

THIS AGREEMENT is dated 2 July 2007

BETWEEN

- (1) **RAIL FOR LONDON LIMITED**, whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL (*RfL*) and registered number is 05965930; and
- (2) **MTR LAING METRO LIMITED**, whose registered office is at Allington House, 150 Victoria Street, London, SW1E 5LB and registered number is 05668786 (the *Operator*).

WHEREAS

(A) RfL wishes to appoint an operator, and the Operator wishes to be appointed, to provide railway passenger services within the LRC and RfL expects its operator and the Operator is willing, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Concession Term from its employees, its Train Fleet and other assets, and from the Infrastructure Managers and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

(B) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recital (A).

1. INTERPRETATION

1.1 This Agreement and the Conditions Precedent Agreement, together constitute a single agreement.

1.2 In this Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) the words “subsidiary”, “wholly owned subsidiary” and “parent undertaking” have the same meaning in this Agreement as in Sections 258 and 736 of the Companies Act 1985;
- (f) references to documents “in the agreed terms” are references to documents initialled by or on behalf of RfL and the Operator;
- (g) references in any of the agreements comprising this Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that

agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;

- (h) references in any Schedule in any of the agreements comprising this Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which RfL reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “notify”, “endorse”, “consent”, “approve”, “waive”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Operator bidding for Train Slots or a Timetable shall mean the final action incumbent on the Operator under the Network Code, or any code or agreement on substantially similar terms to the Network Code, to confirm to the relevant Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and “bid” shall be construed accordingly;
- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger’s Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;

- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to “railway passenger services” are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 2 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Operator shall be to such sums exclusive of Value Added Tax;
- (x) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (y) the words “shall not be liable” are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate; and
- (z) references to a “contravention of this Agreement” (and cognate expressions) are to be construed as meaning a breach of this Agreement.

2. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

2007 Valuation has the meaning given to it in paragraph 3.1 of Schedule 19 (*Pensions*);

Access Agreement has the meaning given to the term “access agreement” in Section 83(1) of the Act;

Act means the Railways Act 1993;

Actual Passenger Demand has the meaning given to it in paragraph 1 of Schedule 1.5 (*Information about Passengers*);

[REDACTED]¹

Actuarial Effective Date has the meaning given to it in paragraph 3.1 of Schedule 19 (*Pensions*);

¹ This information is exempt from disclosure under [REDACTED] 43(2) of the Freedom of Information Act 2000.

Actuary has the meaning given to it in the Pension Trust;

Affected Stations has the meaning given to it in paragraph 2.2 of Schedule 1.10 (*NLRIP Possessions*);

Affiliate means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person;

Agreed Communications Plan means the communications plan set out in the document in the agreed terms marked **EDR**;

Agreed Equality Policy means the equality and diversity policy set out in the document in the agreed terms marked **EDR**;

Agreed Supplier Diversity Plan means the supplier diversity plan set out in the document in the agreed terms marked **EDR**;

Agreed Training Plan means the diversity training plan set out in the document in the agreed terms marked **EDR**;

Ancillary Service means any service specified in paragraph 5 of Schedule 1.6 (*Concession Services*);

Annual Audited Accounts means the accounts of the Operator which:

- (a) comply with paragraph 3.9 of Schedule 16 (*Information and Industry Initiatives*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 3.7 of Schedule 16 and certified by the Operator's auditors as true and fair;

Annual Concession Payment means, in relation to any Concession Year, or where an extension is required pursuant to paragraph 1.3 of Schedule 21 (*Continuation of LRC*), the amount determined in accordance with Schedule 11.2 (*Annual Concession Payments*);

[REDACTED]²

Annual Management Accounts means the management accounts of the Operator which:

- (a) comply with paragraph 3.8 of Schedule 16 (*Information and Industry Initiatives*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 3.6 of Schedule 16;

Assurance Acceptance has the meaning given to it under the ELL Main Works Contract;

ATOC means the Association of Train Operating Companies;

Average Earnings Index means the average earnings index:

- (a) for the whole economy of Great Britain;

² This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

- (b) seasonally adjusted; and
- (c) excluding bonuses,

as published from time to time by the Office for National Statistics or, if such index shall cease to be published or if there is a material change in the basis of the index, such other average earnings index as RfL may, after consultation with the Operator, determine to be appropriate in the circumstances;

Bank means a person which has a permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder and which is reasonably acceptable to RfL;

Bank Holiday means any day other than a Saturday or Sunday on which Banks in the City of London are not open for business;

Base Ilford Investment has the meaning given to it in Schedule 10 of the MSA;

BME means a business which is at least 51 per cent. owned by members of one or more black or minority ethnic groups;

Bond Provider means any person or persons who may provide or be an obligor under a Performance Bond from time to time and who shall, unless RfL otherwise agrees, be a Bank;

Brand Licence means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Operator or between TfL (or any company wholly owned by TfL) and the Operator in respect of any registered or unregistered trade marks;

British Transport Police Agreement means the agreement between the British Railways Board and the Operator in respect of the provision of police services by BTP;

BTP means the British Transport Police Authority established by Section 18(1) of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in that act;

Business Action Plan means an action plan produced by the Operator in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraph 2.7 of Schedule 16 (*Information and Industry Initiatives*);

Business Day means a day (other than a Saturday or Sunday) on which Banks in the City of London are open for business;

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 to 2.4 of Schedule 16 (*Information and Industry Initiatives*);

Cancellation means a Passenger Service:

- (a) which is included in the Plan of the Day and which is cancelled and attributed to the Operator pursuant to any Track Access Agreement;
- (b) which is included in the Plan of the Day and which operates less than 50 per cent. of its scheduled mileage for reasons attributed to the Operator pursuant to any Track Access Agreement; or

- (c) which is omitted from the Plan of the Day, or included in it in a modified form that does not enable the Operator to operate more than 50 per cent. of such Passenger Service's scheduled mileage, without the Operator discharging its obligations under Schedule 1.2 (*Passenger Service Operating Obligations*) in relation thereto;

Capital Expenditure has the meaning given to it in paragraph 4 of Schedule 22 (*Other Provisions*);

Carriage of Bicycles Policy means the document in the agreed terms marked **CBP**;

Category A Station means any Station listed in Table 2 in the Appendix (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*);

Category B Station means any Station listed in Table 3 in the Appendix (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*);

CEDR has the meaning given to it in paragraph 4.4 of Schedule 22 (*Other Provisions*);

Certificate of Commencement means the certificate to be issued by RfL pursuant to the Conditions Precedent Agreement;

Change means if and whenever any of the following occurs:

- (a) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Concession Payments pursuant to Schedule 11.3 (*Track Access Adjustments and Station Charge Adjustments*));
- (b) a Charge Variation;
- (c) a change to the Service Level Commitment previously in force by the issue of a new Service Level Commitment in accordance with paragraph 8 of Schedule 1.1 (*Passenger Service Development*), but excluding:
- (i) the issue of each of SLC1a, SLC1b, SLC1c, SLC1d and SLC1e, in each case, to the extent that it is in accordance with the terms of the Priced Option set out in paragraph 5 of Schedule 10.1 (*List of Priced Options*); and
 - (ii) the issue of SLC2 to the extent that it is in accordance with the terms of the Priced Option set out in paragraph 3 of Schedule 10.1 (*List of Priced Options*);
- (d) the Operator is required to take any action pursuant to paragraph 13.1(a) and/or 13.1(b) of Schedule 1.1;
- (e) a change effected pursuant to paragraph 6 of Schedule 1.2 (*Passenger Service Operating Obligations*), including as a result of any action that the Operator is required to take pursuant to paragraph 8.1(c) of Schedule 1.2 in respect of any guidance or plan referred to in paragraph 8.1(c) of Schedule 1.2, published, endorsed or varied by RfL after the Start Date;
- (f) a change to TfL's standards in respect of alternative transport arrangements, as referred to in paragraph 8.8(d) of Schedule 1.2, from TfL's standards which are current as at the date of signature of this Agreement;

- (g) a change to the terms of any draft Passenger's Charter required by TfL pursuant to paragraph 4.2(a) of Schedule 1.3 (*Passenger Facing Obligations*);
- (h) the imposition of any costs associated with Traveline attributed to the Operator in accordance with a national settlement plan approved by the Secretary of State;
- (i) the imposition, subject to the provisions of paragraph 2.6 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*), of any increased access charges in respect of DDA Requirements at Operator Access Stations;
- (j) the Operator is required by this Agreement to implement the Olympic Services Delivery Plan insofar as such implementation results in the imposition of costs on and/or the receipt of revenue by the Operator;
- (k) any Infrastructure Manager serves on the Operator a Possessions Strategy Notice or any notice of equivalent effect that requires a Restriction of Use of any Route for more than 28 consecutive days;
- (l) any NLRIP Possession:
 - (i) occurs outside the period specified for that NLRIP Possession in column 3 of the NLRIP Possession Table;
 - (ii) extends beyond the expected duration set out for that NLRIP Possession in column 4 of the NLRIP Possession Table; or
 - (iii) has a shorter duration than the expected duration set out for that NLRIP Possession in column 4 of the NLRIP Possession Table;
- (m) **[REDACTED]**³
- (n) LUL does not require the Operator to provide the support services described in paragraph 3 of Schedule 1.14 (*Services to LUL*) for the full first 26 Reporting Periods of the Concession Period;
- (o) TfL has not introduced the New Penalty Fares Scheme by 31 December 2008;
- (p) TfL approves an amendment or proposed amendment to an Inter-Operator Scheme, to the extent (and only to the extent) that the Operator makes a saving as a consequence of such amendment or proposed amendment;
- (q) either of the following Stations is not available for use by the Operator:
 - (i) in the case of Shepherds Bush Station, by the Start Date; or
 - (ii) in the case of Imperial Wharf Station, by the Principal Change Date occurring in December 2009;
- (r) the Phase 1 Station Activities are not completed by the relevant dates set out in Schedule 3.2 (*Station Enhancements*);
- (s) to the extent that:

³ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

- (i) RfL or RfL's Representative on its behalf has issued an Instruction or notice to the Operator pursuant to clause 6.2 of Schedule 1 (*Conditions*) of the Stations Enhancements Works Agreement that constitutes a Variation (as defined under the Stations Enhancements Works Agreement) in accordance with the terms of that clause; and
- (ii) that Variation will consequently require the Operator to either incur increased or decreased maintenance costs at any Station from those maintenance costs assumed in respect of that Station in the Record of Assumptions;
- (t) RfL notifies the Operator pursuant to paragraph 4.3 of Schedule 3.2 (*Station Enhancements*) that it wishes to proceed with the implementation of any Station works contemplated by paragraph 4.1 of Schedule 3.2;
- (u) if, as a result of the late acceptance of the NLR New Trains (other than late acceptance resulting from any act or omission of the Operator or the Operator failing to perform its obligations under Schedule 4.3 (*The New Trains (Testing and Commissioning)*)), the Operator is required to continue leasing any unit or units forming part of the Interim Fleet (to be replaced by NLR New Trains) beyond 14 January 2010, or is required to lease any other unit or units beyond such date by way of replacement for such Interim Fleet units;
- (v) TTL elects under the terms of the MSA to provisionally accept a New Train with acceptance qualifications which have a material adverse effect on the ability of such New Train to operate in passenger revenue earning service;
- (w) the option under the MSA to purchase additional vehicles to convert the NLR New Trains to four-car units (as referred to in paragraph 1.2(b)(iii) of Schedule 4.3 (*The New Trains (Testing and Commissioning)*)) is exercised;
- (x) the MSA is terminated;
- (y) the TSA is terminated;
- (z) either of the following applies:
 - (i) RfL does not make available to the New Trains Maintainer the NXG Facility in the NXG Facility Condition by:
 - (A) 31 March 2009 (unless paragraph (z)(i)(B) or (z)(i)(C) applies);
 - (B) 31 August 2009, if TTL exercises the option under the TSA to make the Base Ilford Investment; or
 - (C) 31 December 2011, if TTL exercises the option under the TSA to make the Enhanced Ilford Investment; or
 - (ii) TTL does not exercise either of the options referred to in paragraph (z)(i)(B) or (z)(i)(C);
- (aa) RfL does not procure that the relevant parts of the ELL OBC are available to the Operator for fitting out of:
 - (i) the ELL Control Centre with Control Centre Systems; and

- (ii) facilities for up to 40 drivers including messing facilities, changing rooms, lockers and the use of at least two meeting rooms equipped with computer access (one large enough to accommodate eight people and the other at least 14 people),

in each case, by November 2008;

- (ab) RfL does not procure that either:

- (i) an operational Dalston Link; or
- (ii) the NLR Satellite Maintenance Facility,

is made available to the New Trains Maintainer by 31 December 2011;

- (ac) Silverlink has not continued to provide maintenance for the “Silverlink Metro” train fleet at the Willesden train maintenance depot from 11 May 2007 to the Start Date;

- (ad) the ELL Core Route TAA is granted on terms which are substantially different from those described in paragraph 1.3 of Schedule 5 (*ELL*);

- (ae) RfL notifies the Operator that it requires the Operator to employ more train crew for ELL Test Running than the number specified in paragraph 5.4 of Schedule 5;

- (af) either:

- (i) the Route between New Cross station and Dalston Junction Station is not upgraded in the manner specified in the ELL Main Works Contract and available for use by the Operator to deliver the ELL Passenger Services within 12 months of 7 November 2009;

- (ii) the Route between Dalston Junction Station and West Croydon station is not upgraded in the manner specified in the ELL Main Works Contract and available for use by the Operator to deliver the ELL Passenger Services within 12 months of 13 December 2009;

- (iii) both such Routes are upgraded in the manner specified in the ELL Main Works Contract and are available for use by the Operator to deliver the ELL Passenger Services within 12 months of their respective scheduled completion dates, but the date of the actual completion of the upgrade of one such Route, relative to the date of the actual completion of the upgrade of the other and their availability for use by the Operator to deliver the ELL Passenger Services, is different by more than three months from the relative timing of those scheduled completion and availability dates; or

- (iv) both or either of such Routes are upgraded in the manner specified in the ELL Main Works Contract and are available for use by the Operator to deliver the ELL Passenger Services, but the ELL Core Route does not satisfactorily permit or sustain operation using regenerative braking;

- (ag) the Operator incurs any liability to any employee of LUL by reason of the operation of TUPE, as a result of the temporary closure of part of the ELL to carry out the infrastructure works pursuant to the ELL Main Works Contract;

- (ah) the Operator's employment costs or the employment costs of its Subcontractors change as a result of RfL notifying the Operator of a change to the applicable rate of the London Living Wage;
- (ai) RfL notifies the Operator pursuant to paragraph 3.1 of Schedule 8.1 (*KPI Regime*) of its intention to amend the requirements of any Key Performance Indicator;
- (aj) RfL notifies the Operator pursuant to paragraph 1.2 of Schedule 8.3 (*CSS Regime*) of the requirement to implement the customer satisfaction regime developed pursuant to paragraph 4 thereof;
- (ak) RfL and the Operator agree or RfL serves written notice on the Operator, exercising RfL's right to call any Priced Option:
 - (i) on different terms from those specified in respect of that Priced Option in Schedule 10.1 (*List of Priced Options*); and/or
 - (ii) at any time after the last date for exercise of such Priced Option,in each case, only to the extent of the difference from the price specified in Schedule 10.3 (*Adjustments to Concession Payments*) caused by the difference in terms and/or the late timing of the agreement or call;
- (al) to the extent not already a Change pursuant to paragraph (b), a change is effected to the methodology for calculating the amounts that the Operator pays any Infrastructure Manager from time to time for traction current, consumed by rolling stock vehicles operated by or on behalf of the Operator over the relevant network operated by that Infrastructure Manager, including by:
 - (i) indexing those amounts by reference to an index other than the index referred to in factor *CIIEC* in the definition of *EC4TI* in paragraph 1 of Schedule 11.2 (*Annual Concession Payments*); and/or
 - (ii) rating those amounts by reference to criteria other than the time and location of such consumption, or by reference to time, location and additional criteria;
- (am) the parameters relating to the Operator contained in the formula for calculating "Train Operator Performance Sums (TPS)" in any Network Rail TAA are different from the assumed parameters specified in the ELL Assumed TPS;
- (an) either:
 - (i) RfL, in its absolute discretion, elects at any time within two months of the occurrence of a Force Majeure Event that such event shall be treated as a Change; or
 - (ii) a Force Majeure Event that continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than two consecutive months;
- (ao) RfL requests the Operator to take any action under paragraph 9.4 of Schedule 16 (*Information and Industry Initiatives*) in accordance with its terms, save that any adjustment to the Concession Payments under Schedule 12 (*Changes*) in respect of any maintenance or support costs incurred pursuant to such paragraph 9.4 shall only

be made to the extent that such maintenance and support costs are over and above the maintenance and support costs of any Computer System that is replaced;

- (ap) the Operator is required to take any action under paragraph 9.5 of Schedule 16 in accordance with its terms;
- (aq) a Variation to the terms of this Agreement pursuant to paragraph 1 of Schedule 22 (*Other Provisions*); or
- (ar) any two or more of the foregoing that RfL groups together in accordance with any procedures issued by it pursuant to paragraph 1.4 of Schedule 22;

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

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of this Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of this Agreement has been published:
 - (A) in a draft parliamentary bill as part of a government departmental consultation paper;
 - (B) in a parliamentary bill;
 - (C) in a draft statutory instrument; or
 - (D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub-paragraph (ii), each TSI shall be considered separately.

Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a **Specifically Included Change of Law**), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

Charge Variation means a variation:

- (a) to a Relevant Agreement; and

- (b) which is effected as a result of a Charging Review (including any variation effected in connection with an Incremental Output Statement Charge);

Charging Review means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Operator is a party with Network Rail on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term; or
 - (ii) Condition 23.4 of the Stations Code;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in RfL's reasonable opinion has an equivalent effect to or is intended to fulfil the same function as any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

Chiltern means The Chiltern Railway Company Limited, a company registered in England with registered number 03007939 whose registered address is 2nd Floor, Western House, Rickfords Hill, Aylesbury, Buckinghamshire, HP20 2RX;

CID means the Card Interface Device which enables passengers to top-up Oystercards with cash, permitting further journeys on the Passenger Services and other railway passenger services;

CIS means customer information system;

Closed Scheme Employees has the meaning given to it in paragraph 5(a) of Schedule 19 (*Pensions*);

Closed Schemes has the meaning given to it in paragraph 5(b) of Schedule 19 (*Pensions*);

Closure means a closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

Code of Practice means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

Collateral Agreement means an agreement which is required to be entered into by the Operator with any Infrastructure Manager or any other Train Operator as a condition to any Access Agreement of which the Operator is the beneficiary;

Committed Obligation Payment Adjustment means a payment adjustment made to Concession Payments pursuant to Schedule 9.3 (*Late/Non-Completion of Committed Obligations*);

Committed Obligations means any of the Operator's obligations listed in Schedule 9.1 (*List of Committed Obligations*);

Common Services has the meaning given to it in the Stations Code;

Completed Phase 2 Assessment has the meaning given to it in paragraph 2.6(a) of Schedule 3.2 (*Station Enhancements*);

Compliance Certificate means a certificate issued by RfL to the Operator to signify either that the Operator has satisfied the standards required of the Stations Phase 2 Works at a Station or satisfied the standards required of the Stations Phase 3 Works in respect of a Milestone for a Phase 3 Facility;

Computer System means computer hardware and computer software, including licensed third party software and data protocols;

Concession Assets means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 17.5 (*Designation of Concession Assets*) but excluding such property, rights or liabilities as shall, in accordance with the terms of this Agreement, cease to be so designated;

Concession Employee means:

- (a) any employee of the Operator from time to time; and
- (b) any other person employed by the Operator or any of its Affiliates or any subcontractor or delegate of any of the Concession Services whose contract of employment may be transferred to a Successor Operator following the expiry of the Concession Period by virtue of the operation of Law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

Concession Letting Process Agreement means the agreement so entitled dated 13 April 2006 between TfL and the Operator entered into by the Operator as part of its proposal to secure the provision and operation of the Concession Services;

Concession Manager means a person appointed by RfL to undertake the responsibilities of such person set out in Schedule 15 (*Agreement Management Provisions*);

Concession Payment means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 11.1 (*Concession Payments*);

Concession Performance Meeting means a meeting between RfL and the Operator to be held in each Reporting Period in accordance with paragraph 5 of Schedule 15 (*Agreement Management Provisions*);

Concession Period means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement pursuant to clauses 4.2(a) or 4.3(a) of the Conditions Precedent Agreement or Schedule 14 (*Remedies, Termination and Expiry*);

Concession Section has the meaning given to it in paragraph 1.1 of Schedule 19 (*Pensions*);

Concession Services means such of the Passenger Services, the Light Maintenance Services, the Station Services, the New Trains Services, the ELL Services and the Ancillary Services as the Operator may provide or operate from time to time, including any of such services as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

Concession Term means the period commencing on the Start Date and ending on the Expiry Date;

Concession Year means any period of 12 months during the Concession Period, beginning on 1 April and ending on 31 March, except that the first and last Concession Years may be for a period of less than 12 months and the first Concession Year shall begin on the Start Date and the last Concession Year shall end on the last day of the Concession Period;

Conditions Precedent Agreement means the agreement between RfL and the Operator dated the date of this Agreement, specifying the conditions to be satisfied or waived by RfL prior to the issue of a Certificate of Commencement;

Connection means a connection (however described) between any of the Passenger Services provided by the Operator and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

Connection Agreement means any agreement entered into by the Operator and any Infrastructure Manager on or before the Start Date relating to the connection of a Depot to the relevant part of the network;

Contingency Plan has the meaning given to it in paragraph 1.1(a)(iv) of Schedule 14.6 (*Force Majeure*);

Contract Manager means a person appointed by the Operator to undertake the responsibilities of such person set out in Schedule 15 (*Agreement Management Provisions*);

Control means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (b) is the parent undertaking of that person or of any other person which Controls that person; or
- (c) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle it to receive 30 per cent. or more of the amount so distributed; or

- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle it to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

Control Centre Systems has the meaning given to it in clause 2.1(a) of Schedule 2 (*Milestones and Payments*) of the Stations Enhancements Works Agreement;

Corrective Action Notice means a notice issued by RfL to the Operator pursuant to Schedule 14.3 (*Other RfL Remedies*), specifying:

- (a) which circumstance, set out in paragraph 1.1 of Schedule 14.3, the notice has been issued in response to;
- (b) the steps RfL requires the Operator to take to secure or facilitate compliance with the Relevant Term; and
- (c) the time period within which RfL requires the Operator to implement those steps;

Creating has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

CSS Regime means the regime set out in Schedule 8.3 (*CSS Regime*) to apply as between the parties following the application of the NPS Regime, subject to service of a notice by RfL to the Operator;

CSS Score has the meaning given to it in paragraph 4.3(f) of Schedule 8.3 (*CSS Regime*);

Customer Satisfaction Survey means a passenger satisfaction survey in respect of the Concession Services, which may be carried out by RfL or its nominee in accordance with the Customer Satisfaction Survey methodology and questionnaire in the agreed terms marked **CSSMQ**;

Daily Rate means, for any particular day, the amount specified in column 2 of the table set out in the Appendix (*NLR New Trains – Daily Rate*) to Schedule 4.2 (*The Interim Fleet and the DMU Fleet*) opposite the month in column 1 of such table in which such day falls;

Dalston Link has the meaning given to it in Schedule 10 of the MSA;

DDA means the Disability Discrimination Act 1995;

DDA Claim has the meaning given to it in paragraph 3.1 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

DDA Requirements means the duties of a provider of services under Sections 21(2)(a), 21(2)(b) and 21(2)(c) of the DDA;

Deductions has the meaning given to it in the TSA;

Default KPI Benchmark has the meaning given to it in paragraph 8.10 of Schedule 8.1 (*KPI Regime*);

