maintainer's representative for all purposes of this Agreement (the *Maintainer Contract Manager*). The Maintainer shall notify the Purchaser in writing of the Maintainer Contract Manager's appointment or, where appropriate, the revocation of any such appointment. The Purchaser shall only be bound by such appointment or revocation of any such appointment of the Maintainer Contract Manager where it has been given the relevant written notice by the Maintainer of such appointment or revocation. The Maintainer shall give one month's written notice to the Purchaser of any replacement of the Maintainer Contract Manager. As at the date of this Agreement the Maintainer Contract Manager is [REDACTED]
- 1.4 The Maintainer Contract Manager shall exercise such rights, powers, discretion, functions or options provided for in this Agreement on behalf of the Maintainer and subject to paragraph 1.3 the Maintainer Contract Manager shall have full authority to act on behalf of the Maintainer for the purposes of this Agreement and the Purchaser shall in all such matters look to the Maintainer Contract Manager as if such party were the Maintainer.
- 1.5 Save as provided in paragraph 1.2, any instruction, direction or other act of the Purchaser Contract Manager shall bind the Purchaser and any instruction, direction or other act of the Maintainer Contract Manager shall bind the Maintainer.

2. Assurance Acceptance Process

- 2.1 Where the Maintainer is required to submit information, drawings and/or documents to the Purchaser under this Agreement, the Maintainer shall comply with the requirements described in this paragraph 2. Any plan, programme, strategy or other

document of the Maintainer that is included in a schedule either as at the Commencement Date or the Existing Fleet Commencement Date (as specified) shall be deemed to have been Assurance Accepted in the form included in this Agreement but this is without prejudice to (i) the obligations of the Maintainer to revise and/or resubmit such document for Assurance Acceptance as required by this Agreement; and (ii) the requirements of this Agreement generally.

- 2.2 The Maintainer shall ensure that each drawing, document, report and/or other information submitted to the Purchaser for Assurance Acceptance shall be in accordance with the requirements of paragraph 6 (*Communications and Document Control*) of this Schedule 8 and is accompanied by a Request for Review.
- 2.3 The Maintainer shall ensure that each Request for Review contains, to the extent applicable, the following information:
- (a) the submission number (which shall be independent of any drawing number);
 - (b) the drawing and/or document number, including where relevant the revision letter or number;
 - (c) the drawing title and/or title of the document;
 - (d) the date of submission;
 - (e) any supplementary information which is reasonably necessary to enable the Purchaser to make a decision in accordance with paragraph 1.5 (including, where relevant, a description of the latest revision).

Where the Purchaser has received drawings, documents and/or information that have been submitted for Assurance Acceptance in accordance with the requirements of this paragraph 2, the Purchaser shall promptly acknowledge receipt of such submission in writing.

- 2.4 The Maintainer shall be responsible for ensuring that the Purchaser receives each submission made by the Maintainer for Assurance Acceptance (as evidenced by the Maintainer receiving acknowledgement of receipt from the Purchaser and the date on which the Purchaser signs a copy of the Request for Review shall be the date on which, for the purposes of this paragraph 2.4, the Purchaser shall be deemed to have received the submission for Assurance Acceptance.
- 2.5 Within 20 Working Days of the date the Purchaser receives a submission from the Maintainer for Assurance Acceptance (or such later date as notified to the Maintainer in accordance with paragraph 2.6) the Purchaser shall review and comment on the information, drawing and/or document that has been submitted or re-submitted by the Maintainer and return one copy of the Request for Review stamped or marked:
- “Category I — No Assurance Acceptance”;
 - “Category II — Assurance Acceptance granted with comments”;
 - or
 - “Category III — Assurance Acceptance granted”.

REDACTED

- 2.6 Where the Purchaser, acting reasonably, considers that the complexity, detail, scope and/or nature of the drawings, documents and/or information submitted by the Maintainer for Assurance Acceptance means that it may not be able to respond to the Maintainer within 20 Working Days of receipt by it of such submission, the Purchaser shall be entitled to an additional period of time to consider the submission provided that the Purchaser notifies the Maintainer in writing within seven Working Days of the date the Purchaser received the submission that the Purchaser is exercising its rights under this paragraph 2.6. Each notice served by the Purchaser pursuant to this paragraph 2.6 shall specify:
- (a) the details of the relevant submission;
 - (b) the additional period of time required by the Purchaser; and
 - (c) a description in reasonable detail as to the reasons why the additional time is required.
- 2.7 The Maintainer shall undertake the following actions in relation to the information, drawing and/or document (as the case may be) that has been returned to it by the Purchaser in accordance with paragraph 2.5 and subject to the provisions of paragraph 2.11:
- (a) if such information has been stamped "Category I — No Assurance Acceptance", the Maintainer shall immediately review and revise the relevant drawing, documents and/or information taking into account and incorporating the comments made by the Purchaser pursuant to paragraph 1.5 and shall resubmit such information for Assurance Acceptance by the Purchaser in accordance with this paragraph 2;
 - (b) if such information has been stamped "Category II — Assurance Acceptance granted with comments", the Maintainer shall be entitled to proceed on the basis of the drawing, documents and/or information as amended to incorporate the comments made by the Purchaser and re-submitted for Assurance Acceptance by the Purchaser pursuant to paragraph 2.5; and
 - (c) if such information has been stamped "Category III — Assurance Acceptance granted", the Maintainer shall be entitled to proceed on the basis of drawings, documents and/or information submitted to the Purchaser.
- 2.8 If the Purchaser does not respond within the timeframe set out in paragraph 2.5, the Maintainer shall be entitled to treat the information submitted to the Purchaser as "Category III — Assurance Acceptance granted" provided that the Purchaser has signed and returned a copy of the Request for Review to acknowledge receipt under paragraph 2.3 in respect of that submission for Assurance Acceptance.
- 2.9 Unless otherwise required by the Purchaser, the Maintainer shall only be required to submit one example of any sample, pattern or model in any request for Assurance Acceptance.
- 2.10 The Purchaser shall be entitled, at any time and on reasonable notice (and in any event not less than two Working Days from the date of such notice) to:

- (a) request the Maintainer to submit any further document, information, design, drawing, calculation, schedule, sample, pattern or model necessary to clarify, support and/or justify any submission for Assurance Acceptance; and
- (b) (acting reasonably) require the Maintainer to attend a meeting to discuss any aspect of the drawings, documents and/or information submitted for Assurance Acceptance,

and the Maintainer shall comply with any such request from the Purchaser.

- 2.11 When considering which category of response to give to a submission by the Maintainer for Assurance Acceptance, the Purchaser shall not comment adversely on any submission if and to the extent the content of such submission is in accordance with the Train Technical Requirements, Applicable Laws and Standards, Good Industry Practice and the provisions of this Agreement. Otherwise, the Maintainer agrees to incorporate all comments made by the Purchaser before re-submitting any drawing, document or information for Assurance Acceptance.
- 2.12 Where indicated in the Agreement, the Maintainer shall not proceed without Assurance Acceptance having first been obtained. Where it is not stated that Assurance Acceptance must be obtained before action may be taken, the Maintainer may proceed without Assurance Acceptance being granted but it shall do so at its own risk.
- 2.13 No comment, stamping, marking or categorisation of any information, drawing or document shall diminish or relieve the Maintainer from any of its obligations under this Agreement nor shall such comment, stamping, marking or categorisation be an the Purchaser Change nor shall it permit the Maintainer to any costs, relief or compensation of any kind.
- 2.14 Unless expressly stated otherwise the Maintainer shall not be entitled to amend any Assurance Accepted document in any manner or form without obtaining prior Assurance Acceptance to such amendment.

3. Authorisation

- 3.1 Without prejudice to clause 5 (*Relationship with the Operator and Representatives*) of this Agreement, each Contract Manager may from time to time as he sees fit authorise an assistant or agent to exercise any of the powers, rights, discretion, options and/or functions vested in him and such authorised functions carried out by such assistant or agent shall bind the Purchaser or the Maintainer (as the case may be) (*Authorisation*). Each Contract Manager may at any time revoke any such Authorisation (*Revocation*). Any such Authorisation or Revocation shall be in writing signed by the relevant Contract Manager and shall state which rights, powers, discretion, options or functions are thereby Authorised or Revoked respectively. Each such Authorisation or Revocation by a Contract Manager shall take effect upon the other Party being given written notice of such Authorisation or Revocation.
- 3.2 The terms of such written Authorisation or Revocation shall be conclusive and the other Party shall have no claim if it relies on communication from any person other

than the Contract Manager in the absence of such written Authorisation or disregarding such written Revocation (as the case may be).

- 3.3 If at any time either Party receives what it considers (acting reasonably) to be conflicting communications from the other Party, clarification should be sought from the relevant Contract Manager whose written determination shall be issued within seven Working Days and shall be conclusive as to the Authorisation.

4. Organisational Arrangements

- 4.1 The Maintainer's internal organisational arrangements (including names of Key Posts, reporting lines and organisation charts) shall be as set out in the Services Delivery Strategy.
- 4.2 The Maintainer shall ensure that the holders of Key Posts are appropriately qualified, experienced and available as necessary to undertake their duties under this Agreement. In particular, the holders of Key Posts shall have an appropriate mixture of the following attributes:
- (a) leadership skills; and
 - (b) relevant experience (such as working with relevant standards, relevant planning regimes and the wider UK rail market).
- 4.3 The Key Posts shall be those roles specified in Appendix 1 (*Key Posts*) to this Schedule 8 and any additional roles that the Purchaser may add from time to time. One person may undertake more than one Key Post if approved by the Purchaser.
- 4.4 On and from the date of this Agreement, the identity of the person undertaking each Key Post shall be as set out under each Key Post in the table in Appendix 1 (*Key Posts*) to this Schedule 8. The Maintainer shall only make changes to the identity of the Key Posts with the prior written approval of the Purchaser and shall provide curriculum vitae for candidates proposed for Key Posts and all additional relevant information that the Purchaser may reasonably request in order to grant such approval.
- 4.5 The Purchaser shall have the right, acting reasonably, to instruct that the Maintainer remove and replace with an alternative candidate any person carrying out a Key Post and the Maintainer shall, as soon as practicable, comply with such instructions.
- 4.6 The Key Posts which shall be based in the Project Office during the respective period of engagement are indicated with an asterisk(*) in Appendix 1 (*Key Posts*) to this Schedule 8. All relevant staff supporting the Key Posts shall also be based in the Project Office.
- 4.7 Where a Key Post is required to be away from the Project Office at the Maintainer's design or manufacturing facilities for a material length of time in order to carry out its obligations, a suitable substitute (approved by the Purchaser) shall be located in the Project Office during his absence.

