

1<sup>st</sup>  
July 2015

**RAIL FOR LONDON LIMITED**  
(the Purchaser)

**BOMBARDIER TRANSPORTATION UK LIMITED**  
(the Maintainer)

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**TRAIN SERVICES AGREEMENT**

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THIS TRAIN SERVICES AGREEMENT is made on <sup>15<sup>th</sup></sup> July 2015

**BETWEEN:**

- (1) **RAIL FOR LONDON LIMITED**, (Registered Number 05965930) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the *Purchaser*); and
- (2) **BOMBARDIER TRANSPORTATION UK LIMITED**, (Registered Number 02235994) a company incorporated under the laws of England and Wales whose registered office is at Litchurch Lane, Derby DE24 8AD (the *Maintainer*).

**WHEREAS:**

- (A) LOROL currently operates passenger services on the LO Infrastructure pursuant to the LO Concession. The Purchaser intends to appoint a new Operator to run such services on or around 13 November 2016.
- (B) Transport for London is sponsoring a project to electrify the GOB Infrastructure and enhance the level of passenger services operating on it. Transport for London has also been delegated the responsibility by the Secretary of State for Transport for procuring the operation of passenger services on West Anglia Inner and certain associated routes as part of the LO Infrastructure. Transport for London is also sponsoring a programme for the increase in train frequency on the East London Railway and North London Railway.
- (C) The Purchaser and the Manufacturer have entered into a Manufacture and Supply Agreement by which the Manufacturer will design, build, test, commission and supply certain rolling stock, a Simulator, Spares and Special Tools for use in the provision of passenger services on the LO Infrastructure.
- (D) The Parties wish to enter into this Agreement to record the terms by which the Maintainer will provide maintenance and related services and supply Spares to the Purchaser in connection with the rolling stock used in the provision of passenger services on the LO Infrastructure.
- (E) A passenger services operator will be appointed by Transport for London to provide passenger services on the LO Infrastructure using the rolling stock procured under the Manufacture and Supply Agreement and may accede to this Agreement or be nominated to exercise some or all of the Purchaser's rights and obligations in accordance with this Agreement.

**IT IS AGREED:**

**1. Definitions and Interpretation**

**Definitions**

- 1.1 In this Agreement, the following words and expressions shall have the following meanings save where the context requires otherwise:

*2005 Regulations* means the Railway (Licensing of Railway Undertakings) Regulations 2005;

**AC Only Unit** has the meaning given to such term in the MSA;

**Accepted Vehicle Day** has the meaning given to such term in Schedule 6 (*Payment Mechanism*);

**Access Contract** has the meaning given to such term in Section 17(6) of the Act;

**Act** means the Railways Act 1993;

**Actual Annual Mileage** has the meaning given to such term in paragraph 3.1 of Schedule 6 (*Payment Mechanism*);

**Additional Services** means those services described as such in paragraph 3.1(a) of Part A (*Maintenance Services*) Schedule 1 (*Maintenance Services*);

**Additional Services Initial Spares** means those Initial Spares listed in schedule 8 (*Spares and Special Tools*) of the Manufacture and Supply Agreement intended to be used by the Maintainer for the provision of Additional Services (and any supplementary levels of Spares subsequently acquired and maintained by the Maintainer throughout the Duration in accordance with clause 9.4(a));

**Additional Services Notice** has the meaning given to that term in paragraph 3.1(a) of Part A (*Maintenance Services*) Schedule 1 (*Maintenance Services*);

**Adjustments** means each of the adjustments or deductions to be made to:

- (a) the Service Payments in accordance with the provisions of the Payment Mechanism and the Performance Regime during the Maintenance Period; and
- (b) the TSSSA Service Payments in accordance with the provisions of Part B (*TSSSA Payment Mechanism*) and Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Aesthetic Exam Benchmark** has the meaning given to such term in paragraph 5 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Affiliate** means in relation to any person, any Holding Company or subsidiary of that person or any subsidiary of such Holding Company and subsidiary is to be construed in accordance with section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

**Agreed Site Condition** has the meaning given to such term in paragraph 1.10(a) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

**Agreed Site Rectification Plan** has the meaning given to such term in paragraph 1.10(d) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

**Agreement** means this Agreement including the Schedules and Appendices referred to herein;

**Allowable Failure** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Annual Deductions Cap** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Annual Mileage Reconciliation** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 6 (*Payment Mechanism*) during the Maintenance Period; and
- (b) paragraph 1 (*Definitions*) of Part B (*TSSSA Payment Mechanism*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Annual Security and Resilience Report and Improvement Plan** has the meaning given to such term in paragraph 6.9 of Schedule 3 (*Security and Resilience*);

**Annual Performance Adjustment** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Applicable Laws and Standards** means, as the context may require, all or any Laws and standards at any time or from time to time in force in the United Kingdom and which are or become applicable to this Agreement, any agreement or document referred to herein, the Units, the Spares, the Special Tools, the Simulator or the Services without prejudice to the generality of the foregoing, Industry Standards, the requirements of the Regulator, Environmental Laws, HSWA, CSM Regulation, ROGS and the Interoperability Regulations;

**Approved Party** has the meaning given to such term in clause 5.2;

**Assigned Employees** means any person engaged or employed by the Maintainer (or any Subcontractor) in relation to the performance of its or their obligations under the Project Documents;

**Assumption Date** has the meaning given to such term in clause 15.3;

**Assurance Acceptance** means the review and approval given by the Purchaser or its nominee in accordance with the procedure described in paragraph 2 (*Assurance Acceptance Process*) of Schedule 8 (*Contract Management*) and **Assurance Accepted** and **Assurance Accepted** shall be construed accordingly;

**Available** has the meaning given to such term in:

- (a) paragraph 2.1(b) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period,

and **Availability** shall be construed accordingly;

**Availability Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Availability Benchmark** means, on any given day prior to all Units being issued with a PAC or a QPAC, the required number of Available Units as specified in column (2) of the table at Appendix 3 (*Availability Benchmark Table*) of Schedule 5 (*Performance Regime*) which corresponds to the number of Accepted Units on such day, as set out in column (1) of such table;

**AWS** has the meaning given to such term in the Train Technical Specification;

**Base Case Maintenance Model** means the financial model contractualised at the date of this Agreement, as shown in the CD attached at Schedule 4 (*Financial Model*), and subsequently amended from time to time in accordance with clause 24 (*Financial Adjustments*);

**Base Period Charge** means, during the Maintenance Period, the charge calculated for each Reference Railway Period in accordance with paragraph 2.1 of Schedule 6 (*Payment Mechanism*);

**Bombardier Transportation Rolling Stock Group** comprises all Affiliates of the Maintainer whose active business is the supply of railway vehicles, railway equipment and the provision of related services;

**Capital Expenditure** means any expenditure which is treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

**Cancellation Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Cancellation Deduction** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Certificate of Commencement** means the certificate issued by the Purchaser in accordance with clause 2.6 in the form or substantially in the form set out in Part A (*Pro Forma Certificates*) of Schedule 19 (*Pro Forma Certificates*);

*Certificate of Engineering Acceptance* has the meaning given to such term in Railway Group Standard GM/RT2000 issue 2, dated October 2000;

*Change* means a change (whether by addition, amendment, substitution, omission or otherwise) of whatever nature to this Agreement including to:

- (a) any of the Maintenance Technical Requirements;
- (b) the Units or any item of Equipment;
- (c) the manner in which the Maintainer undertakes its maintenance or operational activities; or
- (d) any term of this Agreement;

*Change Appraisal* means any written report delivered by the Maintainer in accordance with paragraph 5.1 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 5.2 of Part B (*Purchase Changes*) of Schedule 10;

*Change Appraisal Instruction* means a written notification provided by the Purchaser pursuant to paragraph 3.2(b) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 3.3 of Part B of Schedule 10;

*Change Confirmation Notice* means a notice issued (and counter-signed as appropriate) by the Purchaser to the Maintainer pursuant to paragraph 3.2(a), 3.5 or 6.5(a) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*) instructing the Maintainer to proceed with the implementation of a Change or part of a Change;

*Change in Costs* means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Maintainer (without double counting), including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of clauses 22 (*Exonerating Events*), 23 (*Change in Law*) and/or 24 (*Financial Adjustments*) and/or Part B (*Purchaser Changes*) or Part D (*Compensation Changes*) (save where these parts have an alternative mechanism for dealing with such costs) of Schedule 10 (*Change Procedure*), including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable professional fees;
- (e) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Maintainer (whether arising from physical damage insurance (or its equivalent)) in respect of that insurance

reinstatement and any extension of the period of implementation of the insurance reinstatement;

- (f) operating costs, or life cycle maintenance or replacement costs;
- (g) Capital Expenditure;
- (h) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;
- (i) Direct Losses; and
- (j) the margin to be earned by the Maintainer (as determined in accordance with Appendix 3 (*Maintainer's Margin*) of Schedule 10),

provided that all costs other than limb (j) above shall be calculated in accordance with the principles set out in Appendix 2 (*Calculation of Change in Costs*) of Schedule 10;

**Change in Law** means the coming into effect after the date of this Agreement of:

- (a) Legislation (whether by means of any enactment repeal or amendment), other than Legislation which on or before the date of this Agreement has been published in substantially the same form or with substantially the same effect as the relevant Legislation finally takes when it has legal effect:
  - (i) in a draft Bill as a part of a Government Department Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) published as a proposal in the Official Journal of the European Union or as a Common Position adopted by the European Parliament;
- (b) any applicable Industry Standards, other than any such Industry Standard which on the date of the Agreement has been published (in the same form (except for non material changes) as that which comes into effect) by the relevant arbiter of that Industry Standard and which, when so published, was intended to have force of law; or
- (c) any applicable judgment of a relevant court of law made after the date of the Agreement which changes a binding precedent,

which in any such case affects the Purchaser, TfL, the Maintainer the Purchased Equipment, the Services or the Network;

**Change of Control** means if a person (or persons acting in concert) who directly or indirectly controls the Maintainer as at the date of this Agreement ceases to do so or if a person (or persons acting in concert) obtains directly or indirectly control of the Maintainer after the date of this Agreement, and **control** for the purposes of this definition means:

- (a) the holding and/or possession of the legal or beneficial interest in, and/or the ability to exercise or direct the exercise of the voting rights applicable to, shares or securities of the Maintainer by the relevant person (or persons acting in concert) such that the business and/or affairs and/or policies of the Maintainer are conducted in accordance with the wishes of that person (or persons); or
- (b) any powers or rights of the relevant person (or persons acting in concert) conferred by the articles of association or contractual rights which (directly or indirectly) have effect to secure that the business and/or affairs and/or policies of the Maintainer are conducted in accordance with the wishes of that person (or persons);

**Change Procedure** means the procedure for implementing Changes set out in Schedule 10 (*Change Procedure*);

**Chingford Stabling Site** means the Stabling Site operated by the Operator and to be used by the Maintainer for external heavy cleaning and servicing, and the stabling of Units in accordance with the terms of this Agreement;

**Claim Appraisal** means any written report delivered by the Maintainer in accordance with paragraph 4.1 of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 4.2 of Part D of Schedule 10;

**Claim Appraisal Instruction** means a written notification provided by the Purchaser pursuant to paragraph 3.1(b) of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 3.2 of Part D of Schedule 10;

**Claim Confirmation Notice** means a notice issued by the Purchaser pursuant to paragraph 3.1(a) or 5.4 of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*), containing the information specified in paragraph 6.1 of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*);

**Cleaning and Aesthetic Condition Adjustment** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Cleaning and Aesthetic Condition Defect Deduction** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Commencement Date** means the date specified in the Certificate of Commencement;

**Competent Authority** means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, agency, department, authority, body or regulatory, self-regulatory or other authority or organisation or other similar entity which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement, in each case to the extent acting in its capacity as a relevant authority under Applicable Laws and Standards;

**Competitor** means any person conducting large-scale maintenance services substantially similar to the Services in relation to rolling stock in the United Kingdom and who directly competes with the Maintainer in the United Kingdom in such business;

**Comptroller and Auditor General** or **C&AG** means the head of the National Audit Office from time to time as defined in the National Audit Act 1983, and includes any successor to all or any of his functions;

**Confidential Information** means information of a technical, commercial or financial nature received from a Party to this Agreement or its agents, representatives or advisers, including information received by the Maintainer from the Operator or TfL;

**Connection Agreement** means the connection agreement between the Purchaser and Network Rail in relation to Willesden Depot;

**Connection Agreement Covenants** means, in relation to the Willesden Depot, those covenants found in the Connection Agreement and which the Purchaser is required to comply;

**Consequential Loss** means in relation to a breach of this Agreement or other circumstances in which an Indemnified Party is entitled to recover any Loss suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties and/or indirect or consequential or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

**Consumable Spares** means those Spares which are not able to be overhauled and/or repaired following being fitted on, or to a Unit;

**Contamination** means the presence of any Hazardous Substances in, on, under or migrating from a TSA Facility;

**Contract Information** means:

- (a) this Agreement in its entirety (including agreed changes to the Agreement from time to time);
- (b) data extracted from the invoices submitted by the Maintainer in accordance with clause 19 (*Payments*) (which shall consist of the Maintainer's name, the expenditure account code, the expenditure account code description, the relevant purchase order reference, the clearing date and the invoice amount); and
- (c) the Manufacture and Supply Agreement and any other document, contract or data relating to this Agreement which is required to be published pursuant to the Transparency Commitment from time to time;

**Contract Manager(s)** means either or both of the Purchaser Contract Manager and/or the Manufacturer Contract Manager;

**Contract Year** means:

- (a) the period commencing on the date of Acceptance of the first Unit and expiring on the last day of the last Railway Year in the Railway Year in which that Acceptance occurred; and
- (b) thereafter, each successive Railway Year commencing on the expiry of the immediately preceding Contract Year, the last Contract Year ending on the last day of the Duration;

**Corrective Action** has the meaning given to such term in clause 17.6(a);

**DC Route Diagrams** means the Diagrams described in Part C (*DC Route Diagrams*) of Schedule 2 (*Diagrams*), and any other Diagram which the Purchaser notifies to the Maintainer will constitute a DC Route Diagram from time to time in accordance with this Agreement;

**Declaration of Ineffectiveness** has the meaning given to such term in clause 32.1;

**Deduction** means any of the Cancellation Deductions, the Delay Deductions, the Major Incident Deductions, the Service Defect Deductions, the Performance Monitoring Deductions, the Cleaning and Aesthetic Condition Defect Deductions or the Simulator Deductions, and **Deductions** shall mean any or all of or the above as the context requires;