Default MSS Benchmark means any of the benchmarks so named and set out in column 2, 3 or 4 of the Appendix (*MSS Target Levels and MSS Benchmarks*) to Schedule 8.2 (*MSS Regime*);

Default Operational Benchmark means, in relation to any Reporting Period, the number set out in:

- (a) the column relating to that Default Operational Benchmark; and
- (b) the row for that Reporting Period,

in the Operational Benchmarks Table;

Defined Contribution Arrangement has the meaning given to it in the Railways Pensions Scheme;

Departure Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport*) to Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Depot means a depot in respect of which the Operator has entered into and remains a party to a Depot Lease;

Depot Lease means:

- (a) any lease of a depot to which the Operator is a party as at the Start Date; or
- (b) any other lease of a depot in relation to which the Operator becomes the Facility Owner at any time during the Concession Period;

Depots Code means the document known as the Depots Code that replaced the National Depot Access Conditions 1996 (December Standard) or any equivalent code or agreement;

Designated Employer has the meaning given to it in the Pension Trust;

Destination Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport*) to Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Direct Agreement means any agreement made, or to be made, from time to time between RfL and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by RfL under Schedule 17.3 (*Key Contracts*);

Direct Subcontractor means any contractor or supplier (whether a third party or Affiliate) appointed by the Operator to provide goods or services in connection with the Operator's rights and/or obligations under this Agreement;

Disabled People's Protection Policy means the Operator's policy for the protection of persons with disabilities which the Operator is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

Disabled Person has the meaning given to it in the DDA;

Disabled Person's Reporting System means the system known as the Disabled Person's Reporting System (forming part of the national rail "Computer Reservation System") as described in the Code of Practice as published on 22 March 2005;

Discount Card has the meaning given to it in the Ticketing and Settlement Agreement;

Discount Fare Scheme means:

- (a) the ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
- (b) the ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
- (c) the ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (d) the Network Railcard Scheme dated 23 July 1995 between the participants named therein;
- (e) the Family Railcard Scheme dated 23 July 1995 between the participants named therein;
- (f) the Armed Forces Scheme dated 23 July 1995 between the participants named therein; and
- (g) any other discount fare scheme designated as such by RfL in accordance with paragraph 4.2 of Schedule 2.6 (*Transport, Travel and Other Fares Related Schemes*),

in each case until such time as RfL may de-designate any such scheme in accordance with paragraph 4.3 of Schedule 2.6;

Dispute has the meaning given to it in paragraph 4.1 of Schedule 22 (*Other Provisions*);

Dispute Notice has the meaning given to it in paragraph 4.3 of Schedule 22 (*Other Provisions*);

Dispute Resolution Rules means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof;

Disputes Secretary means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;

Diversity Infraction means any breach by the Operator of any of its obligations under paragraphs 1 to 6 (inclusive) of Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*) and/or any failure by a Direct Subcontractor to adopt and implement an equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 2 to 4 of Schedule 6;

DMU Fleet means the trains specified in Table 2 in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet – General*);

[REDACTED]⁴

ELL means the line of route between Dalston Junction Station, Crystal Palace Station and West Croydon station, via New Cross Gate station, including New Cross station;

ELL Access Option means the option agreement between TfL and Network Rail, granting TfL an option for itself and its nominee to access the ELL (other than the ELL Core Route) to

⁴ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

operate railway passenger services on that part of the network following the upgrade of the ELL specified in the ELL Main Works Contract;

ELL Assumed TPS means the document in the agreed terms marked **EATPS**;

ELL Commencement Date has the meaning given to it in paragraph 10.1 of Schedule 5 (ELL);

ELL Control Centre means the control centre located in the ELL OBC used in the monitoring of the operation of the ELL Passenger Services;

ELL Core Route has the meaning given to it in paragraph 1.2(a)(i) of Schedule 5 (ELL);

ELL Core Route Stations has the meaning given to it in paragraph 1.7 of Schedule 3.1 (Stations, Depots and Property Leases);

ELL Core Route TAA means the Track Access Agreement between the Operator and TfL or its subsidiary in respect of the ELL Core Route;

ELL Hazard Management Procedure has the meaning given to it in paragraph 8.12 of Schedule 5 (ELL);

ELL Main Works Contract means the contract between LUL and the Main Works Contractor, pursuant to which the Main Works Contractor will deliver the ELL infrastructure, system and assets (excluding rolling stock vehicles);

ELL Main Works Contract Project Manager means the Project Manager from time to time appointed in accordance with the ELL Main Works Contract;

ELL New Trains has the meaning given to it in paragraph 1.2(a) of Schedule 4.3 (The New Trains (Testing and Commissioning));

ELL OBC means the operational buildings complex for the ELL located within the NXG Facility;

ELL Passenger Services means Passenger Services operated over the ELL following the completion of the infrastructure works pursuant to the ELL Main Works Contract;

ELL Project Team means RfL's project team, appointed to supervise the upgrade of the ELL;

ELL Services means the services provided or to be provided by the Operator in relation to the ELL that are specified in Schedule 5 (ELL);

ELL Start of Service Steering Group has the meaning given to it in paragraph 3.2 of Schedule 5 (ELL);

ELL Stations means the ELL Core Route Stations and the Southern Stations;

ELL Test Running means together, the testing of:

- (a) the infrastructure of the ELL Core Route by the Main Works Contractor; and
- (b) both that infrastructure and the ELL New Trains concurrently by the Main Works Contractor and the New Trains Manufacturer;

ELL Trial Operations means trial operations on the ELL, as specified in paragraph 6 of Schedule 5 (*ELL*);

ELLP Rolling Stock Approvals Plan means the document titled “East London Line Project Rolling Stock Approvals Plan (ELM-TEC-204-14-06-004, Issue [4])”;

EMU means electrical multiple unit;

Enhanced Ilford Investment has the meaning given to it in Schedule 10 of the MSA;

Escrow Documents has the meaning given to it in paragraph 1.1 of Schedule 12.2 (*Identity of the Financial Model etc.*);

Estimated Revisions has the meaning given to it in paragraph 2.1 of Schedule 12.1 (*Financial Consequences of Change*);

Evening Peak means, in relation to any Passenger Service, the period between 1600 and 1859 during a Weekday or such other continuous evening three hour period as RfL may specify from time to time;

Event of Default means any of the events set out in paragraph 2 of Schedule 14.5 (*Events of Default and Termination Event*);

Exclusive Services has the meaning given to it in the Stations Code;

Existing POMs means POMs and associated equipment transferred on the Start Date by the Incumbent Operators to the Operator under the relevant transfer agreement;

Expiry Date means the later of:

- (a) the Initial Expiry Date;
- (b) 12 November 2016 if RfL exercises its discretion to continue this Agreement pursuant to paragraph 1.1 of Schedule 21 (*Continuation of LRC*); or
- (c) the date to which this Agreement is continued in accordance with paragraph 1.3 of Schedule 21;

Facility Owner has the meaning given to the term *facility owner* in Section 17(6) of the Act;

Fare means the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person;

Fare Evasion Default Level means, as a consequence of passengers travelling without a valid ticket, a Fare Evasion Rate of ten per cent. measured by any Ticketless Travel Surveys carried out during any consecutive period of 12 months during the Concession Period (measured as a moving annual average across all such surveys);

Fare Evasion Rate has the meaning given to it in the Ticketless Travel Survey Methodology and is calculated in accordance with that methodology;

Fare Evasion Target Level means, as a consequence of passengers travelling without a valid ticket, a Fare Evasion Rate of five per cent. measured by any Ticketless Travel Survey;

Fare Year means the period from 1 January in any year to 31 December in the same year;

Fares Document means the document issued by RfL to the Operator from time to time, setting out all TSA Fares that the Operator is required to Create and all Fares that the Operator is required to sell, together with the terms under which those obligations must be fulfilled, as the same may be amended from time to time in accordance with Schedule 2.4 (*Changes to Fares and Fares Documents*);

Fares Setting Round has the meaning given to it in the Ticketing and Settlement Agreement;

Fault Management System means a fault management system that allows for the electronic and manual reporting of faults in respect of certain facilities that are the subject of the KPI Regime and that has, as a minimum, the characteristics set out in paragraph 2.2 of Schedule 8.1 (*KPI Regime*);

Fault Tracking Database has the meaning given to it in paragraph 2.3 of Schedule 8.1 (*KPI Regime*);

Finance Director has the meaning given to it in paragraph 3.1(d) of Schedule 15 (*Agreement Management Provisions*);

Financial Action Plan means any action plan produced by the Operator pursuant to paragraph 3.3(f) of Schedule 16 (*Information and Industry Initiatives*), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan;

Financial Model means the Operator's financial model deposited with RfL on the date of this Agreement and as subsequently revised in each case in accordance with Schedule 12.2 (*Identity of the Financial Model etc.*);

Financial Services Authority means the independent non-governmental body given statutory powers by the Financial Services and Markets Act 2000;

Flow has the meaning given to it in the Ticketing and Settlement Agreement;

FOI Legislation means:

- (a) the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and
- (b) any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environmental Food and Rural Affairs (including each of its successors and assigns) in relation to such legislation;

Force Majeure Event means any of the events described as such in paragraph 1 of Schedule 14.6 (*Force Majeure*) where the conditions specified in paragraph 2 of Schedule 14.6 are satisfied;

Forecast Passenger Demand means the forecast by the Operator pursuant to paragraph 5.1 of Schedule 1.1 (*Passenger Service Development*) and paragraph 1.4 of Schedule 1.5 (*Information about Passengers*) in respect of:

- (a) the number of passengers travelling:
 - (i) on each Passenger Service;

- (ii) on each Route; and/or
 - (iii) at any station or between any stations; and
- (b) the times of day, week or year at which passengers travel,

for the period in respect of which the next Timetable is to apply and for five years following the date of the forecast, even if such five year period extends beyond the Concession Period;

Fund has the meaning given to it in paragraph 2.1 of Schedule 13 (*Financial Obligations and Covenants*);

GAAP means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 1985, ‘Statements of Standard Accounting Practice’, ‘Financial Reporting Standards’, abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Services Authority, in each case, as at the date of this Agreement;

Games means the Olympic Games and Paralympic Games to be held in London and other venues in the United Kingdom in 2012, the Operator’s obligations in respect of which are specified in Schedule 1.7 (*2012 Olympic Games and Paralympic Games*);

GLA Act means the Greater London Authority Act 1999;

GOB means the Route between Gospel Oak Station and Barking station and known as the ‘Gospel Oak Barking Line’;

GSM-R means the unified driver/signaller communication system known as ‘Global System for Mobile Communications – Railways’;

GSN has the meaning given to it in paragraph 8.1 of Schedule 5 (*ELL*);

Handover Package means a package containing the information and objects specified in the Appendix (*Form of Handover Package*) to Schedule 18.3 (*Handover Package*) and such other information and objects as RfL may reasonably specify from time to time;

Hazard Log has the meaning given to it in paragraph 8.12 of Schedule 5 (*ELL*);

Hot Standby means any rolling stock vehicle specified in the Train Plan which:

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and
- (c) will only be used to deliver such Passenger Services if:
 - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
 - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

Iford Facility has the meaning given to it in the TSA;

Impact Minute has the meaning given to it in the TSA;

Impact Minute Bonus has the meaning given to it in the TSA;

Impact Minute Deduction has the meaning given to it in the TSA;

Incremental Output Statement Charge means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

Incumbent Operators means Silverlink and Southern;

Indirect Subcontractor means any contractor or supplier (whether a third party or Affiliate) appointed by a Direct Subcontractor to provide goods or services in connection with the Operator's rights and/or obligations under this Agreement;

Individual Station Charge Adjustment has the meaning given to it in paragraph 2.1 of Schedule 11.3 (*Track Access Adjustments and Station Charge Adjustments*);

industrial action has the meaning given to it in paragraph **Error! Reference source not found.** of Schedule 14.6 (*Force Majeure*);

Information means information recorded in any form held by RfL or by the Operator on behalf of RfL;

Information Network has the meaning given to it in paragraph 13.1 of Schedule 16 (*Information and Industry Initiatives*);

Information Request means a request for any Information under the FOI Legislation;

Infrastructure Manager means:

- (a) in relation to the management of any Station, the Operator; and
- (b) for all other purposes, Network Rail or LUL, as the context requires;

Initial Business Plan means the business plan in the agreed terms marked **IBP**, including any adjusted version of such plan resubmitted to RfL in accordance with paragraph 2 of Schedule 16 (*Information and Industry Initiatives*);

Initial Expiry Date means 8 November 2014;

Initial Permanent Fare has the meaning given to it in the Ticketing and Settlement Agreement;

Instruction has the meaning given to it in the Stations Enhancements Works Agreement;

Integrated Transport Schemes means any schemes relating to the integration of any other form of transport with the Concession Services designated as such in accordance with paragraph 1.2 of Schedule 2.6 (*Transport, Travel and Other Fares Related Schemes*);

[REDACTED]⁵

Interest Rate means a rate equivalent to four per cent. per annum above the base lending rate published by HSBC Bank plc (or such other bank as RfL may, after consultation with the

⁵ This information is exempt from disclosure under [REDACTED] 43(2) of the Freedom of Information Act 2000.

Operator, determine from time to time) during any period in which an amount payable under this Agreement remains unpaid;

Interim Fleet means the trains specified in Table 1 in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet - General*);

Interior Cleaning Standard has the meaning given to it in paragraph 3.2 of Schedule 4.4 (*The New Trains (Train Services Agreement)*);

Inter-Operator Schemes means:

- (a) the ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) the Ticketing and Settlement Agreement;
- (c) the ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) the Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) the Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein as amended by a letter agreement dated 1 December 2000;
- (f) the National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (g) the Amended and Restated (Sundry Travelcards) Agreement dated 31 October 2005 between the participants named therein;
- (h) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Concession Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (i) any Discount Fare Scheme;

Joint Performance Improvement Plan has the meaning given to it in the Network Code;

Key Contract means:

- (a) each agreement and contract listed in the Appendix (*List of Key Contracts*) to Schedule 17.3 (*Key Contracts*) as at the date of this Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Operator is a party or under which the Operator is the beneficiary from time to time which is designated as such pursuant to Schedule 17.3 (*Key Contracts*),

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Agreement, to be designated as a Key Contract;

Key Performance Indicator means a qualitative measure of the Operator's service quality performance, specified in the Appendix (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*);

Key Personnel has the meaning given to it in paragraph 3.1 of Schedule 15 (*Agreement Management Provisions*);

KPI Adjustment means, for any Reporting Period, any payment due by the Operator to RfL pursuant to paragraph 6.2 of Schedule 8.1 (*KPI Regime*) in respect of such Reporting Period;

KPI Audit Programme has the meaning given to it in paragraph 5.1 of Schedule 8.1 (*KPI Regime*);

KPI Regime means the incentive regime for measuring the Operator's performance against certain Key Performance Indicators in ensuring service quality on the LRC, which is specified in Schedule 8.1 (*KPI Regime*);

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

Lead Operator has the meaning given to it in the Ticketing and Settlement Agreement;

Legislation means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

LENNON System means the railway industry fares Computer System known as 'LENNON' (or any successor thereto);

Level 1 Technical Case has the meaning given to it in paragraph 8.8 of Schedule 5 (*ELL*);

Level 2 Technical Case has the meaning given to it in paragraph 8.8 of Schedule 5 (*ELL*);

Licences means such licences granted or to be granted under applicable law as the Operator may be required from time to time to hold under the Act in order to provide or operate the Concession Services;

Light Maintenance Service means any service specified in paragraph 4 of Schedule 1.6 (*Concession Services*) which may be provided by the Operator at the Depots and Stations;

Local Authority means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;

- (d) any other body or council replacing any of the above from time to time; and
- (e) any other body or instrument of local or regional government specified by RfL from time to time;

Lock-up Period has the meaning given to it in paragraph 3.1 of Schedule 13 (*Financial Obligations and Covenants*);

LOCOG means the London Organising Committee of the Olympic Games Limited, a company limited by guarantee and acting as the organising committee for the Games;

LOCOG Option Agreement means any agreement entered into by the Operator and/or any advertising sales agency it appoints with LOCOG, granting LOCOG an option in respect of the use of the Media Space for a limited period before, during and a limited period after the Games, such agreement in the agreed terms marked **LOA**;

London Boroughs Concessionary Travel Scheme means the agreements (Annual and Framework) dated 22 December 2004 between TfL and the Association of London Government Transport and Environment Committee relating to the provision of concessionary travel for elderly and disabled London residents, including any modifications, renewals or replacements thereto from time to time;

London Living Wage means the basic hourly wage of £7.20 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified by RfL to the Operator;

London Living Wage Employees has the meaning given to it in paragraph 9.6 of Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*);

Long NLRIP Possessions has the meaning given to it in paragraph 4.1 of Schedule 1.10 (*NLRIP Possessions*);

LRC means the rights granted by RfL to the Operator under this Agreement to operate railway passenger services on the Routes specified in this Agreement during the Concession Period;

LRC Website means the website to be operated by RfL to provide passengers with an electronic means of obtaining information relating to the LRC and the Passenger Services, amongst other things;

LUL means London Underground Limited;

LUL (Employer) means LUL in its capacity as “Employer” under the ELL Main Works Contract;

LUL Performance Adjustment has the meaning given to it in paragraph 7.1 of Schedule 7 (*Operational Performance*);

LUL Stations has the meaning given to it in paragraph 1.1 of Schedule 1.14 (*Services to LUL*);

MAA PPM has the meaning given to it in the ELL Access Option;

Main Works Contractor means the main works contractor under the ELL Main Works Contract for the ELL infrastructure works;

Maintenance Contract means any contract or arrangement to which the Operator is a party, which includes the carrying out for the Operator of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Operator in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

Major Flow Operator has the meaning given to it in the Ticketing and Settlement Agreement;

Managed Station means London Euston or any other station used in connection with the provision of the Concession Services where Network Rail becomes the Facility Owner during the Concession Period;

Managed Station Area means the premises comprising part or parts of a Managed Station to be occupied by the Operator on or after the Start Date and to be used for or in connection with the provision of the Concession Services;

Management Accounts means, in relation to any Reporting Period, the Operator's management accounts which:

- (a) comply with paragraph 3.8 of Schedule 16 (*Information and Industry Initiatives*); and
- (b) are required to be delivered to RfL by the Operator in accordance with paragraphs 3.2 and 3.3 of Schedule 16;

Mandatory Modification means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board Limited or any government authority;

Marketing Plan means a marketing plan delivered by RfL to the Operator prior to the start of each Concession Year in accordance with paragraph 5 of Schedule 1.3 (*Passenger Facing Obligations*) setting out the marketing obligations of the Operator for that Concession Year;

Marks means such trade marks as the Operator may apply to any Primary Concession Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Concession Period and are not the subject of a Brand Licence;

Mayor's Transport Strategy means the document entitled "Mayor's Transport Strategy" as published by the Mayor of London on 10 July 2001, containing details and proposals for transport in London, including subsequent replacements or revisions thereto;

Media Space has the meaning given to it in the LOCOG Option Agreement;

Minimum Records means all information relating to the Operator's performance of paragraphs 1 to 6 of Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*) and the adoption and implementation of an equality and diversity plan, a diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of paragraphs 2 to 4 of Schedule 6, Indirect Subcontractor of the Operator;

Minor Works has the meaning given to it in paragraph 2.7(a) of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Minor Works' Budget means £250,000 for each Concession Year and allocated by the Operator for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

- (a) for any Concession Year which is shorter than 12 months, the amount shall be reduced pro-rata; and
- (b) for each Concession Year after the first Concession Year, the amount specified in paragraph (a) shall be subject to adjustment as follows:

Minor Works Budget × RPI

where RPI has the meaning given to it in Schedule 11.2 (*Annual Concession Payments*);

Minor Works' Programme means the Operator's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Concession Year pursuant to paragraph 2.7(b) of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Minutes Delay means the delay minutes to the Passenger Services:

- (a) that are attributed to the Operator or any Infrastructure Manager (as the case may be) pursuant to any Track Access Agreement; or
- (b) that are attributed to the Operator pursuant to paragraph 4.6 of Schedule 7 (*Operational Performance*) as a consequence of the occurrence of a Cancellation, a Partial Cancellation or a Short Formation;

Model Changes has the meaning given to it in paragraph 2.2 of Schedule 12.3 (*Runs of the Financial Model*);

Morning Peak means, in relation to any Passenger Service, the period between 0700 and 0959 during a Weekday or such other continuous morning three hour period as RfL may specify from time to time;

MOVie Devices means mobile Oyster viewing devices, together with associated equipment;

MSA means the Manufacture and Supply Agreement dated 31 August 2006 between TTL, the New Trains Manufacturer and LUL for the design, construction, testing, acceptance and supply of the New Trains;

MSS Benchmarks means the Remedial Plan MSS Benchmarks and the Default MSS Benchmarks;

MSS Regime means the regime set out in Schedule 8.2 (*MSS Regime*);

MSS Routes means:

- (a) together the WLL and NLL;
- (b) the GOB;
- (c) the ELL; and
- (d) the WJELL;

MSS Score has the meaning given to it in paragraph 3.1 of Schedule 8.2 (*MSS Regime*);

MTR means MTR Corporation Limited, a company registered in Hong Kong with registered number 714016 whose registered address is MTR Tower, Telford Plaza, Kowloon Bay, Hong Kong;

MWIR means the Main Works Infrastructure Requirements, comprising the MWIR-A, (Assurance), MWIR-C (Contract Management), MWIR-E (Environment), MWIR-P (Planning & Consents), MWIR-S (Scope) and MWIR-T (Technical), all of which form part of the Works Information, as defined under the ELL Main Works Contract;

Mystery Shopper Survey means a mystery shopper survey in respect of the passenger experience of the Concession Services, which may be carried out by RfL or its nominee in accordance with the Mystery Shopper Survey methodology and questionnaire in the agreed terms marked **MSSMQ**;

National Passenger Survey means a passenger satisfaction survey in respect of the Concession Services which may be carried out by the Rail Passengers' Council as described in paragraph 2 of Schedule 1.5 (*Information about Passengers*);

National Rail Enquiry Scheme means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country;

National Rail Timetable means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all railway passenger services in Great Britain;

Net Asset Statement has the meaning given to it in the Silverlink Transfer Agreement;

network agreements has the meaning given to it in paragraph 3.1(a)(i) of the Appendix (*Conditions Precedent*) to the Conditions Precedent Agreement;

Network Change has the meaning given to it in the Network Code;

Network Code means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

Network Rail means in respect of:

- (a) the network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 40 Melton Street, London NW1 2EE; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

Network Rail ELL TAA means the Track Access Agreement to be entered into between the Operator and Network Rail (which may include a supplemental agreement to any Network Rail TAA) pursuant to the ELL Access Option;

Network Rail Payment means any payment made pursuant to the Track Access Agreement between the Operator and Network Rail;

- (a) by Network Rail to the Operator to compensate the Operator for Network Rail's performance of its rights and/or obligations under that agreement; or
- (b) by the Operator to Network Rail to reward Network Rail for Network Rail's performance of its rights and/or obligations under that agreement;

Network Rail TAA means any Track Access Agreement between the Operator and Network Rail;

New DMU Trains means the trains specified in the fourth row of Table 2 in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet – General*);

new insurance arrangements shall have the meaning given to it in paragraph 8.2(b) of Schedule 17.3 (*Key Contracts*);

New Penalty Fares Scheme has the meaning given to it in paragraph 5.6 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

New POMs means POMs procured by RfL pursuant to paragraph 1.5 of Schedule 3.2 (*Station Enhancements*);

New POMs Maintainer means Shere Limited, a company registered in England with registered number 00078235 whose registered office is at 4 Bridge Park, Merrow Lane, Guildford, Surrey GU4 7BF;

New POMs Maintenance Terms means the terms in the agreed form marked *NPMT*;

New Results means, following a Run of the Financial Model in relation to any Change, the restated values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T to be specified for each Concession Year in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*);

New Trains means the trains specified in Table 3 in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet – General*);