5. Senior Managers Review Meetings

- 5.1 Every three Railway Periods from the Commencement Date, the Parties shall hold a meeting (the *Senior Managers Review Meeting*) to review the provision of the Services and the Maintainer's performance of its obligations under this Agreement. The Purchaser shall be entitled to call a Senior Managers Review Meeting more frequently if required. The Senior Managers Review Meeting shall continue to meet until such time as the Purchaser instructs otherwise.
- 5.2 The Parties shall each provide a senior representative to attend the Senior Managers Review Meeting (of a more senior position than the Contract Manager), along with each Contract Manager. The senior representative shall be an appropriate director of the Party in each case.
- 5.3 The Parties may each invite other representatives of their organisations, subcontractors and third parties to attend the Senior Managers Review Meeting to the extent reasonably necessary to discuss specific agenda items.
- 5.4 The Maintainer shall provide to the Purchaser any agenda items for discussion at the Senior Managers Review Meeting at least five Working Days prior to the meeting, accompanied by a paper summarising the issues to be discussed. The Purchaser shall prepare and distribute an agenda and papers in advance of the meeting including any issues the Purchaser wishes to discuss together with details of the location for such meeting. The agenda at each meeting shall also include a discussion of any current Disputes, but this shall be without prejudice to any ongoing formal dispute proceedings.
- 5.5 The Purchaser shall take minutes at each Senior Managers Review Meeting and circulate copies of the minutes to the Maintainer for agreement. Once agreed by the Parties, these minutes shall form a full and accurate record of the meeting.

6. Communications and Document Control

Communications

- 6.1 The Maintainer shall use such electronic document management systems for written communications as shall be specified by the Purchaser from time to time in respect of the communications taking place under this Agreement.
- 6.2 The Contract Managers shall nominate users for these systems in each case and each Contract Manager shall notify the other Contract Manager of any changes necessary to user accounts and shall co-operate to prevent the misuse of these systems.

Document Control and Management

- 6.3 Unless instructed otherwise by the Purchaser, the Maintainer shall submit all written documents (including programmes and drawings) to be provided pursuant to this Agreement to the Purchaser in accordance with clause 48 (*Notices*) and:
- (a) in English;
 - (b) in electronic form;

- (c) in good legible quality;
 - (d) where applicable shall incorporate definitions, a graphic scale, and/or any other appropriate guide for interpretation; and
 - (e) under cover of a document transmittal in a format to be specified by the Purchaser.
- 6.4 The Maintainer shall submit all programmes to the Purchaser in Primavera Project Planner or in such other form as the Purchaser may specify from time to time.
- 6.5 The Maintainer shall submit all large drawings to the Purchaser in hard copy as well as in electronic form.
- 6.6 The Purchaser shall provide the Maintainer with configured electronic document management systems and software which it shall employ for the purposes of the delivery of the Services.
- 6.7 The Maintainer shall be responsible for training its staff and following the document management procedures prescribed by the Purchaser.
- 6.8 Unless otherwise agreed with the Purchaser, each communication shall cover one subject only, and shall bear an individual sequential number in accordance with the system to be prescribed by the Purchaser.
- 6.9 The Purchaser shall prescribe a coding protocol in respect of correspondence which shall be adopted by the Parties.
- 6.10 Subject to clause 5 (*Relationship with the Operator and Representatives*) of this Agreement, all correspondence between the Maintainer on the one hand and other parties appointed or under the control of the Purchaser or any member of the TfL Group on the other relating or linked to this Agreement or the subject matter of this Agreement, shall be made through the Purchaser.

Time for Communications

- 6.11 Save as expressly provided to the contrary in this Agreement, each Party shall respond to communications from the other Party within 5 Working Days of their receipt of such communication.

7. Planning, Reporting, Monitoring and Control

Services Delivery Strategy

- 7.1 The Maintainer shall document its strategy for delivering the Services including, but not limited to:
- (a) the Maintainer's management structure accountable and responsible for delivering all facets of the Services including the names of holders of the Key Posts and their curricula vitae (*Services Management Structure*). The Services Management Structure shall include the key interfaces with stakeholders including the Purchaser and Infrastructure Managers. It shall

clearly define the management structures of, inter alia, the Depot Operator and the Maintainer;

- (b) how the Services management team, workforce and supporting organisations will be mobilised (*Services Mobilisation Plan*);
- (c) the Maintainer's plan for managing the Unit maintenance capacity at the Willesden Depot, including scheduled maintenance, overhaul, Fault rectification and Additional Services (*Depot Capacity Management Plan*);
- (d) how the Maintainer will organise Unit stabling and the planning and execution of Unit movements within the Willesden Depot and between Entry Points and Exit Points and the Network (*Depot Unit Movement Management Plan*);
- (e) a description of the Maintainer's strategy for maintaining compliance with Relevant Approvals (*Relevant Approvals Management Plan (Services)*);
- (f) how the Maintainer will organise for, and manage, day-to-day liaison and the working relationships with:
 - (i) the Operator in delivering the Services, as required by this Agreement; and
 - (ii) Network Rail, including movement of Units out of and into the Willesden Depot, and maintenance of tracks, systems and infrastructure at the Willesden Depot at the interface with the Network,

(*Services Joint Working Plan*);
- (g) the Maintainer's plan for complying with its Services obligations at the Stabling Sites, the Maintenance Facilities and any other Unit maintenance facilities proposed by the Maintainer (*Off Site Maintenance Plan*);
- (h) identification and mitigation of risks (*Services Risk Management Plan*), changes to be made to the Services Risk Management Plan only with the approval of the Purchaser, and reporting relating to those risks to be in accordance with paragraph 12 (*Risk management and reporting*);
- (i) its plan for quality management in respect of the Services (including, until the Existing Fleet Replacement Date the EF Services) (the *Services Quality Management Plan*), including the requirements set out in paragraph 11 (*Services Quality Management Plan*) and to be certified to ISO90001 (or equivalent);
- (j) its assurance plan containing procedures that will progressively assure the Purchaser that the Services are delivered in compliance with the requirements of this Agreement (the *Services Compliance Assurance Plan*);

together forming the *Services Delivery Strategy*.

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- 7.2 The Maintainer shall submit the Services Delivery Strategy to the Purchaser for Assurance Acceptance no later than six months after the Commencement Date.

Maintenance Plan

- 7.3 The Maintainer shall comply with the Maintenance Plan developed by the Manufacturer pursuant to clause 13.2 of the MSA.

Maintenance Progress Reports

- 7.4 On and from the Operating Date, the Maintainer shall issue a Maintenance Progress Report to the Purchaser during each Railway Period in accordance with paragraph 2.13(c) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*) in addition to the Maintainer Daily Performance Record and the Maintainer Performance Monitoring Report, each in accordance with paragraph 10 (*Performance Monitoring*) of Schedule 5 (*Performance Regime*).

Additional Reports

- 7.5 Without prejudice to the foregoing, the Purchaser shall have the right, acting reasonably, to request additional management reports from the Maintainer at any time in relation to details of the Services. The Maintainer shall provide any such additional report to the Purchaser as soon as reasonably practicable.

Subcontractor Meetings

- 7.6 The Maintainer shall advise the Purchaser of any meetings between itself, Subcontractors, suppliers and/or any Competent Authority concerning the subject matter of this Agreement. The Purchaser or its nominee reserves the right to attend any or all such meetings, to the extent reasonably necessary (such right is not, for the avoidance of doubt, to include meetings between the Maintainer and its Subcontractors and suppliers relating to their commercial relationship).

8. Performance Review Meetings

- 8.1 The Parties shall hold a review meeting (the *Performance Review Meeting*) once every Railway Period from the date of Acceptance of the first Unit or more frequently upon the request of either Party.
- 8.2 The Purchaser shall circulate an agenda prior to each Performance Review Meeting and the Maintainer shall be entitled to call for the addition of agenda items before or at the commencement of the Performance Review Meeting.
- 8.3 The Purchaser Contract Manager and the Maintainer Contract Manager shall both attend the Performance Review Meeting unless otherwise agreed by the Parties. Other employees, agents and/or contractors of each Party including the Depot Operator, the Operator and other employees, agents and/or contractors of the TfL Group may attend a Performance Review Meeting with the agreement of both Contract Managers.
- 8.4 The primary purpose of the Performance Review Meeting shall be to:

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- (a) monitor the Maintainer's performance against the requirements of this Agreement including performance against the Performance Regime;
- (b) deal with any Disputes arising from the Service Payment Report and Maintainer Report Response;
- (c) monitor the activities at the interface between the Maintainer and the Purchaser and the Maintainer and the Operator; and
- (d) provide a focal point for the resolution of any problems or issues.

8.5 The Performance Review Meeting shall achieve the purposes specified in paragraph 8.4 by:

- (a) reviewing the Maintenance Progress Report and the Maintainer Performance Monitoring Report prepared pursuant to the Performance Regime in order to:
 - (i) compare the Maintainer's performance against the Maintenance Plan and understand the causes of any variances;
 - (ii) analyse the level of Adjustments and performance generally under the Performance Regime;
 - (iii) determine whether any further remedial or mitigation actions are needed to correct variances; and
 - (iv) ensure that appropriate responsibility for actions is agreed;
- (b) reviewing quality, safety, technical, environmental, health, safety and performance matters to ensure that the Maintainer's performance of its obligations complies with this Agreement;
- (c) reviewing depot facility matters and compliance with the Depot Asset Management Plan and the Depot Operations Plan;
- (d) reviewing the levels and usage of the different types of Spares;
- (e) reviewing the status of any Relevant Approvals required;
- (f) dealing with and attempting to resolve Disputes;
- (g) examining actual expenditure and commitments in respect of Additional Services;
- (h) identifying matters which could potentially affect the Maintainer's performance of its obligations under the Agreement; and
- (i) identifying any major concerns regardless of source and ensuring that appropriate actions are agreed to facilitate resolution of such concerns.

8.6 Both Parties shall endeavour to maintain an open and co-operative relationship in order to promote the success of the provision of the Services by the Maintainer.

8.7 The Purchaser shall chair the Performance Review Meeting and shall produce and promptly circulate the minutes after the completion of each Performance Review Meeting.

9. Meetings with Competent Authorities

The Maintainer shall advise the Purchaser of any relevant meetings proposed between itself and any Competent Authority concerning the Services. The Purchaser may attend any such meeting subject to the agreement of the Competent Authority.