**Default Interest** means interest on late payment at the Default Rate;

**Default Rate** means the Bank of England Base Rate plus one per cent;

**Delay Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Delay Deduction** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Delivery** means the passing of possession of a Unit, other item of Purchased Equipment or Moveable Asset and **Deliver** and cognate terms shall be construed accordingly;

**Depot Asset Management Plan** has the meaning given to such term in paragraph 2 (*Depot Asset Management Plan*) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

**Depot Asset Register** means the up-to-date register of all materials, components, equipment, assemblies and systems used in the Willesden Depot listed and categorised as one of "Fixed Asset", "Depot Moveable Asset" or "Maintainer Excluded Asset";

**Depot Moveable Assets** means those of the Maintainer Moveable Assets that are not Maintainer Excluded Assets, and which are indicated as such in the Depot Asset Register;

**Depot Operations Plan** means the plan detailing the day to day operations at the Willesden Depot during the Maintenance Period including in respect of the organisation of staff in the depot command and control structure; management of train movements; liaison with Network Rail; facilities management; relationship with neighbours; emergency response arrangements and security arrangements;

**Depot Operator** means the operator of Willesden Depot with primary responsibility for buildings, site and facilities management, including site security and maintenance, being at all times a separate entity from the Maintainer;

**Depot Operator Contract** means the contract for the operation and maintenance of the Willesden Depot between the Depot Operator and the Maintainer;

**Depot Safety Certificates** means the certificate evidencing that the statement of procedures, standards and internal regulations prepared in respect of each of the Maintenance Facilities satisfy the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**Diagrams** means the description of each railway service to be operated by the Operator consistent with the Train Plan Parameters as at the date of this Agreement and as definitively set out in the Train Plan from time to time in accordance with the terms of this Agreement;

**Direct Losses** means all Losses excluding Indirect Losses;

**Discount Rate** means ■■■ per cent;

**Dispute** means a dispute or difference of whatever nature between the Maintainer and the Purchaser or the Operator in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, this Agreement;

**Dispute Referral Notice** has the meaning given to such term in paragraph 2.1 of Schedule 17 (*Dispute Resolution Procedure*);

**Dispute Resolution Procedure** means the procedure for resolving Disputes set out in Schedule 17 (*Dispute Resolution Procedure*);

**DPA** means the Data Protection Act 1998;

**Dual Voltage Unit** has the meaning given to such term in the MSA;

**Duration** means that period commencing upon Acceptance of the first Unit or the date of Simulator Acceptance, whichever is the first to occur, and ending (subject to

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earlier termination in accordance with the provisions of this Agreement) on the Expiry Date;

**ECS Movement(s) or Empty Coaching Stock Movement(s)** means the movement of empty, out-of-service Units from one location to another;

**EF Services** has the meaning given to such term in paragraph 1.1 of Part A (*Existing Fleet General Provisions*) of Schedule 23 (*Existing Fleet*);

**Emergency Change** has the meaning given to such term in paragraph 1.3 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Emergency Change Interim Payments** has the meaning given to such term in paragraph 1.4(b) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Employment Losses** means all Losses which are either: (a) connected with employment or an employment relationship (or the termination thereof); or (b) suffered by the Purchaser as a result of indemnifying a Future Service Provider on terms substantially similar to the indemnities given by the Maintainer in clauses 18.4 and clause 18.6;

**Entry Point** means, in respect of a Unit, the physical location specified in a Diagram where such Unit is to enter service in accordance with in the Train Plan;

**Entry Time** means, in respect of a Unit, the time at which such Unit is to enter into service, as set out in the Train Plan;

**Environment** means all or any of the following media, namely air (including air within man-made structures, buildings or natural structures wherever located), water (including sea, ground, drinking and surface water) and land and any other property (including buildings and any other structures or erections in, on or under the land and anything below the surface of the land and any land covered with water) and/or any organisms (including man) or systems supported by such media, and includes such media within buildings and within other natural or man-made structures above or below ground;

**Environmental Claim** means any existing, pending or threatened claims, actions, proceedings or investigations by:

- (a) any civil, criminal, administrative, governmental or regulatory authority for clean-up, removal, treatment, containment, investigation, response, remedial or other actions pursuant to any Environmental Law; or
- (b) any third party pursuant to any Environmental Law;

**Environmental Competent Authority** means any person (including any government department or government agency in particular the Environment Agency and local authorities) having regulatory powers and/or regulatory authority at law in respect of Environmental Matters and/or any court of law;

**Environmental Damage** means any material injury or damage to the Environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

**Environmental Incident** has the meaning given thereto in clause 7.1 of Schedule 15 (*Environment*);

**Environmental Investigation** means any desktop or intrusive survey of a TSA Facility carried out either by or on behalf of any Indemnified Party or the Maintainer in preparation for or otherwise in connection with this Agreement to:

- (a) investigate the presence, location or degree of any Contamination;
- (b) consider methods of Remedial Action in respect of such Contamination; or
- (c) assess Environmental Liabilities that might arise in respect of such Contamination;

**Environmental Laws** means all Applicable Laws and Standards and all orders, regulations, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls relating to or concerning the Environment;

**Environmental Liabilities** means any and all losses, damages, liabilities, fines, penalties, costs and expenses (including without limitation any administrative, legal, environmental consultancy or other professional fees, costs or disbursements) incurred:

- (a) in investigating or defending any Environmental Claim; or
- (b) in respect of any Remedial Action,

including any consequential or indirect losses;

**Equipment** means the Simulator, the Spares and the Special Tools;

**Event of Loss** means, with respect to any Unit, the Simulator, any Initial Spares and/or Initial Special Tools:

- (a) the actual or constructive total loss, or destruction, of such Unit, Simulator, Initial Spares and/or Initial Special Tools, or its being damaged beyond repair or rendered permanently unfit for normal use for any reason whatsoever, including any destruction or damage caused by a Force Majeure Event or requisition for use or hire which, in either case, results in an insurance settlement on the basis of a total loss; or
- (b) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation for any reason of such Unit, Simulator, Initial Spares and/or Initial Special Tools, by any Competent Authority, other than the Purchaser, TfL or other member of the TfL Group but excluding acquisition for use or hire not involving requisition of title; or
- (c) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Unit, Simulator, Initial Spare and/or Initial Special Tool, (other than requisition for use or hire by any Competent Authority) which deprives any person permitted by this Agreement to have possession and/or use of such Unit and/or Simulator and/or Initial Spares and/or Initial Special Tools, its possession and/or use for more than 180 days;

and an Event of Loss shall be deemed to have occurred in respect of a Unit if an Event of Loss occurs with respect to a Vehicle in that Unit;

**Existing Contamination** means the presence of any Hazardous Substances first arising in, on or under a TSA Facility (other than the Ilford A Maintenance Depot) on or before the date of this Agreement, except to the extent that such presence is exacerbated or otherwise disturbed during the term of this Agreement;

**Existing Fleet** means the existing fleet of class 172 diesel multiple units operating on the GOB Infrastructure;

**Existing Fleet Commencement Date** means the date on which the Maintainer commences performance of the EF Services, being 13 November 2016;

**Existing Fleet Replacement Date** means the date on which the last EF Unit is taken out of passenger service on the GOB Infrastructure;

**Existing Fleet Services** means the services, work and activities to be carried out by the Maintainer in relation to the Existing Fleet, as set out in Part B (*Existing Fleet Maintenance Services*) of Schedule 23 (*Existing Fleet*);

**Exit Point** means, in respect of a Unit, the physical location specified in a Diagram where such Unit comes out of service in accordance with the Train Plan;

**Exit Time** means, in respect of a Unit, the time set out in the Train Plan at which such Unit is scheduled to come out of service;

**Exit Transfer Date** has the meaning given to such term in clause 18.1;

**Exonerating Event** means each of the following:

- (a) any breach by the Operator under this Agreement;
- (b) any breach by the Purchaser under this Agreement;
- (c) any damage or excessive or unusual wear and tear caused to the Units as a direct result of any Railway Infrastructure (other than Railway Infrastructure maintained by the Maintainer) being in a condition which is worse than that to be expected of it assuming that such Railway Infrastructure is being maintained by a competent maintenance contractor having regard to (i) Railway Group Standards applicable to such Railway Infrastructure which is controlled by Network Rail and such applicable standards (to be determined by another Competent Authority) in relation to any parts of the LO Infrastructure which shall be controlled by that Competent Authority and (ii) the condition of such Railway Infrastructure (if such Railway Infrastructure exists) at the date of this Agreement taking into account that the condition of certain parts of such Railway Infrastructure may not be compliant with Railway Group Standards. For the avoidance of doubt, in the event that the Maintainer believes that an Exonerating Event pursuant to this limb (c) has occurred it shall be required to prove that the alleged damage or excessive or unusual wear and tear has been caused by circumstances falling within this limb (c) including, if required by the Purchaser, providing to the Purchaser

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written evidence from a reputable and independent third party with relevant experience, or

- (d) the Operator operating the Units other than in accordance with the Permitted Use where the Maintainer is able to prove that this directly results in increased costs or an adverse effect upon the Maintainer's ability to perform the Services;

in each case, where such events do not arise as a result of a Force Majeure Event, a Maintainer Fault, an act, omission, neglect or default of the Maintainer, the Manufacturer, any Subcontractor, any member of the Maintainer Group or Manufacturer Group or the agents, employees or suppliers of any of them, or due to the Maintainer's or Manufacturer's performance, or non-performance of their respective obligations under this Agreement or the MSA;

*Expert* shall mean an individual with relevant experience or expertise in the subject matter of any Expert Dispute, who may or may not be legally qualified, depending on the nature of the Expert Dispute;

*Expert Dispute* means a Dispute that is required under the provisions of this Agreement to be resolved in accordance with paragraph 3 (*Expert Determination*) of Schedule 17 (*Dispute Resolution*) or which has been designated by the parties as an Expert Dispute to be resolved by the procedure set out in paragraph 3 (*Expert Determination*) of Schedule 17 (*Dispute Resolution*);

*Expiry Date* means, subject to the exercise of an Extension Option pursuant to clause 3.3, the thirty-fifth anniversary of Acceptance of the first Unit;

*Extension Option* means the option to extend the term of this Agreement pursuant to 3.3;

*Extensive* has the meaning given to such term in Appendix 2 (*Aesthetic Condition Standards*) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*) for the purposes of that Schedule only

*Exterior Heavy Clean* has the meaning given to such term in paragraph 6.1 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

*Exterior Heavy Clean Benchmark* has the meaning given to such term in paragraph 6.1 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

*Extremely* has the meaning given to such term in Appendix 2 (*Aesthetic Condition Standards*) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*) for the purposes of that schedule only;

*Facility Owner* has the meaning given to such term in the Act;

*Failure* has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and

- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Fair Wear and Tear** means in respect of a Unit or a Part the fair and ordinary wear and tear of that Unit or Part which occurs in the course of the use and operation of such Unit or Part in accordance with the Permitted Use, the Maintenance Plan and the Manuals;

**Fault** means in relation to a Unit, Vehicle, Simulator, Spare or Special Tool, that such Unit, Vehicle, Simulator, Spare or Special Tool is not Fault Free;

**Fault Free** means, in relation to any asset or service to be provided under this Agreement (including the Units, Equipment, Parts and Spares):

- (a) that it complies with all applicable requirements and provisions of this Agreement including the Train Technical Requirements;
- (b) that it complies with all Applicable Laws and Standards, Relevant Approvals or, to the extent that there is non-compliance with any Applicable Laws and Standards, that there is a valid derogation from such Applicable Laws and Standards;
- (c) where the item is a Unit, that it is capable of use in Unrestricted Passenger Revenue Earning Service and all Relevant Approvals have been obtained in respect of that Unit; and
- (d) where the item is a Part, a Spare or any other major component, that if such Part, Spare or other major component is incorporated into a Unit, such incorporation does not prevent such Unit from complying with limbs (a), (b) and (c) above;

**Fault Notification Procedure** means the procedure set out in clause 11.5;

**Financiers** has the meaning given to such term in paragraph 2(a) of Part A (*Maintainer Obligations*) of Schedule 11 (*Insurance*);

**Fit for Purpose** means, in relation to a Unit that is presented to the Purchaser by the Maintainer to deliver any diagram, that Unit is:

- (a) Fit for Service; and
- (b) where the relevant Diagram to be delivered is:
  - (i) a WAI Diagram, an AC Only Unit; or
  - (ii) a GOB Diagram or a DC Route Diagram, a Dual Voltage Unit;

**Fit for Service** has the meaning given to such term in Appendix 1 (*Definitions of Fit for Service, Fit to Remain in Service and Fit to Run*) to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Fit to Remain in Service** has the meaning given to such term in Appendix 1 (*Definitions of Fit for Service, Fit to Remain in Service and Fit to Run*) to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

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**Fit to Run** has the meaning given to such term in Appendix 1 (*Definitions of Fit for Service, Fit to Remain in Service and Fit to Run*) to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Fixed Price Quotation** means a fixed price provided by the Maintainer to the Purchaser for any Change in Costs, which may consist of a single lump sum payment, a number of payments or a change to the Service Payments;

**Fleet** means the Units which have been Accepted and Delivered to the Purchaser from time to time under the MSA;

**FM Affected Party** has the meaning given to such term in clause 29.2;

**FM Termination Notice** has the meaning given to such term in clause 29.7;

**FOI Information Request** means a request under the FOI Legislation for information recorded in any form held by the Purchaser or held by the Manufacturer on behalf of the Purchaser;

**FOI Legislation** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such Legislation;

**Force Majeure Event** means the occurrence after the date of this Agreement of:

- (a) act of terrorism;
- (b) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Maintainer; or
- (d) pressure waves caused by devices travelling at supersonic speeds;

save to the extent that such event is caused by the Maintainer, any Subcontractor, or their respective agents, officers and/or employees;

**Free Issue Materials** means those items (if any) provided by the Purchaser pursuant to clause 10.14 but does not include any:

- (a) Spares;
- (b) Special Tools; and/or
- (c) Maintainer Moveable Assets;

**Full Deployment Date** means the earliest date on which all of the Units in the Fleet have achieved Provisional Acceptance or Qualified Provisional Acceptance;

**Future Service Provider** means the entity or entities (not being the Purchaser) which, at the termination of this Agreement, may be appointed by the Purchaser to perform any service equivalent to any of the obligations required to be performed by the

Maintainer (or any Subcontractor) under the Project Documents immediately after expiry or earlier termination of this Agreement;