New Trains Lease Term Sheet means the term sheet for leasing of the New Trains, in the agreed terms marked *NTLTS*;

New Trains Maintainer means Bombardier Transportation UK Limited, a company registered in England with registered number 02235994 whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD;

New Trains Manufacturer means Bombardier Transportation UK Limited, a company registered in England with registered number 02235994 whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD;

New Trains Services means the services provided or to be provided by the Operator in relation to the New Trains that are specified in Schedule 4.3 (*The New Trains (Testing and Commissioning)*) and Schedule 4.4 (*The New Trains (Train Services Agreement)*);

NLL means the Route between Richmond station and Stratford station and known as the 'North London Line';

NLR means that part of the network comprising the NLL, the WLL, the GOB and the WJELL;

NLR Access Option has the meaning given to it in paragraph 1 of Schedule 1.9 (*NLR TAA*);

NLR Control Centre means the control centre located as anticipated in paragraph 16 of Schedule 9.1 (*List of Committed Obligations*) and used in the monitoring of the operation of the Passenger Services over the NLR;

NLR New Trains has the meaning given to it in paragraph 1.2(b) of Schedule 4.3 (*The New Trains (Testing and Commissioning)*);

NLR Satellite Maintenance Facility has the meaning given to it in Schedule 10 of the MSA;

NLR Stations has the meaning given to it in paragraph 1.1 of Schedule 3.1 (*Stations, Depots and Property Leases*);

NLR TAA has the meaning given to it in paragraph 2.1 of Schedule 1.9 (*NLR TAA*);

NLRIP means the NLR infrastructure project, funded and sponsored by TfL, to enhance the capacity and/or capability of the NLR;

NLRIP Possession means a Restriction of Use associated wholly or mainly with NLRIP works;

NLRIP Possessions Table has the meaning given to it in paragraph 1 of Schedule 1.10 (*NLRIP Possessions*);

NOC has the meaning given to it in paragraph 2.15 of Schedule 3.3 (*Oyster Equipment*);

Non-Compliance Certificate means a certificate issued by RfL to the Operator to signify either that:

- (a) the works carried out at a Station do not satisfy the standards required of the Stations Phase 2 Works; or
- (b) the works carried out at a Phase 3 Facility do not satisfy the standards required of the Stations Phase 3 Works;

NPS Regime means the regime set out in Schedule 8.3 (*CSS Regime*), to apply, unless and until service by RfL of a notice to the Operator pursuant to paragraph 1.2 of Schedule 8.3 (*CSS Regime*), in which case, following the date specified in such notice, the CSS Regime will apply as between the parties in place of the NPS Regime;

NPS Score has the meaning given to it in paragraph 3.1 of Schedule 8.3 (*CSS Regime*);

NXG Facility has the meaning given to it in the TSA;

NXG Facility Condition has the meaning given to it in Schedule 10 of the MSA;

Off-Peak means, in relation to any Passenger Service, the period of time outside of the Peak;

Off-Peak Passenger Services means Passenger Services other than Peak Passenger Services;

Old Results means the following:

- (a) as produced by a Run of the Financial Model in respect of the immediately preceding Change; or

(b) as at the date hereof in respect of the first Change only,

the values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T to be specified for each Concession Year in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*);

Olympic Delivery Authority means the Olympic Delivery Authority established under Section 3 of the Olympic Games Act;

Olympic Games Act means the London Olympic Games and Paralympic Games Act 2006;

Olympic Services Delivery Plan has the meaning given to it in paragraph 3.1 of Schedule 1.7 (*2012 Olympic Games and Paralympic Games*);

Olympic Transport Plan means the Olympic Delivery Authority's transport plan required pursuant to Section 10 of the Olympic Games Act;

Operating Assets has the meaning given to it in paragraph 1.1 of Schedule 17.2 (*Maintenance of Operating Assets*);

Operational Benchmarks means the Target Operational Benchmarks, the Remedial Plan Operational Benchmarks and the Default Operational Benchmarks;

Operational Benchmarks Table means the table specified in Appendix 1 (*Operational Benchmarks Table*) to Schedule 7 (*Operational Performance*);

Operational Capability Plan has the meaning given to it in paragraph 4.6 of Schedule 5 (*ELL*);

Operational Model means the operational model of any of:

- (a) the performance model;
- (b) all cost models; and
- (c) any other relevant models that have generated input to the Financial Model,

in the agreed terms marked **OM**;

Operational Performance Adjustment means any amount determined in accordance with paragraph 3.2 of Schedule 7 (*Operational Performance*);

Operations Director has the meaning given to it in paragraph 3.1(b) of Schedule 15 (*Agreement Management Provisions*);

Operator Access Station means any station at which the Passenger Services call (other than any Station);

Operator Commission has the meaning given to it in paragraph 1.10 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Operator's Ticketing and Scheme Liabilities has the meaning given to it in paragraph 1.7 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

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 Act;

Outline Technical Case has the meaning given to it in paragraph 8.1 of Schedule 5 (*ELL*);

Oyster means the contactless smartcard ticketing system used by RfL, comprising, amongst other things, Oystercards, smartcard readers at access-control ticket gates, bus boarding areas, passenger-operated retail machines, ticket office machines and elsewhere, the communications network, data storage and other systems that connect them together to form an integrated ticketing system;

Oyster Equipment means the gatelines, passenger validators, station computers, remote ticketing devices, CIDs, MOVie Devices and all associated electrical equipment, telephone and data communication lines and equipment installed by TranSys and its subcontractors at NLR Stations, and subsequently installed or to be installed on stations on other Routes;

Oystercard means the contactless smartcard issued by TfL to its customers onto which customers can load travel products for use on TfL-funded transport services, and variants of that card issued by TfL or other organisations that have this capability, including variants that are not in card-shaped form;

PA has the meaning given to it in paragraph 3.1 of Schedule 1.14 (*Services to LUL*);

Parent means:

- (a) MTR Corporation (UK) Limited, a company registered in England with registered number 05205402, whose registered office is at 16 Theberton Street, Islington, London, N1 0QX; or
- (b) Laing Rail Limited, a company registered in England with registered number 03076782, whose registered office is at Allington House, 150 Victoria Street, London, SW1E 5LB;

Partial Cancellation means a Passenger Service which is included in the Plan of the Day and which:

- (a) misses a stop; or
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey,

in each case, for reasons which are attributed to the Operator pursuant to any Track Access Agreement;

Participating Employer has the meaning given to it in the Pension Trust;

Passenger Call Centre has the meaning given to it in paragraph 11.1 of Schedule 1.3 (*Passenger Facing Obligations*);

passenger carrying capacity means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in the Appendix (*The Train Fleet*) to Schedule 4.1 (*Train Fleet - General*)) from which the Passenger Service is formed;

Passenger Change Date means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

Passenger Services means the Operator's railway passenger services specified in any Timetable and/or in any Plan of the Day, including those railway passenger services which

the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

Passenger's Charter means the Operator's service commitments to its passengers in the agreed terms marked *PC*, as amended or replaced from time to time with the prior written consent of RfL in accordance with paragraph 4.10 of Schedule 1.3 (*Passenger Facing Obligations*);

Passenger's Charter Statistics means the record of the Operator's performance against the standards specified in the Passenger's Charter for each Reporting Period as published in accordance with paragraph 4.10 of Schedule 1.3 (*Passenger Facing Obligations*);

Payment Date means the date for the payment of Concession Payments in accordance with paragraph 2.3 of Schedule 11.1 (*Concession Payments*);

Peak means the Morning Peak and the Evening Peak;

Peak Passenger Service means any Passenger Service operated in the Peak;

Penalty Fares Provisions has the meaning given to it in paragraph 5.2 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Pending Phase 2 Assessment has the meaning given to it in paragraph 2.6(ii) of Schedule 3.2 (*Station Enhancements*);

Pension Trust means the pension trust governing the Railways Pension Scheme;

Pensions Committee has the meaning given to it in the Railways Pension Scheme;

Performance Bond means the performance bond to be provided to RfL in the form set out in the Appendix (*Form of Performance Bond*) to Schedule 13 (*Financial Obligations and Covenants*), as replaced or amended from time to time in accordance with Schedule 13;

Period PPM has the meaning given to it in the ELL Access Option;

Phase 1 Stations Activities means the activities to be carried out by RfL pursuant to paragraph 1 of Schedule 3.2 (*Station Enhancements*);

Phase 2 Contract Price means the aggregate of the amounts that may be paid by RfL to the Operator pursuant to paragraph 2.2 of Schedule 3.2 (*Station Enhancements*);

Phase 2 Standards has the meaning given to it in paragraph 2.9 of Schedule 3.2 (*Station Enhancements*);

Phase 2 Stations means the Stations listed in paragraph 2.2 of Schedule 3.2 (*Station Enhancements*);

Placed in Escrow means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of this Agreement;
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and

- (iii) audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of this Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
- (c) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 12.2 (*Identity of the Financial Model etc.*);

Plan of the Day means, in relation to each day during the Concession Period, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Operator by any Infrastructure Manager from time to time prior to 2200 on the previous day;

Plant and Materials has the meaning given to it under the ELL Main Works Contract;

Policy has the meaning given to it in paragraph 1.5 of Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*);

POM means passenger-operated ticket vending machine;

Possessions Strategy Notice has the meaning given to it in the Network Code;

Power of Attorney means the power of attorney granted by the Operator in favour of RfL in the agreed terms marked **POA**;

PPM means the percentage of Passenger Services arriving at their destination within five minutes of the arrival time scheduled for each such Passenger Service in the Plan of the Day;

PPM Concession Failure Situation has the meaning given to it in paragraph 9.9 of Schedule 7 (*Operational Performance*);

PPM Concession Target means, in respect of the relevant Concession Year ended 31 March, the PPM percentage set out in the row designated “PPM Concession Target” in the table set out in Appendix 2 (*PPM Targets*) to Schedule 7 (*Operational Performance*);

PPM Route Failure Situation has the meaning given to it in paragraph 9.6 of Schedule 7 (*Operational Performance*);

PPM Route Target means, in respect of the relevant Concession Year ended 31 March and relevant Route, the PPM percentage set out in the row relating to that Route in the row designated “PPM Route Target” in the table set out in Appendix 2 (*PPM Targets*) to Schedule 7 (*Operational Performance*);

PPM Targets means the PPM Concession Targets and the PPM Route Targets;

Previous Franchise Agreement means any franchise agreement which terminated on or about the day prior to:

- (a) the Start Date; or
- (b) 31 May 2009,

under which in either case services equivalent to the Concession Services (or a material proportion thereof) were provided by a Train Operator;

Priced Option means any of the options set out in Schedule 10.1 (*List of Priced Options*);

Primary Concession Assets means:

- (a) the property, rights and liabilities of the Operator listed in the Appendix (*List of Primary Concession Assets*) to Schedule 17.5 (*Designation of Concession Assets*); and
- (b) any other property, rights and liabilities of the Operator which is or are designated as such pursuant to Schedule 17.5,

but excluding such property, rights or liabilities as may, in accordance with the terms of this Agreement, cease to be so designated;

Principal Change Date has the meaning given to it in the Network Code;

profit means profit before corporation tax, determined in accordance with GAAP;

[REDACTED]⁶

[REDACTED]⁷

Property Lease means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Operator may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Concession Services;

Protected Employees has the meaning given to it in the Railways Pension (Protection and Designation of Schemes) Order 1994;

Protected Proposal has the meaning given to it in paragraph 1.9 of Schedule 22 (*Other Provisions*);

Proving Period has the meaning given to it in the ELL Access Option;

Proving Period Date has the meaning given to it in paragraph 10.2 of Schedule 5 (*ELL*);

PSO Technical Case has the meaning given to it in paragraph 8.1 of Schedule 5 (*ELL*);

⁶ This information is exempt from disclosure under [REDACTED] 43(2) of the Freedom of Information Act 2000.

⁷ This information is exempt from disclosure under [REDACTED] 43(2) of the Freedom of Information Act 2000.

Public Sector Operator means any person (other than a franchisee or franchise operator or concession operator in relation to the services provided or operated under its franchise agreement or concession agreement to which TfL or any member of the TfL Group is a party (as the case may be)) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005 or who is appointed by TfL or any member of the TfL Group to provide such services or operate such facilities otherwise than pursuant to a concession agreement to which TfL or a member of the TfL Group is a party;

Qualifying Change means:

- (a) any Change specified in any of the following paragraphs of that definition:
 - (i) paragraph (l) (*NLRIP Possessions*);
 - (ii) paragraph (q) (*late completion of Imperial Wharf/Shepherds Bush*);
 - (iii) paragraph (r) (*late completion of Phase 1 Station Activities*);
 - (iv) paragraph (t) (*Phase 4 Station Works*);
 - (v) paragraph (u) (*late acceptance of NLR New Trains*);
 - (vi) paragraph (ae) (*train crew for ELL Test Running*);
 - (vii) paragraph (ah) (*London Living Wage*);
 - (viii) paragraph (ai) (*Key Performance Indicators*);
 - (ix) paragraph (ak) (*Priced Options*);
 - (x) paragraph (al) (*EC4T*); or
 - (xi) paragraph (an) (*Force Majeure*); or
- (b) any other Change which would (if it were subject to a Run of the Financial Model in accordance with Schedule 12 (*Changes*)) result in adjustments in Concession Payments over the remaining life of this Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Concession Year during which the relevant Change arises, and for the purposes of ascertaining a net present value of the amount of any adjustment in any Concession Payment, it shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate as at the date of this Agreement being 3.5 per cent. per annum (in real terms)) from the date of receipt of that adjusted Concession Payment to the date of the Change;

Quality Plan means the plan specified in paragraph 4.3 of Schedule 16 (*Information and Industry Initiatives*);

Rail Corridor Plan means a study by TfL into the capacity requirements of passenger and freight services for a specific Route or other route comprising part of the network;

Rail Passengers' Council means the passengers' council established under Section 19 of the Railways Act 2005;

Railway Group Standards has the meaning given to it in the Network Code;

railway industry standards has the meaning given to it in paragraph 10.1 of Schedule 16 (*Information and Industry Initiatives*);

Railways Pension Scheme means the pension scheme established by the Railways Pension Scheme Order 1994 (SI No. 1433);

Reconciliation Amount has the meaning given to it in paragraph 8.3 of Schedule 12.3 (*Runs of the Financial Model*);

Record of Assumptions means a document prepared by the Operator in the agreed terms marked **ROA**, or as may be revised in accordance with Schedule 12 (*Changes*) and Placed in Escrow providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model;
- (b) details of how Concession Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Financial Model; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;

Relevant Agreement means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Operator in connection with the Concession Services, as replaced or amended from time to time. If and to the extent that:

- (a) following the effective date of any Charge Variation, the Operator enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) RfL has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

Relevant Debits and Credits has the meaning given to it in the Silverlink Transfer Agreement;

Relevant Default Operational Benchmark has the meaning given to it in factor **LMD** of paragraph 3.8 of Schedule 7 (*Operational Performance*);

Relevant Indemnity has the meaning given to it in the Stations Code;

Relevant Reporting Period has the meaning given to it in paragraph 4.3 of Schedule 7 (*Operational Performance*)

Relevant Term has the meaning given to it in paragraph 1.2(a) of Schedule 14.1 (*Remedial Plans and Remedial Agreements*);

Relevant Ticketless Travel Survey has the meaning given to it in paragraph 2.9(a) of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Relevant Undertaking has the meaning given to it in the Stations Code;

Relevant Year has the meaning given to it in paragraph 9.3(c) of Schedule 7 (*Operational Performance*);

Remedial Agreement has the meaning given to it in paragraph 1.5 of Schedule 14.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan has the meaning given to it in paragraph 1.2(a) of Schedule 14.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan CSS Benchmark means any benchmark set by the parties, or RfL (as the case may be) pursuant to paragraph 4 of Schedule 8.3 (*CSS Regime*);

Remedial Plan KPI Benchmark has the meaning given to it in paragraph 8.7(a) of Schedule 8.1 (*KPI Regime*);

Remedial Plan MSS Benchmark means any of the benchmarks so named and set out in column 2, 3 or 4 of the Appendix (*MSS Target Levels and MS Benchmarks*) of Schedule 8.2 (*MSS Regime*);

Remedial Plan Notice has the meaning given to it in paragraph 1.1 of Schedule 14.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan NPS Benchmark means any of the benchmarks so named and set out in column 3 of the Appendix (*NPS Target Levels and Remedial Plan NPS Benchmarks*) of Schedule 8.3 (*CSS Regime*);

Remedial Plan Operational Benchmark means, in relation to any Reporting Period, the number set out in:

- (a) the column relating to that Remedial Plan Operational Benchmark; and
- (b) the row for that Reporting Period,

in the Operational Benchmarks Table;

Remedial Plan Quality Benchmark means any Remedial Plan CSS Benchmark, Remedial Plan KPI Benchmark or Remedial Plan MSS Benchmark;

Replacement Agreement means an agreement entered into as a replacement for any Relevant Agreement;

Replacement Copy has the meaning given to it in paragraph 2.2(b) of Schedule 12.2 (*Identity of the Financial Model etc.*);

Reporting Period means a period of 28 days, provided that:

- (a) the first such period during the Concession Period shall exclude any days up to but not including the Start Date;
- (b) the first and last such period in any Reporting Year may be varied by up to seven days by notice from RfL to the Operator;
- (c) each such period shall start on the day following the last day of the preceding such period; and

- (d) the last such period during the Concession Period shall end at the end of the Concession Period;

Reporting Year means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;

Restriction of Use has the meaning given to it in the Track Access Agreements to which the Operator is a party on the Start Date;

Retail Prices Index means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as RfL may, after consultation with the Operator, determine to be appropriate in the circumstances;

Revenue means any revenue owed to or received by RfL in respect of journeys made by the passengers travelling on the Passenger Services, which shall include revenue derived from the use of Oyster products, but exclude:

- (a) any commission retained by ticket sellers;
- (b) amounts received by RfL or the Operator under:
 - (i) the London Boroughs Concessionary Travel Scheme;
 - (ii) the ATOC Staff Travel Scheme dated 23 July 1999; or
 - (iii) the British Transport Police Agreement;

Revenue Account means the bank account held with a Bank to be notified to the Operator by the Start Date in the name of RfL or such other bank account as RfL may notify to the Operator from time to time, into which the Operator is required to:

- (a) pay Ticket Revenue, other revenue from the sale of tickets and other amounts; and
- (b) to make payments to permitted third parties,

in each case, pursuant to paragraph 1 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Account Letter means the letter dated the date of this Agreement between RfL, the Operator and others concerning the arrangements for the Revenue Account;

Revenue Estimate has the meaning given to it in paragraph 1.11 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Protection Incentive Adjustment means in respect of any Revenue Protection Survey Period, any payment to be made by RfL to the Operator, or vice versa pursuant to paragraphs 2.8 or 2.9 respectively of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Protection Policy has the meaning given to it in paragraph 4.1 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Reconciliation has the meaning given to it in paragraph 1.14 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Share Adjustment means the amount of an adjustment to a Concession Payment determined in accordance with paragraph 3 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*);

Revenue Share Adjustment Date means the Payment Date for the first and seventh Reporting Period in any Concession Year in respect of which the Revenue Share Adjustment in question is being determined pursuant to paragraph 3 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*), except in respect of:

- (a) any Revenue Share Adjustment falling due in respect of the first Concession Year, in which case the Revenue Share Adjustment Date shall be the first and fourth Reporting Period in the second Concession Year; and
- (b) any Revenue Share Adjustment falling due in respect of the final Concession Year, in which case, the Revenue Share Adjustment Date shall be no later than 60 days after the end of such Concession Year;

Revenue Share Period means:

- (a) for any Concession Year other than the first or the last Concession Year;
 - (i) the first to the sixth (inclusive) Reporting Period of any such Concession Year; and
 - (ii) the seventh to the thirteenth (inclusive) Reporting Period of any such Concession Year, and
- (b) for the first and last Concession Year, the Reporting Periods that comprise that first or last Concession Year;

Review Date means:

- (a) 11 October 2007; or
- (b) such later date as may be notified to the Operator by RfL pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement;

Revised Inputs has the meaning given to it in paragraph 2.1 of Schedule 12.3 (*Runs of the Financial Model*);

RfL's Representative has the meaning given to it in the Stations Enhancements Works Agreement;

Rolling Stock Lease means any agreement for the leasing of rolling stock vehicles to which the Operator is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Operator is a party from time to time during the Concession Period whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

Rolling Stock Related Contract means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

Rolling Stock Unit means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Operator in the provision of the Passenger Services;

Route means any route specified in the Service Level Commitment which the Operator has permission to operate the Passenger Services over pursuant to any Track Access Agreement;

Route Utilisation Strategy means any route utilisation strategy or any document of a similar or equivalent nature notified to the Operator by the Network Rail on or before the Start Date or as developed by Network Rail from time to time and notified to the Operator for the purposes of this Agreement;

RSP means Rail Settlement Plan Limited;

Rules of the Plan has the meaning given to it in the Network Code;

Run of the Financial Model means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 12.3 (*Runs of the Financial Model*);

Safety Authorisation means the authorisation issued by the ORR under the Safety Regulations, authorising the Operator's safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;

Safety Certificate means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Operator's safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Routes;

Safety Director has the meaning given to it in paragraph 3.1(c) of Schedule 15 (*Agreement Management Provisions*);

Safety Regulations means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

Saver Return Fare means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;

Season Ticket Fare means a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Secretary of State means the Secretary of State for Transport;

Secure Station means a station granted secure station accreditation under the Secure Station Scheme administered by the Department of Transport and BTP;

Security Interest means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

Security of Service Letter means the letter dated the date of this Agreement between RfL, the Operator and others concerning arrangements to secure continuity of the Passenger Services in the event of termination of this Agreement;

Senior Personnel has the meaning given to it in paragraph 4.2 of Schedule 22 (*Other Provisions*);

Service Group has the meaning given to it in the Passenger's Charter when used in relation to the Passenger's Charter, and when used in this Agreement it has the meaning given to it in any Track Access Agreement, or as specified by RfL from time to time;

Service Level Commitment means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (*Passenger Service Development*), the first such service level commitment in the agreed terms marked **SLC0** and any other service level commitment developed in accordance with Schedule 1.1 or issued pursuant to Schedule 10.1 (*List of Priced Options*);

Service Recovery Plan means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or Short Formation, a plan implemented by the Operator:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with the relevant Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC "Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2006" or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Operator, the relevant Infrastructure Manager and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager or equivalent officer of the relevant Infrastructure Manager,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 14.6 (*Force Majeure*);

Settlement Proposal has the meaning given to it in paragraph 3.2 of Schedule 1.4 (*Persons with Disabilities and Disability Discrimination*);

Shared Cost Arrangement has the meaning given to it in the Railways Pension Scheme;

Shared Facilities means those facilities in respect of which the Operator and any Infrastructure Manager carry out their respective activities concurrently;

Short Formation means the operation of a Passenger Service with fewer rolling stock vehicles than the number of rolling stock vehicles scheduled to be operated by the Operator in the Train Plan;

Short NLRIP Possessions has the meaning given to it in paragraph 4.2 of Schedule 1.10 (*NLRIP Possessions*);

significant alterations shall, in relation to a Timetable, include alterations to the Timetable which result in:

- (a) the addition or removal of railway passenger services;
- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timings for first/last trains by more than ten minutes;
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;

Silverlink means Silverlink Train Services Limited, a company registered in England with registered number 03007935, or any successor franchisee or franchise operator of the railway passenger services operated by Silverlink as at the date of this Agreement;

Silverlink Section has the meaning given to in paragraph 2 of Schedule 19 (*Pensions*);

Silverlink Transfer Agreement means the agreement entered into on or before the Start Date between the Operator and the Incumbent Operator in the agreed terms marked *STA* setting out the terms applicable to the transfer by the Incumbent Operator to the Operator of certain property, rights and liabilities;

SLC0 means the first Service Level Commitment specified and issued by RfL under this Agreement;