10. Annual Improvement Strategy

10.1 The Maintainer shall submit to the Purchaser prior to the end of the first Railway Period following each anniversary of the Commencement Date a strategy (an *Annual Improvement Strategy*) that:

- (a) describes the process by which the Maintainer has evaluated its and, where applicable, any Subcontractor's, performance of the Maintainer Obligations in the preceding year;
- (b) identifies those areas where the Maintainer, and where applicable its Subcontractors, could improve its performance of the Maintainer Obligations;
- (c) describes the processes and mechanisms that the Maintainer will implement in order to improve the areas of performance identified in paragraph 10.1(b) above; and
- (d) other than in respect of the initial Annual Improvement Strategy, describes the effectiveness of each of the processes and mechanisms that the Maintainer has implemented in accordance with earlier Annual Improvement Strategies both in the preceding year and cumulatively since their respective implementation.

10.2 The Parties shall discuss the Annual Improvement Strategy at the next Performance Review Meeting following the submission of the Annual Improvement Strategy. The Maintainer shall revise the Annual Improvement Strategy to take into account any comments made by the Purchaser at the Performance Review Meeting or otherwise notified to the Maintainer and shall submit a copy of the revised Annual Improvement Strategy to the Purchaser as soon as reasonably practicable and in any event no later than 10 Working Days following the Performance Review Meeting where the Annual Improvement Strategy was first discussed.

10.3 The Maintainer shall implement and comply with the Annual Improvement Strategy submitted to the Purchaser and where applicable revised by the Maintainer pursuant to paragraph 10.2.

10.4 The Maintainer acknowledges and agrees that the preparation of an Annual Improvement Strategy:

- (a) shall not constitute a Change;

- (b) shall not entitle it to any relief from any Deductions and/or the application of any part of the Performance Regime; and
- (c) shall not entitle it to any increase in or additional Service Payments and/or any other compensation.

11. Services Quality Management Plan

11.1 The Services Quality Management Plan (defined in paragraph 7.1(i)) shall include, but not be limited to, the Maintainer's:

- (a) quality policy;
- (b) quality management organisation;
- (c) quality management systems for, inter alia:
 - (i) schedule management;
 - (ii) delivery of the Services;
 - (iii) management of change and non-conformities; and
 - (iv) reporting;
- (d) information technology and document control and retention procedures;
- (e) process for the selection of suppliers and subcontractors;
- (f) quality performance indicators;
- (g) quality system review and continuous improvement processes;
- (h) inspection and quality assurance processes (including suppliers and subcontractors);
- (i) auditing requirements and methods;
- (j) non-conformance and corrective action processes;
- (k) risk management processes;
- (l) customer complaints handling process; and
- (m) other applicable quality procedures and all other relevant quality matters envisaged by this Agreement.

11.2 The Maintainer shall submit evidence satisfactory to the Purchaser of certification to ISO 9001 no later than six months after the Commencement Date.

12. Risk management and reporting

Within five Working Days of the last Working Day of the third week of each Railway Period, the Maintainer shall prepare and submit to the Purchaser a services risk management report (*Services Risk Management Report*) by reference to the Services

Risk Management Plan reporting on actual performance for the last week of the preceding Railway Period and the first three weeks of the current Railway Period.

13. Reporting on Health, Safety and Environmental Matters

Throughout the term of this Agreement the Maintainer shall report on health and safety and environmental matters in accordance with Schedule 14 (*Health and Safety*) and Schedule 15 (*Environment*).

Appendix 1
Key Posts

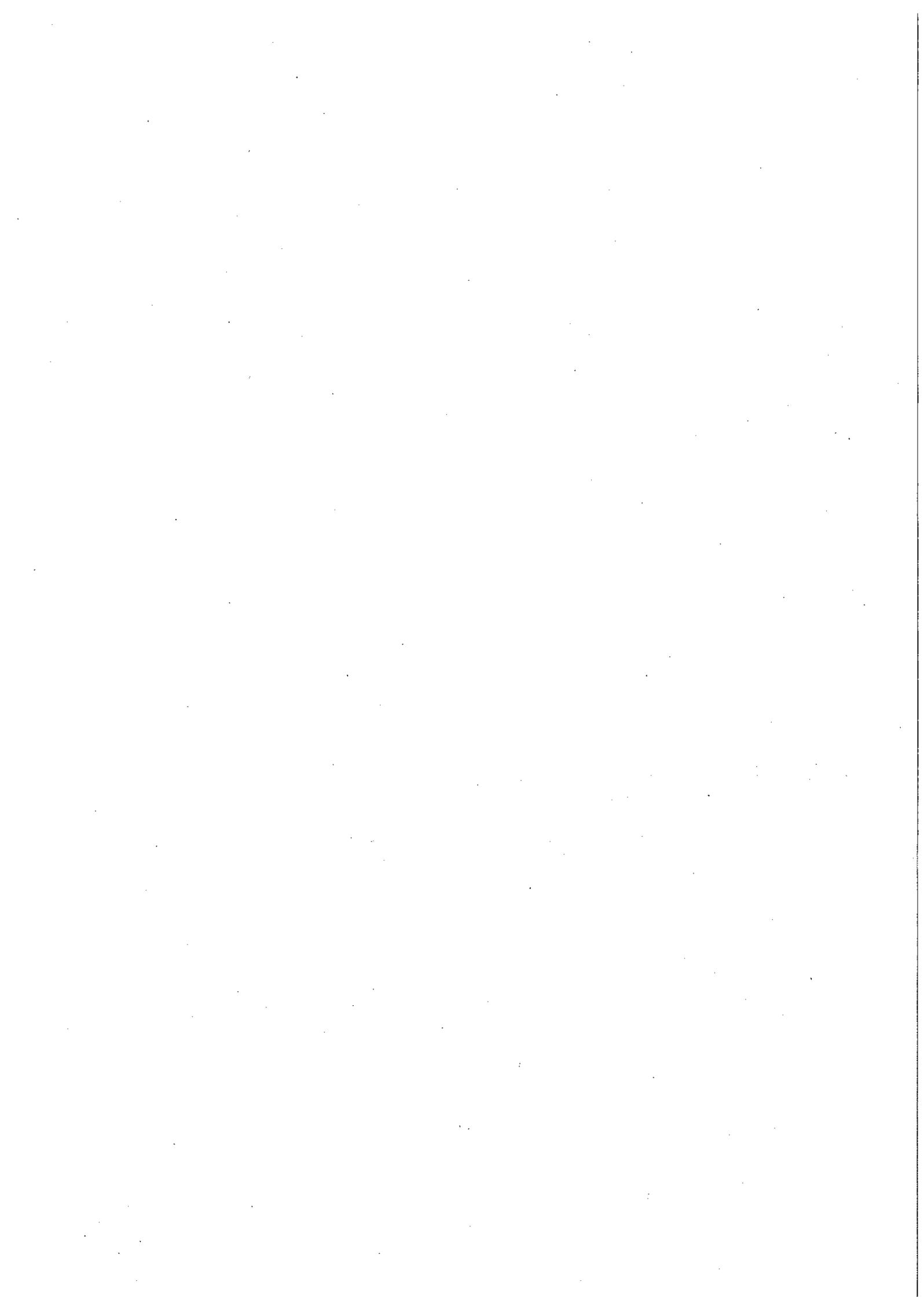
Each position identified in the table below is a Key Post and the person named in respect of each Key Post shall carry out such role unless otherwise agreed in accordance with paragraph 4 (*Organisational Arrangements*) of this Schedule 8:

Key Post	Name
Maintainer Contract Manager	[REDACTED]
Maintainer Project Manager	[REDACTED]
Operations and Maintenance Director	[REDACTED]
Operations Delivery and Resilience Manager	[REDACTED]
Operations Safety Manager (to include train driver management responsibility)	[REDACTED]
Operations Environmental and Security Manager	[REDACTED]
Depot Facility Manager	[REDACTED]
Maintainer Service Technician	[REDACTED]
SLNT Co-Ordinator	[REDACTED]
Technical Support Personnel (x2)	To be advised in October 2016

Appendix 2
Table of Assurance Acceptance Submissions

Part of Agreement	Clause Reference	Subject Matter
Agreement	11.2(b)	Preparation, Presentation and Hand-Back Procedure
Agreement	11.4	In-Service Support Procedure
Agreement	11.5	Fault Notification Procedure
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 2.1	SecResOps
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 3.1	Preliminary SecResOps
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 3.1	Final SecResOps
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 3.3	Preliminary SecResOps associated working procedures
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 3.3	Final associated SecResOps working procedures
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 3.4	Amendment to SecResOps
Schedule 3 (<i>Security and Resilience (Operations)</i>)	Paragraph 6.4	Detailed audit programme
Schedule 8 (<i>Contract Management</i>)	Paragraph 7.2	Services Delivery Strategy
Schedule 9 (<i>Maintenance Facilities – Willesden Depot</i>)	Paragraph 2 (<i>Depot Asset Management Plan</i>)	Depot asset management plan
Schedule 9 (<i>Maintenance Facilities – Willesden Depot</i>)	Paragraph 3.4	Depot Safety Management System
Schedule 9 (<i>Maintenance Facilities – Willesden Depot</i>)	Paragraph 3.5	Depot Operations Plan
Schedule 12 (<i>Responsible Procurement</i>)	Paragraph 2.2(a)	Responsible Procurement Plan
Schedule 12 (<i>Responsible Procurement</i>)	Paragraph 2.2(d)	Revised Responsible Procurement Plan
Schedule 12 (<i>Responsible</i>)	Paragraph 3.2(a)	Revised Strategic Labour

<i>Procurement)</i>		Needs and Training Plan
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.1	Preliminary OHSOps
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.1	Final OHSOps
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.2	Preliminary OHSOps associated working procedures
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.2	Final OHSOps associated working procedures
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.3	Amendment to OHSOps
Schedule 14 (<i>Health and Safety</i>)	Paragraph 3.3	Amendment to OHSOps associated working procedures
Schedule 14 (<i>Health and Safety</i>)	Paragraph 4.1	Workplace violence policy
Schedule 14 (<i>Health and Safety</i>)	Paragraph 4.2	Alcohol and drugs policy
Schedule 14 (<i>Health and Safety</i>)	Paragraph 7.4	Detailed audit programme
Schedule 15 (<i>Environment</i>)	Paragraph 3.1	Preliminary EMSOps
Schedule 15 (<i>Environment</i>)	Paragraph 3.1	Final EMSOps
Schedule 15 (<i>Environment</i>)	Paragraph 3.2	Preliminary EMSOps associated working procedures
Schedule 15 (<i>Environment</i>)	Paragraph 3.2	Final EMSOps associated working procedures
Schedule 15 (<i>Environment</i>)	Paragraph 3.3	Amendment to EMSOps
Schedule 15 (<i>Environment</i>)	Paragraph 3.3	Amendment to EMSOps associated working procedures
Schedule 15 (<i>Environment</i>)	Paragraph 5.1	Detailed audit programme
Schedule 22 (<i>Technical Support and Spare Supply</i>)	Part A (<i>TSSSA Services</i>), paragraph 3.5(a)	Supply and return procedures



**Schedule 9
Maintenance Facilities – Willesden Depot**

1. Licence

Grant of licence

1.1 Subject to paragraph 1.2, the Purchaser shall permit the Maintainer and its employees, Affiliates, Subcontractors and servants to use or access (in common with the Purchaser and all other persons permitted by the Purchaser) the Site during the Willesden Licence Period on a non-exclusive basis in accordance with this Agreement.