**Generally Approved Additional Service** means any Additional Service carried out, or to be carried out, in accordance with paragraph 3.4 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**GOB Diagrams** means the Diagrams described in Part B (*GOB Diagrams*) of Schedule 2 (*Diagrams*), and any other Diagram which the Purchaser notifies to the Maintainer will constitute a GOB Diagram from time to time in accordance with this Agreement;

**Good Industry Practice** means the exercise by the Maintainer of that degree of skill, care, diligence, foresight and practice which would ordinarily be expected of a skilled contractor engaged in the relevant activities required under this Agreement;

**Group** means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any group undertaking of that company from time to time, and all of them and each of them as the context admits; for which purposes **group undertaking** has the meaning given to such term by section 1161 of the Companies Act 2006;

**Guarantee** means the guarantee to be provided by the Guarantor in favour of the Purchaser in the form or substantially in the form set out in Schedule 21 (*Form of Parent Company Guarantee*);

**Guarantee Event** means:

- (a) the Guarantee ceases to be in full force and effect; or
- (b) the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable;

**Guarantor** means Bombardier Inc., a company incorporated under the laws of Canada, whose registered office is at 800 René Lévesque Boulevard West, Montréal, Québec Canada H3B 1YB;

**Hand-Back** means the formal handing-back of a Unit by the Purchaser to the Maintainer at the Exit Point for the relevant Services to be performed on that Unit pursuant to this Agreement and references to **Handed-Back** shall be construed accordingly;

**Hand-Back Certificate** means the electronic certificate populated by the Purchaser in relation to the Hand-Back of a Unit;

**Hand-Over** means the formal handing-over of a Unit by the Maintainer to the Purchaser at the Entry Point following the carrying out of the relevant Services on that Unit pursuant to this Agreement and references to **Handed-Over** shall be construed accordingly;

**Hand-Over Certificate** means the electronic certificate populated by the Maintainer in relation to the Hand-Over of a Unit;

**Hazardous Substances** means any item or substance, including a component thereof, or any preparation or component thereof containing such a substance or combination of any substances:

- (a) which is capable of causing harm to or having a deleterious effect on the Environment or human health or constituting a nuisance;
- (b) the presence of which has to be notified by virtue of any Applicable Laws and Standards or Environmental Laws to a regulatory authority either particularly or generally; or
- (c) is categorised or listed under any Environmental Laws as being proscribed or prohibited or restricted or as requiring precautions to be taken in the use or keeping thereof;

**Headlease** means the headlease between the Purchaser and Network Rail in relation to the lease of the Willesden Depot;

**Headlease Covenants** means, in relation to the Willesden Depot, those covenants found in the Headlease and which the Purchaser is required to comply;

**HVAC** means Heating, Ventilation and Air Conditioning System as set out further in the Train Technical Specification;

**Ilford Depot** means the light maintenance depot operated by the Greater Anglia Franchise Operator and to be used by the Maintainer for train preparation and stabling of Units in accordance with clauses 7.2 to 7.8;

**Ilford A Maintenance Depot** means the light maintenance depot co-located at Ilford Depot and operated by the Maintainer and to be used by the Maintainer for light and heavy maintenance and stabling of Units in accordance with clauses 7.2 to 7.8;

**Immediately Effective Clauses** means clauses 1, 2, 4, 6, 36, 37, 41, 43, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 61, 62 and 63;

**Indemnified Parties** means:

- (a) the Purchaser;
- (b) the Owner
- (c) any Operator; and
- (d) TfL,

and, in each case, all or any of their respective Affiliates, employees, servants, agents, directors, officers, contractors and subcontractors;

**Indemnifying Party** means a Party that has agreed under the terms of this Agreement to indemnify another person on the basis set out in this Agreement;

**Indexation Adjustment Formula** means the calculation for indexation:

- (a) pursuant to paragraph 5 (*Indexation*) of Schedule 6 (*Payment Mechanism*) during the Maintenance Period; and
- (b) pursuant to paragraph 6 (*Indexation*) of Part B (*TSSSA Payment Mechanism*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period.

***Indexation Base Month*** means March 2014;

***Indirect Losses*** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, consequential loss and for indirect loss of any nature;

***Industry Standards*** means all the laws, rules, regulations, guidance, directions, recommendations and instructions, including codes of practice and conduct which have the force of law or with which it is generally accepted within the rail industry in the United Kingdom that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Units or the Equipment which are or have been issued by the Regulator, Network Rail, the Railway Safety Directorate, HSE, the Safety Authority, a Notified Body, a Designated Body, ATOC, RSSB (in each case to the extent acting in its capacity as a relevant authority under the Applicable Laws and Standards) or any other Competent Authority or other person from time to time legally authorised to set standards in respect of the rail industry and shall include Railway Group Standards, Network Rail Standards, the Rule Book, TSIs, Notified National Technical Rules and/or any equivalent standard or any standard amending, replacing or superseding any of the foregoing;

***Ineffective and Ineffectiveness*** have the meanings given to such terms in the Utilities Contracts Regulations and shall be construed accordingly;

***Infrastructure Manager*** means the person taking on the role of infrastructure manager in respect of Railway Infrastructure under the ROGS;

***Initial Change Appraisal*** means any written report delivered by the Maintainer in accordance with paragraph 2.1 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

***Initial Claim Appraisal*** means any written report delivered by the Maintainer in accordance with paragraph 1.1 of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*);

***Initial Site Inspection*** has the meaning given to such term in paragraph 1.10(a) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

***Initial Spares*** means those Spares to be supplied by the Manufacturer and Accepted by the Purchaser pursuant to the Manufacture and Supply Agreement in the numbers and specifications set out in schedule 8 (*Spares and Special Tools*) of the Manufacture and Supply Agreement;

***Initial Special Tools*** means those Special Tools to be supplied by the Manufacturer under the Manufacture and Supply Agreement in the numbers and specifications set out in schedule 8 (*Spares and Special Tools*) of the Manufacture and Supply Agreement;

**Initial TSA Performance Bond Amount** has the meaning given to such term in paragraph 1.1 of Schedule 20 (*TSA Performance Bond*);

**In-Service Support Procedure** means the procedure to be provided by the Maintainer pursuant to clause 11.4 and reference to **In-Service Support Procedure** shall be treated as references to the In-Service Support Procedure so set out;

**Insolvency Event** in relation to any person means:

- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding up petition in respect of such person which is not dismissed within seven (7) days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

**Insolvent** means:

- (a) in the case of a company that it has suffered, or is the subject of, an Insolvency Event that is current and/or has not been dismissed or fully remedied; or
- (b) in the case of an individual that:
  - (i) he has had a bankruptcy order or an interim order made against him and such order has not been discharged;
  - (ii) he has entered into a composition with his creditors or a scheme of arrangement of his affairs; or
  - (iii) there is current an appointment of an interim receiver in respect of his property;

- (c) in either case that circumstances exist or proceedings have been instituted (and not dismissed) or events have occurred or are occurring outside the jurisdiction of the courts of England which have an analogous effect to any referred to in paragraphs (a) and (b);

**Insurance Claims** has the meaning given to such term in paragraph 4(d)(iv) of Part C (*Broker's Letter of Undertaking*) of Schedule 11 (*Insurance*);

**Insurances** means any insurances taken out by the Maintainer in accordance with Schedule 11 (*Insurance*);

**Insureds** has the meaning given to such term in paragraph 1 of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*) of Schedule 11 (*Insurance*);

**Insured Property** has the meaning given to such term in paragraph 2.1 of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*) of Schedule 11 (*Insurance*);

**Intellectual Property Rights** or **IPR** means all rights in or in relation to any and all patents, utility models, trade and service marks, rights in designs, get-up, trade, business or domain names, copyrights, topography rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, know-how, trade secrets and other confidential information, rights in databases and all other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world;

**IPR Assets** means the Technical Documents and the Software (including its Source Code);

**IPR Claim** has the meaning ascribed to that term in clause 16.9;

**Irrecoverable VAT** has the meaning given to such term in clause 23.6;

**Joint Site Inspection** has the meaning given to such term in paragraph 1.10(c) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

**Key Posts** means those key roles within the Maintainer organisation listed in Appendix 1 (*Key Posts*) of Schedule 8 (*Contract Management*), to be undertaken by persons approved by the Purchaser in advance in accordance with paragraph 4 (*Organisational Arrangements*) of Schedule 8;

**Last Railway Period** has the meaning given to such term in clause 19.5(b);

**Law** means any Legislation or common law of the United Kingdom, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom or any other principles of law or equity established by the Courts;

**LCIA** has the meaning given to such term in paragraph 3.2 of Schedule 17 (*Dispute Resolution Procedure*);

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**Legislation** means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom (and including any modification, amendment or re-enactment of such Legislation from time to time and any instruments, orders or regulations made pursuant thereto);

**Level 1 Fault-Finding** has the meaning given to such term in paragraph 4.27(a) of Part A (*TSSSA Services*) of Schedule 22 (*TSSSA Services*);

**Level 2 Fault-Finding** has the meaning given to such term in paragraph 4.27(b) of Part A (*TSSSA Services*) of Schedule 22 (*TSSSA Services*);

**Level 3 Fault-Finding** has the meaning given to such term in paragraph 4.27(c) of Part A (*TSSSA Services*) of Schedule 22 (*TSSSA Services*);

**Liverpool Street Approach** means from (and including) Liverpool Street station platforms to (and including) Bethnal Green station platforms on that part of the LO Infrastructure known as LTN1, with line reference EA1010 in the Sectional Appendix;

**Losses** means any claims, proceedings, losses, liabilities, suits, judgements, costs, expenses, Taxes, penalties or fines, whether arising under statute, contract or at common law;

**Maintainer Change** has the meaning given to such term in paragraph 1.1 of Part C (*Maintainer Changes*) of Schedule 10 (*Change Procedure*);

**Maintainer Change Notice** has the meaning given to such term in paragraph 1.1 of Part C (*Maintainer Changes*) of Schedule 10 (*Change Procedure*);

**Maintainer Compensation Proposal** has the meaning given to such term in paragraph 6.1(a) of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*);

**Maintainer Confidential Information** means the Confidential Information listed in Schedule 16 (*Maintainer Confidential Information*);

**Maintainer Contamination** means:

- (a) with respect to any TSA Facility (excluding the Ilford A Maintenance Depot), the presence of any Hazardous Substances in, on, under or migrating from that TSA Facility first arising during the term of this Agreement (including as a result of the exacerbation or disturbance of any Existing Contamination) directly or indirectly as a result of:
  - (i) the presence of any person on the site of the TSA Facility, other than an Indemnified Party or persons under their control during the term of this Agreement; and/or
  - (ii) any action of the Maintainer, any Subcontractor of the Maintainer, or its or their respective servants, employees or agents in connection with this Agreement; or

- (b) with respect to the Ilford A Maintenance Depot, the presence of any Hazardous Substances in, on, under or migrating from the Ilford A Maintenance Depot arising during the term of this Agreement (including as a result of the exacerbation or disturbance of any Existing Contamination) directly or indirectly as a result of:
- (i) the presence of any person on the site of the Ilford A Maintenance Depot, other than an Indemnified Party or persons under their control during the term of this Agreement; and/or
  - (ii) any action of the Maintainer, any Subcontractor of the Maintainer, or its or their respective servants, employees or agents in connection with this Agreement;

**Maintainer Contract Manager** has the meaning given to such term in paragraph 1.3 of Schedule 8 (*Contract Management*);

**Maintainer Cost Proposal** has the meaning given to such term in paragraph 8.1(a) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Maintainer Daily Performance Record** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Maintainer Event of Default** means any of the events or circumstances listed in clause 30.1;

**Maintainer Excluded Assets** means any plant, equipment or other assets belonging to the Maintainer but not used solely and exclusively in the performance of the Maintainer Obligations, including:

- (a) laptops, printers, desktops and Off-the-Shelf Software;
- (b) third party plant and equipment; and
- (c) plant, equipment and vehicles on hire or lease;

**Maintainer Fault** means a Fault which is not a Purchaser Fault;

**Maintainer Group** means the Maintainer, the Guarantor and any member of their/its Group from time to time;

**Maintainer IPR** means the Intellectual Property Rights, whether existing at the date of this Agreement or arising hereafter that are owned by the Maintainer or any of its Affiliates;

**Maintainer Moveable Assets** has the meaning given to such term in clause 7.18;

**Maintainer Obligations** means each and all of the obligations to provide the Services and every other obligation of the Maintainer under this Agreement;

**Maintainer Performance Monitoring Report** means the report to be provided by the Maintainer pursuant to paragraph 10.11 of Schedule 5 (*Performance Regime*) in the form to be agreed between the Parties;

**Maintainer Report Response** has the meaning given to such term in clause 19.3(a);

**Maintainer Software** means any modification, upgrade or enhancement of the Software provided to the Purchaser pursuant to the Manufacture and Supply Agreement which is provided by the Maintainer in performing the Maintainer Obligations;

**Maintainer Termination Notice** has the meaning given to such term in clause 31.3;

**Maintainer's Records** has the meaning given to such term in clause 17.3(a)(i);

**Maintenance Facility** means each of the facilities at the Ilford A Maintenance Depot, and the Willesden Depot where the Maintainer may undertake stabling, cleaning and maintenance of the Units in accordance with this Agreement and/or such other facility or facilities as may be agreed between the Maintainer and the Purchaser from time to time;

**Maintenance Period** means:

- (a) in relation to each Unit, the period, commencing on the Acceptance Date for that Unit, and ending on the date which is the earlier of:
  - (i) where a TSSSA Change Notice has been served, the TSSSA Commencement Date;
  - (ii) the date of termination of this Agreement; or
  - (iii) the date of expiry of this Agreement;
- (b) in relation to an item of Purchased Equipment other than a Unit, the period commencing on the Acceptance Date for that item of Purchased Equipment and ending on the date that is the earlier of:
  - (i) where a TSSSA Change Notice has been served, the TSSSA Commencement Date;
  - (ii) the date of termination of this Agreement; or
  - (iii) the date of expiry of this Agreement;

**Maintenance Plan** means the maintenance plan for the Units prepared by the Manufacturer pursuant to the MSA in order to obtain a Certificate of Engineering Acceptance for the Units;

**Maintenance Technical Requirements** means, together:

- (a) Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);
- (b) the Train Plan Parameters;
- (c) the Maintenance Plan;
- (d) the Manuals;
- (e) the Preparation, Presentation and Hand-Back Procedure;

- (f) the In-Service Support Procedure;
- (g) the Fault Notification Procedure; and
- (h) the Services Delivery Strategy;

**Major Depot Change** means a Purchaser Change which requires:

- (a) a material change to the Maintainer's use of the Maintenance Facilities; or
- (b) the relocation of a Maintenance Facility to a different location, whether on a temporary or permanent basis.