SLC1a means the second Service Level Commitment specified and potentially issued by RfL under this Agreement;

SLC1b means the third Service Level Commitment specified and potentially issued by RfL under this Agreement;

SLC1c means the fourth Service Level Commitment specified and potentially issued by RfL under this Agreement;

SLC1d means the fifth Service Level Commitment specified and potentially issued by RfL under this Agreement;

SLC1e means the sixth Service Level Commitment specified and potentially issued by RfL under this Agreement;

SLC2 means the seventh Service Level Commitment specified and potentially issued by RfL under this Agreement;

SME means either of the following:

(a) an enterprise which meets at least two of the following criteria:

- (i) turnover per annum of up to £5.6 million;
- (ii) an annual balance sheet total of no more than £2.8 million; and/or
- (iii) it employs 50 or less employees,

provided that, the criteria specified in paragraph (a)(ii) and (iii) will also be applied to the SME's group accounts where the turnover for that group does not exceed the figure stated in paragraph (a)(i); or

(b) an enterprise which meets at least two of the following criteria:

- (i) turnover per annum of up to £22.8 million;
- (ii) an annual balance sheet total of no more than £11.4 million; and/or
- (iii) it employs 250 or less employees,

provided that, the criteria specified in paragraph (b)(ii) and (iii) will also be applied to the SME's group accounts where the turnover for that group does not exceed the figure stated in paragraph (b)(i);

Southern means New Southern Railway Limited, a company registered in England with registered number 03010919, or any successor franchisee or franchise operator of the railway passenger services operated by Southern as at the date of this Agreement;

Southern Stations has the meaning given to it in paragraph 1.4 of Schedule 3.1 (*Stations, Depots and Property Leases*);

Spare means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

Specifically Included Change of Law has the meaning given to it in the definition of Change of Law;

Stakeholder means the Rail Passenger's Council and any relevant Local Authority;

Start Date means the time and date stated in the Certificate of Commencement as being the time at and date on which the Operator is to commence operating the Concession Services, which shall either be:

(a) 0200 on 11 November 2007; or

- (b) such later time and date as may be notified to the Operator by RfL pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement;

Station means any station in respect of which the Operator has entered into and remains a party to a Station Lease;

Station Call means the stopping of a Passenger Service at a station to allow passengers to board or alight that service, which shall include the originating station of that service;

Station Change has the meaning given to it in the Stations Code;

Station Charge Adjustment means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 11.3 (*Track Access Adjustments and Station Charge Adjustments*);

Station Lease means:

- (a) any lease of a station that the Operator is a party to as at the Start Date; or
- (b) a lease of any other station to which the Operator becomes the Facility Owner at any time during the Concession Period;

Station Service means any service specified in paragraph 3 of Schedule 1.6 (*Concession Services*) which may be provided by the Operator at the Stations;

Station Sublease means a lease or sub-lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;

Stations Code means the document known as the Stations Code that replaced the National Station Access Conditions 1995 or any equivalent code or agreement;

Stations Enhancements Works Agreement means the agreement entered into or to be entered into between RfL and the Operator for the carrying out of the Stations Phase 3 Works;

Stations Phase 2 MSS Score means the score that is specified in Attachment B (*Phase 2 MSS Completion Assessment Methodology*) of the Stations Phase 2 Specification;

Stations Phase 2 Specification means the document in the agreed terms marked **SP2S**;

Stations Phase 2 Works means the works specified works in the Stations Phase 2 Specification;

Stations Phase 3 Works means the Works, as defined in the Stations Enhancements Works Agreement;

Step-In Notice has the meaning given to it in paragraph 4.1 of Schedule 14.3 (*Other RfL Remedies*);

Step-In Period means the period between the date of any Step-In Notice and the date specified in the related Step-Out Notice that the Operator is to resume performing the Concession Services and/or meeting its obligations under this Agreement that were the subject of that Step-In Notice;

Step-Out Notice has the meaning given to in paragraph 4.9 of Schedule 14.3 (*Other RfL Remedies*);

Subcontractor means a Direct Subcontractor or Indirect Subcontractor;

Successor Operator means a Train Operator succeeding or intended by RfL to succeed (and whose identity is notified to the Operator by RfL) the Operator in the provision or operation of all or any of the Concession Services including, where the context so admits, the Operator where it is to continue to provide or operate the Concession Services following termination of this Agreement;

Successor Operator Timetable has the meaning given to it in paragraph 2.2(a) of Schedule 17.1 (*Maintenance of Concession*);

Supplemental Agreement means a supplemental agreement between the Operator and a Successor Operator to be entered into pursuant to a Transfer Notice, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 18.4 (*Provisions Applying on and after Termination*), but subject to such amendments as RfL may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of this Agreement and the date on which the relevant Transfer Notice is given and subject further to paragraph 3.2 of Schedule 18.4;

System Interface Committee means any committee of representatives of the railway industry established to consider system interface issues across the railway industry and which is designated as such by RfL;

TAA Schedule 8 has the meaning given to it in paragraph 7.1 of Schedule 7 (*Operational Performance*);

Target CSS Level means any target level to be set by the parties or RfL (as the case may be) pursuant to paragraph 4 of Schedule 8.3 (*CSS Regime*);

Target MSS Level means a target level expressed as such in any of columns 2, 3, 4 and 5 of the table set out in the Appendix (*MSS Target Levels and MSS Benchmarks*) to Schedule 8.2 (*MSS Regime*);

Target NPS Level means a target level expressed as such in Column 2 of the table set out in the Appendix (*NPS Target Levels and Remedial Plan NPS Benchmarks*) to Schedule 8.3 (*CSS Regime*);

Target Operational Benchmark means, in relation to any Reporting Period, the number set out in:

- (a) the column relating to that Target Operational Benchmark; and
- (b) the row for that Reporting Period,

in the Operational Benchmarks Table;

Target Operational Level means a target level expressed as such in the table in paragraph 3.11 of Schedule 7 (*Operational Performance*);

Target Passenger Demand means:

- (a) the greater of Actual Passenger Demand or Forecast Passenger Demand; or
- (b) as directed by RfL, either:

- (i) the lower of such levels of passenger demand; or
- (ii) any intermediate level of passenger demand;

Taxation means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of this Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

Technical Case means a structured argument, consisting of a graphical notation and supported by tabular or textual information as necessary, which confirms that:

- (a) a system, sub-system, module or component is fit for purpose and possesses the required properties; and
- (b) an appropriate series of processes relating to that system, sub-system, module or component have been executed by trained, experienced and competent personnel;

Technical Case Development Procedure means the document so entitled, referenced ELM-TEC-204-18-06-0002, Issue 1 in the agreed terms marked **TCDP**;

Technical Standard has the meaning given to it in paragraph 2.4 of Schedule 3.2 (*Station Enhancements*);

Technical Support Contract means a contract for technical support to which the Operator is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;

Termination Event has the meaning given to it in paragraph 3 of Schedule 14.5 (*Events of Default and Termination Event*);

Termination Notice means a notice from TfL to the Operator terminating this Agreement following an Event of Default or a Termination Event in accordance with Schedule 14.4 (*Termination and Expiry*);

TfL means Transport for London, a statutory corporation established under the GLA Act;

TfL Bus Operating Framework Agreement means any agreement entered into from time to time by a member of the TfL Group and a third party for the provision of bus services in the Greater London Area;

TfL Group means TfL and all its subsidiaries from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any “member of the TfL Group” shall refer to TfL or any such subsidiary;

TfL Penalty Fares Scheme means the penalty fares scheme applying to the Passenger Services, introduced or, as the context may require, to be introduced by TfL on or before the Start Date pursuant to Schedule 17 of the GLA Act as such scheme may be amended from time to time and notified to the Operator, which shall, as at the Start Date, provide for a penalty fare of £20;

TfL Revenue Enforcement and Prosecutions Policy means the TfL policy in respect of the carrying out by TfL’s agents of revenue protection enforcement measures, as such policy may be approved by TfL’s board from time to time;

TfL Staff Travel Scheme means the scheme, the terms of which are notified to the Operator by TfL from time to time, operated by TfL for the purpose of offering free or concessionary

travel on various transport services, including the Passenger Services, to employees of TfL, other nominated persons and the employees and other nominated persons of organisations nominated by TfL;

Threshold Amount means, for any Concession Year, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = FAC \times RPI$$

where:

TA is the Threshold Amount for any Concession Year;

FAC is £200,000; and

RPI is ascertained as follows:

$$\frac{CRPI}{ORPI}$$

where:

CRPI means the Retail Prices Index published in the March immediately preceding the commencement of the Concession Year in which the Change has occurred; and

ORPI means the Retail Prices Index for March 2007,

provided that, for the first Concession Year RPI shall be one;

Through Ticketing (Non-Travelcard) Agreement means the agreement of that name referred to in paragraph (e) of the definition of Inter-Operator Scheme;

Ticket Revenue means any revenue:

- (a) owed to the Operator under the terms of the Ticketing and Settlement Agreement, excluding commission owed in respect of sales of TSA Fares for travel on railway passenger services other than the Passenger Services; and
- (b) owed to RfL in respect of journeys made by the passengers travelling on the Passenger Services, including revenue derived from use of Oyster products (to the extent not already forming part of the revenue referred to in paragraph (a));

Ticketing and Settlement Agreement means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Operator and the other Train Operators named therein, as amended from time to time with the approval of the Secretary for State;

Ticketless Travel Survey means the survey carried out by RfL or its nominee in any Ticketless Travel Survey Period to determine the Fare Evasion Rate for such period;

Ticketless Travel Survey Methodology means the agreed methodology for carrying out Ticketless Travel Surveys and calculating the Fare Evasion Rate in the agreed terms marked **TTSM**;

Ticketless Travel Survey Period means any of the following periods:

- (a) the first to the third Reporting Period (inclusive) of any Concession Year;
- (b) the fourth to the sixth Reporting Period (inclusive) of any Concession Year;
- (c) the seventh to the ninth Reporting Period (inclusive) of any Concession Year; and
- (d) the tenth to the thirteenth Reporting Period (inclusive) of any Concession Year;

Timetable means the timetable which reflects the working timetable issued by each Infrastructure Manager at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at Stations and Operator Access Stations; and
- (b) principal Connections at those stations and other stations;

Timetable Development Rights means all or any of the rights of the Operator under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to any Infrastructure Manager in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code where relevant;
- (d) surrender any Train Slots allocated to the Operator by any Infrastructure Manager in accordance with that Track Access Agreement;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by any Infrastructure Manager; and
- (f) seek from any Infrastructure Manager additional benefits as a condition to granting any consent to any actual or proposed act or omission by that Infrastructure Manager;

TOM means a ticket office ticket vending machine;

Total Revenue Factor has the meaning given to it in section 6.4 of the Ticketless Travel Survey Methodology;

Track Access Adjustment means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 11.3 (*Track Access Adjustments and Station Charge Adjustments*);

Track Access Agreement means each Access Agreement between any Infrastructure Manager and the Operator which permits the Operator to provide the Passenger Services on track operated by that Infrastructure Manager, incorporating by reference where relevant, the Network Code;

Traction Electricity Price List has the meaning given to it in any Network Rail TAA;

Traffic Day means the period of any day between the first and last Station Call of the Passenger Services to be operated on that day including the period up to and including 0200 on the next day;

Train Fleet means the rolling stock vehicles specified in or required by the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet - General*) and any other rolling stock vehicles RfL consents to in accordance with paragraph 2 of Schedule 4.1 from time to time;

Train Mileage means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable);

Train Operator means any of:

- (a) a franchisee or franchise operator either of which operate railway passenger services pursuant to a franchise agreement;
- (b) a concession operator which operates railway passenger services pursuant to a concession agreement to which RfL (or any other member of the TfL Group) is a party; or
- (c) a Public Sector Operator;

Train Plan means the plan of the Operator for the operation of trains and train formations under the Timetable in the agreed terms marked **TP** and any other train plan developed in accordance with Schedule 1.1 (*Passenger Service Development*), except that when used in Schedule 7 (*Operational Performance*), it shall have the meaning given to it in paragraph 4.8 of Schedule 7;

Train Slots shall have the meaning given to it in the Network Code;

Transfer Notice means a transfer notice given by RfL pursuant to paragraph 3.1 of Schedule 18.4 (*Provisions Applying on and after Termination*) requiring the Operator to transfer to a Successor Operator the Primary Concession Assets specified in such Transfer Notice on the expiry of the Concession Period, such notice being substantially in the form of Appendix 1 (*Form of Transfer Notice*) to Schedule 18.4, but subject to such amendments as RfL may make thereto as a result of any change of circumstances between the date of this Agreement and the date on which such notice is given;

Transport Act means the Transport Act 2000;

TranSys means Transaction Systems Limited (company number 3162437);

Travelcard Agreement means the agreement of that name referred to in paragraph (d) of the definition of Inter-Operator Scheme;

Traveline means the telephone enquiry service providing information on all public transport across the United Kingdom;

TSA means the Train Services Agreement dated 31 August 2006 between TTL and the New Trains Maintainer relating to the maintenance and repair of the New Trains;

TSA Adjustment means any adjustment to any Concession Payment calculated in accordance with paragraph 3.13 and made pursuant to paragraph 3.14, each of Schedule 7 (*Operational Performance*);

TSA Agency Agreement means the agreement entered or (as the context may require) to be entered between the Operator, the New Trains Maintainer and TTL pursuant to which TTL appoints the Operator as its agent for the purpose of performing certain of TTL's obligations, and exercising certain of TTL's rights, under the TSA;

TSA Fare means a Fare that may be Created under the terms of the Ticketing and Settlement Agreement;

TSI means any Technical Standard for Interoperability with which the Operator is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

TTL means Transport Trading Limited, a wholly owned subsidiary of TfL;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Turnaround Time means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Operator from the carrying out of the Concession Services and the receipt of Concession Payments during such period;

Updated Business Plan means the revised business plan to be provided prior to the start of each Concession Year (other than the first Concession Year) in accordance with paragraph 2.3 of Schedule 16 (*Information and Industry Initiatives*);

Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994;

Variation means a variation to the terms of this Agreement pursuant to paragraph 1 of Schedule 22 (*Other Provisions*);

Vehicle Change has the meaning given to it in the Network Code;

Virtual Executive Team has the meaning given to it in paragraph 15(a) of Schedule 9.1 (*List of Committed Obligations and Related Provisions*);

Virtual Operations Team has the meaning given to it in paragraph 15(b) of Schedule 9.1 (*List of Committed Obligations and Related Provisions*);

Weekday means any day other than a Saturday, a Sunday or a Bank Holiday;

West Midlands Franchise means the franchise to be let by the Secretary of State in respect of railway passenger services to be operated to, from and between destinations in the West Midlands pursuant to a franchise agreement;

West Midlands Franchisee means the franchisee appointed by the Secretary of State to operate railway passenger services in relation to the West Midlands Franchise;

WJELL means the Route between Watford Junction station and London Euston station;

WLL means the Route between Willesden Junction station and Clapham Junction station known as the ‘West London Line’;

Young Person’s Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (b) of the definition of Discount Fare Scheme; and

Zone means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect.

3. COMMENCEMENT

3.1 The provisions listed in clauses 3.1(a) to (z) (inclusive) together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be binding upon the parties immediately upon signature of this Agreement (or as otherwise indicated):

- (a) clauses 1 to 9 inclusive;
- (b) Schedule 1.1 (*Passenger Service Development*);
- (c) Schedule 1.3 (*Passenger Facing Obligations*), paragraphs 5.1(a), 5.2, 5.4, and 5.5 (*Marketing*);
- (d) Schedule 1.10 (*NLRIP Possessions*);
- (e) Schedule 1.11 (*Staffing*), paragraphs 3.2 and 3.3 (*Accommodation for RfL Management Team*);
- (f) Schedule 1.12 (*Silverlink Separation*), paragraph 3 (*IT and Information Systems*);
- (g) Schedule 1.14 (*Services to LUL*):
 - (i) paragraph 1 (*Relevant Stations*);
 - (ii) paragraph 2 (*Ticket Retailing Agency*), insofar as that paragraph relates to entering into negotiations or providing training services;
 - (iii) paragraph 5.2 (*Enhancements*);
 - (iv) paragraph 9.2 (*Payroll Services*) insofar as that paragraph relates to entering into negotiations; and
 - (v) paragraph 10 (*Operational Training*);
- (h) Schedule 2.1 (*Specification and Creation of Fares*):
 - (i) paragraph 1 (*RfL Specification of Fares*);
 - (ii) paragraph 2 (*Creation of TSA Fares*);
 - (iii) paragraph 3 (*Restrictions on Creation of TSA Fares*);
 - (iv) paragraph 4 (*Creation of Flows*); and
 - (v) paragraph 6 (*Rationalisation of London Fares*),

provided that each of paragraphs 2, 3 and 4 shall only be operative from the date the Operator accedes to the Ticketing and Settlement Agreement in accordance with its terms;

- (i) Schedule 5 (*ELL*), paragraph 3 (*Operator's Advice and Co-operation*);
- (j) Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*):
 - (i) paragraph 1 (*Compliance*);
 - (ii) paragraph 7 (*Diversity Infractions*); and
 - (iii) paragraph 8 (*Equality and Diversity Audit*).
- (k) Schedule 8.1 (*KPI Regime*), paragraph 3 (*Changing the Key Performance Indicators*);
- (l) Schedule 8.3 (*CSS Regime*), paragraph 2.1 (*National Passenger Surveys*) and paragraphs 4.3(b) and (c) (*Customer Satisfaction Surveys*); insofar as those provisions relate to the entering into of discussions prior to the Start Date to finalise the National Passenger Survey methodology and questionnaire and the Customer Satisfaction Survey methodology and questionnaire respectively;
- (m) Schedule 9.1 (*List of Committed Obligations and Related Provisions*):
 - (i) paragraphs 4(a) and (b); and
 - (ii) paragraph 46.
- (n) Schedule 9.2 (*Miscellaneous Provisions*), insofar as that Schedule relates to the delivery of paragraphs 4(a) and (b) and 46 of Schedule 9.1;
- (o) Schedule 9.3 (*Late/Non Completion of Committed Obligations*), including the Appendix (*Committed Obligations to which Committed Obligation Payment Adjustments Apply*) thereto, but only insofar as that Schedule and Appendix relate to the delivery of paragraphs 4(a) and (b) and 46 of Schedule 9.1;
- (p) Schedule 10 (*Priced Options*);
- (q) Schedule 12 (*Changes*);
- (r) Schedule 13 (*Financial Obligations and Covenants*):
 - (i) paragraph 1 (*Obligations*); and
 - (ii) paragraph 4 (*Performance Bond*);
- (s) Schedule 14 (*Remedies, Termination and Expiry*), insofar as any rights available to RfL in that Schedule are not already provided for under the Conditions Precedent Agreement;
- (t) Schedule 15 (*Agreement Management Provisions*), except that paragraph 3.1 and 3.2 (*Key Personnel*) shall only be operative from the date on which the relevant employee of the Operator has been appointed by the Operator and paragraph 3.4 shall not be operative until the Start Date;
- (u) Schedule 16 (*Information and Industry Initiatives*);

- (i) paragraph 1.2 (*Corporate Information*);
 - (ii) paragraph 1.5 (*Operational and Performance-related Information to be provided by the Operator*);
 - (iii) paragraph 2.1 (*Initial Business Plan*);
 - (iv) paragraph 5 (*Further Information*);
 - (v) paragraph 6 (*Contraventions of this Agreement*);
 - (vi) paragraph 7 (*Information about Third Parties*);
 - (vii) paragraph 8 (*Compatibility of Information*); and
 - (viii) paragraph 12 (*Development of Business Cases*);
- (v) Schedule 17 (*Preservation of Assets*), other than paragraph 1 (*Operating Assets*) and paragraph 2.7 (*Branding*) of Schedule 17.2 (*Maintenance of Operating Assets and Branding*);
- (w) Schedule 18 (*Obligations Associated with Termination*), other than Schedule 18.3 (*Handover Package*);
- (x) Schedule 20 (*Confidentiality*);
- (y) Schedule 22 (*Other Provisions*); and
- (z) Schedule 23 (*Agreed Form Documents*).

3.2 The other provisions of this Agreement shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

4. TERM

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clauses 4.2(a) or 4.3(a) of the Conditions Precedent Agreement or pursuant to Schedule 14 (*Remedies, Termination and Expiry*).

5. GENERAL OBLIGATIONS

5.1 The Operator shall perform its obligations under this Agreement in accordance with their terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the LRC.

5.2 Any obligation on the part of the Operator to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

5.3 The Operator shall co-operate with RfL and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

5.4 RfL shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

6. COMPLIANCE WITH LAWS

The Operator shall at all times during the Concession Period perform the Concession Services and all its other obligations under this Agreement in accordance with all applicable Laws.

7. DOCUMENTS IN THE AGREED TERMS

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Schedule 23 (*List of Documents in the Agreed Terms*).

8. ENTIRE AGREEMENT

8.1 This Agreement, the Conditions Precedent Agreement, the Stations Enhancements Works Agreement, the Security of Service Letter and the Revenue Account Letter contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Operator may have entered into with TfL in connection with its proposal to secure the provision of the Passenger Services under this Agreement.

8.2 The Operator hereby acknowledges that it is not entering into this Agreement or the Conditions Precedent Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in this Agreement.

8.3 The Operator hereby acknowledges and agrees with RfL (for itself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in any document supplied by or on behalf of TfL in connection with this Agreement, the process leading to the entering into of this Agreement, or the Concession Services (including any "Invitation to Tender" issued in connection therewith).

8.4 The Operator irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement, except as expressly set out in the this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF **RAIL FOR LONDON
LIMITED**

DIRECTOR:

DIRECTOR/SECRETARY:



...IAN A. BROWN.....

...HOWARD SMITH.....

SIGNED FOR AND ON
BEHALF OF **MTR LAING METRO
LIMITED**

DIRECTOR:

DIRECTOR/SECRETARY:



...ADRIAN SHOOTER.....

...JEREMY LONG.....

SCHEDULE 1

PASSENGER SERVICE OBLIGATIONS

Schedule 1.1:	Passenger Service Development
	Appendix: Passenger Service Development Additional Factors
Schedule 1.2:	Passenger Service Operating Obligations
Schedule 1.3:	Passenger Facing Obligations
Schedule 1.4:	Persons with Disabilities and Disability Discrimination
	Appendix 1: Minor Works
	Appendix 2: Alternative Transport
Schedule 1.5:	Information about Passengers
Schedule 1.6:	Concession Services
Schedule 1.7:	2012 Olympic Games and Paralympic Games
Schedule 1.8:	Extended Restrictions of Use and Closures
Schedule 1.9:	NLR TAA
Schedule 1.10:	NLRIP Possessions
Schedule 1.11:	Staffing
Schedule 1.12:	Silverlink Separation
Schedule 1.13:	[REDACTED]⁸
	Appendix: [REDACTED]⁹
Schedule 1.14:	Services to LUL

⁸ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

⁹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

SCHEDULE 1.1

Passenger Service Development

1. SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

1.1 A Service Level Commitment is the means by which RfL specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services that the Operator is to:

- (a) seek Train Slots for from each Infrastructure Manager; and
- (b) operate pursuant to the working timetable issued by the relevant Infrastructure Manager at the end of its timetable development process.

1.2 RfL shall issue to the Operator a Service Level Commitment for, and prior to the start of, each timetable development process of Network Rail during the Concession Period.

1.3 The Service Level Commitment as at the date of this Agreement is in the agreed terms marked *SLC0*, attached to this Agreement.

1.4 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail RfL considers appropriate.

2. TRAIN PLAN – PURPOSE AND RESPONSIBILITY

2.1 A Train Plan is the means by which the Operator expresses its proposed allocation of the passenger carrying capacity of its Train Fleet to meet passenger demand for the railway passenger services it is to operate.

2.2 The Operator shall submit to RfL a Train Plan in respect of:

- (a) each Service Level Commitment; and
- (b) subsequently, each Timetable in accordance with this Schedule 1.1.