Operator Area

- 1.2 (a) Throughout the Willesden Licence Period, the Operator and the Purchaser shall have the right to enter and occupy the Operator Area on a non-exclusive basis.
- (b) The Maintainer and the Operator shall each have the right to access and use all parts of the Willesden Depot to the extent reasonably necessary for the performance of their obligations under this Agreement and the Operator's concession agreement respectively, provided that the Maintainer shall (and shall procure that its Subcontractors shall) and the Purchaser shall procure that the Operator at all times shall comply with all applicable health and safety rules published at the Site and ensure that their actions shall not interfere with operations at the Willesden Depot.
- (c) Throughout the Willesden Licence Period, the Maintainer shall be responsible for servicing and maintaining (including cleaning) the Operator Area to the standard required by the terms of this Agreement.

General provisions in respect of land and the licence

- 1.3 The Maintainer shall, and shall procure that its Subcontractors shall, at all times during the Willesden Licence Period in respect of any part of the Site to which it has the licence:
- (a) observe and perform the Headlease Covenants and the Connection Agreement Covenants on behalf of TfL and pay any amounts due to be paid by TfL under the Headlease save for rental and for the fees payable to Network Rail under the Connection Agreement, which shall be payable by the Purchaser;
- (b) allow Network Rail to act in accordance with its rights under the Headlease and the Connection Agreement;
- (c) observe and comply with any third party rights in respect of the Site under the Headlease;
- (d) not do or permit or suffer to be done anything whereby the Headlease or the Connection Agreement may be avoided or forfeited or cause any liability for TfL, the Purchaser or any other Indemnified Party under any of them;

- (e) not use the Site for any purposes other than the performance of its obligations under this Agreement without prior written consent from the Purchaser (not to be unreasonably withheld);
- (f) pay all Taxes, assessments, outgoings and impositions whatsoever (including, without limitation, business rates) payable in respect of the Site (or any related equipment located at the Site) or assessed upon the owner or occupier in respect thereof (other than those payments which shall arise by virtue of any disposition of or dealing with or the ownership of any estate or interest expectant in the reversion) in either case immediately upon the provision of possession to the Maintainer of the Site;
- (g) procure and maintain as necessary for the duration of the Willesden Licence Period the domestic power supply and water and sewerage services at the Site, arranging these directly with the utilities suppliers;
- (h) implement all necessary security systems in accordance with Good Industry Practice to prevent unauthorised access, theft, damage and vandalism to the Willesden Depot in accordance with Schedule 3 (*Security and Resilience*);
- (i) keep and maintain the Site and each and every part thereof in a good, clean, tidy and safe condition and free from any graffiti, any offensive or noisome matter or other thing whatsoever;
- (j) undertake any remedial work which is required in accordance with Applicable Laws and Standards;
- (k) without prejudice to clauses 1.3(a) and 1.3(b), allow the Purchaser and the Operator and their representatives access to the Site at all reasonable times upon reasonable notice (except in the case of an emergency) for the performance of the Purchaser's functions under the Project Documents or the Operator's functions under its franchise agreement including without limitation for the purposes of clause 14 (*Maintainer obligations and third parties*) and for access to the Special Tools provided that the Purchaser shall, and shall procure that its agents shall, comply with all reasonable health and safety requirements which are published at the Site by the Maintainer in relation to such access;
- (l) not commit any act or omission on the Site whereby any property (including the air above, water running on or through or the soil, subsoil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the Environment or on human health in accordance with Environmental Laws;
- (m) on the termination of this Agreement for whatever reason vacate the Site and leave the same in a good, clean, tidy, secure and safe condition in compliance with all Environmental Laws; and
- (n) take out and maintain in full force and effect at all times throughout the Willesden Licence Period policies and contracts of insurance that satisfy all and any relevant requirements of the Headlease.

Site condition

- 1.4 No warranty is given or representation made by the Purchaser that the Site or any existing structures, foundations and services are or will be fit or adequate for any particular purpose including without limitation for the purpose of enabling the Maintainer to comply with its obligations pursuant to this Agreement. Without in any way limiting the foregoing, but without prejudice to paragraphs 1.9(c), 1.9(e) and 1.9(f), the Maintainer accepts responsibility for and has made full provision for all risks arising from:
- (a) the climatic, hydrological, ground, subsoil, sub-strata and general conditions affecting the Site and the environment in which they are situated at whatever time those conditions may arise;
 - (b) injury or damage to property on or adjacent to the Site and to the owners or occupiers of such property arising from the performance of the Maintainer Obligations; and
 - (c) the possibility of interference by persons other than the Purchaser with the performance of the Maintainer Obligations.

Exercise of rights

- 1.5 At the reasonable request of the Maintainer, the Purchaser shall (or shall procure that TfL shall, as applicable) enforce such rights under the Headlease or Connection Agreement to the extent that it is reasonably able and where to do so would not prejudice the Purchaser's (or TfL's) position and to the extent reasonably necessary to allow the Maintainer to comply with and carry out its obligations pursuant to this Agreement.
- 1.6 The Maintainer shall indemnify the Purchaser and TfL for any costs incurred by either of them by reason of the action taken by the Purchaser (or TfL) pursuant to paragraph 1.5.

Willesden Licence Fee

- 1.7 From the start of the Willesden Licence Period, the Maintainer agrees to procure that the Depot Operator, being the person in occupation of and operating the Willesden Depot, will enter into an agreement with Network Rail under which it agrees to pay the Willesden Licence Fee directly to Network Rail.

Change to Headlease, Supplemental Headlease and/or Connection Agreement

- 1.8 Any material amendment or variation to the Headlease and/or Connection Agreement from the version initialled by the Parties on the Commencement Date which directly causes a change in the requirements or obligations of the Maintainer under this Agreement shall be a Purchaser Change for the purposes of this Agreement (and the Purchaser agrees not to withdraw such Purchaser Change to the extent that the terms of this paragraph 1.8 apply).

Hazardous Substances and Waste

- 1.9 (a) The Maintainer shall not use, transport, store or dispose of Hazardous Substances on the Site nor emit, discharge or release Hazardous Substances on or from the Site or permit any other person to do so other than as may be essential in the interests of safety or in order to perform its maintenance obligations under this Agreement in accordance with all Applicable Laws and Standards.
- (b) The Maintainer shall not keep, deposit, accumulate, or dispose of Waste at, on or under the Site nor permit any other person to do so other than the temporary storage of Waste prior to its removal or treatment.
- (c) If in the performance of its operation and maintenance obligations in respect of the Units and the Willesden Depot under this Agreement or otherwise, the Maintainer uses, transports, stores, disposes of, emits, excavates, dislodges, discharges or releases any Contamination or permits any other person to do so or allows to escape any Contamination or permits any other person to do so (unless the Contamination is Existing Contamination) the Maintainer shall, to the extent required to ensure that:
- (i) the Willesden Depot can be operated and maintained safely and in accordance with all Applicable Laws and Standards, Good Industry Practice and the requirements of this Agreement; and
 - (ii) all Applicable Laws and Standards are fully complied with,
- remove, take any other remedial action in relation to or otherwise deal with, such Contamination in accordance with all Applicable Laws and Standards, Good Industry Practice and the requirements of this Agreement and, in the case of Contamination which it dislodges, discharges or allows to escape outside the Site, take all such actions (including remedial action) as are necessary to ensure that such Contamination is removed or otherwise dealt with in accordance with all Applicable Laws and Standards, in each case in accordance with paragraphs 7 (*Reporting of Environmental Incidents*) and 8 (*Remedial Actions*) (as applicable) of Schedule 15 (*Environment*).
- (d) Except to the extent required by this paragraph 1.9, clause 37.3(e) and Schedule 15 (*Environment*), the Maintainer shall not be responsible for Hazardous Substances or Waste on any part of the Site or on land outside the Site or for taking any remedial action in relation thereto.
- (e) If the Maintainer is at any time obliged by any Applicable Laws and Standards to remove or otherwise deal with any Contamination from or under any part of the Site by reason of the Maintainer being the licensee or occupier of the relevant parcel of land, then, except to the extent that the Maintainer would have been obliged to remove (or otherwise deal with) such Contamination as a result of the operation of paragraph 1.9(c) or paragraph 1.9(f), the relevant Remedial Action shall be treated as a Purchaser Change (and the Purchaser agrees not to withdraw such Purchaser Change to the extent that the terms of this paragraph 1.9(e) apply).

- (f) Nothing in this paragraph 1.9 shall relieve the Maintainer from any obligations relating to Hazardous Substances or Waste contained in the Headlease, which obligations shall be discharged by the Maintainer at its own cost.
- (g) Except where otherwise agreed in writing between the Parties, subject to clause 38.1(b) and without prejudice to any rights of the Purchaser in relation to any other Indemnified Party or other third party, the Purchaser shall be responsible as between the Parties for the cost of any Remedial Action in respect of Existing Contamination.