**Major Exonerating Event** means an Exonerating Event which, in the opinion of the Maintainer, will increase the cost of, or have an adverse effect on, the performance by the Maintainer of its obligations under this Agreement for a period of more than five (5) Working Days;

**Major Incident Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Major Incident Deduction** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Mandatory Modification** means a Modification required by Applicable Laws and Standards;

**Manufacture and Supply Agreement** or **MSA** means the agreement between the Purchaser and the Manufacturer pursuant to which the Manufacturer will manufacture and supply Units to the Purchaser;

**Marginal Unit** means an additional Unit to be operated and fulfil additional Diagrams on any one day to be operated by the Purchaser or the Operator in addition to the Units provided for in the relevant Train Plan;

**Maximum Liability** has the meaning given to such term in clause 38.2(a);

**Minimum Aesthetic Condition** has the meaning given to such term in paragraph 7 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Minimum Liability Coverage** means £155,000,000 or such other amount as may be required by the ORR in accordance with Applicable Laws and Standards;

**Minor Exonerating Event** means an Exonerating Event which, in the opinion of the Maintainer, will increase the cost of, or have an adverse effect on, the performance by

the Maintainer of its obligations under this Agreement for a period of five (5) Working Days or less;

**Modification** means any change, modification or addition to any Unit, Vehicle or item of Equipment;

**Network** means the rail network of which Network Rail is the owner and/or operator and which is situated in Great Britain and any other part of the LO Infrastructure;

**Network Monitoring System** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Network Rail** means Network Rail Infrastructure Limited, a company incorporated under the laws of England (registered number 2904587), whose registered office is at Kings Place, 90 York Way London N1 9AG, and any successors to its functions or any relevant part thereof;

**Network Rail's Cumulo** means the deemed valuation of Network Rail's undertaking for the purpose of assessability to business rates;

**Notice of Appointment** has the meaning given to such term in paragraph 3.4 of Schedule 17 (*Dispute Resolution Procedure*);

**Notice of Dispute** has the meaning given to such term in paragraph 3.1 of Schedule 17 (*Dispute Resolution Procedure*);

**Notified National Technical Rules** has the meaning given to such term in the Interoperability Regulations;

**Off-the-Shelf Software** means any computer program that is generally available to the public on a commercial or open source basis;

**Open Book Basis** means the provision of any costs or other expenses in accordance with the principles set out in Schedule 13 (*Open Book Accounting*);

**Operating Date** means the date of Qualified Provisional Acceptance or Provisional Acceptance (whichever occurs first) of the first Unit under the MSA;

**Operator** means the person(s) appointed by TfL or a subsidiary of TfL to deliver the LO Services;

**Operator Area** means office accommodation within the Willesden Depot for use by the Operator together with access to and use of toilets, washrooms and mess room facilities;

**Operator's Control Room** means a room within an operational control building within south-east England as shall be advised to the Maintainer by the Purchaser in writing;

**Operator Document** means:

- (a) the Operator's Safety Management System together with the Safety Certificate in respect of that Safety Management System;

- (b) any agreement between the Operator and a member of the TfL Group relating to the LO Services;
- (c) any Access Contracts between the Operator and a Facility Owner or between a member of the TfL Group and a Facility Owner in connection with the LO Services;
- (d) any leases or other property arrangements between:
  - (i) the Operator and Network Rail;
  - (ii) a member of the TfL Group and Network Rail; and/or
  - (iii) the Operator and a member of the TfL Group;in relation to any of the Maintenance Facilities, the Ilford Depot and/or the Stabling Sites; and
- (e) any licences obtained by the Operator in accordance with section 8 of the Act and/or the 2005 Regulations.

**Operator Fault** means a Fault which results from:

- (a) the Operator:
  - (i) operating the relevant Unit, Vehicle or item of Equipment materially other than in accordance with the Permitted Use; or
  - (ii) maintaining the relevant Unit, Vehicle or item of Equipment materially other than in accordance with the Maintenance Plan and the Manuals; or
- (b) damage (including that resulting from vandalism, suicide or other passenger action) to a Unit whilst that Unit is not, in accordance with the terms of this Agreement or the Manufacture and Supply Agreement, in the Maintainer's, the Manufacturer's or any Subcontractor's care, custody or control,

in each case, where such Fault is not caused by: (A) any act, omission, neglect or default of the Manufacturer, the Maintainer, any Subcontractor, any member of the Maintainer's Group or the Manufacturer's Group or the employees or suppliers of any of them, or (B) the Manufacturer's or the Maintainer's performance, non-performance or purported performance of their respective obligations under this Agreement or the MSA;

**Operator's Safety Certificate** means the Safety Certificate required to be in place for the Operator to operate the Train Services and which will be applied for, obtained and maintained by the Operator and/or the Purchaser from time to time;

**Operator's Safety Management System** means the Safety Management System prepared by the Operator, and certified by the applicable Competent Authority pursuant to ROGS;

**Option Unit Change** means a Purchaser Change under the MSA and this Agreement which requires Option Units and/or Option Vehicles to be incorporated into the Fleet;

**Option Unit Maintenance Costs** means the indicative costing for maintenance of the Option Units contained in the Base Case Maintenance Model, which the Parties shall take into account in determining the Change in Costs for an Option Unit Change having regard to any changes from the assumptions made in respect of such costing;

**ORR** means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Railways Act;

**Overhaul Spares** means those Spares which are intended to be overhauled and reused including (but not limited to) those Spares set out in Part A (*Initial Spares*) of schedule 8 (*Spares and Special Tools*) of the Manufacture and Supply Agreement;

**Owner** means the Purchaser or such other person nominated by the Purchaser in accordance with clause 45.2 to take title, to have supplied to it, and own, the Purchased Equipment;

**Part** means any component, furnishing or equipment forming part of a Unit and/or any Spare and/or the Simulator;

**Party** means each of the Purchaser or the Maintainer (or, if it accedes to this Agreement, the Operator) and **Parties** shall be construed accordingly;

**Payer** has the meaning given to such term in clause 19.9(a);

**Payee** has the meaning given to such term in clause 19.9(a);

**Payment Mechanism** means the mechanism for calculating payments to be made by the Purchaser to the Maintainer during the Maintenance Period, set out in Schedule 6 (*Payment Mechanism*);

**Performance Monitoring Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Performance Monitoring Deduction** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Performance Regime** means the regime for monitoring the performance of the Maintainer in carrying out the Maintainer Obligations during the Maintenance Period, set out in Schedule 5 (*Performance Regime*);

**Performance Regime Adjustment** is the adjustment calculated in accordance with Schedule 5 (*Performance Regime*) taking into account the Adjustments listed in paragraph 1.2 of Schedule 5;

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**Performance Review Meeting** means the meeting referred to in paragraph 8.1 of Schedule 8 (*Contract Management*);

**Period of Insurance** means the period identified in paragraph 3.6 of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*) of Schedule 11 (*Insurance*);

**Permitted Use** means the operation of the Units on any part of the LO Infrastructure and the operation of the Simulator, in each case in accordance with all Applicable Laws and Standards, Relevant Approvals and the Manuals;

**Persistent Breach** has the meaning given to such term in clause 30.3;

**Personal Data** means personal data as defined in the DPA which is supplied to the Maintainer by the Purchaser or obtained by the Maintainer in the course of performing its obligations under this Agreement;

**Preparation, Presentation and Hand-Back Procedure** means the procedure to be developed and provided by the Maintainer in accordance with clause 11.2;

**Procurement Schedule** has the meaning given to such term in Appendix 5 (*Procurement Schedule Requirements*) of Schedule 12 (*Responsible Procurement*);

**Prohibited Act** means:

- (a) offering, giving or agreeing to give any servant, agent, contractor or representative of a Public Sector Body any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with a Public Sector Body;
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with a Public Sector Body;
- (b) entering into this Agreement or any of the Project Documents or any contract with a Public Sector Body in connection with which commission has been paid or has been agreed to be paid by the Maintainer or on its behalf, or to its knowledge, unless the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Purchaser;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under law created in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with a Public Sector Body; or
- (d) defrauding or attempting to defraud or conspiring to defraud a Public Sector Body;

**Project Document** means:

- (a) the Manufacture and Supply Agreement;
- (b) the Guarantee;
- (c) any Advance Payment Bond;
- (d) the Performance Bond;
- (e) any agency agreement entered into between the Maintainer, the Operator and the Purchaser in relation to the Operator's exercise of rights and obligations under this Agreement; and
- (f) the Escrow Agreement;

**Project Office** has the meaning given to such term in clause 8.3;

**Public Sector Body** means all Ministers of the Crown, government departments, Crown agencies and authorities, local authorities or similar public sector bodies and any body corporate owned or controlled by any of them (including for the avoidance of doubt the Purchaser, TfL and the SoS);

**Purchaser Change** has the meaning given to such term in paragraph 1.1 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Purchaser Change Notice** has the meaning given to such term in paragraph 1.2 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Purchaser Contract Manager** has the meaning given to such term in paragraph 1.1 of Schedule 8 (*Contract Management*);

**Purchaser's Employee** means any director, officer, authorised agent, servant or person in the employment of the Purchaser and references in this Agreement to any personnel and/or staff and/or employee of the Purchaser shall be deemed to include references to any such person;

**Purchaser Event of Default** means any events or circumstances as described in clause 31.1;

**Purchaser Fault** means a Fault which results from:

- (a) the Operator or the Purchaser:
  - (i) operating the relevant Unit or item of Equipment materially other than in accordance with the Permitted Use; or
  - (ii) maintaining the relevant Unit or item of Equipment materially other than in accordance with the Maintenance Plan and the Manuals; or
- (b) damage to a Unit whilst that Unit is not, in accordance with the terms of this Agreement, in the Maintainer's or any Subcontractor's care, custody or control; or

- (c) damage caused to a Unit (as proved by the Maintainer and demonstrated in written evidence from a reputable and independent third party with relevant experience) as a direct result of any Railway Infrastructure (other than any Railway Infrastructure maintained by the Maintainer) being in a condition which is worse than that to be expected of such Railway Infrastructure which is being maintained by a competent maintenance contractor having regard to:
- (i) the standards applicable to such Railway Infrastructure (being Railway Group Standards in the case of Railway Infrastructure controlled by Network Rail); and
  - (ii) the condition of such Railway Infrastructure (to the extent that such Railway Infrastructure exists) at the date of this Agreement taking into account that the condition of certain parts of such Railway Infrastructure may not be compliant with Railway Group Standards,

in each case, where such Fault is not caused by: (A) an act, omission, neglect or default of the Maintainer, any member of the Maintainer's Group, any Subcontractor or Subcontractor of the Manufacturer or the employees or suppliers of any of them; or (B) the Maintainer's or the Manufacturer's performance, non-performance or purported performance of their respective obligations under this Agreement or the MSA; or (C) any failure by the Maintainer to maintain, repair or renew the assets at the Maintenance Facilities and/or the Chingford Stabling Site in accordance with this Agreement and *Purchaser Faults* shall be construed accordingly;

*Purchaser's Estate* means any area that is owned, occupied or managed by the Purchaser, TfL or any member of the TfL Group;

*Purchaser Termination Notice* has the meaning ascribed to that term in clause 30.5;

*Purpose* has the meaning given to such term in clause 12.7(a);

*Qualifying Change in Law* means a Change in Law which:

- (a) is specific (but not necessarily exclusively so) to the provision of train maintenance services of the sort carried out by the Maintainer under this Agreement at the time of the relevant Change in Law; or
  - (b) directly and specifically affects:
    - (i) staffing levels or working patterns in a manner which materially adversely affects the staffing levels or working patterns which the Maintainer can deploy in performing the Services in compliance with Law; or
    - (ii) any of the Spares used or permitted to be used and directly increases the cost of or materially prejudices the availability of any of the Spares; or
  - (c) means the Maintainer cannot perform the Services within the Train Plan Parameters,
- and in each case:

- (i) is not due to a change in Taxation;
- (ii) does not relate to pensions;
- (iii) is not due to the business or administration arrangements or structuring of the Maintainer or its Subcontractors or it or its Subcontractor's suppliers (or any member of the Group of the Maintainer, its Subcontractors or its Subcontractor's suppliers); and
- (iv) has a material and demonstrable adverse effect on the Maintainer's costs in and/or performance of, its obligations under this Agreement;

**Qualifying Change in Law Cap** means £ [REDACTED] (Indexed by RPI) per Contract Year;

**Qualifying Event** means, for the purposes of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*), a Qualifying Change in Law or an Exonerating Event that causes that or is likely to cause any of the consequences referred to in clause 22.1;

**Railway Group Standards or RGS** means:

(a) technical standards with which railway assets, or equipment used on or as part of railway assets, must conform; and

(b) operating procedures with which the operators of railway assets must comply,

in each case as issued and maintained by the Rail Safety and Standards Board and authorised pursuant to the document known as the Railway Group Standards Code;

**Railway Infrastructure** means the fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

**Railway Period** means a period of twenty-eight (28) consecutive days, which shall start on the day following the last day of the preceding such period, the first of which in each Railway Year starts at 2am on 1 April in such Railway Year, provided that the duration of the first or last Railway Period in any Railway Year may be varied by up to seven days by Network Rail;

**Railway Year** means the year commencing on 1 April and ending on 31 March;

**Recipient** has the meaning given to such term in clause 19.7(b);

**Recognised Investment Exchange** has the meaning given to such term in section 285 of the Financial Services and Markets Act 2000;

**Rectification Plan** has the meaning given to such term in clause 30.5(b)(i);

**Reference Railway Period** means the Railway Period in respect of which any calculation is performed pursuant to Schedule 6 (*Payment Mechanism*), Part B of Schedule 22 (*TSSSA Payment Mechanism*) or Part C of Schedule 23 (*Existing Fleet Payment Mechanism*), as applicable;

**Refurbishment** means any of the refurbishments in respect of the Units, Vehicles and Equipment that the Maintainer is required to carry out in accordance with Appendix 3 (*Refurbishments*) to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Regulator** means the office of rail regulation from time to time established under the Railways and Transport Safety Act 2003 and includes any successor to all or any of its functions;