2.3 In preparing any Train Plan, the Operator shall do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment to which it relates.

2.4 The Train Plan for the Timetable as at the Start Date is in the agreed terms marked *TP*, attached to this Agreement.

2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the class of rolling stock vehicles that the allocated train is to have;
- (d) the passenger carrying capacity that the allocated train, as formed, is to have;

- (e) the indicative formation of those trains allocated in accordance with paragraph 2.5(d) which have a Target Passenger Demand greater than 75 per cent. of their passenger carrying capacity;
 - (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (*Information about Passengers*); and
 - (g) its Forecast Passenger Demand.
- 2.6 A Train Plan shall be in any format that RfL may reasonably specify for this purpose.

3. SERVICE LEVEL DEVELOPMENT

The Operator agrees to co-operate with RfL to develop the Service Level Commitment in accordance with this Schedule 1.1.

4. PROCEDURE

4.1 The Operator agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in franchise agreements entered into by the Secretary of State, or in other agreements to which RfL may be a party for the procurement of public transport services, will require certain procedural arrangements and timescales to be followed to a common timescale by RfL, the Operator and others.

4.2 The Operator agrees that RfL may stipulate any reasonable procedural arrangements and timescales that are to be followed by RfL and the Operator for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that RfL may amend any such stipulation.

4.3 RfL agrees to consult the Operator as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 4.2.

4.4 Any stipulation by RfL pursuant to paragraph 4.2:

- (a) shall be at the reasonable discretion of RfL;
- (b) may contain procedural arrangements and timescales to be followed by the Operator in relation to other changes to the Concession Services (pursuant to paragraph 1 of Schedule 22 (*Other Provisions*)) in conjunction with a Service Level Commitment; and
- (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

4.5 Any procedural arrangements and timescales stipulated by RfL pursuant to paragraph 4.2 shall have contractual effect between the Operator and RfL in accordance with the terms of such stipulation.

5. OPERATOR'S PASSENGER SERVICE DEVELOPMENT OPINIONS

Requirements of opinion

5.1 As and when required by RfL pursuant to paragraph 4.2, the Operator shall provide to RfL:

- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as RfL may reasonably require in order to assist RfL's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
- (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Concession Payments;
- (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 5.1(b)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Concession Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) its informed opinion as to any changes that RfL ought to make to the Operational Benchmarks pursuant to paragraph 5.2 of Schedule 7 (*Operational Performance*); and
- (e) a draft of the Train Plan that it considers that each set of proposed changes would require.

Considerations

5.2 The Operator shall:

- (a) provide its opinion as to Service Level Commitment changes; and
- (b) prepare its draft Train Plan,

each with due regard to:

- (i) any Route Utilisation Strategy and any Rail Corridor Plan published by RfL;
- (ii) the additional factors set out in the Appendix (*Passenger Service Development Additional Factors*); and
- (iii) any other constraints or considerations (including affordability constraints and value for money considerations) that RfL has notified to it.

Planning to Operate the Train Plan in the Peak

5.3 The Operator shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for any reasonable planning requirements for:

- (a) the allocation of Hot Standbys; or
- (b) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with RfL (such agreement not to be unreasonably withheld).

Planning to meet Target Passenger Demand

5.4 The Operator shall also, in preparing its Train Plan, unless RfL otherwise agrees, use all reasonable endeavours to:

- (a) provide for passenger carrying capacity on each Passenger Service that meets as a minimum the Target Passenger Demand; and
- (b) provide passengers with a reasonable expectation of a seat:
 - (i) on boarding in respect of any Off-Peak Passenger Service; and
 - (ii) ten minutes after boarding (or such other time period as RfL may stipulate) in respect of any Peak Passenger Service.

Allocation of rolling stock if unable to meet capacity requirements of paragraph 5.4

5.5 If at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Operator is unable to prepare a Train Plan having the passenger carrying capacity and meeting the reasonable expectations referred to in paragraph 5.4, then the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services;
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding in the case of any Off-Peak Passenger Service; and
 - (ii) ten minutes after boarding (or such other time period as RfL may stipulate) in respect of any Peak Passenger Service.

Proposals to address shortfalls in capacity

5.6 Where paragraph 5.5 applies, the Operator shall propose to RfL:

- (a) such changes to the Service Level Commitment; and/or
- (b) any other actions,

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Target Passenger Demand.

6. RfL'S PASSENGER SERVICE DEVELOPMENT OPINIONS

As and when required pursuant to paragraph 4.2, RfL shall provide to the Operator:

- (a) its draft Service Level Commitment;
- (b) its opinion on any changes that it reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraph 5.4; or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 5.5 and 5.6 if it reasonably considers that the capacity requirements referred to in paragraph 5.4 cannot be met; and
- (c) its opinion of any changes that are required to the Benchmarks pursuant to paragraph 5.2 of Schedule 7 (*Operational Performance*).

7. INDICATIVE TIMETABLE AND CONSULTATION

7.1 If and to the extent that the Operator reasonably considers that any Service Level Commitment issued by RfL pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify RfL and RfL shall provide such further information as is reasonably required.

7.2 The Operator shall, as and when required pursuant to paragraph 4.2, provide RfL with a summary (in such form as RfL may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if RfL's draft Service Level Commitment and its proposed Train Plan were implemented.

7.3 Notwithstanding any consultation RfL might separately undertake in respect of the draft Service Level Commitment issued pursuant to paragraph 6, the Operator shall:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to RfL pursuant to paragraph 7.2, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary in the manner notified to it by RfL; and
 - (ii) sending or receiving any correspondence in respect of such notice or consultation, provide RfL with copies of such correspondence;
- (b) take due account of such bodies' views that are submitted to the Operator in accordance with the procedural stipulations pursuant to paragraph 4.2 and the guidance referred to in paragraph 7.3(d);
- (c) inform RfL of any material changes that it would expect there to be to such draft Service Level Commitment if the views of such bodies were accommodated; and
- (d) comply with such reasonable requirements and guidance as RfL may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 7.3.

8. SERVICE LEVEL COMMITMENT

RfL shall, in accordance with paragraph 4.2, issue to the Operator the Service Level Commitment that it requires the Operator to operate and notice of the changes (if any) to the Benchmarks that it will make pursuant to paragraph 5 of Schedule 7 (*Operational Performance*).

9. TIMETABLE DEVELOPMENT RIGHTS

9.1 The Operator shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment.

9.2 The Operator shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 11.

9.3 Unless RfL otherwise directs, the Operator shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under any Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by the relevant Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights.

9.4 Subject to the Operator complying with its obligations under paragraph 9.3, it shall not be liable for any failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) the Operator's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Operator has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 9.1;
- (b) any Infrastructure Manager exercising its flexing rights from time to time under the relevant Track Access Agreement or, in the case of Network Rail, the Network Code in respect of such Train Slots;
- (c) any Infrastructure Manager exercising its other rights from time to time under the relevant Track Access Agreement or, in the case of Network Rail, the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

9.5 If RfL does not consider that the Operator has taken sufficient steps under paragraph 9.3, it may require the Operator to exercise its rights referred to in paragraph 9.3 in such manner as it reasonably considers appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by the relevant Infrastructure Manager in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including, where relevant, to the ORR.

9.6 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to it concerning the exercise by the Operator of any of its rights referred to in paragraph 9.3 before requiring the Operator to take any action referred to in paragraph 9.5.

9.7 If and to the extent that the Operator is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, RfL shall issue to the Operator a Service Level Commitment in the form required by paragraph 9.7(a), which shall, subject to paragraphs 9.8 and 9.9, operate between the parties only for the purpose referred to in paragraph 9.7(b):

- (a) the Service Level Commitment issued pursuant to this paragraph 9.7 shall be in a form that:
 - (i) would enable the Operator to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Operator does have or would have had the Operator properly performed its obligations under this Agreement; and
 - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Operator by RfL; and
- (b) any Service Level Commitment issued pursuant to this paragraph 9.7 shall, for the purpose of Schedule 12 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to the Operator by RfL.

9.8 If and to the extent that the Operator is not able to secure a Timetable enabling it to operate railway passenger services that comply with any iteration of SLC1 due to the Route specified in paragraph (af)(i) of the definition of Change not being upgraded in the manner specified in the ELL Main Works Contract and available for use by the Operator between from 7 November 2009 and 6 November 2010, then RfL shall not be obliged to issue a Service Level Commitment as contemplated by paragraph 9.7(a).

9.9 If and to the extent that the Operator is not able to secure a Timetable enabling it to operate railway passenger services that comply with any iteration of SLC1 either due to:

- (a) the Route specified in paragraph (af)(ii) of the definition of Change not being upgraded in the manner specified in the ELL Main Works Contract and available for use by the Operator between 13 December 2009 and 12 December 2010; or
- (b) both of the Routes specified in paragraphs (af)(i) and (ii) of the definition of Change are upgraded in the manner specified in the ELL Main Works Contract and are available for use by the Operator to deliver the ELL Passenger Services before 6 November 2010 and 12 December 2010 respectively, but the date of the actual completion of the upgrade of one such Route, relative to the date of the actual completion of the upgrade of the other and their availability for use by the Operator to deliver the ELL Passenger Services, is different from the relative timing of those scheduled completion and availability dates by less than three months,

then, in either case, RfL shall not be obliged to issue a Service Level Commitment as contemplated by paragraph 9.7(a).

10. CERTIFICATION AND NOTIFICATION BY OPERATOR OF TIMETABLE BIDS

10.1 Before exercising any Timetable Development Right to bid for Train Slots, the Operator shall provide a certificate addressed to RfL confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 9.2.

10.2 If requested by RfL, the Operator agrees to demonstrate to the reasonable satisfaction of RfL that the Operator's certificate referred to in paragraph 10.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 9.2. RfL agrees that the certificate will be acceptable if:

- (a) such certificate confirms that the Operator has used timetable assurance processes approved by RfL; and
- (b) the Operator has demonstrated its compliance with the Service Level Commitment by using such assurance processes.

10.3 The Operator shall:

- (a) keep RfL fully informed of any discussions with any Infrastructure Manager in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of the Operator to deliver the Service Level Commitment through the Timetable and shall, if required to do so by RfL, supply copies of any related correspondence to RfL; and
- (b) update any notification under this paragraph 10.3 and/or certification under paragraph 10.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following any Infrastructure Manager's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

11. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS

Subject to the terms of the Licences and any applicable Law, the Operator shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Operator; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

12. FINALISING THE TRAIN PLAN

12.1 The Operator shall submit its Train Plan to RfL as soon as reasonably practicable after each Infrastructure Manager has published the working timetable on which the Timetable is to be based.

12.2 RfL may notify the Operator of:

- (a) any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
- (b) any revisions that it requires to address such non-compliance,

and the Operator shall revise the Train Plan in accordance with RfL's requirements.

12.3 If the Operator considers that any of the revisions that RfL requires pursuant to paragraph 12.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
- (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

13. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES

13.1 Where RfL considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement, or any other agreement to which RfL may be a party for the procurement of public transport services, or for the better achievement by it of any of its duties, functions and powers in relation to railways, RfL may require the Operator:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as RfL may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

13.2 Except to the extent that RfL otherwise indicates from time to time, the Operator shall notify RfL of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the ORR is required under the Act, not less than ten Business Days before the submission to the ORR; and
- (b) where no such approval is required, not less than ten Business Days prior to entering into such amendment or Access Agreement.

13.3 The Operator shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with RfL on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by RfL or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of RfL.

13.4 If and to the extent that:

- (a) RfL exercises its rights pursuant to paragraph 13.1;
- (b) the Operator's compliance with RfL's requirements pursuant to paragraph 13.1 would lead to the unavoidable consequence of the Operator contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Operator duly complies with such requirements,

no such contravention of this Agreement or Event of Default shall have occurred.

14. RfL'S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES

Any requirement for RfL to issue a draft or final Service Level Commitment may be satisfied by it issuing a draft or final statement of how the existing Service Level Commitment is to be changed.

15. THE TIMETABLE AND THE WORKING TIMETABLE

15.1 Any specification of railway passenger services in a Service Level Commitment shall (unless RfL states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

15.2 Accordingly, the Operator's obligations specified in paragraph 9.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Operator to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

15.3 The Operator shall ensure, for each period between two consecutive Passenger Change Dates during the Concession Period, that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

APPENDIX TO SCHEDULE 1.1**Passenger Service Development Additional Factors**

1. The Operator, in formulating its service development opinion pursuant to paragraph 5.1 of Schedule 1.1 (*Passenger Service Development*), in addition to having regard to any Route Utilisation Strategy or any Rail Corridor Plan published by TfL and any other constraints or considerations notified to it pursuant to paragraph 5.2(iii) of Schedule 1.1, shall also have regard to:

- (a) Actual Passenger Demand;
- (b) the latest Forecast Passenger Demand;
- (c) the revenue and cost consequences of operating railway passenger services on the Routes;
- (d) opportunities to reduce the incidence of disruption caused by the Operator, any Infrastructure Manager, other Train Operators, freight operators and/or other industry parties;
- (e) operational constraints and measures that might be taken to address such constraints;
- (f) the appropriateness of the Train Fleet to the Routes;
- (g) service calling patterns and journey times;
- (h) changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
- (i) the effect of the Service Level Commitment on the railway passenger services operated by other Train Operators and/or freight operators;
- (j) interchange and inter modal opportunities;
- (k) Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any “Local Transport Plans”);
- (l) the long-term interests of passengers in using railway passenger services on the Routes, and for the purposes of this paragraph 1(l), the Operator shall have regard to this additional factor as if it operated the Passenger Services in perpetuity, and not for the Concession Term only;
- (m) the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Operator to or from such special events;
- (n) the impact of Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code or other Restrictions of Use that may affect Forecast Passenger Demand; and
- (o) such other matters as RfL may notify to the Operator from time to time.

SCHEDULE 1.2

Passenger Service Operating Obligations

1. DAILY OPERATING OBLIGATION

1.1 The Operator agrees to use all reasonable endeavours to operate on each day of the Concession Period those of its Passenger Services as are set out in the Plan of the Day for that day, with at least the passenger carrying capacity specified in the Train Plan.

1.2 The Operator agrees to use all reasonable endeavours to operate during the Peak the entire Train Fleet in delivering the Peak Passenger Services, save for any reasonable requirements:

- (a) for the deployment of Hot Standbys; or
- (b) for other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with RfL (such agreement not to be unreasonably withheld).

1.3 The Operator agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the availability standards of the train presentation requirements set out in the KPI Regime.

1.4 The Operator shall not remove any rolling stock vehicle from service with a view to distorting the results of any audit carried out pursuant to Schedule 8.1 (*KPI Regime*).

2. THE TRAIN PLAN

References in this Schedule 1.2 to the Train Plan are to the Train Plan as issued by the Operator to RfL pursuant to paragraph 12.1 of Schedule 1.1 (*Passenger Service Development*), and as amended:

- (a) to comply with any requirements of RfL pursuant to paragraph 12.2 of Schedule 1.1; or
- (b) pursuant to paragraph 3.

3. AMENDMENTS TO THE TRAIN PLAN

3.1 The Operator shall use all reasonable endeavours to propose to RfL from time to time any amendments that it considers should be made to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger Demand, having regard to:

- (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day; and
- (b) any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (*Information about Passengers*); and/or

- (ii) attributable to seasonal or exceptional factors.

3.2 The Operator shall amend the Train Plan in accordance with RfL's response to its proposal.

3.3 Where there are short-notice factors or exceptional factors affecting passenger demand to which the Operator reasonably considers that it should respond before it is able to make a proposal to RfL in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify RfL as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with RfL's response to such amendment.

3.4 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for passenger carrying capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services;
 - (ii) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service; and
 - (iii) minimise the extent to which passengers are required to stand:
 - (A) on boarding in respect of any Off-Peak Passenger Service; and
 - (B) ten minutes after boarding (or such other time period as RfL may stipulate) in respect of any Peak Passenger Service.

3.5 If RfL does not consider that the Operator has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, RfL may require the Operator to amend the Train Plan in accordance with its requirements.

4. TIMETABLE CHANGES PROPOSED BY ANY INFRASTRUCTURE MANAGER

4.1 The Operator shall notify RfL promptly after being notified by any Infrastructure Manager that that Infrastructure Manager has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable,

to the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4.

4.2 The Operator shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Operator's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4.

4.3 The Operator agrees to supply to RfL from time to time, in the format required by RfL, such details of any actual or proposed omission or rescheduling of Passenger Services by any Infrastructure Manager as RfL may reasonably require, including details of the steps which the Operator proposes to take pursuant to paragraph 4.4.

4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Operator's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, the Operator agrees (unless RfL specifically agrees otherwise) to exercise its rights under any Track Access Agreement (including the Network Code where relevant) to:

- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant);
- (b) make representations; and
- (c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by any Infrastructure Manager.

4.5 If RfL does not consider that the Operator has taken sufficient steps under paragraph 4.4, RfL may require the Operator to exercise its rights referred to in paragraph 4.4 in such manner as RfL may consider appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by any Infrastructure Manager in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant.

4.6 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the exercise of any of its rights referred to in paragraph 4.4 before requiring the Operator to take any action referred to in paragraph 4.5.

4.7 The provisions of this paragraph 4 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than any Infrastructure Manager, as those provisions apply to that person.

5. TIMETABLE CHANGES PROPOSED BY THE OPERATOR

5.1 The Operator agrees not to propose to any Infrastructure Manager without RfL's prior consent:

- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;

- (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

5.2 One year after the opening of both Imperial Wharf Station and Shepherds Bush Station for the operation of Passenger Services, the Operator may request RfL to consider such changes to the dwell times at those Stations as the Operator considers appropriate to reflect what can be operated, having regard to the volume of passengers boarding and/or alighting at each such Station, and in so doing, the Operator shall provide to RfL such supporting evidence as the Operator considers relevant.

5.3 Following such request, RfL shall duly review such proposed changes and evidence and may thereafter permit the Operator to propose to the relevant Infrastructure Manager such consequent adjustments to any Plan of the Day as RfL in its sole discretion considers are appropriate.

6. TIMETABLE CHANGES REQUESTED BY RfL

The Operator agrees, as and when requested by RfL, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

7. ADDITIONAL RAILWAY PASSENGER SERVICES

The Operator agrees not to operate any railway passenger services other than those:

- (a) required or permitted pursuant to this Schedule 1.2; or
- (b) operated on behalf of any other Train Operator where RfL has approved the sub-contracting of the operation of such railway passenger services to the Operator.

8. DISRUPTION TO RAILWAY PASSENGER SERVICES

Response to planned/unplanned disruption

8.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Operator shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify RfL promptly of any such disruption where that disruption would prejudice the Operator's ability to deliver the Timetable and the Operator:
 - (i) has ten or more days' advance notice thereof; or
 - (ii) has less than ten days' advance notice thereof, but that disruption lasts:

- (A) for a period in excess of three consecutive hours; or
 - (B) to the extent not already provided for under paragraph 8.1(a)(ii)(A), for a period that begins during one Plan of the Day and continues into the next Plan of the Day;
- (b) where the Operator has ten or more days' advance notice of any disruption, as soon as reasonably practicable after notifying RfL pursuant to paragraph 8.1(a), also propose to RfL:
- (i) how it plans to manage that disruption, including how it plans to satisfy its obligations pursuant to paragraphs 8.1(c) and (d); and
 - (ii) what alternative transport arrangements it plans to provide or procure the provision of;
- (c) use all reasonable endeavours to act in accordance with any guidance or plan published or endorsed by RfL in relation to disruption to railway passenger services notified to it by RfL from time to time;
- (d) co-operate with each Infrastructure Manager and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
- (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (e) carry out its obligations in respect of the provision of alternative transport arrangements in accordance with the rest of this paragraph 8.

Planned disruption

8.2 Where the Operator has ten or more days' advance notice of any disruption, the parties shall agree, or in the absence of such agreement, RfL shall reasonably determine:

- (a) the alternative transport arrangements with the characteristics specified in paragraph 8.8 that shall be provided or procured by the Operator in response to that disruption;
- (b) the ticketing arrangements (including the arrangements with other modes of transport (if any)) that shall apply during that period of disruption; and
- (c) the costs associated with those arrangements,

in each case, in sufficient time to permit the Operator to carry out those arrangements.

8.3 The Operator shall provide or procure the provision of any alternative transport arrangements agreed or determined pursuant to paragraph 8.2 in accordance with that agreement or determination.

8.4 As soon as reasonably practicable after making alternative transport arrangements in response to any disruption referred to in paragraph 8.2 and incurring consequent costs, the Operator shall provide RfL with an account of those costs to such level of detail as RfL may reasonably require, in order that RfL can satisfy itself as to its payment obligations pursuant to paragraph 8.5.

8.5 RfL shall pay:

- (a) the costs actually incurred by the Operator in making alternative transport arrangements in response to any disruption referred to in paragraph 8.2 up to the amount agreed or determined pursuant to that paragraph (but not any excess); and
- (b) that amount on the next Payment Date after those costs are incurred, unless those costs are incurred seven or less days prior to the end of any Reporting Period, in which case, that payment shall be made as soon as reasonably practicable after that Reporting Period.

Unplanned disruption

8.6 Where the Operator has less than ten days' advance notice of any disruption, it shall use all reasonable endeavours to provide or procure the provision of alternative transport arrangements in respect of that disruption that have the characteristics specified in paragraph 8.8.

8.7 The Operator shall pay its own costs in respect of any alternative transport arrangements provided or procured pursuant to paragraph 8.6.

Alternative transport arrangements

8.8 Any alternative transport arrangements to be provided or procured by the Operator pursuant to this paragraph 8 shall, unless otherwise agreed by RfL:

- (a) enable passengers affected by any disruption to complete their intended journeys by transporting those passengers to, or as near as reasonably practicable to, the end of their intended journeys on the relevant Passenger Services;
- (b) have particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;
- (c) be:
 - (i) of reasonable quality;
 - (ii) of a reasonably similar frequency to the disrupted Passenger Services; and
 - (iii) reasonably fit for the purpose of the journey to be undertaken;
- (d) comply with any standards issued by TfL from time to time in respect of such alternative transport arrangements;
- (e) include the provision in advance of adequate and prominent publicity of such alternative transport arrangements;
- (f) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

- (g) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

8.9 Where alternative transport arrangements consist of bus services, the Operator shall source them from either:

- (a) a supplier who is a party to a relevant TfL Bus Operating Framework Agreement at the time the Operator's arrangements are implemented; or
- (b) another supplier approved by RfL.

8.10 Where so directed by RfL, any alternative transport arrangements to be provided or procured by the Operator pursuant to this paragraph 8 shall utilise other scheduled transport services provided for and on behalf of RfL.

9. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS

9.1 Any obligation in this Schedule 1.2 on the part of the Operator to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Concession Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.2; and
- (c) actively manage the performance by the Infrastructure Managers of their respective contractual relationships with the Operator (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from the Infrastructure Managers by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances.

9.2 The matters to which the Operator is to have regard pursuant to paragraph 9.1(b) shall include:

- (a) variations in weather and operating conditions (including any Infrastructure Manager's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Operator;
- (c) shortages of appropriately skilled or qualified Concession Employees;
- (d) disputes with Concession Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles consistently with the requirements of the KPI Regime; and

- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

9.3 For the purpose of taking measures in respect of any disruption to the Concession Services in accordance with paragraph 9.1(b) and assessing the extent of any risk referred to in paragraph 9.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Concession Services;
 - (ii) similar services both by the Operator and/or its predecessors; and
 - (iii) other services of a type similar to the Concession Services; and
- (b) to potential changes in circumstances which may affect those levels.