Handover of the Site

- 1.10 (a) No later than six months prior to the Existing Fleet Commencement Date, the Maintainer shall perform an inspection of the Site, the date of such inspection to be agreed by the Parties (the *Initial Site Inspection*). Within 28 days of the Initial Site Inspection and without prejudice to paragraph 1.4, the Maintainer shall notify the Purchaser what, if any, aspects of the existing structures, foundations and services of the Site it reasonably considers are not in a state of repair such that, assuming due performance by the Manufacturer of the Manufacturer Fit Out Works under Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*) of the MSA, it would reasonably be able to commence provision of the Services (including the EF Services). As soon as reasonably practicable thereafter, the Parties shall discuss and agree whether any of the matters raised in the Maintainer's notification shall be subject to rectification works, (and any failure to agree within twenty eight (28) days of such discussions shall be referred for resolution as an Expert Dispute), and the condition of the Site as at the Initial Site Inspection including any (if any) rectification works agreed or determined to be performed pursuant to this paragraph (a) shall be the *Agreed Site Condition* for the purposes of this paragraph 1.10.
- (b) Without prejudice to paragraph 1.4, the Purchaser shall be responsible for procuring the performance of the agreed rectification works such that, subject to the following provisions, the Site is in the Agreed Site Condition by no later than the Existing Fleet Commencement Date.
- (c) Without limiting any other provision of this Agreement, on the Existing Fleet Commencement Date, the Parties shall conduct a joint inspection (the *Joint Site Inspection*) to ascertain whether the Site meets the Agreed Site Condition. If the Site does not meet the Agreed Site Condition, the Maintainer shall, within 10 Working Days of the occurrence of the Joint Site Inspection provide to the Purchaser a proposed rectification plan (the *Site Rectification Plan*) to include:
- (i) the rectification works required to bring such aspect of the Site into the Agreed Site Condition as soon as reasonably possible;
 - (ii) any anticipated disruption to the Operator or any third party accessing the Site during the rectification works;

- (iii) a timetable for such rectification works, such timetable to commence no earlier than the Existing Fleet Commencement Date; and
- (iv) the reasonable costs (on an Open Book Basis) that the Maintainer will incur in implementing the rectification works pursuant to the Site Rectification Plan,

provided that the Site Rectification Plan shall, so far as practicable, best meet the Purchaser's requirements in terms of cost and minimising the effects on the provision of the Standard Services (including the EF Standard Services), the impact on the Train Plan and the Diagrams (including the EF Train Plan and the EF Diagrams) and any disruption to third party users of the Site.

- (d) The Purchaser shall review the Site Rectification Plan and respond as soon as reasonably practicable after receipt. The Parties shall thereafter consult with a view to agreeing the Site Rectification Plan as soon as reasonably practicable thereafter. Once the Parties have agreed the Site Rectification Plan (any failure to agree within fifteen (15) days being an Expert Dispute) (the *Agreed Site Rectification Plan*), the Maintainer shall proceed to implement the Agreed Site Rectification Plan in accordance with its terms and Clause 10.1.
- (e) Without prejudice to paragraph 3.11(c), the Purchaser shall be entitled to inspect the Site following completion of the relevant rectification works. The agreed costs of the implementation of the Agreed Site Rectification Plan shall be reimbursed by the Purchaser to the Maintainer following confirmation by the Purchaser of satisfactory completion of the Agreed Site Rectification Plan.
- (f) A Failure and/or an EF Failure (as applicable) that arises as a result of the implementation of the Agreed EF Rectification Plan in accordance with its terms and paragraph (c) shall be an Allowable Failure and/or an EF Allowable Failure (as applicable).

2. Depot Asset Management Plan

The Maintainer shall prepare and submit to the Purchaser for Assurance Acceptance at least six months prior to the Existing Fleet Commencement Date, a final depot asset management plan setting out details of the Maintainer's asset management, maintenance, repair and renewals schedule and procedures at the Willesden Depot in accordance with the requirements of the Headlease and the Return Condition and once such plan has received Assurance Acceptance, it shall be the Depot Asset Management Plan for the purposes of this Agreement and clause 12.5 shall apply.

3. Maintenance Facilities

Maintainer managing Willesden Depot

- 3.1 Without prejudice to paragraph 1.3, the Maintainer acknowledges that it has full responsibility for the management (including security arrangements), operation and maintenance (including repair and renewal (as necessary)) of the Willesden Depot (including the Operator Area) for the Duration, all in accordance with the Depot

Operations Plan, the Depot Asset Management Plan, paragraph 6 (*Willesden Depot Interim Inspection*) of Part A (*Return Condition*) of Schedule 7 (*Return of Assets*) and the terms of this Agreement.

- 3.2 Without prejudice to clause 14 (*Maintainer obligations and third parties*), in the event that the Maintainer fails to carry out reasonable facilities management of the Operator Area, the Purchaser shall have the right, at the Maintainer's cost, to procure the carrying out of necessary services in order to put the Operator Area in the reasonable condition that is required by this Agreement.
- 3.3 The Maintainer shall appoint the Depot Operator in accordance with clause 15.2 and shall ensure that the Depot Operator carries out all the Services under this Agreement that equate to light maintenance pursuant to the Act. The Maintainer shall further ensure that, at all times, the Depot Operator is a separate entity from the Maintainer.

Depot Safety Management System

- 3.4 The Maintainer shall prepare and submit to the Purchaser for Assurance Acceptance at least six months prior to the Existing Fleet Commencement Date a depot safety management system (the *Depot Safety Management System*).

Depot Operations Plan

- 3.5 The Maintainer shall prepare and submit to the Purchaser for Assurance Acceptance at least six months prior to the Existing Fleet Commencement Date a depot operations plan (*Depot Operations Plan*).

Regulation and access at Willesden Depot

- 3.6 The Maintainer shall comply with all the requirements of any Competent Authority and any Applicable Laws and Standards in terms of its management and operation of the Willesden Depot and the Maintainer shall ensure that any Depot Operator complies with the same.
- 3.7 Without prejudice to clause 15 (*Subcontracting*) the Maintainer shall not without the prior written consent of the Purchaser:
- (a) permit any activities of whatever type (whether as part of the performance of the Services or ancillary thereto or for any other purposes) to be carried out at Willesden Depot by any person other than the Maintainer or its Subcontractors, whether or not such other person is managed or overseen by the Maintainer or any of its Subcontractors; and
 - (b) undertake or permit to be undertaken any activities of whatever type (other than the Services) on behalf of (in consideration of any payment from, or as part of the performance of any contract with) any person other than the Purchaser, at the Willesden Depot.

Network Rail at Willesden Depot

- 3.8 The Maintainer shall:

- (a) make all arrangements and liaise with Network Rail as appropriate throughout the Willesden Licence Period whether pursuant to the Headlease, the Connection Agreement or otherwise; and
- (b) other than as set out in paragraph 1.3(a) in relation to the Connection Agreement, meet all costs of Network Rail involvement at the Willesden Depot throughout the Duration as a result of the Maintainer's activities at the Willesden Depot, whether under this paragraph 3.7 or otherwise.

3.9 The Maintainer acknowledges and agrees that save as set out expressly in this Agreement, the Maintainer shall not be entitled to any relief or compensation as a consequence of any act, omission, failure or default of Network Rail.

Connection to Network

3.10 The Maintainer shall comply with the Connection Agreement, the Depot Operations Plan and the Depot Asset Management Plan.

Interim inspection rights

- 3.11
- (a) The Maintainer shall ensure that the Willesden Depot, the Fixed Assets and the Depot Moveable Assets are maintained in accordance with this Agreement and the principles set out in paragraph 6 (*Willesden Depot Interim Inspection*) of Part A (*Return Condition*) of Schedule 7 (*Return of Assets*).
 - (b) At any time after the Existing Fleet Commencement Date, the Purchaser shall have the right to carry out interim inspections of the Willesden Depot on giving no less than five Working Days' notice to the Maintainer in accordance with the principles set out in paragraph 6 of Part A of Schedule 7.
 - (c) The Purchaser shall be entitled to carry out a maximum of one inspection a year. For each inspection, the Purchaser shall comply with applicable health and safety requirements at the Willesden Depot and shall not unreasonably disrupt the safe performance of the maintenance operations of the Maintainer or its Subcontractors pursuant to this Agreement.
 - (d) If Purchaser notifies the Maintainer that it has failed an interim inspection, the Purchaser shall:
 - (i) require that the Maintainer produce and implement a remedial plan in accordance with clause 11.7(a)(ii); and/or
 - (ii) exercise its rights under clause 14 (*Maintainer obligations and third parties*).
 - (e) Within ten Working Days of the Purchaser's notification under paragraph 3.11(d)(i), the Maintainer shall produce a remedial plan acceptable to the Purchaser (such acceptance not to be unreasonably withheld or delayed) setting out the steps that the Maintainer will take to remedy the failure to comply with paragraph 3.11(a). The Purchaser will be deemed to have accepted any such remedial plan if it has not responded to the Maintainer in relation to that remedial plan within ten Working Days of receiving it.

3.12 If:

- (a) the Maintainer fails to produce a remedial plan within ten Working Days of the Purchaser's notification under paragraph 3.11(d)(i); or
- (b) the Parties fail to agree such remedial plan within ten Working Days of receipt by the Purchaser of the remedial plan from the Maintainer; or
- (c) the Maintainer fails to comply with the agreed remedial plan,

then the Purchaser may exercise its rights under clause 14 (*Maintainer obligations and third parties*).

**Schedule 10
Change Procedure**

Part A	General
Part B	Purchaser Changes
Part C	Maintainer Changes
Part D	Compensation Changes
Appendix 1	Schedule of Costs
Appendix 2	Calculation of Change in Costs
Appendix 3	Maintainer's Margin

Part A General

1. Scope

Any amendment to the terms of this Agreement, including to the rights and/or obligations of the Maintainer, the Purchaser or the Operator under this Agreement shall, save expressly provided to the contrary in this Agreement, be made in accordance with the procedure set out in this Part A.

2. Duties

- 2.1 In exercising any of their rights and performing any of their obligations under this Part A, the Parties shall use reasonable endeavours to act in such a manner as to simplify and minimise the administrative time and costs incurred in dealing with any Change proposal.
- 2.2 Each Party agrees to act reasonably and not to require the other Party to undertake unnecessary and onerous work in relation to a Change proposal.

3. Changes to MSA

If one Party informs the other Party that it considers that a Change proposed in relation to this Agreement is either related to a Change proposed in relation to the MSA or that, if implemented, would require the making of a Change under the MSA, as applicable, then:

- (a) the proposals under this Agreement and under the MSA (as applicable) shall be considered concurrently; and
- (b) a Change Confirmation Notice or a Claim Confirmation Notice (as the case may be) shall not be issued in relation to one of the related Changes alone.