**Relevant Approvals** means all up-to-date consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, permits, registrations, notarisations, declarations, letters of no objection and other matters required in each case from any Competent Authority, pursuant to any Applicable Laws and Standards in relation to any of the Maintainer's obligations under this Agreement including (without limitation) under the Act, ROGS and the Interoperability Regulations;

**Relevant Event** means:

- (a) a Purchaser Change;
- (b) a Qualifying Change in Law;
- (c) a Qualifying Event; or
- (d) any other matter as a result of which there may be adjustments to the Service Payments in accordance with clause 24 (*Financial Adjustments*);

**Relevant Property** means the LO Infrastructure and any other property belonging to any of the Indemnified Parties;

**Remedial Action** means any or all of the following:

- (a) any works, steps or measures to clean-up, prevent, minimise, contain, remedy, abate, ameliorate or mitigate the presence of any Hazardous Substances, or the actual or potential effect of any Hazardous Substances on the Environment; or
- (b) any works, steps or measures to prevent an Environmental Claim;
- (c) any inspections, investigations, assessments, audits, sampling or monitoring reasonably required in relation to (a) or (b) above,

in each case to the extent required under Environmental Laws or required pursuant to any requirement or direction of any Environmental Competent Authority including an agreement that is entered into with the Environmental Competent Authority where a failure to enter into or take steps to comply with the obligations under that agreement would be reasonably likely to result in a criminal offence being committed or other enforcement action being taken by the relevant Environmental Competent Authority;

**Remedial Plan** has the meaning given to such term in clause 30.2(a)(iii);

**Remedy Period** has the meaning given to such term in paragraph 3.5(c)(i) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Repair** means to restore an original part to the appropriate condition by hand-tooling, machining, building up, welding, patching, bending, setting, heat-treating, re-securing and/or other appropriate process;

**Request for Additional Services Authorisation** has the meaning given to such term in paragraph 3.3 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Request for Review** means a document of that name in the form agreed between the Parties from time to time requesting the Purchaser to review certain documents for Assurance Acceptance;

**Required Action** has the meaning given to such term in clause 14.3;

**Required Action Period** means the period in which the Required Action is taken;

**Required Insurances** has the meaning given to such term in paragraph 1.1 of Part A (*Maintainer Obligations*) of Schedule 11 (*Insurance*);

**Restricted Information** has the meaning given to such term in clause 12.7;

**Retendering Information** has the meaning given to such term in clause 18.2(a)(iii)(A);

**Retention Account** has the meaning given to such term in paragraph 2.2 in Part B (*Return Procedures*) of Schedule 7 (*Return of Assets*);

**Retention Period** has the meaning given to such term in clause 17.3(a)(ii);

**Return** means the delivery to the Purchaser and/or the Purchaser's nominee of the Return Assets on the expiry, earlier termination of this Agreement or implementation of a TSSSA Change;

**Return Assets** means those assets listed in paragraph 1.2 of Part A (*Return Condition*) of Schedule 7 (*Return of Assets*) to be Returned to the Purchaser in the relevant Return situation;

**Return Condition** means the condition that each Return Asset must be in on Return as described in paragraph 2.2 of Part A (*Return Condition*) of Schedule 7 (*Return of Assets*);

**Return Date** means the date specified by the Purchaser on which the Return shall take place;

**Return Location** means the location or locations notified by the Purchaser to the Maintainer for the Return of the Return Assets;

**ROGS** means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**RSSB** means the Rail Safety and Standards Board Limited, a company incorporated in England and Wales with registered number 04655675, and any successor body;

**Safety Certificate** has the meaning given to such term in the ROGS;

**Safety Management System** has the meaning ascribed to that term in the ROGS;

**Safety Obligations** means all applicable obligations concerning health and safety arising under Applicable Laws and Standards (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice in Great Britain or other applicable jurisdiction);

**Scheduled Commencement Date** means the date falling 10 Working Days after execution of this Agreement, or such other date as may be agreed between the Parties for commencement of this Agreement;

**Schedule of Costs** means the schedule of costs included in Appendix 1 (*Schedule of Costs*) of Schedule 10 (*Change Procedure*);

**Schedule of Payments** means the schedule of payments to be made by the Purchaser in respect of either:

- (a) a Change, provided by the Maintainer in accordance with paragraph 2.2(b) or 5.2(h) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 9 (*Payments by the Purchaser*) of Part B of Schedule 10; or
- (b) another Qualifying Event, provided by the Maintainer in accordance with paragraph 1.2(b) or 4.2(f) of Part D (*Compensation Changes*) of Schedule 10 (*Change Procedure*) and containing the information specified in paragraph 7 (*Payments by the Purchaser*) of Part D of Schedule 10;

**Second Party** has the meaning given to such term in paragraph 2.1 of Schedule 17 (*Dispute Resolution Procedure*);

**Second Railway Period** has the meaning given to such term in clause 19.5(a);

**Security Interest** means:

- (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention or other encumbrance; or
- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing; or
- (c) any agreement to give any of the foregoing; or
- (d) any arrangement to prefer one creditor over another creditor; or
- (e) the interest of the vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or

- (f) any interest described in (a) to (e) above over any interest described in (a) to (e) above;

**Senior Representatives** has the meaning given to such term in paragraph 2.2 of Schedule 17 (*Dispute Resolution Procedure*);

**Service Defect Adjustment** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Service Defect Deduction** has the meaning given to such term in:

- (a) paragraph 1.1 of Schedule 5 (*Performance Regime*) during the Maintenance Period; and
- (b) paragraph 1.1 of Part C (*TSSSA Performance Regime*) of Schedule 22 (*Technical Support and Spare Supply*) during the TSSSA Period;

**Service Payment Report** has the meaning given to such term in clause 19.2;

**Service Payments** means the service payments to be made by the Purchaser to the Maintainer during the Maintenance Period, calculated in accordance with paragraph 1.1 of Schedule 6 (*Payment Mechanism*), as varied or amended from time to time pursuant to Schedule 10 (*Change Procedure*);

**Service Records** means the records maintained by the Maintainer under clause 12 (*Maintenance Period Documentation*);

**Service Subcontractor** means a direct Subcontractor of the Maintainer which is engaged in the provision of services to the Maintainer at a TSA Facility using labour employed by such Service Subcontractor;

**Services** means:

- (a) from Acceptance of the first Unit collectively the Standard Services and the Additional Services only; and
- (b) from the date upon which any TSSSA Change Notice becomes effective the services, work and activity necessary to meet the requirements of Schedule 22 (*Technical Support and Spare Supply*);

**Services Delivery Strategy** has the meaning given to such term in paragraph 7.1 of Schedule 8 (*Contract Management*);

**Simulator** means the simulator equipment described in the Train Technical Specification;

**Simulator Adjustment** means the aggregate of the relevant Simulator Deductions for the relevant Railway Period;

**Simulator Deduction** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Performance Regime*);

**Simulator Services** means all Standard Services as they relate to the Simulator;

**Site** means the site at the Willesden Depot comprising the land shown on the demise of the Headlease;

**Site Rectification Plan** has the meaning given to such term in paragraph 1.10(c) of Schedule 9 (*Maintenance Facilities – Willesden Depot*);

**Software** means any computer program installed in or used for the operation of any Unit, Equipment, Fixed Asset, Depot Moveable Asset or IPR Asset and/or maintenance, servicing, Repairing or overhauling of any Unit, Equipment, Fixed Asset, Depot Moveable Asset or IPR Asset and any computer program required to access, install, build or compile or otherwise use any such computer program, including the access to and editing of any online/web-based IPR Assets or Special Tools;

**Source Code** means, with respect to any Software, the source code version of that Software, being all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance that Software without reference to any other person or document, and whether in eye-readable or machine-readable form;

**Spares** means all spare parts of any description including fluids, consumables, parts and assemblies required in connection with the Units supplied or to be supplied by the Maintainer and/or any Subcontractor in accordance with this Agreement or by the Manufacturer under the Manufacture and Supply Agreement, and includes any Spare which is a Standard Services Initial Spare, Additional Services Initial Spare, Standard Services Supplementary Spare or a redesigned Part;

**Spares Inventory** has the meaning given to such term in clause 9.6(b);

**Spotlessly Clean** has the meaning given to such term in paragraph 1 of Appendix 2 (*Aesthetic Condition Standards*) to Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**Stabling Sites** means, subject to the Train Plan Parameters, such stabling facilities during and/or at the end of a Diagram (as identified in Schedule 2 (*Diagrams*) where the Units for that Diagram may be stabled and any other site(s)) as may be agreed from time to time as the context requires;

**Standard Services** means the services, work and activities set out in paragraph 2 of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*) to be carried out by the Maintainer;

**Standard Services Initial Spares** means those Initial Spares set out in schedule 8 (*Spares and Special Tools*) of the Manufacture and Supply Agreement to be maintained by the Maintainer for the purposes of undertaking the Standard Services;

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**Standard Services Supplementary Spares** means any Spares subsequently acquired (to supplement the Standard Services Initial Spares) and maintained by the Maintainer during the Duration for the purposes of undertaking the Standard Services in accordance with clause 9.3(a);

**Subcontract** means any subcontract awarded by, or to be awarded by, the Maintainer and any subcontract awarded by any person who is a party to a Subcontract with the Maintainer or awarded by any party to a subcontract with a Subcontractor, and so on, in relation to, or connected with, the carrying out of the obligations of the Maintainer under this Agreement;

**Subcontractor** means any party to a Subcontract, other than the Maintainer;

**Suitable Lessor** means a person (other than a Competitor) that, in the Purchaser's reasonable opinion, has the capacity to meet any payment obligations under this Agreement as may be transferred to it;

**Supplier** has the meaning given to such term in clause 19.7(b);

**Taxes** means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Competent Authority, together with any penalties, additions, fines, surcharges or interest relating thereto and **Tax** and **Taxation** shall be construed accordingly;

**Technical Documents** means all documents, drawings and data to be provided by the Maintainer to the Purchaser (in original or copy form (as applicable)) and updated pursuant to the terms of this Agreement, including but not limited to:

- (a) Services Delivery Strategy;
- (b) copies of all Relevant Approvals and notices from Competent Authorities and Network Rail;
- (c) all documentation to be provided for TSA Assurance Acceptance pursuant to paragraph 2 (*TSA Assurance Acceptance Process*) of Schedule 8 (*Contract Management*);
- (d) any plan required pursuant to Schedule 14 (*Health & Safety*), Schedule 15 (*Environment*) or Schedule 12 (*Responsible Procurement*);
- (e) the Fault Notification Procedure;
- (f) the Preparation, Presentation and Hand-Back Procedure;
- (g) the Service Records;
- (h) the Maintenance Plan;
- (i) the Manuals;
- (j) the Software and, where any Maintainer Software exists, the Maintainer Software;
- (k) the In-Service Support Procedure;

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- (l) all documents, appraisals and notices submitted pursuant to the Change Procedure including any Modifications or Mandatory Modifications; and
- (m) all, reports, reviews, plans and strategies in relation to the performance and progress of the Services to be provided pursuant to Schedule 8 (*Contract Management*);

**Technical Library** means:

- (a) each Hand-Over Certificate and Hand-Back Certificate;
- (b) the Maintenance Plan;
- (c) the Manuals;
- (d) the Service Records;
- (e) the Software and (where any Maintainer Software exists) the maintainer Software;
- (f) the Technical File;

**Technical Support Personnel** has the meaning given to such term in paragraph 4.1 of Part A (*TSSSA Services*) of Schedule 22 (*Technical Support and Spare Supply*);

**Technical Support Secondment** has the meaning given to such term in paragraph 4.1 of Part A (*TSSSA Services*) of Schedule 22 (*Technical Support and Spare Supply*);

**Technical Support Services** has the meaning given to such term in paragraph 4.2 of Part A (*TSSSA Services*) of Schedule 22 (*Technical Support and Spare Supply*);

**Tendered Price** means, in respect of any Tendered Works, the price calculated pursuant to the report on tenders in accordance with paragraph 4 (*Tendered Prices*) of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Tendered Works** has the meaning given to such term in paragraph 4.1 of Part B (*Purchaser Changes*) of Schedule 10 (*Change Procedure*);

**Termination Date** means the date of termination of this Agreement in accordance with its terms;

**TfL** or **Transport for London** means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

**TfL Group** means Transport for London and any member of its Group;

**Third Party IPR** means IPR, whether existing at the date of this Agreement or arising hereafter, other than the Manufacturer IPR;

**Train Management System** or **TMS** has the meaning given to such term in the Train Technical Specification;

**Train Plan** means the train plan to be produced by the Purchaser for the LO Services (and for driver training) for a Contract Year (or part thereof) in accordance with clause 11.1 specifying the Diagrams that the Purchaser/the Operator intends to

operate during the term of that train plan and, for a particular day, shall mean such train plan as may be revised (and not necessarily remaining within the Train Plan Parameters) and issued by the Purchaser/the Operator by 22:00 on the previous day in accordance with clause 11.1(d);

**Train Plan Parameters** means the Train Plan Parameters contained in Part B (*Train Plan Parameters*) of Schedule 1 (*Maintenance Services*);

**Train Services** means the services (including all passenger services, diversionary routes and ECS Movements) to be operated on the LO Infrastructure by or on behalf of the Purchaser or the Operator as set out in the Diagrams and/or the Train Plan from time to time;

**Train Technical Requirements** has the meaning given to such term in the MSA;

**Transferring Employees** means those employees of the Maintainer (or any Subcontractor) who are wholly or mainly engaged in relation to the performance of the obligations of the Maintainer (or any Subcontractor) under the Project Documents that transfer to the employment of the Purchaser or Future Service Provider under TUPE that have been identified by the Maintainer in accordance with clause 18.2(b);

**TSA Bond Step-Down Date** has the meaning given to such term in paragraph 2.1 of Schedule 20 (*TSA Performance Bond*);

**TSA Equipment** means the Simulator, the Spares, Special Tools and Maintainer Moveable Assets described in this Agreement;

**TSA Facility** means any place, including any Maintenance Facility, the Ilford Depot, a Stabling Site and/or an Operator's Control Room, that the Maintainer shall use, occupy or otherwise be responsible for in connection with the performance of the Maintainer Obligations, together in each case with so much of the area surrounding such place as is used by the Maintainer in connection with the performance of the Maintainer Obligations;

**TSA Performance Bond** means a bonding guarantee in the form set out in Schedule 20 (*TSA Performance Bond*);

**TSA Performance Bond Amount** means the amount for which the Maintainer is required to provide the TSA Performance Bond from time to time in accordance with Schedule 20 (*TSA Performance Bond*), being the Initial TSA Performance Bond Amount at the Operating Date, as increased and/or decreased thereafter in accordance with paragraphs 1.5 and 1.6 of Schedule 20;