9.4 The steps to which paragraph 9.1(c) refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) co-operating with any Infrastructure Manager in adopting the principles set out in any Service Recovery Plans agreed between that Infrastructure Manager and the Operator from time to time;
- (c) undertaking a weekly review of:
 - (i) the ten most common causes of delay to the Passenger Services; and
 - (ii) the ten causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(c)(i)),

which have occurred during that week and which have been caused by the Operator, any other Train Operator or Network Rail;

- (d) undertaking with each Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 9.4(c)(i) and (c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with each Infrastructure Manager, evidenced by meeting minutes and the closure of actions agreed between the parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;

- (g) as and when required by each Infrastructure Manager, co-operating with that Infrastructure Manager in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
- (h) co-operating with each Infrastructure Manager other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where any Infrastructure Manager fails to perform its obligations under the relevant Track Access Agreement, enforcing the Operator's rights under such Track Access Agreement.

9.5 The Operator undertakes to reasonably co-operate with each Infrastructure Manager with regard to each such Infrastructure Manager's management of its own network, including in relation to Network Rail, the establishment of up to date Rules of the Plan.

9.6 To the extent not already provided for in this Agreement, the Operator shall use all reasonable endeavours to ensure the performance by each Infrastructure Manager of each such Infrastructure Manager's respective obligations under any relevant agreement including, where appropriate or where requested by RfL, enforcing its rights against any such Infrastructure Manager under any such agreement.

9.7 When and to the extent reasonably requested by RfL, the Operator shall provide to RfL evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

10. SUBCONTRACTING PASSENGER SERVICES

10.1 The Operator may not subcontract or delegate the provision of the Passenger Services without the prior written consent of RfL.

10.2 To the extent RfL agrees to any subcontracting or delegation of the Passenger Services pursuant to paragraph 10.1:

- (a) any such subcontracting or delegation shall not relieve the Operator from any of its obligations under this Agreement;
- (b) the Operator shall continue to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and continue to enjoy all relevant access and operational rights thereunder; and
- (c) RfL shall continue, via the Operator, to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares.

10.3 Any such subcontracting or delegation shall not relieve the Operator from any of its obligations under this Agreement, including its obligations under this paragraph 10 and Schedule 17 (*Preservation of Assets*).

11. OTHER OPERATORS

11.1 If:

- (a) a franchise agreement terminates;
- (b) another concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party terminates; or
- (c) a railway administration order is made in respect of a Train Operator that is a party to either of those agreements,

the Operator shall co-operate with any reasonable request of RfL to ensure that:

- (i) the services provided or operated by the relevant Train Operator may continue to be provided or operated by any successor Train Operator or the railway administrator; and
- (ii) the benefit of any arrangements between the Operator and the relevant Train Operator which were designated as a key contract under such franchise agreement or concession agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

11.2 The benefit of any arrangements of the type referred to in paragraph 11.1(ii) shall be provided on substantially the same terms as previously obtained by the relevant Train Operator, subject to clause 5 and paragraph 11.3, provided that RfL may exclude or modify any terms agreed or amended by such Train Operator in the 12 months preceding the date on which such Train Operator's franchise agreement or concession agreement was terminated or the date on which the relevant railway administration order was made which were, in RfL's reasonable opinion, to the material detriment of such Train Operator's business. The benefit of such arrangements shall be provided for such period as RfL may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

11.3 The Operator shall notify RfL of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement or concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

11.4 If a Train Operator's franchise agreement or concession agreement in respect of railway passenger services to which RfL (or any other member of the TfL Group) is a party terminates in contemplation of the entry into or entry into effect of a new franchise agreement or concession agreement (as the case may be) with the same Train Operator in respect of all or a material part of the relevant railway passenger services, the Operator shall waive any event of default or other right it may have to terminate any agreement with such Train Operator arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement or concession agreement takes place.

12. ROYAL TRAIN

12.1 The Operator shall, if and to the extent requested by any person (including the operator of the royal train from time to time) and subject to the payment by such person of

any reasonable costs of the Operator, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

12.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

- (a) running a “sweeper” train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or
- (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 1.3

Passenger Facing Obligations

1. PUBLISHING THE TIMETABLE

The First Timetable

1.1 The Operator shall publish on the Start Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) at each Operator Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and (a)(ii); and
 - (iv) on the LRC Website by updating that website's database so as to enable that website to accurately display in real time the Timetable; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

Timetable Revisions and Alterations

1.2 The Operator shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Operator Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the LRC Website, at least four weeks before the changes come into effect by updating that website's database so as to enable that website to accurately display in real time those changes.

1.3 In addition, the Operator shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all significant alterations between any two Passenger Change Dates to railway passenger

services calling at that Station, no later than four weeks in advance of the date on which the alterations come into effect; and

- (b) provide posters to the operators of Operator Access Stations, advising passengers of all significant alterations between any two Passenger Change Dates to the Passenger Services which call at such Operator Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

Other Train Operators' Timetables

1.4 The Operator shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call:

- (a) within the time limits specified in paragraphs 1.2 and 1.3 where and to the extent that such other Train Operator delivers to the Operator the relevant information and materials in sufficient time for the Operator to so publish; and
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Operator.

National Rail Timetable and National Rail Enquiry Scheme

1.5 The Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

1.6 The Operator shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any significant alterations to the Timetable to take effect between any two Passenger Change Dates,

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four weeks prior to coming into effect.

Format of any Timetable

1.7 RfL shall:

- (a) from time to time specify to the Operator the format of any Timetable, including any booklets or posters relating thereto; and
- (b) notify the Operator of any such specification in sufficient time for the Operator to be able to comply with its publication obligations under this paragraph 1.

2. LATE TIMETABLE CHANGES

2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Operator shall inform passengers, so far as possible on seven days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;
- (b) notifying the operators of the Operator Access Stations, as appropriate, including by providing such operators with revised posters; and
- (c) updating the LRC Website by updating that website's database so as to enable that website to accurately display in real time such information.

2.3 The Operator shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Operator is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Operator shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

2.5 The Operator shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Operator as far in advance as is reasonably practicable.

3. PUBLISHING INFORMATION IN RESPECT OF OTHER MODES

3.1 The Operator shall publish, or procure the publication of, at Stations and Operator Access Stations, such timetable or other information relating to other transport modes sponsored or funded by the TfL Group as RfL may request from time to time.

3.2 As and when RfL requires the Operator to publish the information specified in paragraph 3.1, it will provide the Operator with the required publication material.

3.3 The Operator shall display such notices and make such announcements at such intervals as are required, in accordance with training to be provided by RfL, to inform passengers at the Stations:

- (a) of the proper use of Oyster; and,
- (b) of any disruption to Oyster services (not restricted solely to Oyster facilities located at the particular Station).

4. PASSENGER'S CHARTER

Content

4.1 The Operator shall:

- (a) publish its Passenger's Charter:

- (i) in substantially the form marked **PC**, appended to this Agreement; and
 - (ii) in accordance with the requirements specified in paragraph 4.5;
- (b) review the need for changes to the Passenger's Charter at least every two years, in consultation with any interested agency notified to it by RfL from time to time, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to RfL; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.
- 4.2 The Operator shall:
- (a) amend the terms of any draft Passenger's Charter submitted to RfL pursuant to paragraph 4.1(b) in accordance with any requirements notified to it by RfL; and
 - (b) publish such amended Passenger's Charter in accordance with this paragraph 4.
- 4.3 Any notification by RfL pursuant to paragraph 4.2(a) shall be a Change.
- 4.4 The Operator may not otherwise change the Passenger's Charter without RfL's prior written consent.

Publishing the Passenger's Charter

- 4.5 The Operator shall publicise its Passenger's Charter by:
- (a) providing copies to RfL and any interested agency notified to it by RfL from time to time at least seven days before it comes into effect;
 - (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven days before such revision comes into effect;
 - (c) sending a copy, free of charge, to any person who requests it; and
 - (d) updating the LRC Website's database so that that website is capable of displaying it at all times and, in the case of any revision thereto, updating the LRC Website's database at least seven days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Start Date, in which case the Operator shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.5 on and from the Start Date.

4.6 The Operator shall also provide at each staffed Station the current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Operator by such other Train Operator.

4.7 The Operator shall provide copies of its Passenger's Charter to the operators of Operator Access Stations to enable such operators to publish it.

Passenger's Charter Payments and Other Obligations

4.8 The Operator shall honour all commitments, including payments which passengers may reasonably expect to be made or provided from time to time, under the terms of the Passenger's Charter (whether or not the Operator is legally obliged to do so).

- 4.9 The Operator shall use all reasonable endeavours:
- (a) to comply with any other obligations, statements and representations; and
 - (b) to meet any other standards or targets of performance,
- as are comprised in its Passenger's Charter from time to time.

Passenger's Charter Statistics

- 4.10 The Operator shall:
- (a) prepare the Passenger's Charter Statistics (in a manner and format directed to it by RfL from time to time);
 - (b) publish the Passenger's Charter Statistics (and the passenger's charter statistics of other Train Operators whose trains call at any Stations), in a manner, format and level of disaggregation directed to it by RfL from time to time, on information displays at all staffed Stations by midnight on the Saturday following the end of each Reporting Period. The Passenger's Charter Statistics to be displayed shall relate to the Service Groups or Routes (as directed by RfL) serving such Stations; and
 - (c) at the same time, provide copies of its Passenger's Charter Statistics to RfL in order that RfL may, amongst other things, publish (as it sees fit) those statistics on the LRC Website and the Rail Passengers' Council.

4.11 The obligation under paragraph 4.10(b) to display any other Train Operator's statistics is subject to the provision of such statistics to the Operator by such other Train Operators.

4.12 The Operator shall provide Passenger's Charter Statistics in a format approved by RfL to the operators of Operator Access Stations in sufficient time for the information to be displayed by such other operators within the time limits specified in paragraph 4.10.

Audit of the Passenger's Charter Statistics

- 4.13 The Operator shall procure that:
- (a) the Passenger's Charter Statistics published in accordance with paragraphs 4.10 and 4.12 are audited by an independent person or persons acceptable to RfL;
 - (b) the audit is conducted at least once every 13 Reporting Periods; and
 - (c) details of the methodology and the results of the audit are provided to RfL within 28 days of receipt by the Operator.

4.14 If any audit reveals inaccuracies in the data and information used to measure the performance of the Operator, the Operator shall:

- (a) ensure so far as reasonably practicable that the production of such inaccurate data and information is not repeated;
- (b) as soon as reasonably practicable implement any corrections to such inaccurate data and information (including on a retrospective basis for the previous 13 Reporting Periods); and

- (c) insofar as any inaccuracies in data and information result in compensation that was not given to passengers when it should have been given, so far as reasonably possible make such compensation available.

5. MARKETING

5.1 Not less than:

- (a) 28 days before the Start Date, RfL shall deliver to the Operator a Marketing Plan for the first Concession Year; and
- (b) one Reporting Period prior to the start of each Concession Year (other than the first such year), RfL shall deliver to the Operator a Marketing Plan for that Concession Year.

5.2 The Operator shall, within 14 days of receipt of a Marketing Plan, review such Marketing Plan and provide RfL with its informed opinion to assist RfL's decision making in relation to marketing activities for the LRC.

5.3 The Operator shall manage and undertake all aspects of on-train, on-station and premises advertising in accordance with the Marketing Plan. The Operator shall not carry out any marketing activities in relation to Concession Services other than those specified by RfL in the Marketing Plan.

5.4 RfL may amend the Marketing Plan from time to time and shall promptly notify the Operator of such amendment.

5.5 The Operator acknowledges that:

- (a) the Marketing Plan will include the use by RfL of advertising and/or marketing facilities at Stations in order to disseminate information to customers regarding Oyster products, Oystercard and other TfL services and modes;
- (b) the extent of such use may vary between Concession Years and within any single Concession Year; and
- (c) amendments to the Marketing Plan issued by RfL under paragraph 5.4 may include such amendments as are necessary to give effect to the overall marketing strategy for Oyster.

6. LOST PROPERTY

The Operator shall comply with any code of practice issued by ATOC and as reasonably supplemented by RfL from time to time in respect of the handling of lost property.

7. BICYCLES

7.1 The Operator shall, so far as is reasonably practical and subject to the availability of appropriate space on any rolling stock vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such rolling stock vehicles are made available, free of charge to passengers using the Passenger Services.

7.2 The Operator shall, so far as is reasonably practical and subject to the availability of appropriate space at Stations, ensure that reasonable facilities to enable the secure storage of

bicycles at Stations are made available, free of charge to passengers using the Passenger Services.

7.3 The Operator shall not, except to the extent RfL otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles:

- (a) on the rolling stock vehicles used by the Incumbent Operators in the provision, as at the date hereof, of railway passenger services that will constitute the Passenger Services as at the Start Date; or
- (b) as are made available by Silverlink at the NLR Stations at the date hereof.

7.4 The Operator shall not, except to the extent RfL otherwise agrees, impose any restrictions on the carriage of bicycles on any Passenger Services other than those set out in the Carriage of Bicycles Policy.

7.5 Except to the extent that RfL otherwise agrees, having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by the Operator shall include reasonable facilities for the carriage and storage of bicycles.

7.6 Notwithstanding any of the above, the Operator shall not be in contravention of any of its obligations under this paragraph 7 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or wheelchair users and/or those passengers travelling with such wheelchair users.

8. TRAVELINE

The Operator shall co-operate with RfL, the Secretary of State, any Local Authority or any other third party notified to it by RfL in developing Traveline for the purpose of increasing the numbers of passengers using railway passenger services.

9. NOTICES

To the extent not already provided for under this Schedule 1.3, if requested by RfL, the Operator shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at Operator Access Stations of) such notices as RfL may wish to publish from time to time.

10. THE LRC WEBSITE

10.1 RfL will establish the LRC Website on or prior to the Start Date and shall maintain it throughout the Concession Period.

10.2 RfL shall grant the Operator such access to the database of the LRC Website as the Operator reasonably requires in order to comply with its obligation under this Schedule 1.3.

10.3 In addition to the specific requirements to update the database for the LRC Website referred to in this Schedule 1.3, where reasonably requested to do so by RfL, the Operator shall co-operate with RfL in preparing and finalising the content to be published on the LRC Website from time to time.

11. PASSENGER CALL CENTRE

11.1 In addition to the requirements to participate in and comply with its obligations under the terms of the National Rail Enquiry Scheme pursuant to paragraph 5 of Schedule 2.6 (*Transport, Travel and Other Fares Related Schemes*), the Operator shall, on or before the Start Date, establish and resource a passenger call centre for the purposes set out in paragraph 11.2 (the *Passenger Call Centre*).

11.2 Through the Passenger Call Centre, the Operator shall:

- (a) receive and answer telephone calls and other correspondence from the public, including electronic forms of correspondence;
- (b) administer complaints from the public; and
- (c) provide real-time Passenger Service and general service information (including information relating to fares, timetables, station facilities and inter-changes with other Train Operators).

11.3 The Passenger Call Centre shall be available to the public between 0900 and 1700 Monday to Friday, excluding Bank Holidays.

11.4 The Operator shall maintain the Passenger Call Centre throughout the Concession Period.

12. GRAFFITI

12.1 The Operator shall enforce any contractual rights it may have from time to time to procure the reduction in, prevention of, or prompt removal of graffiti from:

- (a) Operator Access Stations; and
- (b) the trackside of each Route.

12.2 The Operator shall:

- (a) procure the removal of graffiti that is present at the Start Date from areas within its control at the Stations; and
- (b) use all reasonable endeavours to procure the removal of graffiti that is present at the Start Date from areas that may reasonably be considered to be within the Stations,

in each case, by no later than 19 February 2008, and if the Operator fails to comply with this requirement it shall pay RfL [REDACTED]¹⁰ by way of a Committed Obligation Payment Adjustment, payable in accordance with Schedule 11.1 (*Concession Payments*).

13. DISTRIBUTION OF MEDIA MATERIAL

The Operator shall be prohibited from distributing or permitting the distribution of any media material whatsoever (including newspapers, magazines, leaflets, coupons and flyers) at any of the Stations or on any rolling stock vehicle forming part of the Train Fleet without the prior consent of RfL.

¹⁰ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

SCHEDULE 1.4

Persons with Disabilities and Disability Discrimination

1. RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

1.1 The Operator acknowledges that its obligations in this Schedule 1.4 are in addition to and do not limit its obligations to comply with:

- (a) the DDA;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements in this Agreement.

1.2 This Schedule 1.4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Operator directed at meeting the needs of persons with disabilities.

2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF STATIONS

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Operator that:

- (a) there is limited funding available to RfL to assist operators with the carrying out of those works; and
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect.

2.2 The Operator shall:

- (a) as and when requested by RfL, provide:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Operator's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or any Infrastructure Manager to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

(c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through RfL pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Operator shall notify RfL of:

- (i) any such additional funding which it secures; and
- (ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Operator shall, subject to paragraph 3 of Schedule 2.6 (*Transport, Travel and Other Fares Related Schemes*), use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Concession Period:

- (a) the Operator has complied with its obligations in Section 21(2)(d) of the DDA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person) and its obligations in paragraph 2.7 concerning Minor Works; and
- (b) notwithstanding such compliance, the Operator reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the DDA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Operator may seek funding from RfL in respect of that expenditure.

2.5 If the Operator seeks funding from RfL under paragraph 2.4, and demonstrates to RfL's satisfaction that the criteria in paragraph 2.4 have been satisfied, then RfL may agree to adjust the amount of Concession Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, RfL will have regard to the availability to it of funding, together with any other available sources of funding described in paragraph 2.2(c). If and to the extent RfL agrees to adjust Concession Payments in accordance with this paragraph 2.5 in any Concession Year:

- (a) RfL shall make such adjustment to the Concession Payments; and
- (b) the Operator shall spend the additional funds that are available as a consequence of that adjustment:
 - (i) in order to comply with the DDA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions RfL may notify the Operator of.

2.6 If and to the extent the Operator is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the DDA Requirements in respect of a Operator Access Station, provided that the Operator:

- (a) notifies RfL within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with RfL's reasonable directions regarding the exercise of any rights the Operator may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Operator shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, **Minor Works** means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 (*Minor Works*);
 - (ii) shall not include any works which any Infrastructure Manager, the Operator or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Operator under the DDA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and RfL gives its consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (a)(ii) with the prior consent of RfL; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of RfL;
- (b) as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Concession Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and the Rail Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with any Infrastructure Manager and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and (b)(ii), obtain RfL's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Concession Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Concession Year in such Concession Year (unless otherwise agreed by RfL);

- (d) report progress to RfL in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and
- (e) co-operate, as RfL may reasonably require, with any Infrastructure Manager or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. DEALING WITH CLAIMS RELATING TO STATIONS

3.1 If during the Concession Period the Operator receives notification of a claim under the DDA in respect of any alleged non-compliance by it with the DDA Requirements or otherwise in respect of any Station (a **DDA Claim**), then the Operator shall:

- (a) notify RfL within seven days of receiving notification of the DDA Claim. The Operator shall at the same time notify RfL of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 21(2)(d) of the DDA;
- (b) if required by RfL, defend the DDA Claim or any aspect of the DDA Claim (which may include appealing the judgment). RfL will, subject to paragraph 3.4, pay the Operator's reasonable costs of:
 - (i) any defence or appeal required by RfL; and/or
 - (ii) compliance with RfL's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of RfL to defend the DDA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of RfL) settle or enter into any compromise in relation to the DDA Claim (or the relevant aspect of it), including by entering into mediation.

3.2 If, in the reasonable opinion of the Operator, it will be more cost effective to settle the DDA Claim rather than act in accordance with RfL's requirement under paragraph 3.1, it shall produce for RfL's approval a settlement proposal, setting out the terms of the Operator's proposals to make an offer to the Disabled Person making the DDA Claim and its reasons for making such offer (the **Settlement Proposal**).

3.3 If RfL does not accept the Settlement Proposal and still requires the Operator to defend the DDA Claim (or any aspect of it) then the Operator shall defend the DDA Claim in accordance with paragraph 3.1.

3.4 If the Operator is required to defend a DDA Claim where it has submitted a Settlement Proposal to RfL and an award is made in respect of the DDA Claim in favour of the Disabled Person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, RfL shall pay to the Operator:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Operator in defending the DDA Claim, to the extent that such costs have not already been paid by RfL under paragraph 3.1(b).

3.5 RfL shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the

court on this point has been sought or made, RfL, in its reasonable opinion, considers that the Operator has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

4. ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

4.1 The Operator acknowledges that its obligations in this paragraph 4 are in addition to and do not limit its obligations to comply with:

- (a) the DDA;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

4.2 The Operator shall establish and implement procedures necessary to:

- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Disabled Person's Reporting System (or whatever system may replace it from time to time for the purposes of the Secretary of State's Guidance on Disabled People's Protection Policies) and where the Operator is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved;
- (b) record whether such seating accommodation and/or assistance is actually provided; and
- (c) provide such records to RfL on its request.

4.3 The Operator shall comply with the requirements set out in Appendix 2 (*Alternative Transport*) in respect of the provision of alternative means of transportation for persons with disabilities.

APPENDIX 1 TO SCHEDULE 1.4**Minor Works**

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - (a) thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - (b) fewer than three steps,in either case from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the station where handrails do not currently exist and where the Operator reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.
12. Providing portable light-weight ramps (and appropriate restraining devices for such ramps) and any required assistance with the use of such ramps. Any such ramps shall be:
 - (a) compliant with the Rail Vehicle Accessibility Regulations 1998; and
 - (b) carried on board trains to provide a method of facilitating access to or egress from a rolling stock vehicle, acknowledging that their use is subject to availability of staff:
 - (i) on the train of which the rolling stock vehicle comprises part; or
 - (ii) at the station.

APPENDIX 2 TO SCHEDULE 1.4**Alternative Transport**

1. References in this Appendix 2 to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.

2. Subject to paragraph 4, where:

- (a) a passenger wants to travel on a Passenger Service; and
- (b) the design of the station at which the Passenger Service is to start, (the *Departure Station*) or finish (the *Destination Station*) prevents the passenger from using that station to access or disembark from that Passenger Service,

the Operator shall provide alternative transport for that passenger in accordance with paragraph 3.

3. The Operator shall provide alternative transport for the passenger referred to in paragraph 2:

- (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
- (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
- (c) to or from such other station as the Operator may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.

4. The Operator's obligations under this Appendix 2 are subject to:

- (a) reasonable prior notice of the passenger's requirement for alternative transport; and
- (b) the availability of suitable alternative transport (provided that the Operator has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 1.5

Information about Passengers

1. PASSENGER NUMBERS INFORMATION

1.1 The Operator shall, as and when reasonably requested by RfL, but in any event not less frequently than every six months (the first such period commencing on the Start Date), provide information to RfL on the extent of the use by passengers of the Passenger Services. In particular, the Operator shall provide information relating to:

- (a) the number of passengers travelling:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations; and
 - (b) the times of the day, week or year at which passengers travel,
- (together, *Actual Passenger Demand*).

1.2 The Operator shall obtain the information specified in paragraph 1.1:

- (a) on each Passenger Service;
- (b) on each Route; and
- (c) at any station or between any stations,

by carrying out:

- (i) manual passenger counts every six months during the Concession Period; or
- (ii) automatic passenger counts as and when requested by RfL pursuant to paragraph 1.1 where any New Train is equipped with automatic passenger counting equipment,

in each case, in accordance with the passenger count methodology in the agreed terms marked *PCM*.

1.3 The information specified in paragraph 1.1 shall be provided by the Operator:

- (a) in such format and to such level of disaggregation as RfL may reasonably require in order to assist RfL's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding; and
- (b) within 14 days of:
 - (i) in the case of manual counts, the end of each six month period referred to in paragraph 1.1; and

- (ii) in the case of automatic counts, any request by RfL pursuant to paragraph 1.1.

1.4 At the same time as the Operator provides any information in accordance with paragraph 1.1, it shall (if RfL requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as RfL required pursuant to paragraph 1.3(a); and
- (b) notify RfL of any such update.