Part B Purchaser Changes

1. Purchaser Change Notice

- 1.1 The Purchaser shall be entitled at any time from the Commencement Date until the expiry of the Duration to propose a Change (*Purchaser Change*).
- 1.2 If the Purchaser wishes to propose a Purchaser Change, it shall serve a notice (*Purchaser Change Notice*) on the Maintainer. The Purchaser Change Notice shall only be valid if it is signed by the Purchaser Contract Manager and counter-signed by an authorised person (such person to be notified by the Purchaser to the Maintainer) and shall set out details of the proposed Purchaser Change in sufficient detail to enable the Maintainer to provide the Initial Change Appraisal in accordance with paragraph 2 (*Initial Change Appraisal*).
- 1.3 If the Purchaser considers, in its absolute discretion, that a Change needs to be implemented immediately (an *Emergency Change*) then the Purchaser shall indicate in the Purchaser Change Notice or at any time during the process set out in this Part B that the Purchaser Change is an Emergency Change and the Maintainer shall commence the implementation of such Purchaser Change forthwith notwithstanding that the full process in this Part B has not been followed. The provisions set out in the remainder of this Part B shall apply to such Emergency Change save that where the context requires such provisions shall be read having regard to the fact that the Maintainer has already commenced the implementation of the Purchaser Change.
- 1.4 In relation to an Emergency Change the Purchaser shall:
 - (a) not require the Maintainer to provide or procure Capital Expenditure upfront;
 - (b) during the implementation of any Emergency Change and prior to the full Purchaser Change process having been duly completed (in accordance with this Part B), pay to the Maintainer each Railway Period an amount to cover any reasonable interim incremental costs, fees and expenses reasonably and properly incurred during that Railway Period as a direct result of the implementation of the Emergency Change (*Emergency Change Interim Payments*). Any Emergency Change Interim Payments will be reconciled in the Schedule of Payments in accordance with paragraph 9.4 of this Part B; and
 - (c) if (where the Purchaser is not precluded under this Agreement from doing so) the Purchaser withdraws the relevant Purchaser Change Notice (or if it is deemed withdrawn), pay the reasonable costs properly incurred by the Maintainer in respect of the Emergency Change prior to such withdrawal (to the extent not already covered by the Emergency Change Interim Payments).

2. Initial Change Appraisal

- 2.1 As soon as practicable and in any event within 10 Working Days after receipt of the Purchaser Change Notice or such longer period (including where the Purchaser Change is a Major Depot Change) as is agreed by the Purchaser acting reasonably,

the Maintainer shall deliver to the Purchaser a written report (an *Initial Change Appraisal*) which shall set out:

- (a) whether, in the reasonable opinion of the Maintainer, including an explanation of the Maintainer's reasons for such an opinion, the proposed Purchaser Change would:
 - (i) be technically unfeasible or impossible;
 - (ii) be illegal or put it in breach of its Safety Obligations where such illegality or breach could not be remedied by the Maintainer making other changes to the Units or Services in order to accommodate such Purchaser Change;
 - (iii) materially and adversely affect the ability of the Maintainer to provide the Services;
 - (iv) if implemented, change the calibration of the Performance Regime in a manner which would make it more likely that the Maintainer will suffer Adjustments;
 - (v) change the termination provisions of this Agreement in a manner which would make termination of the Agreement materially easier; or
 - (vi) change the scope of any indemnity under the Agreement which would have the effect of making it materially more likely that the Maintainer would be required to indemnify the Purchaser,

in each case in a manner that cannot be compensated or relieved by this Schedule 10.

- (b) the Maintainer's initial assessment of the scope of any Modifications or any additional works required to implement the proposed Purchaser Change, including:
 - (i) any investigatory or detailed design work which would have to be carried out in advance of preparing or finalising a Change Appraisal in respect of the proposed Purchaser Change; and
 - (ii) any Modifications or additional works which, in order to achieve the proposed Purchaser Change or to avoid or minimise any abortive works, would have to be commenced in advance of preparing or finalising a Change Appraisal in respect of the proposed Purchaser Change;
- (c) the Maintainer's initial assessment of the impact of the proposed Purchaser Change on the operation and maintenance regimes adopted or proposed to be adopted for the Units including any consequential changes to the Services;
- (d) the Maintainer's initial assessment of the impact of the proposed Purchaser Change on any matters which affect the Maintainer's revenue from the

Services including whether such Purchaser Change will give rise to additional or reduced Adjustments;

- (e) the Maintainer's estimate, acting in good faith, of all Change in Costs with such estimate identifying separately the aggregate increased or decreased costs discounted back to the date of the Initial Change Appraisal at the Discount Rate and the annual increase or decrease for each Contract Year and which, in the case of an Option Unit Change, shall take account of the Option Unit Maintenance Costs; and
- (f) the Maintainer's reasonable estimate of the cost and time required to prepare a Change Appraisal in respect of the proposed Purchaser Change in accordance with paragraph 5 (*Change Appraisal*).

2.2 If the Maintainer's estimate referred to in paragraph 2.1(d) is for an amount which is equal to or less than £2,000,000 of the aggregate Change in Costs (Indexed by the Indexation Adjustment Formula), then the Initial Change Appraisal shall also include:

- (a) in respect of any capital works and any other part of the proposed Purchaser Change for which a Fixed Price Quotation can be provided or the cost can be determined by reference to the Schedule of Costs, either:
 - (i) a Fixed Price Quotation; or
 - (ii) details of those parts of the proposed Purchaser Change which are not covered by the Fixed Price Quotation provided under (i) and for which the cost can be determined by reference to the Schedule of Costs; and
- (b) the Maintainer's proposed Schedule of Payments (which may, if appropriate, consist of a single lump sum payment) to cover the Fixed Price Quotation where one can be provided.

2.3 The reasonable and properly incurred costs of preparing any Initial Change Appraisal shall be borne:

- (a) subject to paragraph 2.3(c), prior to the date of the end of the Detailed Unit Design Phase (as defined in the MSA), by the Maintainer;
- (b) subject to paragraph 2.3(c), from and including the date of the end of the Detailed Unit Design Phase, by the Maintainer and the Purchaser in equal amounts subject to a capped contribution by the Purchaser of £10,000 (Indexed by RPI); and
- (c) in respect of a Major Depot Change, by the Purchaser,

provided always that the Maintainer shall provide such evidence in support of the cost of preparing the Initial Change Appraisal claimed as the Purchaser may reasonably require.

3. Procedure Following Submission of an Initial Change Appraisal

- 3.1 If the Initial Change Appraisal states that, in the Maintainer's opinion, the proposed Purchaser Change falls within one or more of the restrictions set out in paragraphs 2.1(a)(i) to 2.1(a)(vi) then the Maintainer shall be entitled to object to the implementation of the proposed Purchaser Change, save that the Maintainer shall not be entitled to object to an Option Unit Change on any of the grounds in paragraphs 2.1(a)(i) to 2.1(a)(vi) if the principal reason of such objection is that the number of diagrams will increase or for any reason if the Maintainer can be compensated by this Schedule 10.

If the Purchaser disagrees with the Maintainer's opinion, then the Parties shall seek to resolve the matter(s) in dispute and, if agreement has not been reached within 10 Working Days of receipt of the Initial Change Appraisal, the Purchaser may refer the matter for resolution under the Dispute Resolution Procedure. If the Purchaser has not referred the matter to the Dispute Resolution Procedure within 20 Working Days of receipt of the Initial Change Appraisal, the Purchaser Change Notice shall be deemed to be withdrawn. If it is agreed or determined that the Purchaser is not permitted to carry out a Major Depot Change then the Purchaser shall be entitled to terminate this Agreement and the provisions of clause 26.3 shall apply.

- 3.2 Provided that the Purchaser Change Notice has not been withdrawn by the Purchaser or deemed to have been withdrawn in accordance with paragraph 3.1, then within 20 Working Days after receipt of the Initial Change Appraisal (or a determination in favour of the Purchaser following a reference to the Dispute Resolution Procedure under paragraph 3.1), the Purchaser may either:

- (a) if the Maintainer's estimate referred to in paragraph 2.1(d) is:
- (i) for an amount which is equal to or less than £2,000,000 (indexed by the Indexation Adjustment Formula) and the Purchaser would like the Maintainer to proceed with the proposed Purchaser Change without the Maintainer preparing a Change Appraisal; or
 - (ii) for an amount which is more than £2,000,000 (indexed by the Indexation Adjustment Formula) and the Parties agree that a Change Appraisal is not required in order for the Maintainer to implement the proposed Purchaser Change,

issue a Change Confirmation Notice instructing the Maintainer to proceed with the implementation of the Purchaser Change or a part of the Purchaser Change in accordance with paragraph 8 (*Implementation of the Purchaser Change*); or

- (b) issue a Change Appraisal Instruction instructing the Maintainer to prepare a Change Appraisal in respect of the proposed Purchaser Change.

If the Purchaser has not issued a Change Confirmation Notice or a Change Appraisal Instruction within such 20 Working Day period, the Purchaser Change Notice shall be deemed to have been withdrawn.

- 3.3 A Change Appraisal Instruction provided by the Purchaser under paragraph 3.2(b) shall:
- (a) state:
 - (i) whether the Purchaser requires the Maintainer to submit to it a Fixed Price Quotation in respect of the proposed Purchaser Change or any part of the proposed Purchaser Change and, if so, whether such Fixed Price Quotation should include a Tendered Price for Tendered Works in accordance with paragraph 4; and
 - (ii) any other requirement which the Purchaser has with regard to the form of procurement;
 - (b) include any additional information in respect of the proposed Purchaser Change which the Purchaser requires the Maintainer to consider when preparing the Change Appraisal;
 - (c) specify any reporting format, break down of quotations or any other matters specifically required to be included in the Change Appraisal; and
 - (d) if the Purchaser will be responsible for a portion of the costs pursuant to paragraph 2.3, state whether or not the Purchaser accepts the estimate of the cost and time required to prepare the Change Appraisal provided by the Maintainer in accordance with paragraph 2.1(e).

3.4 If the Change Appraisal Instruction:

- (a) states that the Purchaser does not agree with the estimate of the cost and/or time required to prepare the Change Appraisal; or
- (b) materially alters the basis on which the Maintainer made such estimate,

then the Parties shall endeavour to reach agreement on any matter in dispute, failing which either Party may refer such matter for resolution under the Dispute Resolution Procedure provided that the process set out in this Schedule 10 shall continue and such Dispute shall only be in respect of costs.

- 3.5 At the same time as issuing a Change Appraisal Instruction under paragraph 3.2(b), the Purchaser may issue a Change Confirmation Notice instructing the Maintainer to proceed with any preliminary works or advance works identified in the Initial Change Appraisal in accordance with paragraphs 2.1(b)(i) and/or (ii). The cost of any such works shall be included in the quotation included in the Change Appraisal and agreed in accordance with paragraph 8 (*Implementation of the Purchaser Change*). In the event of any Dispute in respect of the extent of such works, either Party may refer the matter for resolution under the Dispute Resolution Procedure.