**TSA Performance Bond Event** means:

- (a) an Insolvency Event of the TSA Performance Bond Provider;
- (b) a Performance Bond ceases to be in full force and effect; or
- (c) the TSA Performance Bond Provider's obligations under a Performance Bond are or become wholly or partly invalid or unenforceable;

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**TSA Performance Bond Provider** means a financial institution who is providing a TSA Performance Bond in accordance with the requirements of Schedule 20 (*TSA Performance Bond*);

**TSA Performance Bond Provider Downgrade** means the long-term credit rating of a TSA Performance Bond Provider falls below ■ from Standard and Poor's Rating Services or the equivalent of ■" from each one of the entities of equivalent international reputation that provide a long-term credit rating for the TSA Bond Provider;

**TSIs** has the meaning given to such term in the Interoperability Regulations;

**TSSSA Change** means the coming into effect of the Maintainer's obligations to comply with the provisions of Schedule 22 (*Technical Support and Spare Supply*) in accordance with clause 27.1;

**TSSSA Change Notice** has the meaning given to such term in clause 27.1;

**TSSSA Commencement Date** has the meaning given to such term in clause 27.2;

**TSSSA Initial Spares** has the meaning given to such term in paragraph 3.4 of Part A (*TSSSA Services*) of Schedule 22 (*Technical Support and Spare Supply*);

**TSSSA Period** means the period from and including the TSSSA Commencement Date until the expiry or earlier termination of this Agreement;

**TSSSA Service Payment** has the meaning given to such term in paragraph 1 of Part B (*TSSSA Payment Mechanism*) of Schedule 22 (*Technical Support and Spare Supply*);

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive into English Law;

**Unavailable** means in respect of an Accepted Unit that such Accepted Unit is not Available and **Unavailability** shall be construed accordingly;

**Undesirable Transferee** means

- (a) any person who is Insolvent; or
- (b) any person who is, or who is directly or indirectly controlled (having the meaning given in paragraph (a) or (b) of the definition of "Change of Control") by a person who is, a person:
  - (i) who has been convicted of a criminal offence, or a series of offences (where any relevant time period permitting the lodging of an appeal has expired or in the event an appeal has taken place no further appeal is possible) (*Convictions*), in the last three years prior to the date of the notice issued by the Maintainer pursuant to clause 47.2(a), provided that the Convictions are significant and the Maintainer could reasonably be expected to have knowledge of the Convictions by the undertaking of appropriate due diligence (for the purposes of this clause, "significant" means that the Convictions are capable of

having a material adverse effect on the performance of the Agreement by the Maintainer);

- (ii) whom it would be reasonable for a contracting authority to exclude from consideration on grounds of national security; or
- (iii) from a country which is, or who is otherwise, the subject of economic or security sanctions imposed by the United Kingdom in the form of sanctions which prevent or restrict transactions for the supply of goods or services which are the same or materially the same or which employ related technology as any goods or services to be procured or delivered under this Agreement or the MSA with the country or relevant persons from that country, whether the sanctions are in full force or suspended;

**Undisputed Amount** has the meaning given to such term in clause 19.3(c);

**Unexpected Employee** has the meaning given to such term in clause 18.4(c);

**Uninsured Loss** means that the relevant Losses are not recoverable under the Required Insurances to be taken out by the Maintainer in accordance with clause 25 (*Insurance and Risk*) (assuming that such Required Insurances have been taken out and maintained in force as required by clause 25 and taking no account of any Losses which are not recoverable as a result of any excess or deductible under any such policy of insurance);

**Unit Failure** has the meaning given to such term in paragraph 2.9(a) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*);

**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto and any similar sales, consumption or turnover Tax replacing or introduced in addition thereto;

**Vehicle** means each vehicle which forms part of a Unit on Acceptance of that Unit (including any Option Vehicle (as defined in the MSA) after Acceptance of the relevant Option Vehicle as part of the applicable Unit in 5-car formation), whether or not that Vehicle continues to form part of that Unit after Acceptance;

**Vitiating Act** has the meaning given to such term in Part D (*Endorsements*) of Schedule 11 (*Insurance*);

**Voluntary Termination** means termination in accordance with clause 26.1;

**WAI Diagrams** means the Diagrams described in Part A (*WAI Diagrams*) of Schedule 2 (*Diagrams*), and any other Diagram which the Purchaser notifies to the Maintainer will constitute a WAI Diagram from time to time in accordance with this Agreement;

**Warranty Period** means, in respect of:

- (a) each Unit, Special Tool and Simulator, the period commencing on either the date of expiry or termination of this Agreement or the TSSSA

Commencement Date (as applicable) for that Unit, Special Tool or Simulator;  
and

- (b) each Spare, the period commencing on the date of expiry or termination of this Agreement for that Spare,

and expiring one year thereafter;

*Waste* has the meaning given to such terms in the Waste Framework Directive (European Directive (WFD) 2006/12/EC), as amended by the Waste Framework Directive (Directive 2008/98/EC);

*Willesden Depot* means the light maintenance depot owned by Network Rail and to be operated by the Maintainer for light maintenance and stabling of Units in accordance with clause 7.1 and Schedule 9 (*Maintenance Facilities – Willesden Depot*);

*Willesden Licence Fee* means the fee of a peppercorn payable by the Depot Operator to Network Rail in respect of the occupation by the Depot Operator of the Willesden Depot;

*Willesden Licence Period* means the period from the Existing Fleet Commencement Date until the end of the Duration; and

*Working Day* means a weekday (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

### Interpretation

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

- (a) any reference to this Agreement includes the Schedules, Appendices and Annexes to it, each of which forms part of this Agreement for all purposes;
- (b) a reference to an enactment or statutory provision shall, unless otherwise expressly specified in this Agreement, include:
- (i) a reference to any subordinate legislation made under the relevant enactment or statutory provision, whether before or after the date of this Agreement; and
  - (ii) be a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced, whether before or after the date of this Agreement;
- (c) words importing the singular only shall include the plural and vice versa;
- (d) references to one gender include other genders;
- (e) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to that person's legal representatives, successors and permitted assignees;

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- (f) a reference to a clause, Schedule (other than to a schedule to a statutory provision) paragraph, Part, Appendix or Annex shall be a reference to a clause, schedule, paragraph, part, appendix or annex (as the case may be) of or to this Agreement and a reference in a Schedule to a Part, paragraph, Annex or Appendix shall mean references to that paragraph, part, annex or appendix of that Schedule;
- (g) if a period of time is specified as *from* or *within* a given day, or *from* or *within* the day of an act or event, it shall be calculated exclusive of that day;
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- (i) references to *writing* shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- (j) a reference to includes or including is to be construed as includes without limitation or including without limitation;
- (k) the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- (l) references to this Agreement or any other agreement or document include permitted, variations, amendments, replacements, novations or supplements to this Agreement or the other agreement or document (as the case may be);
- (m) words and expressions defined in the Railways Act 1993 shall, unless otherwise defined in this Agreement or unless the context otherwise requires, have the same meaning in this Agreement;
- (n) a reference to the *Purchaser* or the *Maintainer* includes their respective (and any subsequent) successor(s) in title, and their respective permitted transferee(s) or assignee(s);
- (o) any obligation on any Party to do or not to do anything shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by such Party's agents, servants, contractors and subcontractors of any tier and acts or omissions of either Party's agents, servants, contractors or subcontractors of any tier shall be deemed to be acts of such Party for the purposes of this Agreement;
- (p) references in this Agreement to costs, expenses and Losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar Tax properly chargeable therein in any jurisdiction;

- (q) references to amounts expressed to be *Indexed by RPI* are references to such amounts multiplied by:

$$\frac{RPI_t}{RPI_{Base}}$$

where:

- (i) *RPI<sub>t</sub>* is the value of RPI most recently published prior to the relevant calculation date; and
- (ii) *RPI<sub>Base</sub>* is the value of RPI for March 2014 as published in April 2014;
- (r) reference to a *third party* is a reference to any person who is not a Party;
- (s) a reference to any agreement or other document in the agreed form shall be deemed to be a reference to that agreement or document in the form which has been accepted by each of the Purchaser and the Maintainer and initialled on behalf of each such Party for the purpose of identification;
- (t) references to *otherwise* and words following *other* shall not be limited by any foregoing words where a wider construction is possible;
- (u) a reference to provisions of this Agreement expressed as being from one provision *to* another provision shall be construed as including both mentioned provisions;
- (v) words and expressions defined in the MSA shall, unless otherwise expressly defined in this Agreement (or where the context otherwise so requires), have the same meaning in this Agreement; and
- (w) references to a *nominee* of the Purchaser shall mean an Approved Party appointed by the Purchaser from time to time in accordance with clause 5 (*Relationship with the Operator and Representatives*).

## 2. Conditions Precedent

### Immediately Effective Clauses

- 2.1 The rights and obligations of the Parties arising under the Immediately Effective Clauses shall be of immediate effect upon execution by the last Party to execute this Agreement.

### Conditions Precedent to Commencement

- 2.2 The rights and obligations of the Parties under this Agreement (other than the rights and obligations arising under the Immediately Effective Clauses) shall be conditional upon satisfaction or waiver of the conditions set out in clauses 2.3 and 2.4, and shall come into effect upon the Commencement Date as specified in the Certificate of Commencement.

**Maintainer Conditions Precedent**

2.3 Subject to clause 2.5, the Maintainer shall provide to the Purchaser:

- (a) the Guarantee duly executed by the Guarantor;
- (b) the Manufacture and Supply Agreement duly executed by the Manufacturer;
- (c) a certified copy of:
  - (i) a resolution of the board of directors of the Maintainer or, where the Maintainer is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting:
    - (A) approving the terms of, and the transactions contemplated by, this Agreement and all the other related documents to which it is a party; and
    - (B) authorising a specified person to approve amendments to, and execute, this Agreement and all the other related documents to which it is a party;
  - (ii) a resolution of the board of directors of the Guarantor or, where the Guarantor is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting:
    - (A) approving the terms of, and the transaction contemplated by, the Guarantee; and
    - (B) authorising a specified person to approve amendments to, and execute, the Guarantee; and
  - (iii) certified copies of the most recent:
    - (A) statutory audited accounts;
    - (B) memorandum of association; and
    - (C) articles of association,(or the equivalent documentation in any jurisdiction other than England and Wales) in respect of the Maintainer and the Guarantor;
- (d) a legal opinion (in a form and substance satisfactory to the Purchaser) that the Guarantor has the requisite power and authority to execute the Guarantee and that, following such execution, the terms of the Guarantee will be binding on and enforceable against the Guarantor;
- (e) evidence that the Required Insurances that the Maintainer is required to take out and maintain in accordance with this Agreement are in full force and

effect and a letter of undertaking in the form set out in Part C (*Broker's Letter of Undertaking*) to Schedule 11 (*Insurance*); and

- (f) a completed Procurement Schedule in the form set out in Appendix 5 (*Procurement Schedule Requirements*) to Schedule 12 (*Responsible Procurement*).

The Maintainer shall use its reasonable endeavours to procure that the conditions referred to in this clause 2.3 are satisfied on or before the Scheduled Commencement Date.

#### **Purchaser Condition Precedent**

2.4 Subject to clause 2.5(b), the Purchaser shall provide to the Maintainer a certified resolution of Transport for London's Finance and Policy Committee (by way of an extract of the minutes) passed at a duly convened and held meeting:

- (a) approving the terms of, and the transactions contemplated by this Agreement and all the other related documents to which it is a party; and
- (b) authorising a specified person or persons to approve amendments to, and execute, this Agreement and all the other related documents to which it is a party.

The Purchaser shall use its reasonable endeavours to procure that the conditions referred to in this clause 2.4 are satisfied on or before the Scheduled Commencement Date.

#### **Waiver**

- 2.5 (a) The Purchaser may, by written notice to the Maintainer, waive or defer any condition precedent specified in clause 2.3 in whole or in part.
- (b) The Maintainer may, by written notice to the Purchaser, waive or defer any condition precedent specified in clause 2.4 in whole or in part.

#### **Certificate of Commencement**

- 2.6 On the later of:
  - (a) the Purchaser being satisfied that each of the conditions precedent set out in clause 2.3 has been satisfied, waived or deferred; and
  - (b) the Maintainer being satisfied that each of the conditions precedent set out in clause 2.4 has been satisfied, waived or deferred (as notified by the Maintainer to the Purchaser in writing),

the Purchaser shall issue to the Maintainer a Certificate of Commencement which shall specify the Commencement Date.

#### **Information**

- 2.7 If at any time the Maintainer becomes aware of any matter that might prevent or delay a condition precedent in clause 2.3 from being satisfied, it shall inform the

Purchaser as soon as is reasonably practicable. If at any time the Purchaser becomes aware of any matter that might prevent or delay a condition precedent set out in clause 2.4 from being satisfied it shall inform the Maintainer as soon as is reasonably practicable.

### **Effect of non-satisfaction of conditions precedent**

- 2.8 Unless all of the conditions precedent in clauses 2.3 and 2.4 are satisfied or, in the case of the conditions set out in clause 2.3 waived or deferred in writing by the Purchaser, and, in the case of the conditions set out in clause 2.4 waived or deferred in writing by the Maintainer, in each case on or before the Scheduled Commencement Date (or such later date as the Parties may agree), this Agreement (other than the Immediately Effective Clauses) shall have no force or effect, each Party shall bear their own costs in connection with the negotiation of this Agreement and neither Party shall have any obligation to the other hereunder save for any antecedent breach or under clause 41 (*Confidentiality*) which shall remain in full force and effect notwithstanding the non-satisfaction of the conditions precedent hereto.

### **3. Duration of Agreement**

#### **Commencement**

- 3.1 The Parties' rights and obligations under this Agreement shall commence in accordance with clauses 2.1 and 2.2, provided that the Maintainer's obligations to provide the Services shall not commence until the first Unit has been Accepted.

#### **Expiry or Termination**

- 3.2 Subject to clause 3.3, this Agreement shall terminate on the Expiry Date unless it has been terminated prior thereto in accordance with the provisions of this Agreement.

#### **Extension Option**

- 3.3 The Purchaser shall have the right to extend the Duration in accordance with Schedule 24 (*Extension Option*).