2. NATIONAL PASSENGER SURVEYS

2.1 The Operator agrees with RfL that:

- (a) the Rail Passengers' Council may measure the level of passenger satisfaction with the Concession Services through the carrying out of National Passenger Surveys;
- (b) the Rail Passengers' Council shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
- (c) the Operator shall grant access on trains or at stations to the Rail Passengers' Council (or its representatives and agents) to carry out National Passenger Surveys;
- (d) the Operator shall co-operate with the Rail Passengers' Council (in such manner as the Rail Passengers' Council may reasonably request or as RfL may reasonably direct) in order to enable the Rail Passengers' Council to carry out National Passenger Surveys;
- (e) the Rail Passengers' Council and/or RfL may, from time to time, publish the results of each National Passenger Survey; and
- (f) in accordance with Schedule 8.3 (*CSS Regime*), National Passenger Surveys (as modified in accordance with the National Passenger Survey methodology and questionnaire) will be used to determine the Operator's performance in respect of the CSS Regime for the Concession Period, unless RfL serves a notice on the Operator pursuant to paragraph 1.2 of Schedule 8.3.

2.2 RfL shall procure that:

- (a) the findings of any National Passenger Survey are made available by the Rail Passengers' Council to the Operator within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

SCHEDULE 1.6

Concession Services

1. CONCESSION SERVICES

1.1 The Operator may at all times during the Concession Period provide and operate the Concession Services specified in this Schedule 1.6, save that in providing and operating the Concession Services, the Operator shall not take any action which:

- (a) is detrimental to RfL's or TfL's reputation or the value of the LRC to Successor Operators;
- (b) prejudices the continuity of the provision of the Concession Services by a Successor Operator at the end of the Concession Period; or
- (c) results in additional liabilities and obligations being assumed by such a Successor Operator.

1.2 The Operator shall at all times during the Concession Period operate the Concession Services in a safe manner, in accordance with good industry practice, and shall maintain appropriate and up-to-date safety management systems.

2. RESTRICTIONS RELATING TO CONCESSION SERVICES

2.1 The Operator shall not directly or indirectly, without the prior written consent of RfL, carry on any business or activity other than the provision and operation of the Concession Services.

2.2 Such consent shall not be unreasonably withheld where that other business or activity proposed to be carried on by the Operator could not reasonably be so carried on by an Affiliate of the Operator unless, in RfL's reasonable opinion, such additional business or activity would contravene any of the conditions specified in paragraph 1.

2.3 RfL may impose such conditions to its consent as it considers appropriate for the purpose of securing the continuity of the provision of the Concession Services at the end of the Concession Period.

2.4 The Operator shall not during the Concession Period, without the consent of RfL:

- (a) provide or operate any railway passenger services other than the Passenger Services;
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Operator's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-

operation between such participants or between any such participants and any other person.

2.5 The Operator shall not engage any Concession Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. STATION SERVICES

3.1 The Station Services shall comprise:

- (a) the provision of any services to persons at the Stations or to Train Operators whose trains call at such Stations, provided that such services:
 - (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
 - (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;
 - (iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare; and
 - (iv) may include the provision of car parking spaces subject to paragraph 1.7 of Schedule 2.2 (*Fares Selling*) in respect of the terms and conditions under which those spaces maybe made available; and
- (b) the provision of access to any person under an Access Agreement at any Station.

3.2 The Station Services shall include the provision of any service which the Operator may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

4. LIGHT MAINTENANCE SERVICES

4.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (d) replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;
- (g) the refuelling of rolling stock vehicles;
- (h) the replenishment of water tanks; and
- (i) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself at any Station or Depot.

4.2 Light Maintenance Services shall include the provision of any service which the Operator may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

5. ANCILLARY SERVICES

The Operator may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) the provision of any service or activity at any Station or on any train permitted under the terms of the related Station Lease or Rolling Stock Lease (as appropriate) and not otherwise provided for under this Agreement;
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent. of the number of Concession Employees as at the Start Date, for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent. of any other Concession Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to (c) inclusive and (e) to (m) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at:

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subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent. the number so engaged or employed on the Start Date;

- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Operator on or before the date of signature of this Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;

- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- (i) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Operator;
- (j) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Operator or the lending, hiring or contracting out of any employees of the Operator or the provision of any other services to any Infrastructure Manager or any other Train Operator, in each case on an emergency basis;
- (k) the licensing or permitting of any other person (including an Affiliate of the Operator) to carry out any activity or business, in connection with the provision of the Concession Services, or otherwise, on any rolling stock vehicle operated by the Operator, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (l) such activity or business as may be reasonably necessary for the purpose of providing any other Concession Services or complying with this Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Operator;
- (m) the provision of consultancy services reasonably ancillary to the provision of the Concession Services; and
- (n) any services or activity not falling within paragraphs 3, 4 or 5(a) to (m), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding such amounts per annum in each Concession Year, per item and in aggregate, respectively prescribed for this purpose in this Agreement, provided that in the second and each subsequent Concession Year, these amounts will be adjusted in accordance with the following formula:

$$\text{Adjusted Amount} = \text{Original Amount} \times \text{RPI}$$

where:

Original Amount means £25,000 per annum per item and £250,000 per annum in aggregate; and

RPI has the meaning given to it in Schedule 11.2 (*Annual Concession Payments*).

6. AFFILIATES OF THE OPERATOR

Nothing in this Schedule 1.6 shall restrict any Affiliate of the Operator from having an interest in or participating in any business or activity.

SCHEDULE 1.7**2012 Olympic Games and Paralympic Games****1. ACKNOWLEDGEMENT**

The parties acknowledge that:

- (a) London will host the Games in 2012;
- (b) as a key provider of public transport services into and out of London, the surrounding area and other areas serving venues for the Games, the Operator will have an important role to play during the Concession Period in helping to make the staging of the Games successful; and
- (c) the Olympic Delivery Authority must prepare and keep under review the Olympic Transport Plan for addressing transport matters relating to the Games.

2. OPERATOR CO-OPERATION

The Operator:

- (a) shall co-operate and consult as reasonably required by and with the Olympic Delivery Authority, the LOCOG, TfL, RfL, any Infrastructure Manager, BTP and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:
 - (i) the provision of additional and/or specific railway passenger services;
 - (ii) the carrying out of necessary works to the network;
 - (iii) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
 - (iv) the provision of specific integrated ticketing in relation to the Passenger Services; and
 - (v) advertising and marketing of the Games in relation to the Concession Services; and
- (b) shall not for the purposes of publicity, advertising, marketing or any other reason, without the prior written consent of LOCOG, represent that any product or service provided by the Operator under this Agreement:
 - (i) has been endorsed or approved by LOCOG, the Olympic Delivery Authority or any other Olympic body; or
 - (ii) is in any way associated with those organisations or the Games,including by publishing or issuing any statement (factual or otherwise) about the Operator's products or services under this Agreement.

3. ENTRY INTO THE OLYMPIC SERVICES DELIVERY PLAN

3.1 RfL may require the Operator to enter into a plan with it:

- (a) to facilitate, in particular, the implementation of the railway aspects of the Olympic Transport Plan; and
- (b) to the extent not already provided for under paragraph 3.1(a), to:
 - (i) implement any or all of the matters referred to in paragraph 2; and
 - (ii) any other matter relevant to the planning or staging of the Games,

(the *Olympic Services Delivery Plan*).

3.2 RfL shall give the Operator reasonable notice of the terms of the Olympic Services Delivery Plan it wishes to enter into and the date on which it wishes to enter into the Olympic Services Delivery Plan.

3.3 The Operator may make representations to RfL in respect of RfL's proposed terms of the Olympic Services Delivery Plan.

3.4 If RfL and the Operator cannot agree on the terms of the Olympic Services Delivery Plan, then RfL shall reasonably determine such terms.

3.5 On the date notified to the Operator by RfL pursuant to paragraph 3.2, RfL and the Operator shall enter into the Olympic Services Delivery Plan.

4. FINANCIAL EFFECTS OF THE OLYMPIC SERVICES DELIVERY PLAN

For the purpose of paragraph (j) of the definition of *Change*, the Operator's implementation of the Olympic Services Delivery Plan shall be a Change, insofar as such implementation results in the imposition of costs on and receipt of revenue by the Operator.

5. IMPLEMENTATION OF THE OLYMPIC SERVICES DELIVERY PLAN

The Operator shall implement the Olympic Services Delivery Plan in accordance with its terms.

SCHEDULE 1.8

Extended Restrictions of Use and Closures

1. NOTICE OF PROPOSED POSSESSIONS STRATEGY AND NETWORK CHANGE

1.1 The Operator shall notify RfL:

(a) as soon as reasonably practicable upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement works which require a programme of co-ordinated Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code; and

(b) a reasonable period in advance of:

(i) responding to Network Rail in respect of any notification referred to in paragraph 1.1(a); and

(ii) appealing against any aspect of the proposed extended Restriction of Use specified in any Possessions Strategy Notice,

in order to allow the consultation pursuant to paragraph 1.2 to take place in a timely manner should it be required.

1.2 If and to the extent requested by RfL, the Operator shall:

(a) consult it in relation to any of the matters referred to in paragraph 1.1; and

(b) provide to RfL copies of any notices, correspondence or other information exchanged between Network Rail and the Operator in respect of those matters.

1.3 The Operator shall:

(a) respond to Network Rail in relation to any of the matters referred to in paragraph 1.1 in accordance with RfL's reasonable direction; and

(b) as directed by RfL, waive its rights in whole or in part to any compensation it may be entitled to from Network Rail under any Network Rail TAA in relation to any NLRIP Possession.

1.4 Where RfL directs the Operator to waive its rights pursuant to paragraph 1.3(b), RfL shall compensate the Operator to the extent that the Operator:

(a) would have been entitled to exercise those rights; and

(b) suffered any loss of the kind that is compensatable pursuant to those rights,

in each case, but for such direction.

1.5 The Operator shall provide to RfL such evidence as RfL requires in order to demonstrate to RfL's reasonable satisfaction the extent of any compensation to be paid pursuant to paragraph 1.4.

1.6 The Operator shall not propose a Network Change to Network Rail or any other third party without RfL's prior written consent.

2. IMPLEMENTATION OF WORKS SPECIFIED IN ANY POSSESSIONS STRATEGY NOTICE

2.1 The Operator shall co-operate with Network Rail, RfL and any other relevant party in connection with any proposed extended Restriction of Use specified in any Possessions Strategy Notice.

2.2 The Operator shall co-operate with Network Rail in Network Rail's endeavours to obtain all consents required for the carrying out of each such extended Restriction of Use, including any required consent under Part D of the Network Code and under Part G of the Network Code in respect of any related Network Change.

2.3 The Operator's obligations under paragraphs 2.1 and 2.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

2.4 If Network Rail serves on the Operator a Possessions Strategy Notice that requires a Restriction of Use of any Route for more than 28 consecutive days, then a Change shall occur.

3. CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES

3.1 Except to the extent that RfL agrees otherwise, the Operator shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

3.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Operator shall and to the extent so requested by RfL, take such action as RfL may require in order to enable RfL to comply with any duty imposed on it under Part 4 of the Railways Act 2005 in relation to such Closure.

SCHEDULE 1.9

NLR TAA

1. NLR ACCESS OPTION

The Operator acknowledges that TfL intends to enter into an option agreement with Network Rail for the purpose of reserving the necessary capacity on the NLR for TfL or its nominee to operate the railway passenger services on the NLR contemplated by SLC2 (the *NLR Access Option*).

2. NLR TAA

2.1 Following notice from RfL, the Operator shall promptly negotiate a Track Access Agreement with Network Rail (which may include a supplemental agreement to its Network Rail TAA) either pursuant to the NLR Access Option or as otherwise directed by RfL to the extent TfL does not enter into the NLR Access Option as intended (the *NLR TAA*).

2.2 The Operator shall, in respect of such NLR TAA:

- (a) fully consult with RfL on each draft of the NLR TAA before submitting its comments to Network Rail and use all reasonable endeavours to comply with any directions from RfL as to which provisions the Operator should seek to include or modify in the NLR TAA;
- (b) ensure, to the extent that the NLR Access Option is entered into, that all provisions of the NLR Access Option are incorporated in the NLR TAA;
- (c) use reasonable endeavours to ensure, to the extent that the NLR Access Option is not entered into, that all provisions of any RfL direction pursuant to paragraph 2.1 regarding the content of the NLR TAA are incorporated in the NLR TAA;
- (d) provide RfL with a progress report at the end of each Reporting Period on the status of negotiations and issues with Network Rail, indicating matters discussed in such Reporting Period and their status, and matters due to be discussed or reviewed in the forthcoming Reporting Period;
- (e) if directed to do so by RfL, exercise its rights under the Network Code and make an application to the ORR under Section 17 or Section 22A of the Act in relation to any provisions of the NLR TAA on which the Operator and Network Rail are unable to reach agreement;
- (f) to the extent that the NLR Access Option or the provisions of any RfL direction pursuant to paragraph 2.1 envisage that the terms of the NLR TAA will be agreed by a specified date, use all reasonable endeavours to agree the terms of the NLR TAA by such date so as to enable Network Rail and the Operator to submit an application to the ORR under Section 18 or Section 22 of the Act by the date contemplated by the NLR Access Option or that direction, as the case may be;
- (g) not give its approval of the final form of the NLR TAA unless RfL has approved such form in writing, nor sign the NLR TAA until directed to do so by RfL; and

(h) following signature of the NLR TAA, not consent to any amendment or variation to the NLR TAA unless RfL has approved it in writing.

2.3 RfL undertakes to provide reasonable support to the Operator in any negotiations with Network Rail and communications with ORR concerning the form of the NLR TAA, and if RfL deems it necessary. RfL may procure that TfL enforces TfL's rights under the NLR Access Option.

2.4 The Operator acknowledges that RfL may direct the Operator to enter into the NLR TAA to secure the timetable rights required to operate SLC2, whether or not RfL has exercised the option described in paragraph 3 of Schedule 10.1 (*List of Priced Options*).

2.5 As directed by RfL, the Operator shall make representations to ORR concerning the payment rate under Schedule 8 (*Performance Regime*) to the NLR TAA.

SCHEDULE 1.10**NLRIP Possessions****1. NLRIP POSSESSIONS EXPECTED TIMETABLE**

As at the date of this Agreement, RfL expects NLRIP Possessions on the following Routes to occur during the periods and for the duration specified in the following table (the *NLRIP Possessions Table*):

Column 1	Column 2	Column 3	Column 4
No.	Passenger Services Affected	NLRIP Possession Periods	NLRIP Possession Duration
1	Gospel Oak to Barking	From 1 August 2008 to 31 January 2009	4 weeks
2	Kensal Rise to Gospel Oak	From 1 August 2008 to 31 January 2009	8 weeks
3	Stratford to Hackney Wick	December 2008	1 week
4	Stratford to Caledonian Road and Barnsbury	From 1 June 2009 to 31 October 2009	15 weeks
5	Stratford to Willesden Junction	December 2009	1 week
6	Camden Road to Kensal Rise	From 1 June 2010 to 31 October 2010	15 weeks
7	Stratford to Willesden Junction	December 2010	1 week

2. OPERATOR OBLIGATIONS

2.1 The Operator shall co-operate with Network Rail, RfL and any other relevant party in connection with any proposed NLRIP Possession.

2.2 During any NLRIP Possession, the Operator shall, to the extent operationally possible, continue to operate the Concession Services in accordance with this Agreement, provided that, at Stations on the Routes affected by the NLRIP Possession where Passenger Services are, as a result of the NLRIP Possession, not operating (*Affected Stations*) and where the ticket retailing facility at such Station would, but for the NLRIP Possession, have been staffed with more than one member of retail staff, the Operator shall, without prejudice to its obligations under paragraph 2 of Schedule 1.11 (*Staffing*) to staff such Affected Stations for a certain number of hours, only be required to maintain one member of retail staff.

3. MSS REGIME

The MSS Regime shall, for the duration of a NLRIP Possession, cease to apply in respect of the Affected Stations. The MSS Regime will continue to apply to the Passenger Services which are being provided during the NLRIP Possession.

4. PERFORMANCE BENCHMARKS

Long NLRIP Possessions

4.1 On or before the commencement of each of the NLRIP Possessions specified in rows 1, 2, 4 and 6 of the NLRIP Possessions Table (the *Long NLRIP Possessions*) RfL and the Operator shall agree or, in the absence of such agreement, RfL shall reasonably determine, the revised Operational Benchmarks that will apply for the duration of any such Long NLRIP Possession. The Operational Benchmarks will be revised to reflect any necessary changes to the Concession Services resulting from any such Long NLRIP Possession, but otherwise applying the same principles as were applied to determine the Operational Benchmarks as at the Start Date.

Short NLRIP Possessions

4.2 For each Reporting Period occurring during any NLRIP Possession specified in rows 3, 5 and 7 of the NLRIP Possessions Table (the *Short NLRIP Possessions*), RfL shall, for the purpose of performing the calculations referred to in paragraph 3 of Schedule 7 (*Operational Performance*), assume that the Operator has, in respect of each Route affected by any Short NLRIP Possession and for the duration of such Short NLRIP Possession, achieved operational performance equivalent to the average performance achieved by the Operator on such Route during the portion of such Reporting Period which excludes the duration of the Short NLRIP Possession.

SCHEDULE 1.11

Staffing

1. INTRODUCTION

The Operator shall at all times during the Concession Period provide appropriate staffing at stations and on trains so as to ensure that:

- (a) it can efficiently comply with any of its safety, customer service and operational obligations under this Agreement, any Licences and any applicable Law;
- (b) it can provide high levels of passenger reassurance; and
- (c) it meets passenger requirements and customer expectations.

2. STAFFING AT STATIONS

Ticket Offices

2.1 The Operator shall ensure that, during the period commencing on the Start Date and ending on 30 November 2009, the ticket retailing facility at each NLR Station and each ELL Station (for which the Operator becomes the Facility Owner during this period) is staffed for no less than the hours that such Station is required to be staffed as at the date of this Agreement, or, where this is not appropriate, each such facility is staffed for no less than the hours that an equivalent station (in terms of size, facilities and passenger usage) on the Routes is staffed for as at the date of this Agreement.

2.2 The Operator shall ensure that, during the period commencing on 1 December 2009 and ending at the end of the Concession Period, the retailing facility at the following NLR Stations and the following ELL Stations (for which the Operator is or becomes the Facility Owner during this period) is staffed for no less than the hours that such Station is required under paragraph 2.1 to be staffed as at 30 November 2009:

NLL Stations

1	Acton Central
2	Camden Road
3	Dalston Kingsland
4	Gospel Oak
5	Hackney Central
6	Watford High Street
7	Willesden Junction

ELL Stations

1	Brockley
2	Crystal Palace
3	Dalston Junction
4	Forest Hill
5	Honor Oak Park
6	New Cross Gate
7	Norwood Junction
8	Sydenham
9	West Croydon

2.3 The Operator shall ensure that, during the period commencing on 1 December 2009 and ending at the end of the Concession Period, the retailing facility at the following NLR Stations and the following ELL Stations (for which the Operator is or becomes the Facility Owner during this period) is staffed for at least the time between 0700 and 1000 each Weekday:

NLR Stations

1	Bushey
2	Carpenders Park
3	Hatch End

ELL Stations

1	Anerley
2	Penge West

2.4 The Operator may with the consent of RfL substitute different Stations for the Stations in the tables in paragraphs 2.2 and 2.3, but the aggregate number of Stations in each table may not be reduced.

Stations

2.5 Each Station shall be open for passenger access and egress 15 minutes prior to the first Station Call each day and until 15 minutes after the last Station Call each day, in each case, at each such Station.

2.6 The Operator shall ensure that:

- (a) station duties at each station are carried out in an effective and efficient manner; and
- (b) a regular and effective staff presence at all Stations is provided to meet the objectives set out in paragraph 1,

such that the total number of Station staff on duty 15 minutes prior to, during and 15 minutes after the first and last Station Call at each Station each day shall be no less than the total number of Stations at any given time during the Concession Period.

2.7 The Operator shall ensure that on each day, from 15 minutes prior to the first Station Call at any Station and throughout the day until 15 minutes after the last Station Call at such Station:

- (a) there is at least one suitable member of Station staff on duty at that Station; and
- (b) the member of Station staff on duty is:
 - (i) continuously available and visible to passengers at that Station to provide customer services; and
 - (ii) appropriately dressed in order that passengers may readily identify that person as being available to provide customer services.

2.8 The Operator shall operate and supervise all ticket gatelines installed at the Stations between 0700 (or five minutes before departure of the first train from the station, if later) and 2100 on all days of operation, and shall manage those ticket gatelines appropriately, having regard to the flow of passengers, occurrence of incidents, and other relevant circumstances.

2.9 To the extent that the Operator provides accommodation for Station staff in order to facilitate the carrying out of the obligation specified in paragraph 2.7, the Operator shall:

- (a) provide such accommodation as the Operator reasonably determines is:
 - (i) adequate for the needs of those staff at any Station; and
 - (ii) sustainable for the duration of the Concession Term; and
- (b) service and maintain such accommodation for the duration of the Concession Period.

3. ACCOMMODATION FOR RfL MANAGEMENT TEAM

3.1 The Operator shall at all times during the Concession Period provide secure, separate and fully serviced office accommodation for RfL's LRC management team, within the same building as the Operator's management team. Such office accommodation shall be available for use without any unreasonable time restrictions and shall provide not less than:

- (a) one open-plan office of 1200 sq. ft.;
- (b) a meeting room sufficient for 12 people;
- (c) two separate senior managers' offices, each of not less than 150 sq. ft.; and
- (d) toilet and kitchen facilities for 12 staff.

3.2 The Operator shall use all reasonable endeavours to provide:

- (a) the accommodation set out in paragraph 3.1 before the Start Date; and
- (b) the following by four weeks before the Start Date:
 - (i) the office referred to in paragraph 3.1(a), but with a capacity of 800 sq. ft.; and
 - (ii) toilets and kitchen facilities that are shared with the Operator's employees.

3.3 The Operator shall co-operate with RfL to assist RfL in the successful mobilisation of its resources and the carrying out of its activities prior to the start of the LRC, and this co-operation shall include:

- (a) regularly consulting RfL (including RfL's information technology representatives) on the Operator's project plans for the Operator's fit out of the accommodation referred to in paragraph 3.1; and
- (b) taking reasonable steps to accommodate RfL's information technology requirements for that accommodation as soon as reasonably practicable.

SCHEDULE 1.12

Silverlink Separation

1. ROLLING STOCK VEHICLES

1.1 Subject to paragraph 1.2, from the Start Date until the Passenger Change Date occurring in December 2008, the Operator shall supply (including maintenance and cleaning) one Class 313 EMU seven days per week to the West Midlands Franchisee to allow the West Midlands Franchisee pursuant to the West Midlands Franchise to deliver Watford Junction – St Albans services.

1.2 RfL may extend the Operator's obligation under paragraph 1.1 until the Passenger Change Date occurring in June 2009 on no less than three months' prior notice to the Operator.

1.3 Pursuant to paragraph 1.1, the Operator shall be responsible for presenting a Class 313 EMU at Watford Junction station on each day within the period specified in paragraph 1.1 (as extended pursuant to paragraph 1.2) in a timely manner in order that the West Midlands Franchisee can operate the first scheduled railway passenger service between Watford Junction and St Albans of each such day, as specified in the National Rail Timetable in force in June 2005.

2. TRAIN CREWS

2.1 Subject to paragraph 2.2, from the Start Date until the Passenger Change Date occurring in December 2008, the Operator shall provide drivers to the West Midlands Franchisee for the operation of Watford Junction-St Albans services and any associated empty stock movements, in line with driver diagrams of the Incumbent Operator as at the date of this Agreement.

2.2 RfL may extend the Operator's obligation under paragraph 2.1 until the Passenger Change Date occurring in June 2009 on no less than three months' prior notice to the Operator.

2.3 The Operator shall, for a period of 12 months from the Start Date, supply supervision and rostering facilities based at Watford Junction for conductors of the West Midlands Franchisee, in line with arrangements existing immediately prior to the date of this Agreement.