4. Tendered Prices

- 4.1 *Tendered Works* are works relating to the modification of the Units to be carried out after the Operating Date.

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- 4.2 In the event that the Maintainer receives a Change Appraisal Instruction which requires the Maintainer to submit a Tendered Price, then subject to paragraphs 4.3 and 4.4 the Maintainer shall, as soon as practicable after receipt of the Change Appraisal Instruction, seek competitive tenders for implementation of the proposed Purchaser Change (or the part thereof that relates to Tendered Works) from not less than three appropriately qualified and experienced contractors acceptable to the Maintainer and the Purchaser (both acting reasonably). The terms of each such competitive tender shall specify:
- (a) the tender return date;
 - (b) the evaluation criteria (acceptable to the Maintainer and the Purchaser, each acting reasonably) to be utilised with regard to assessing the most economically advantageous tender;
 - (c) that each tenderer is required to submit a non-collusion certificate to the Purchaser in a form acceptable to the Purchaser (acting reasonably); and
 - (d) that the tenders do not contain confidentiality restrictions which would prevent a copy of the tender from being provided to the Purchaser.
- 4.3 If the Maintainer demonstrates that it is impractical to complete the tender process within the time period specified in the Change Appraisal Instruction or agreed or determined in accordance with paragraph 3.4, the Maintainer shall deliver the Change Appraisal to the Purchaser within five Working Days of the tender return date specified in accordance with paragraph 4.2(a).
- 4.4 The Maintainer shall notify the Purchaser if, in its reasonable opinion, it is impractical given the nature of the proposed Purchaser Change to obtain a Tendered Price. If the Parties fail to reach agreement on such matter within five Working Days of such notification, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.

5. Change Appraisal

- 5.1 Following the issue of a Change Appraisal Instruction, the Maintainer shall deliver a written report (a *Change Appraisal*) to the Purchaser no later than, as applicable:
- (a) the date accepted in the Change Appraisal Instruction pursuant to paragraph 3.3(d);
 - (b) the date agreed or determined in accordance with paragraph 3.4; or
 - (c) the date determined in accordance with paragraph 4.3.
- 5.2 The Change Appraisal shall set out:
- (a) the Maintainer's detailed assessment of the matters referred to in paragraphs 2.1(b), 2.1(c) and 2.1(d) and any other impact of the proposed Purchaser Change on the Units, the Equipment and the provision of the Services;

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- (b) whether relief from compliance with obligations is required, including the obligations of the Maintainer to comply with the Performance Regime during the implementation of the proposed Purchaser Change;
- (c) any amendments required to this Agreement (including any amendments to the Maintenance Technical Requirements) or the MSA as a result of the proposed Purchaser Change;
- (d) any Relevant Approvals which are required in order to implement the proposed Purchaser Change and any assistance which the Maintainer anticipates it will require from the Purchaser in order to obtain such Relevant Approvals;
- (e) the proposed method of certification of any design, construction or operational aspects of the Units, the Equipment or the Services required by the proposed Purchaser Change if not covered by the procedures specified in the Agreement;
- (f) where the Change Appraisal Instruction specifies that a Fixed Price Quotation must be provided:
 - (i) the amount of such Fixed Price Quotation and a breakdown of such quotation identifying separately (without double counting):
 - (A) each Change in Costs, such estimates to include the aggregate increased or decreased costs discounted to the date of the Change Appraisal at the Discount Rate and the annual increase or decrease for each Contract Year;
 - (B) any impact on the Service Payments, such estimate to include the aggregate increase or decrease discounted back to the date of the Change Appraisal at the Discount Rate and where relevant the annual increase or decrease for each Contract Year; and
 - (C) any additional Adjustments arising from the proposed Purchaser Change which have been taken into account in determining such Fixed Price Quotation; and
 - (D) where the Change is an Option Unit Change, take account to the extent possible of the Option Unit Maintenance Costs;
 - (ii) where the Change Appraisal Instruction specifies that such Fixed Price Quotation should, subject to paragraph 4.4, include a Tended Price:
 - (A) a report on the tenders obtained in accordance with paragraph 4.2 together with a recommendation as to the tender which the Maintainer proposes to accept which, unless the Purchaser directs otherwise, shall be the most economically advantageous tender;

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- (B) sufficient supporting information to demonstrate the basis of such recommendation; and
 - (C) confirmation that the Tendered Price in respect of such recommendation has been included in the Fixed Price Quotation provided under (i);
- (g) insofar as not covered by a Fixed Price Quotation provided under paragraph 5.2(f):
- (i) an estimate of each of the items set out in paragraphs 5.2(f)(i)(A) to (C); and
 - (ii) details of any of the expenditure referred to in paragraph (i) which can be determined by reference to the Schedule of Costs;
- (h) the Maintainer's proposed Schedule of Payments to take account of the aggregate cost (or saving) of implementing the proposed Purchaser Change and/or any adjustment to the Service Payments such adjustments to be determined pursuant to clause 24 (*Financial Adjustments*); and
- (i) the Maintainer's proposed amendments to the Performance Bond and/or Guarantee, or where the Guarantee is not being amended, a confirmation that the Guarantee will be reaffirmed.

5.3 If while preparing the Change Appraisal the Maintainer forms the opinion that:

- (a) (i) other than in respect of an Option Unit Change, the proposed Purchaser Change would fall within one or more of the restrictions set out in paragraph 2.1(a)(i) to (vi); or
 - (ii) in respect of an Option Unit Change, the proposed Purchaser Change would fall within one or both of the restrictions set out in paragraphs 2.1(a)(i) and (ii) and the principal reason is not the increase in number of diagrams and the Maintainer cannot be compensated under this Schedule 10 and
- (b) the grounds for such objection were not identified in the Initial Change Appraisal and have not been the subject of a Dispute under paragraph 3.1,

then the Maintainer may, at any time prior to the date on which it issues the Change Appraisal, notify the Purchaser of its objection to implementing the proposed Purchaser Change provided that any such notification shall be accompanied by an explanation of its reasons supporting its opinion. The Parties shall endeavour to reach agreement on any matter in dispute, failing which the Purchaser may within 10 Working Days of receipt of such notification refer such matter for resolution under the Dispute Resolution Procedure. If the Purchaser has not referred the matter to the Dispute Resolution Procedure within 20 Working Days of receipt of the Initial Change Appraisal, the Purchaser Change Notice shall be deemed to be withdrawn.

- 5.4 If it is agreed or determined that the Purchaser is not entitled to carry out a Major Depot Change then the Purchaser shall be entitled to terminate this Agreement and the provisions of clause 26.3 shall apply.
- 5.5 The Maintainer shall ensure in respect of any Change Appraisal that the Change in Costs are calculated in accordance with Appendix 2 (*Calculation of Change in Costs*) of this Schedule 10.

6. Procedure Following Submission of a Change Appraisal

- 6.1 As soon as practicable after the Purchaser receives the Change Appraisal, the Parties shall discuss and endeavour to agree, acting reasonably, the matters set out in the Change Appraisal. During such discussions, the Purchaser may request that the Maintainer provide any further evidence or information in respect of the matter referred to at paragraphs 5.2 and 5.4 and notify the Maintainer whether it wishes to amend the proposed Purchaser Change providing full details of any proposed amendment in which case the Maintainer shall submit an amended Change Appraisal within 20 Working Days of such notification or such longer period as is agreed between the Parties.
- 6.2 All evidence and information provided by the Maintainer or its Subcontractors and their subcontractors of any tier in response to a request under paragraph 6.1 shall be provided on an Open Book Basis and the Purchaser shall be entitled, subject to providing reasonable notice, to enter the offices of the Maintainer for the purposes of auditing, inspecting and copying documentation (using facilities at the Maintainer's offices at no charge to the Purchaser) relating to any costings, claims of expenditure or losses incurred or likely to be incurred, estimates and quotations relevant to the proposed Purchaser Change.
- 6.3 Subject to paragraph 6.5, if the Parties cannot agree on the contents of the Change Appraisal (other than any element which forms part of the Maintainer Cost Proposal for which the provisions of paragraph 8 shall apply), then either Party may refer the Dispute for resolution under the Dispute Resolution Procedure.
- 6.4 If the Parties cannot agree on the contents of any Change Appraisal which relates to a Major Depot Change within 40 Working Days then the Purchaser shall be entitled to terminate this Agreement and the provisions of 26.3 shall apply.
- 6.5 As soon as practicable, and in any event within 40 Working Days, after the contents of the Change Appraisal (other than any outstanding issues in relation to the Maintainer Cost Proposal as referred to in paragraph 8) have been agreed in accordance with paragraph 6.1 or determined in accordance with paragraph 6.3, the Purchaser shall either:
- (a) issue a Change Confirmation Notice counter-signed by a person authorised by the Purchaser instructing the Maintainer to proceed with the implementation of the Purchaser Change or a part of the Purchaser Change in accordance with paragraph 8 (*Implementation of the Purchaser Change*); or
 - (b) withdraw the Purchaser Change Notice.

If the Purchaser has not issued a Change Confirmation Notice within such 40 Working Day period, then the Purchaser Change Notice shall be deemed to have been withdrawn.

7. Change Appraisal Costs

7.1 If and to the extent the Purchaser is liable for costs pursuant to paragraph 2.3, the Purchaser shall pay the costs, fees and expenses reasonably and properly incurred by the Maintainer in preparing and amending the Change Appraisal up to a maximum of:

- (a) the amount agreed pursuant to paragraph 3.3(d) or agreed or determined pursuant to paragraph 3.4; and
- (b) where the Purchaser has notified the Maintainer under paragraph 6.1 that it wishes to amend the Purchaser Change, any costs, fees and expenses above the amount referred to in paragraph 7.1(a) which have been reasonably and properly incurred by the Maintainer as a consequence of such amendment.

7.2 In determining the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 7.1, the costs of any referral to the Dispute Resolution Procedure shall be disregarded and the apportionment of such costs shall be determined in accordance with Schedule 17 (*Dispute Resolution Procedure*).

7.3 Whilst preparing and amending the Change Appraisal, the Maintainer shall provide a report to the Purchaser on a monthly basis showing:

- (a) the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 7.1 up to the date of the report; and
- (b) the Maintainer's estimate of the costs, fees and expenses which it anticipates it will incur in total.