### **4. Representations and Warranties**

#### **Maintainer Representations and Warranties**

- 4.1 The Maintainer represents and warrants to the Purchaser as at the date of this Agreement that:
- (a) it is a corporation, duly incorporated and validly existing under the laws of England and Wales and that it has the power to own its assets and carry on its business as it is being conducted;
  - (b) the execution by it of this Agreement does not contravene any provision of:
    - (i) any existing law, treaty or regulation in force and binding on the Maintainer;

- (ii) the memorandum of association or articles of association of the Maintainer or their equivalent in a jurisdiction other than England and Wales;
  - (iii) any order or decree of any Court or arbitrator existing as at the date of this Agreement and binding on the Maintainer; or
  - (iv) any obligation which is binding upon the Maintainer or upon any of its assets or revenues;
- (c) it has the requisite power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement;
- (d) it has obtained all necessary shareholder and board approvals in respect of the execution of this Agreement and the performance of its obligations under it;
- (e) its obligations under this Agreement are valid, binding and enforceable at law and in equity in accordance with its terms;
- (f) so far as it is aware, no litigation, arbitration or administrative proceeding is current, pending or threatened to restrain the entry into, exercise of any of its rights under and/or performance or enforcement of or compliance with any of its obligations under this Agreement;
- (g) no meeting has been convened or is intended to be convened and/or so far as it is aware, no petition, application or the like is outstanding with a view to its winding-up;
- (h) the certified copies of the most recent statutory audited accounts, memorandum of association and articles of association (or the equivalent documentation in any other jurisdiction other than England and Wales) of the Maintainer delivered to the Purchaser under clause 2.3(c)(iii) are true and accurate and that no proposals are outstanding to amend those documents;
- (i) the Maintainer (and/or the relevant Subcontractors) is/are the absolute and unencumbered proprietor of all Intellectual Property Rights described in clause 16 (*Intellectual Property Rights*) or, where such Intellectual Property Rights are licensed, has/have the right to exercise those Intellectual Property Rights and grant the relevant licences of those Intellectual Property Rights to the Purchaser as contemplated by this Agreement in each case to the extent that such Intellectual Property Rights exist as at the date of this Agreement;
- (j) the entering into or performance of its obligations or exercising of its rights under this Agreement or any related document will not be in breach of, or cause to be breached, any restriction (whether arising in contract or otherwise) binding on the Maintainer or any Subcontractor or any of their respective assets or undertakings;
- (k) no Maintainer Event of Default has occurred which is continuing; and

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- (l) in entering into this Agreement none of it, any other member of the Maintainer Group nor, to the best of its knowledge and belief having made due enquiry, any Subcontractor of the Maintainer has committed any Prohibited Act.

#### **Repetition of Warranties**

- 4.2 The Parties agree that the representations and warranties set out in this clause 4 shall be deemed to be repeated by the Maintainer on the Commencement Date. The Maintainer understands and acknowledges that the Purchaser is relying on these representations and warranties and is entering into this Agreement on the basis of them.

#### **5. Relationship with the Operator and Representatives**

##### **Acknowledgement of the Operator Franchise**

- 5.1 The Maintainer acknowledges that the Purchaser may contract with the Operator to undertake the operation of the LO Concession or may undertake the operation of the LO Services by TfL or an Affiliate of TfL.

- 5.2 Consequently, the Maintainer acknowledges that, subject to clause 5.3, the Purchaser is entitled to, by notice in writing to the Maintainer:

- (a) subcontract all or any of its obligations and functions under this Agreement to the Operator and/or TfL or its Affiliates; and/or
- (b) appoint the Operator or any Affiliate of the Purchaser to exercise all or any of the Purchaser's rights, powers and entitlements under this Agreement as agent for or nominee of the Purchaser,

in each case the *Approved Party*, provided always that the Purchaser shall retain full responsibility (under, and subject to the terms and conditions (including limitations) of, this Agreement) for the acts and omissions of the Approved Party when carrying out any of the Purchaser's rights, powers and entitlements under this Agreement as if such acts and omissions were those of the Purchaser itself.

- 5.3 The Purchaser shall not be entitled to appoint the Operator to undertake on the Purchaser's behalf:

- (a) the Purchaser's payment obligations under this Agreement;
- (b) the Purchaser's rights and obligations in relation to Changes under this Agreement; and
- (c) the Purchaser's rights to terminate this Agreement.

##### **Notification**

- 5.4 Without prejudice to clause 5.2, the Purchaser shall be entitled to notify the Maintainer from time to time of any specific functions which the Approved Party will be carrying out on behalf of the Purchaser and, following any such notification, the

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Maintainer shall co-operate with the Approved Party in the performance of such functions as if they were being carried out by the Purchaser.

- 5.5 The Maintainer may rely on the authority granted under a notice served pursuant to clause 5.4 and such authority shall only lapse in accordance with the terms of the notice or where otherwise notified by the Purchaser.

#### **Co-operation**

- 5.6 The Maintainer shall co-operate in all respects with the Approved Party as if it were the Purchaser and at the request of the Purchaser shall provide to the Approved Party any assistance reasonably required by the Approved Party to undertake any functions.
- 5.7 The Parties acknowledge that the Purchaser may provide any information or documents it receives in respect of or relating to this Agreement from the Maintainer or from any third party in relation to or on behalf of the Maintainer to the Approved Party to enable it to undertake its functions.

#### **Collaborative Business Relationships**

- 5.7A Without prejudice to the generality of clause 5.6, the Maintainer shall ensure that, in its relationship with the Purchaser or any Approved Party, it shall work in accordance with BS11000 (*Collaborative Business Relationships*) and shall:
- (a) using reasonable endeavours with the cooperation of Purchaser and the first Approved Party with whom the Purchaser enters into a new LO Concession or a new appointment to undertake the operation of LO Services after the Commencement Date, submit to the Purchaser, no later than eighteen months after the Commencement Date, evidence (reasonably satisfactory to the Purchaser) of certification to ISO11000 of the Maintainer's working practices with the Purchaser and/or such Approved Party; and
  - (b) as from the date of first certification to ISO11000 of the Maintainer's working practices with the Purchaser and/or an Approved Party as referred to in paragraph (a) above, use its reasonable endeavours (with the cooperation of Purchaser and any Approved Party appointed from time to time) to maintain such certification to ISO 11000 in full force and effect until the date on which this Agreement terminates or expires in accordance with the terms set out herein.

#### **Representatives**

- 5.8 In carrying out or exercising any rights, duties and obligations under this Agreement or the other Project Documents, the Purchaser shall always be entitled to consult the Approved Party and shall be entitled to bring a representative of the Approved Party to any meeting or discussion on any matter relating to this Agreement and to disclose any information and/or documents relating to the subject matter of the Project Documents to such Approved Party.

### **Maintainer Acknowledgment**

- 5.9 The Maintainer acknowledges and confirms that an Approved Party appointed under an LO Concession to undertake the operation of the LO Services using the Units will enter into or be bound by other Operator Documents, and, subject to the operation of clause 5.11, waive any right to make any claim under this Agreement in respect of any of the Operator Documents.

### **Subsequent franchisees**

- 5.10 If the Purchaser appoints any subsequent or additional Operator or Operators, the terms of this clause shall apply in relation to such subsequent or additional Operator or Operators.

### **Amendments in light of appointment of the Operators**

- 5.11 If the Maintainer's obligation to co-operate with the Operator (including facilitating the performance by the Operator of the obligations and functions contained in its franchise agreement) causes a change in the requirements or obligations of the Maintainer under this Agreement at the request of the Purchaser, there will be a Purchaser Change for the purposes of this Agreement.

### **Definition of the Operator**

- 5.12 References in this clause to *Operator* or *Operators* or *TfL* shall be deemed to include any agents, subcontractors of any tier, officers and employees of such Operator or Operators or TfL from time to time.

## **6. Priority of Documents and Information**

### **Priority of provisions in the Agreement**

- 6.1 Unless expressly stated otherwise, where there is a conflict or other discrepancy between a clause of this Agreement and the provisions of a Schedule or Appendix to this Agreement, the provisions of the clause of this Agreement shall prevail.

### **Maintainer's acknowledgements regarding discrepancies and errors**

- 6.2 The Maintainer confirms to the Purchaser that, as at the Commencement Date, it has considered in detail this Agreement and has satisfied itself that no discrepancies or errors exist within this Agreement.

### **Notification of errors and discrepancies**

- 6.3 Each of the Purchaser and the Maintainer shall notify the Maintainer or the Purchaser (as the case may be) in writing forthwith upon becoming aware of a discrepancy or error within this Agreement and the Party in receipt of such notice shall provide proposals for resolving such error or inconsistency. Without prejudice to clause 6.5, the Parties shall endeavour to consult with each other and seek to agree the manner in which any error or discrepancy should be resolved.

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**Maintainer to inform itself fully**

- 6.4 (a) The Maintainer shall be deemed prior to entering into this Agreement to have:
- (i) inspected and examined all documents and specifications and terms, and all established Applicable Laws and Standards, associated specifications and material requirements, and
  - (ii) obtained for itself all necessary information as to risks, contingencies and all other circumstances,

which may influence or affect the amounts payable to the Maintainer and the performance of the Maintainer Obligations. The Maintainer shall be responsible for the interpretation of all such information for the purposes of this Agreement.

- (b) The Maintainer may at any time submit a reasonable request for information which is not reasonably available to the Maintainer from the Purchaser (a *Request for Information* or *RFI*) and, if the Purchaser is reasonably able to provide such information, the Parties shall agree a timescale for the provision of such information. For the avoidance of doubt, the Purchaser shall provide any information which it is able to procure on an unwarranted basis and under no circumstances shall a failure by the Purchaser to provide information to the Maintainer in response to an RFI amount to a claim by the Maintainer for relief or compensation under this Agreement.

**Exclusions of Claims or Relief**

- 6.5 Save as expressly provided herein, the Maintainer shall not be entitled to make any claim against the Purchaser or to seek any relief or remedy of any nature nor shall the Maintainer be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on the grounds:
- (a) of any errors or discrepancies;
  - (b) of any misunderstanding or misapprehension in respect of any of the matters referred to in clause 6.4; or
  - (c) that incorrect or insufficient information (including the information made available to the Maintainer at any stage) was given to it by any person whether or not in the employ of the Purchaser; or
  - (d) that, at the date hereof, it did not or could not foresee any matter which may affect or have affected the ability of the Maintainer to comply with its obligations under this Agreement.

**7. Maintenance Facilities**

**Willesden Depot**

- 7.1 The Parties have agreed that:

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- (a) the Maintainer shall use the Willesden Depot to maintain and carry out train preparation and cleaning of Units in accordance with the Preparation, Presentation and Hand Back Procedure and the Maintenance Plan and to stable Units in designated locations to the extent that the existing facilities permit; and
- (b) the Parties shall comply with the provisions of Schedule 9 (*Maintenance Facilities – Willesden Depot*).

#### **Iford A Maintenance Depot and Ilford Depot**

7.2 The Parties have agreed that the Maintainer shall use:

- (a) the Ilford A Maintenance Depot to maintain and clean Units in accordance with the Maintenance Plan and to stable Units in designated locations to the extent that the existing facilities permit;
- (b) the Ilford Depot to carry out train preparation in accordance with the Preparation, Presentation and Hand-Back Procedure; and
- (c) the Purchaser will not be obliged to procure additional equipment or facilities at the Ilford A Maintenance Depot or the Ilford Depot for use by the Maintainer.

7.3 The Maintainer acknowledges that it shall be responsible for:

- (a) procuring its access to the Ilford A Maintenance Depot and the Ilford Depot;
- (b) procuring all rights, licences and privileges required for the Maintainer to carry out its obligations under this Agreement at the Ilford A Maintenance Depot and the Ilford Depot;
- (c) adoption and implementation of all relevant security and safety requirements, rules and regulations at the Ilford A Maintenance Depot for the performance of this Agreement; and
- (d) the management, operation and maintenance of the Ilford A Maintenance Depot,

and the Maintainer shall not, save only to the extent of the Purchaser's obligations under clause 7.6, be entitled to make any claim against the Purchaser or to seek any relief or remedy of any nature nor shall the Maintainer be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any grounds arising from the matters described in paragraphs (a), (b) or (c) of this clause 7.3.

7.4 The Maintainer shall comply in all respects with the requirements and arrangements applicable at the Ilford Depot, including the depot access agreements with the relevant depot facility owner under which access to the Ilford Depot is obtained by the Maintainer.

7.5 The Maintainer will be granted access to the Ilford Depot at all reasonable times and upon reasonable notice in order to and permit a review of the condition of the Units, carry out train preparation and, if appropriate, carry out any immediately necessary

work on the Units provided that such work shall not contravene any rules related to safe methods of work imposed by the depot facility owner of Ilford Depot, and provided that the Maintainer shall not be entitled to carry out light maintenance services to the Units while at the Ilford Depot.

- 7.6 The Purchaser and the Operator and their representatives shall each have the right to access and use all parts of the Ilford A Maintenance Depot to the extent reasonably necessary for the performance of their obligations under this Agreement and 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 the Operator and their respective representatives shall at all times comply with all applicable health and safety rules published at Ilford A Maintenance Depot and ensure that their actions shall not interfere with operations at the Ilford A Maintenance Depot.
- 7.7 Without prejudice to Clause 15 (*Subcontracting*), the Maintainer shall remain fully responsible for the performance of all the Services to be undertaken by it and/or a Subcontractor at the Ilford A Maintenance Depot and the Ilford Depot.
- 7.8 The Maintainer shall procure the transportation of its staff and materials to and from and in and about the Ilford A Maintenance Depot and the Ilford Depot. The Maintainer shall procure the movement of Units around the Ilford A Maintenance Depot and the Ilford Depot in accordance with paragraph 2.14(g) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*).

#### Stabling Sites

- 7.9 The Purchaser shall procure that the Maintainer is granted access to the Stabling Sites save to the extent that this is not possible as a result of:
- (a) a breach by the Maintainer or by any Subcontractor or by the agents, employees or suppliers of any of them of the Maintainer's obligations under this Agreement or of any depot or track access agreement relating to the Stabling Sites, or a breach by the Manufacturer or by any of its Subcontractors or by the agents, employees or suppliers of any of them of the Manufacturer's obligations under the MSA;
  - (b) a Maintainer Fault; or
  - (c) any Force Majeure Event.
- 7.10 The Parties have agreed that the Maintainer shall be entitled, to the extent the existing facilities and conditions of access allow, to carry out light maintenance at the Stabling Sites.
- 7.11 The Maintainer shall comply in all respects with all requirements and arrangements at the Stabling Sites including the Operator's track access agreement with Network Rail under which access to such sites is provided and the Maintainer acknowledges such access shall be in accordance with the rules of the route.