8. Implementation of the Purchaser Change

8.1 A Change Confirmation Notice issued by the Purchaser pursuant to paragraph 3.2(a) or 6.5 shall state:

- (a) whether the Purchaser accepts:
 - (i) in the case of a Change Confirmation Notice issued under paragraph 3.2(a):
 - (A) the Fixed Price Quotation; and
 - (B) the Maintainer's proposed Schedule of Payments (which may, if applicable consist of a single lump sum payment),each as included in the Initial Change Appraisal (where applicable, as amended in accordance with paragraph 6); or
 - (ii) in the case of a Change Confirmation Notice issued under paragraph 6.5:
 - (A) the Fixed Price Quotation (including any Tendered Price);

- (B) the Maintainer's proposed Schedule of Payments and/or adjustments to the Service Payments proposed in accordance with paragraph 5.2(h); and
- (C) any other proposal relating to the costs of or savings arising from the implementation of the Purchaser Change including costs that can be calculated using the Schedule of Costs,

each as included in the Change Appraisal,

(in each case, the *Maintainer Cost Proposal*); and

- (b) if the Purchaser states in accordance with paragraph 8.1(a) that it does not accept the Maintainer Cost Proposal, whether the Purchaser requires the Maintainer to proceed with the Purchaser Change or any part of the Purchaser Change either:
 - (i) immediately following issue of the Change Confirmation Notice or such other date specified in the Change Confirmation Notice notwithstanding that the Parties have not reached final agreement in respect of the Maintainer Cost Proposal; or
 - (ii) immediately following agreement or determination in respect of the Maintainer Cost Proposal in accordance with paragraph 8.4.

8.2 A Change Confirmation Notice issued by the Purchaser pursuant to paragraphs 3.2(a), 3.5 or 6.5 shall attach a copy of or otherwise reference the Initial Change Appraisal, the instructions issued in accordance with paragraph 3.5 or the Change Appraisal, as applicable, which shall be in agreed form other than in respect of any issues relating to the Maintainer Cost Proposal or which remain to be agreed or determined under this paragraph 8.

8.3 Subject to paragraph 8.6, a Change Confirmation Notice shall have the effect of varying the Maintenance Technical Requirements or any other term of this Agreement to the extent provided in the agreed Initial Change Appraisal, the agreed instructions issued in accordance with paragraph 3.5 or the agreed Change Appraisal, as applicable, with effect from the date of receipt by the Maintainer of the Change Confirmation Notice or such other date specified in the Change Confirmation Notice. As soon as practicable after such date the Maintainer shall implement the Purchaser Change or part of the Purchaser Change and shall be bound by this Agreement in so doing as if the Purchaser Change or relevant part of the Purchaser Change formed part of the Maintenance Technical Requirements or other terms of this Agreement.

8.4 If the Purchaser states in the Change Confirmation Notice that it does not agree with the Maintainer Cost Proposal, then:

- (a) the Parties shall endeavour to reach agreement in respect of the cost (or saving) of implementing the Purchaser Change; and
- (b) the Purchaser may request any additional information of the type referred to in paragraph 5.4 and in providing such information the provisions of paragraph 6.2 shall apply mutatis mutandis.

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If the Parties fail to reach agreement within 20 Working Days of the issue of the Change Confirmation Notice, then either Party may refer the matter for resolution under the Dispute Resolution Procedure. Notwithstanding any other provision of this Part B, the Maintainer shall not be entitled to any compensation in connection with a Purchaser Change save to the extent that such compensation directly arises from such Purchaser Change.

8.5 The Maintainer Cost Proposal accepted in accordance with paragraph 8.1(a) or agreed or determined in accordance with paragraph 8.4 shall be binding on both Parties in full and final settlement of all costs incurred by the Maintainer and any impact (whether arising directly or indirectly as a result of the Purchaser Change) on the Service Payments and any other sum to be calculated pursuant to Schedule 6 (*Payment Mechanism*) notwithstanding that the actual costs or impact may be greater or less than the Maintainer Cost Proposal accepted, agreed or determined as the case may be.

8.6 If the Maintainer, having used best endeavours, fails to obtain the Relevant Approvals required to implement the Purchaser Change as set out in the Change Appraisal within 180 Working Days of receipt of the Change Confirmation Notice (or such longer period as set out in the agreed Change Appraisal), then the Maintainer shall notify the Purchaser of such failure. Following such notification, the Purchaser shall either:

- (a) withdraw the Purchaser Change Notice; or
- (b) agree an extended period for the Maintainer to obtain the necessary consents or regulatory approvals.

If the Maintainer fails to obtain the Relevant Approvals within such extended period, the Purchaser shall be deemed to have withdrawn the Purchaser Change Notice.

8.7 In implementing any Purchaser Change, the Maintainer shall comply with the method of certification specified in the agreed Change Appraisal in accordance with paragraph 5.2(e).

8.8 The Maintainer shall maintain and make available any records relating to a Purchaser Change in accordance with this Agreement.

8.9 The Maintainer shall:

- (a) where required, within 10 Working Days of the Change Confirmation Notice provide an amended and/or restated Performance Bond and/or Guarantee; and
- (b) in relation to any Change where an amended Guarantee is not required provide a restated Guarantee.

9. Payments by the Purchaser

9.1 Any Schedule of Payments proposed by the Maintainer in accordance with paragraph 2.2(b) or 5.2(h) shall:

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- (a) set out the timing of the payments to be made by the Purchaser in respect of the net cost (if any) for implementing the proposed Purchaser Change (as quoted or estimated pursuant to paragraphs 2.1(e), 2.2 and 2.2(a) or paragraphs 5.2(f) and 5.2(g), as applicable) other than any such payments which will be made by means of an adjustment to the Service Payments in accordance with clause 24 (*Financial Adjustments*); and
 - (b) in respect of the payments referred to in paragraph 9.1(a), identify those payments which relate to the carrying out of, or specific progress towards, an element within the Purchaser Change and, in respect of each such payment, specify the evidence which the Maintainer will provide in order to confirm that the part of the Purchaser Change corresponding to each occasion when payment is due has been duly carried out.
- 9.2 Where the Maintainer Cost Proposal (accepted in accordance with paragraph 8.1(a) or agreed or determined in accordance with paragraph 8.4) requires the Purchaser to make one or more payments to the Maintainer by reference to a Schedule of Payments, the Purchaser shall make any such payment within 30 Working Days of receipt by the Purchaser of an invoice (complete in all material respects) in accordance with the agreed Schedule of Payments accompanied by relevant evidence (where applicable) that the relevant part of the Purchaser Change has been carried out.
- 9.3 If payment is not made in accordance with paragraph 9.2 or 9.3 the Purchaser shall pay to the Maintainer interest at the Default Rate on the amount unpaid from the date 30 Working Days after receipt of the relevant invoice until settlement of such payment.
- 9.4 Once a Change Confirmation Notice has been issued by the Purchaser, the Parties shall ensure that the Schedule of Payments provides for a reconciliation of any discrepancy between the Emergency Change Interim Payments made by the Purchaser and the actual incremental costs, fees and expenses reasonably and properly incurred by the Maintainer (and accounted for) in relation to the implementation of the Emergency Change during the period from the relevant Purchaser Change Notice issued pursuant to paragraph 1.3 and prior to the Purchaser Change Confirmation Notice.

Part C Maintainer Changes

1. Maintainer Change Notice

1.1 If the Maintainer wishes to introduce a change to any of the Maintenance Technical Requirements (*Maintainer Change*), it must serve a notice in writing on the Purchaser (*Maintainer Change Notice*) which shall:

- (a) set out the proposed Maintainer Change in sufficient detail to enable the Purchaser to evaluate it in full including providing information equivalent to that provided in respect of a Purchaser Change pursuant to paragraph 2 (*Initial Change Appraisal*) or paragraph 5 (*Change Appraisal*) of Part B (*Purchaser Changes*);
- (b) specify the Maintainer's reasons for proposing the proposed Maintainer Change;
- (c) request the Purchaser to consult with the Maintainer with a view to deciding whether to agree to the Maintainer Change and, if so, what consequential changes the Purchaser requires as a result;
- (d) indicate any implications of the proposed Maintainer Change; and
- (e) indicate if there are any dates by which a decision by the Purchaser is critical.

2. Evaluation of Maintainer Change

2.1 The Purchaser shall evaluate the proposed Maintainer Change in good faith, taking into account all relevant issues, including whether:

- (a) the Purchaser will be required to make a change in the Service Payments or to make any other payment;
- (b) the change affects the quality of the Services or the likelihood of successful delivery of the Services;
- (c) the change will alter the relationship of the Purchaser with third parties;
- (d) the financial strength of the Maintainer is sufficient to perform the changed Services, taking into account the Performance Bond and Guarantee;
- (e) the residual value of the Units is reduced; or
- (f) the change materially affects the risks or costs to which the Purchaser is exposed.

2.2 The Purchaser cannot reject a Maintainer Change which is required in order to conform to a Change in Law. The costs of introducing a Maintainer Change and other effects resulting from a Qualifying Change in Law (including any resulting variation in the Service Payments) shall be dealt with in accordance with clause 23 (*Change in Law*) and to the extent not so dealt with shall be borne by the Maintainer.

3. Procedure following Submission of a Maintainer Change Notice

- 3.1 As soon as practicable after receiving the Maintainer Change Notice, if requested by either Party, the Parties shall meet and discuss the matters referred to in such notice. During their discussions the Purchaser may propose modifications or (acting in its absolute discretion) accept or reject the Maintainer Change Notice.
- 3.2 If the Purchaser accepts the Maintainer Change Notice (with or without modification), the Parties shall, as soon as practicable after the Purchaser's acceptance:
- (a) agree and enter into any documents to amend this Agreement which are necessary to give effect to the Maintainer Change; and
 - (b) implement the Maintainer Change.
- 3.3 If the Purchaser rejects the Maintainer Change Notice, it shall not be obliged to give its reasons for such a rejection.

4. Payment Adjustment

- 4.1 Unless the Purchaser's acceptance specifically agrees to an increase in the Service Payments or other payments under this Agreement, there shall be no increase in such payments as a result of a Maintainer Change.
- 4.2 If the Maintainer Change causes or will cause the Maintainer's costs or those of a Subcontractor to decrease, the Service Payments or other payments shall be reduced accordingly.
- 4.3 Following agreement to any adjustment to the Service Payments pursuant to this Part C, the Base Case Maintenance Model shall be updated in accordance with clause 24 (*Financial Adjustments*).