- 7.12 The Maintainer staff present at the Stabling Sites for the purposes of this Agreement shall comply with all applicable site rules and shall have access to toilets and washrooms provided for the staff of the Operator at the location.
- 7.13 Without prejudice to Clause 15 (*Subcontracting*), the Maintainer shall remain fully responsible for the performance of all the Services to be undertaken by it and/or a Subcontractor at the Stabling Sites.
- 7.14 The Maintainer shall procure the transportation of its staff and materials to and from and in and about each Stabling Site.
- 7.15 If and to the extent that the Maintainer requires more stabling capacity than the aggregate provided in the Willesden Depot, the Ilford A Maintenance Depot, the Ilford Depot and the Stabling Sites, then the Maintainer shall indemnify the Indemnified Parties from and against all Losses arising from:
- (a) the provision of any further stabling capacity;
  - (b) any arrangements relating to such stabling capacity including its maintenance; and
  - (c) any access required to such stabling capacity.
- 7.16 The Maintainer shall procure the movement of Units around the Chingford Stabling Site in accordance with paragraph 2.14(g) of Part A (*Maintenance Services*) of Schedule 1 (*Maintenance Services*).

#### **Saving Provision**

- 7.17 Nothing in this clause 7, Schedule 9 (*Maintenance Facilities – Willesden Depot*) or this Agreement shall grant or shall be deemed to grant to the Maintainer or to any Subcontractor any right of access to any light maintenance depot which would require or is dependent on the consent of the Regulator under the Act unless and until any such Regulator consent is granted.

#### **Ownership of Assets**

- 7.18 The Maintainer and the Purchaser acknowledge and agree that the legal and beneficial title to any plant, equipment and/or other assets:
- (a) installed by the Maintainer at any TSA Facility;
  - (b) located by the Maintainer at any TSA Facility; and/or
  - (c) otherwise acquired by the Maintainer in connection with the Maintainer's occupation, maintenance and/or use of a TSA Facility and/or in performing the Maintainer Obligations at any TSA Facility,

(together *Maintainer Moveable Assets*) shall remain the property of the Maintainer at all times during the Maintenance Period and shall, except for Maintainer Excluded Assets, transfer to the Purchaser on Return, subject to the provisions of Schedule 7 (*Return of Assets*), with full title guarantee and free from any Security Interest.

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### Security and prevention of damage

- 7.19 (a) The Maintainer shall comply with the provisions of Schedule 3 (*Security and Resilience*) during the Maintenance Period.
- (b) Without prejudice to the following paragraphs of this clause 7.19, notwithstanding that the Maintainer is not responsible for security at the Stabling Sites, the Maintainer shall comply with all security protocols and instructions which apply at the Stabling Sites from time to time, and shall take all reasonable precautions to ensure that, whilst at the Stabling Sites, the Units are secure.
- (c) Without prejudice to or limiting any of the Maintainer's other obligations under this Agreement, the Maintainer shall:
- (i) take all reasonable precautions to prevent loss of or damage to the Stabling Sites resulting from theft and vandalism; and
  - (ii) take all reasonable precautions and implement all necessary security systems to prevent loss of or damage to:
    - (A) the Units and the TSA Equipment;
    - (B) the Willesden Depot and all assets listed in the Depot Asset Register; and
    - (C) all equipment or assets owned by the Purchaser or Operator or provided by the Purchaser or the Operator and owned by a third party,resulting from theft or vandalism, at all times during such periods as it shall have the care, custody and/or control of them. The Maintainer shall also use reasonable endeavours to minimise the risk of such loss or damage when working on the Units at the Stabling Sites or the Ilford Depot, or when working on the Simulator after Acceptance, notwithstanding that the Units or the Simulator (as applicable) are not in its care, custody or control.
- (d) As between the Parties, during the Maintenance Period the Units and the TSA Equipment shall be treated as being in the care, custody or control of the Maintainer when at the Ilford A Maintenance Depot and the Willesden Depot and in the care, custody and control of the Purchaser when at the Stabling Sites or the Ilford Depot and when being operated by or on behalf of the Purchaser to perform Diagrams as set out in the Train Plan (following Hand-Over by the Maintainer until Hand-Back by the Purchaser).
- (e) As between the Parties, the Simulator (once Accepted) shall be treated as being in the care, custody and control of the Purchaser.

### Tax Allowances

- 7.20 The Maintainer undertakes and confirms to the Purchaser that neither it nor any other person which is a member of the Maintainer's Group, a Subcontractor, a supplier or a

provider of finance to the Maintainer or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any capital allowances or analogous Tax allowances in respect of any Unit, any other item of Purchased Equipment, or any Depot Moveable Asset.

## 8. Maintainer's General Obligations

### General rights and obligations of the Maintainer

8.1 The Maintainer shall, with effect from the Acceptance of the first Unit by the Purchaser for the Duration have the right and obligation at its own cost and risk and without requiring any payment or contribution from the Purchaser, other than as specifically provided in this Agreement, to:

- (a) provide the relevant Services to the Purchaser;
- (b) repair and maintain the Units and the TSA Equipment and make the Units Available to the Purchaser or the Operator for the purposes of operating Diagrams in the condition required by the provisions of this Agreement during the Maintenance Period; and
- (c) return the Units and the TSA Equipment on termination or expiry of this Agreement,

in each case, subject to and in accordance with the terms of this Agreement. Further, the Parties agree that the provisions of Schedule 13 (*Open Book Accounting*) shall apply.

### Maintainer's Responsibilities

8.2 Without limiting the obligations of the Maintainer set out in clause 8.1, during the Maintenance Period the Maintainer shall be responsible for procuring:

- (a) the servicing, maintenance, support, cleaning, inspection, Repair of, and remedy of defects in the Units strictly in accordance with Schedule 1 (*Maintenance Services*) and the other provisions of this Agreement;
- (b) the provision of all services, labour (including the supervision of labour), plant, goods, materials, equipment, work facilities, patterns, jigs, tools, fixtures, Spares, Special Tools, test equipment, Software data, consumables and any other resources, whether of a permanent or temporary nature, required for the performance of the Services, save where expressly stated otherwise in this Agreement;
- (c) the transport of its staff and materials to and from and in and about each TSA Facility; and
- (d) the provision in a timely manner of such technical assistance, advice and/or information as is reasonably requested by the Purchaser or its nominee in connection, and in accordance, with this Agreement.

### Project Office

- 8.3 (a) The Maintainer shall provide an office in London (the *Project Office*) at a location to be agreed with the Purchaser for the purposes of administering its activities under this Agreement and liaising with the Purchaser's contractors and shall provide sufficient workspace and reasonable facilities to accommodate up to four of the Purchaser's staff or contractors at any one time.
- (b) The Maintainer shall ensure that certain Key Posts are based in the Project Office in accordance with Appendix 1 (*Key Posts*) of Schedule 8 (*Contract Management*).
- (c) The Maintainer may change the location of the Project Office with the prior approval of the Purchaser or shall move the Project Office if reasonably required by the Purchaser at different stages of the performance of the services.

### Existing Fleet

- 8.4 The Parties shall comply with the provisions of Schedule 23 (*Existing Fleet*) and the Maintainer shall perform its obligations in respect of the Existing Fleet in accordance with the terms set out therein.

### Performance of obligations in accordance with laws

- 8.5 In performing its obligations under this Agreement, the Maintainer shall and shall procure that its Subcontractors shall (where relevant):
- (a) comply with all Applicable Laws and Standards and continually review, throughout the Maintenance Period, its business practices, policies, standards, procedures and controls, to ensure compliance with all Applicable Laws and Standards in a manner which would be adopted by a diligent contractor acting in accordance with Good Industry Practice;
- (b) comply with their respective Safety Obligations including all relevant requirements of the HSWA, ROGS and the Transport and Works Act 1992;
- (c) comply with all directions of the Regulator and any other Competent Authority (in each case acting properly and lawfully in its role as Competent Authority) provided that the Maintainer acknowledges and agrees that compliance with the same shall not relieve the Maintainer from compliance with any of its obligations under this Agreement nor entitle it to any compensation or relief; and
- (d) comply with Environmental Laws and at all times prevent any unlawful nuisance (including noisy working operations), obstruction, trespass, interference with any right of light, way, air or water, or other interference with the rights of any adjoining landowners, tenants or occupiers or any statutory undertaker.

- 8.6 The Maintainer shall be the “entity in charge of maintenance” for the purposes of regulation 18A of ROGS and must register itself as such on the National Vehicle Register.
- 8.7 Without prejudice to clauses 8.5 and 8.6 above, the Maintainer shall comply with all relevant provisions of the Interoperability Regulations at its own costs and shall carry out its maintenance and services responsibilities under this Agreement so as to ensure that neither the Purchaser nor the Operator (as operator of the Units) is in breach of its obligations under regulation 20 (*Continuing duty on operator in relation to standards*) of the Interoperability Regulations.

#### **Standards of performance and quality**

- 8.8 The Maintainer shall at all times in performing its obligations under this Agreement:
- (a) perform its obligations in accordance with the best modern principles and practices in the activity concerned, and with all due skill, care, diligence, prudence and foresight to be expected of appropriately qualified maintainers of railway vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement and provide all necessary additional and ongoing training required to ensure the same;
  - (b) comply in all respects with the standards and methods of performance detailed in the Train Technical Requirements;
  - (c) ascertain, maintain and comply in all respects with all Applicable Laws and Standards and Relevant Approvals and perform its obligations in a safe manner and free from any material risk to the health and wellbeing of persons (including passengers) using, operating, maintaining or involved in the management of the Units, the TSA Equipment or the Services; and
  - (d) without prejudice to the foregoing, exercise all due skill, care, diligence and good safety practice in the performance of its obligations under this Agreement and not in any manner endanger the health and safety or unreasonably interfere (except as expressly provided in this Agreement) with the proper performance of the duties of the Purchaser or the Operator or the employees of either of them or those of any third parties.

#### **Independent Maintainer**

- 8.9 In entering into and performing its obligations under this Agreement, the Maintainer shall be an independent maintainer and is not and shall not hold itself out as, and shall ensure that none of its employees, Subcontractors or the employees of the Subcontractors holds itself out as, an agent of the Purchaser, TFL, any other member of the TfL Group, the Owner and/or the Operator.

#### **Responsible Procurement, equality and anti-bribery**

- 8.10 The Maintainer shall comply with the provisions of Schedule 12 (*Responsible Procurement*).

- 8.11 The Maintainer shall, at no additional cost to the Purchaser, assist and co-operate with the Purchaser where necessary to assist the Purchaser to comply with:
- (a) all relevant guidance, enactments, orders, regulations or instruments in force from time to time relating to discrimination in employment and the promotion of equal opportunities; and
  - (b) its duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a **Relevant Protected Characteristic**) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it.
- 8.12 The Maintainer shall if required, at no additional cost to the Purchaser, provide in a timely manner all such assistance to the Purchaser as the Purchaser may reasonably require in connection with the Purchaser's anti-corruption and anti-bribery procedures in compliance with the Bribery Act 2010.
- 8.13 The Maintainer shall:
- (a) promptly inform the Purchaser where formal proceedings have been issued or commenced against it in relation to a genuine allegation, complaint or information with regard to a Prohibited Act or offence under the Money Laundering Regulations 2007 relating to the Services;
  - (b) following any notification pursuant to clause 8.13(a), provide such updates and/or copies of the Maintainer's Records as the Purchaser may request in relation to such alleged Prohibited Act or offence under the Money Laundering Regulations 2007;
  - (c) without prejudice to any similar obligation contained within this Agreement, keep books and records of all financial transactions and expenditures in connection with the Services and permit the Purchaser to review and take copies of the same; and
  - (d) ensure that all Subcontracts which are entered into in connection with the Services impose obligations on the relevant Subcontractor which are identical in effect to the obligations set out in clauses 8.13(a) to (c).
- 8.14 Notwithstanding any confidentiality obligation contained within this Agreement, the Maintainer acknowledges, and shall procure that all Subcontractors acknowledge, that all information acquired by the Purchaser pursuant to clause 8.13 may be provided to any bank or other institution which may be providing finance to any member of the TFL Group in connection with this Agreement.

#### **Health and Safety**

- 8.15 The Maintainer shall comply with the provisions of Schedule 14 (*Health and Safety*).

### **Environment**

8.16 The Maintainer shall comply with the provisions of Schedule 15 (*Environment*).

### **Professional Superintendence, Skills, Qualifications and Experience**

8.17 The Maintainer shall employ or cause to be employed in connection with the provision of the Services and the performance of its other obligations under this Agreement and their superintendence, sufficient persons who have adequate knowledge of the operations and work and the levels of skills, qualifications, competence and experience in each case required to carry out the Maintainer Obligations in accordance with all Applicable Laws and Standards and Relevant Approvals and shall provide such information relating to the knowledge, skill, experience, qualification and competence of those persons and/or organisation, management and supervision of personnel as the Purchaser may reasonably request from time to time in connection with the Maintainer Obligations.

### **Units and Vehicles**

8.18 The Maintainer undertakes to the Purchaser that it shall and shall procure that its Subcontractors shall:

- (a) not do or fail to do or knowingly allow something to be done or not done which might reasonably be expected to jeopardise the rights and interests of the Purchaser, the Owner or the Operator in any Unit or Vehicle while the Units or Vehicles are in the care, custody and/or control of the Maintainer;
- (b) not create any Security Interest over the title, rights and interest of the Purchaser, the Owner or the Operator in any Unit or Vehicle;
- (c) not do, or allow anything to be done (other than by the Purchaser or any person exercising the rights of the Purchaser in respect of the Units or Vehicles) which may reasonably be expected to expose the Units or Vehicles to penalty, forfeiture, impounding, detention, appropriation, damage or destruction while the Units or Vehicles are in the care, custody and/or control of the Maintainer; and
- (d) not attempt, or hold itself out as having any power to sell, lease or otherwise dispose of the Units, the Vehicles, the Spares or the Special Tools.

### **Liability for Performance**

8.19 Notwithstanding any other provision of this Agreement, no examination or lack of examination and/or the giving or issue of any approval, consent or certificate or any delay in respect of the foregoing by the Purchaser or any other Purchaser's employee under or in accordance with this Agreement shall relieve or absolve the Maintainer from any liability to the Purchaser arising out of, or connected with, the performance or non-performance of the Maintainer Obligations under this Agreement.