3. IT AND INFORMATION SYSTEMS

3.1 RfL shall procure that each of the following information technology and data network systems or configurations are available to the Operator for the separate operation of the NLR Stations by the Start Date:

- (a) a separate LAN / WAN structure with associated links to ATOS mainframe services;
- (b) a separate network structure for Scheidt and Bachmann ticket vending machines on the NLR stations;
- (c) a separate CIS structure and reconfiguration of the associated 'Tracknet' system;

- (d) transfer of relevant information from the 'Gemini' system;
- (e) separate network structures at Euston and Watford Junction stations;
- (f) separate sign-on arrangements for 'TOPS' and 'TRUST';
- (g) transfer of season ticket database information; and
- (h) transfer of relevant information from customer information databases.

3.2 RfL shall procure that separate network IT licences, hardware rental and maintenance agreements exist for the systems identified in paragraphs 3.1(a) to (f) inclusive.

SCHEDULE 1.13

[REDACTED]¹¹

¹¹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 1.13

[REDACTED]¹²

¹² This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

SCHEDULE 1.14

Services to LUL

1. RELEVANT STATIONS

1.1 The arrangements in this Schedule 1.14 shall apply to the following stations (*the LUL Stations*):

1	Blackhorse Road	6	Kensal Green	11	South Kenton
2	Gunnersbury	7	Kenton	12	Stonebridge Park
3	Harlesden	8	Kew Gardens	13	Wembley Central
4	Harrow and Wealdstone	9	North Wembley	14	West Brompton
5	Highbury and Islington	10	Queens Park		

1.2 The Operator shall co-operate with LUL in assisting LUL to develop effective operational arrangements for the LUL Stations in line with RfL’s objectives for the LRC.

2. TICKET RETAILING AGENCY

The following ticket retailing arrangements shall apply at the LUL Stations (other than Blackhorse Road, Highbury and Islington and West Brompton stations):

- (a) retailing will be undertaken by LUL staff as retail agent of the Operator under a retail agency licence, without a charge to LUL or the Operator. The Operator shall negotiate the terms of such licence in good faith with LUL, on the basis that the Operator shall provide at least the following services:
 - (i) reporting and data provision, including any ad-hoc reports reasonably requested by LUL, amongst other things to enable LUL to have clear visibility of sales volume and value at the LUL Stations by origin, destination, ticket type and time or day (or as permitted by the LENNON System and other relevant retail systems); and
 - (ii) any financial and administrative interfaces between LUL and RSP necessary to deliver the terms of the retail agency licence;
- (b) LUL will retain any commission from ticket sales;
- (c) the Operator shall provide training to LUL employees before the Start Date, if LUL so requests, in order to achieve the objectives of the retail agency licence and meet the requirements of RSP and ATOC for ticket retailing. The Operator will negotiate in good faith with LUL the arrangements for the provision of these services and the associated payments from LUL to the Operator. Any payments are to be determined with a view to the market rate and the actual costs that will be incurred by the Operator in the provision of training; and
- (d) if LUL so requires, the Operator shall provide maintenance for ticket retailing equipment at the LUL Stations so as to enable LUL to comply with its relevant obligations under the retail agency licence. The Operator shall negotiate the charge to

LUL for such maintenance based on appropriate market rates, with a view to reimbursing the Operator for the actual costs to be incurred by the Operator in providing such maintenance.

3. SUPPORT SERVICES

3.1 For the first 26 Reporting Periods of the Concession Period, the Operator shall provide the following services to LUL for those LUL Stations and areas of LUL Stations where CCTV, 'Long Line Public Address' (*PA*), station help points and/or station visual CIS are at the date of this Agreement monitored and maintained by Silverlink Metro:

- (a) **CCTV:** CCTV monitoring, associated control services and maintenance;
- (b) **PA:** PA announcements on behalf of LUL, and maintenance to station PA equipment (including replacement of defective speakers and associated station equipment);
- (c) **Station help points:** help point monitoring and maintenance services to LUL; and
- (d) **CIS:** CIS functionality, and maintenance to station CIS equipment.

3.2 (a) A PA feed allowing for the provision of information provided by the Operator shall continue to be provided by the Operator to the LUL Stations. The operation and maintenance of this feed shall remain the maintenance responsibility of the Operator throughout the Concession Period.

(b) LUL shall be responsible for the operation and maintenance of station PA equipment to which such a feed may interface. LUL shall not charge the Operator for linking to a station PA system (or for any maintenance of the station PA system) unless specific equipment is required to connect the LRC PA link to the LUL station PA.

3.3 (a) A CIS feed allowing for the provision of information concerning the Passenger Services shall continue to be provided to the LUL Stations. The operation and maintenance of this feed shall remain the maintenance responsibility of the Operator throughout the Concession Period.

(b) LUL shall be responsible for the operation and maintenance of station CIS equipment to which such a feed may interface. LUL shall not charge the Operator for linking to a station CIS (or for any maintenance of the station CIS) unless specific equipment is required to connect the LRC CIS link to the LUL station CIS.

3.4 For the first 26 Reporting Periods of the Concession Period, the Operator shall, at no cost to LUL, provide the following services to LUL for the lifts at Wembley Central, West Brompton and Harrow & Wealdstone stations:

- (a) lift status and alarm monitoring services, which shall at least include contacting LUL staff and/or the emergency services where appropriate when there is a fault with a lift or any other relevant incident occurs that is detectable using the monitoring equipment in place at the Start Date; and
- (b) maintenance of the lift monitoring equipment.

4. QUALITY OF MAINTENANCE

For the first 26 Reporting Periods of the Concession Period, the Operator shall, at no charge to LUL, procure the maintenance of CCTV, PA, help points, CIS and lift monitoring

equipment at LUL Stations to such standard and at such frequency as is required to maintain each such item of equipment in the respective condition and with the same level of operability as it had at the Start Date. Such maintenance shall, where necessary, include the renewal of local equipment (including cameras, speakers, CIS screens and help points).

5. ENHANCEMENTS

5.1 The Operator shall not be responsible for enhancements to the facilities of such equipment installed at those stations above the levels available as at the Start Date to CCTV, PA, help points or CIS at the LUL Stations. LUL shall be responsible for providing sufficient CCTV coverage, PA coverage, a sufficient quantity of help points and sufficient CIS coverage at the LUL Stations.

5.2 The Operator shall, if LUL so requests, enter into good faith negotiations with LUL for enhancements to the CCTV, PA, help point systems or CIS at the LUL Stations, which will be determined with a view to reimbursing the Operator for the actual costs of meeting LUL's requirements.

6. SUBSEQUENT ARRANGEMENTS

6.1 During the first 26 Reporting Periods of the Concession Period, and if required by LUL, the Operator shall negotiate in good faith with LUL with a view to putting in place arrangements for the operation, enhancement and maintenance of CCTV, station public address, help points, lift monitoring equipment and/or stations CIS at the LUL Stations after the first 26 Reporting Periods.

6.2 Any such arrangements will be at market rates and will be determined with a view to reimbursing the Operator for the actual cost of providing such arrangements, or as otherwise agreed, provided that LUL shall not be obliged to require a continuation of these services from the Operator.

7. OWNERSHIP OF EQUIPMENT

The Operator hereby acknowledges that all assets and equipment comprising or relating to CCTV systems, PA systems, help points and CIS at or on the LUL Stations, including any renewed assets pursuant to paragraph 4, is and shall remain the property of LUL.

8. MAINTENANCE OF LUL OPO EQUIPMENT AT COMMON PLATFORMS BETWEEN LUL AND THE LRC

LUL shall be responsible for the maintenance of the equipment at the LUL Stations that supports the one-person operation of train departures for each platform that is used by both the passenger railway services operated on behalf of LUL and the Passenger Services.

9. PAYROLL SERVICES

9.1 LUL shall be responsible for meeting the employment costs of those staff at the LUL Stations who transfer by operation of TUPE to LUL from Silverlink on the Start Date.

9.2 Where required by LUL, the Operator shall provide payroll services on behalf of LUL for such staff. The Operator and LUL shall negotiate in good faith to agree how those payroll services will be provided for the remainder of the Concession Term or such shorter period as is agreed between them. Any such arrangement will be on market rates or as otherwise agreed, provided that LUL shall not be obliged to reach any agreement with the Operator.

10. OPERATIONAL TRAINING

The Operator shall provide training to LUL employees (and other relevant employees) that RfL advise will have responsibilities at the LUL Stations in order to achieve the requirements of any Safety Certificate required by LUL and, where relevant, any Safety Certificate required by Network Rail, in each case, in relation to operations at the LUL Stations. LUL and the Operator shall negotiate in good faith with a view to putting in place arrangements for the provision of that training. Such arrangements will be at market rates and will be determined with a view to reimbursing the Operator for the actual costs to be incurred by the Operator in the provision of such training.

11. LUL SEPARATION

At any time during the first 26 Reporting Periods of the Concession Period, LUL may require the Operator to negotiate in good faith for the termination either in whole or in part of or gradual migration from providing to LUL the services specified in the preceding paragraphs of this Schedule 1.14. Any costs or savings incurred by the Operator as a result of such termination or migration will be assessed on an “open book” basis at market rates, with a view to the Operator suffering no loss and realising no gain as a result of ceasing to provide the relevant services (or part thereof) to LUL, and the Concession Payments will be adjusted accordingly.

SCHEDULE 2

FARES AND TICKETING

- Schedule 2.1:** **Specification and Creation of Fares**
- Schedule 2.2:** **Fares Selling**
- Schedule 2.3:** **Ticket Revenue and the Revenue Protection Incentive Regime**
Appendix: Revenue Share Adjustment to Annual Concession
Payments
- Schedule 2.4:** **Changes to Fares and Fares Documents**
- Schedule 2.5:** **Fares Information and Monitoring**
- Schedule 2.6:** **Transport, Travel and Other Fares Related Schemes**

SCHEDULE 2.1

Specification and Creation of Fares

1. RfL SPECIFICATION OF FARES

1.1 RfL shall make the initial Fares Document available to the Operator at least eight weeks prior to the Fares Setting Round in January 2008.

1.2 RfL shall provide to the Operator by no later than week 12 of each Fares Setting Round, to the extent not already specified in the current Fares Document, a list of the TSA Fares it requires the Operator to Create under the terms of the Ticketing and Settlement Agreement and then sell pursuant to Schedule 2.2 (*Fares Selling*).

1.3 RfL shall provide to the Operator from time to time, to the extent not already specified in the current Fares Document, a list of non-TSA Fares it requires the Operator to sell pursuant to Schedule 2.2.

2. CREATION OF TSA FARES

The Operator shall ensure that each TSA Fare notified to it pursuant to paragraph 1.1 or 1.2 has been Created in accordance with RfL's requirements pursuant to paragraph 1.1, or 1.2 (as the case may be) to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

3. RESTRICTIONS ON CREATION OF TSA FARES

The Operator shall not Create or agree to Create any TSA Fare or Discount Card except in accordance with RfL's requirements pursuant to paragraph 1.

4. CREATION OF FLOWS

The Operator shall ensure that each Flow notified to it by RfL from time to time shall be created to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

5. PRICE AND OTHER TERMS AND CONDITIONS OF FARES

The Operator shall not vary the terms and conditions, including the price, of any Fare notified to it by RfL pursuant to paragraph 1 without RfL's prior written consent.

6. RATIONALISATION OF LONDON FARES

6.1 The Operator shall co-operate with TfL, RfL, the Secretary of State, any other Train Operator and any other affected party in the industry initiative to rationalise the terms, including the price, of Fares in the London area.

6.2 In co-operating with the persons named in paragraph 6.1, the Operator shall:

- (a) exchange, from time to time, such information as may be reasonably necessary for or associated with reaching an agreement on the terms and conditions of relevant Fares, including the availability of those Fares during the course of a day; and

- (b) provide its informed opinion as and when reasonably required with a view to:
 - (i) harmonising the terms and conditions that will apply to Fares between stations in the London area; and
 - (ii) determining the terms and conditions of and extent to which any Fares will be priced by reference to any Zone or Zones; and
- (c) take such action under the Ticketing and Settlement Agreement or under any other Inter-Operator Scheme as RfL may reasonably direct to give effect to the initiative referred to in paragraph 6.1.

SCHEDULE 2.2

Fares Selling

1. FARES SELLING

Obligation to Sell

1.1 The Operator shall sell to any person wishing to travel on the Passenger Services, on any other railway passenger services, or both, the Fare he requires and which the Operator:

- (a) is entitled or obliged to sell under the Ticketing and Settlement Agreement; or
- (b) is otherwise directed to sell by RfL from time to time.

Restrictions on Sales

1.2 The Operator shall ensure that the purchaser of any Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the price specified by RfL pursuant to paragraph 1 of Schedule 2.1 (*Specification and Creation of Fares*) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as RfL may specify from time to time; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Fare on a Passenger Service where such Fare is one which RfL specifies the price of under this Agreement.

1.3 The Operator shall not set a limit on the number of Fares that may be used on any particular train.

1.4 The Operator shall not sell or offer to sell:

- (a) any Fare in respect of which the price has been specified by RfL at an amount that is greater or less than that price; and
- (b) any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

Agents of the Operator

1.5 The Operator shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise) comply with the requirements of paragraphs 1.1 to 1.4.

Additional Ancillary Services

1.6 The Operator shall, subject to this paragraph 1, be entitled to charge a purchaser of any Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Fare was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase,

provided that, pursuant to paragraphs 7.1 and 7.2 of Schedule 1.3 (*Passenger Facing Obligations*) the Operator shall not be entitled to charge a purchaser of any Fare for either the carriage or storage at any Station of a bicycle.

1.7 RfL's prior written approval shall be required in respect of the setting of the amount of any charge or the determination of other terms for car parking arrangements that the Operator wishes to introduce at any Station.

2. FARES

Reduction in Prices of Fares

2.1 Paragraph 1.4 shall not prevent the Operator from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Operator before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
- (b) presenting a Discount Card issued by another Train Operator;
- (c) the Passenger's Charter or the passenger's charter of any other Train Operator; or
- (d) any relevant conditions of carriage.

Percentage Allocations

2.2 (a) Except to the extent that RfL may consent from time to time, the Operator shall not take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.

(b) The Operator shall notify RfL upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Operator shall take such action as RfL may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

3. INCORRECT SELLING OF FARES

3.1 If the Operator has overcharged any Fare, it shall reduce that price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.4 from such date.

3.2 RfL may adjust Concession Payments by an amount equivalent in its opinion to the sum of:

(a) any additional gross revenue accruing to the Operator or any person selling Fares on its behalf as a result of the sale of Fares at prices in excess of the relevant amounts required under this Schedule 2; and

(b) any costs incurred by RfL in determining the amount of such gross revenue.

3.3 If the Operator has undercharged any Fare, it shall increase the price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.4 from such date.

3.4 RfL may adjust Concession Payments by an amount equivalent in its opinion to the sum of:

(a) the gross revenue that RfL failed to earn as a result of the sale of Fares at prices for less than the relevant amounts required under this Schedule 2; and

(b) any costs incurred by RfL in determining the amount of such gross revenue.

3.5 Any adjustment to Concession Payments by RfL pursuant to paragraphs 3.2 and 3.4:

(a) shall not be a Change; and

(b) shall be without prejudice to any other rights or remedies of RfL under this Agreement in respect of such contravention.

SCHEDULE 2.3

Ticket Revenue and the Revenue Protection Incentive Regime

1. REVENUE COLLECTION AND PAYMENT

Acknowledgement

- 1.1 The Operator hereby acknowledges that:
- (a) RfL remains on risk for the amount of Ticket Revenue that accrues in respect of passenger journeys made on the Passenger Services and that it therefore has an interest in both maximising Ticket Revenue and ensuring its timely collection; and
 - (b) the Operator does not share this risk, save for the provisions of paragraphs 2 and 3, and it has no commercial incentive to protect Ticket Revenue through the carrying out of regular and effective revenue protection measures.

1.2 The Operator therefore agrees to:

- (a) undertake its obligations set out in the remainder of this Schedule 2.3; and
- (b) co-operate with RfL or its nominee in the carrying out of Ticketless Travel Surveys by granting RfL or its nominee (as the case may be) such access to Stations or trains as either reasonably require for that purpose.

Collection and payment

1.3 RfL shall establish the Revenue Account on or prior to the Start Date.

1.4 The Operator shall, in a timely manner, collect or procure the collection of:

- (a) all Ticket Revenue on behalf of RfL and all other revenue from the sale of tickets the Operator is required to collect pursuant to the Ticketing and Settlement Agreement;
- (b) all payments due to the Operator from RSP;
- (c) the balance of the value of penalty fares that is owed to RfL pursuant to paragraph 5.5; and
- (d) all amounts payable to the Operator:
 - (i) under the London Boroughs Concessionary Travel Scheme;
 - (ii) under the British Transport Police Agreement; and
 - (iii) under the ATOC Staff Travel Scheme, specified in paragraph (a) of the definition of Inter-Operator Scheme.

1.5 The Operator shall pay or procure the payment of each of the amounts specified in paragraph 1.4 into the Revenue Account as soon as reasonably practicable after each such amount becomes due. For this purpose, if there is a dispute (concerning the amount due to the Operator) between the Operator and RSP, any other Train Operator or any counterparty to the

London Boroughs Concessionary Travel Scheme, the British Transport Police Agreement or the ATOC Staff Travel Scheme, then for so long as the Operator is, acting in good faith, taking appropriate steps to contest or resolve such dispute, the amount due shall be regarded as the portion (if any) which is not in dispute.

1.6 The Operator shall keep RfL fully informed as to the progress of any such dispute and of its settlement or adjudication, and shall comply with any reasonable directions from RfL as to the conduct of such dispute and any settlement. When such dispute is settled or adjudicated, the amount due shall be the amount determined as due pursuant to such settlement or adjudication.

1.7 RfL shall procure on behalf of the Operator that the following persons shall receive automatic electronic funds transfers in pounds sterling of the following amounts to such bank account in the United Kingdom as the relevant person has previously specified to RfL in writing:

- (a) RSP, in respect of all ticket revenue accrued during that Reporting Period or any previous Reporting Period, but owed via RSP to third parties or RfL in accordance with the terms of the Ticketing and Settlement Agreement; and
- (b) ATOC, in respect of the Operator's contribution for that Reporting Period under the terms of any relevant Inter-Operator Scheme for the upkeep of that scheme and/or towards that scheme's administrative costs,

(together, the *Operator's Ticketing and Scheme Liabilities*).

1.8 RfL shall, subject to the Operator keeping RfL informed at all times of the Operator's Ticketing and Scheme Liabilities, ensure that the Revenue Account is in sufficient funds to enable the Operator to meet those liabilities.

1.9 Subject to paragraph 1.8, RfL shall be entitled to make withdrawals from and deposits into the Revenue Account in its discretion.

Revenue Account

1.10 The following shall apply in relation to the Revenue Account:

- (a) all commission paid into the Revenue Account from time to time by RSP in respect of the value of sales by the Operator of the Fares of other Train Operators (except LUL or any other operator of railway passenger services on behalf of any member of the TfL Group) (*Operator Commission*), including interest accruing thereon, shall be for the account of the Operator;
- (b) all other sums paid into the Revenue Account pursuant to this Schedule 2.3 from time to time, including interest accruing thereon, shall be for the account of RfL;
- (c) the Operator shall not make any withdrawals from the Revenue Account, unless otherwise approved by RfL; and
- (d) if at any time there is a shortfall in the amounts credited to the Revenue Account which is caused by cash collection, fraud or accounting losses (other than any such shortfall caused by RfL), the Operator shall immediately pay to the Revenue Account from its own funds the amount of the shortfall.

Revenue Estimate

1.11 For each Reporting Period during the Concession Period and within the timescales specified in Schedule 11.1 (*Concession Payments*), RfL shall reasonably determine the adjustment that should be made to the Concession Payment for that Reporting Period in order to make provision:

- (a) to the Operator in respect of any Operator Commission and interest accruing thereon in that Reporting Period;
- (b) to RfL in respect of the Operator's Ticketing and Scheme Liabilities paid in that Reporting Period; and
- (c) to RfL in respect of any compensation that has been paid to passengers for delays of 30 minutes or more to any Passenger Service whether by way of refunds, Oystercard top ups, extensions or otherwise pursuant to the Passenger's Charter, or pursuant to other rules notified by the Operator to passengers, which, in each case, RfL has met in the relevant or any previous Reporting Period, other than any such compensation that has been paid solely due to the occurrence of industrial action by the Operator's employees (where references to industrial action (or equivalent terms) in the Passenger's Charter or such rules shall have the meaning given to it in paragraph **Error! Reference source not found.** of Schedule 14.6 (*Force Majeure*),

(together, the *Revenue Estimate*).

1.12 In reasonably determining the Revenue Estimate in respect of any Reporting Period, RfL shall do so having regard to:

- (a) the amount held in the Revenue Account at the date the Revenue Estimate is made;
- (b) the amounts paid or to be paid into the Revenue Account by the Operator from time to time during that Reporting Period pursuant to this Schedule 2.3;
- (c) the payments made or to be made from the Revenue Account on behalf of the Operator from time to time during that Reporting Period to meet the Operator's Ticketing and Scheme Liabilities;
- (d) the amount of interest earned or to be earned during that Reporting Period:
 - (i) on any Operator Commission paid or to be paid into the Revenue Account pursuant to this Schedule 2.3 during that Reporting Period; and
 - (ii) on any other amounts held or to be held in the Revenue Account during that Reporting Period; and
- (e) any other information available to it during that Reporting Period.

1.13 In accordance with Schedule 11.1, the Revenue Estimate for any Reporting Period shall be paid to the party in whose favour the estimate is determined by RfL.

Revenue Reconciliation

1.14 Subject to paragraph 1.16, within the timescales specified in Schedule 11.1:

- (a) for each Reporting Period during the Concession Period, RfL shall reasonably determine the adjustment that should be made to the Concession Payment for that

Reporting Period in order to reconcile the amount by which the Revenue Estimate made in the previous Reporting Period is different from the Revenue Estimate that would have been made had all relevant information been known by RfL at the Payment Date of the previous Reporting Period; and

- (b) at the end of each Revenue Share Period (other than the first) during the Concession Period, RfL shall reasonably determine the adjustment that should be made to the Concession Payment for the next Reporting Period in order to reconcile the amount by which the immediately preceding Revenue Share Adjustment is different from the Revenue Share Adjustment that would have been made had all relevant information been known by RfL at the end of the Revenue Share Period to which the immediately preceding Revenue Share Adjustment relates,

(together, the **Revenue Reconciliation**).

1.15 In reasonably determining the Revenue Reconciliation in respect of any Reporting Period, RfL shall do so having regard to the latest information of the kind described in paragraph 1.12 available to it at the date that reconciliation is to be made.

1.16 For the first Reporting Period of the Concession Period, the Revenue Reconciliation shall be zero.

1.17 In accordance with Schedule 11.1, the Revenue Reconciliation for any Reporting Period shall be paid to the party in whose favour the reconciliation is determined by the other party.

2. REVENUE PROTECTION INCENTIVE REGIME

General Ticket Revenue Protection Obligations

2.1 The Operator shall:

- (a) efficiently and effectively protect Ticket Revenue and implement measures in line with the retail obligations set out in Schedule 2.2 (*Fares Selling*) to ensure that passengers are in possession of a valid ticket before boarding a train; and
- (b) ensure regular and effective Ticket Revenue protection activity across all Passenger Services at all times of the Traffic Day and all days of the week, without diminishing the wider passenger interests of:
 - (i) safety required by applicable Law; or
 - (ii) security and customer service required by this Agreement.

Ticketless Travel Surveys

2.2 RfL will use all reasonable endeavours or will ensure that its nominee uses all reasonable endeavours to carry out four Ticketless Travel Surveys during each consecutive period of 12 months during the Concession Period.

2.3 RfL or its nominee shall carry out Ticketless Travel Surveys across all Passenger Services and during all times of the Traffic Day and all days of the week in accordance with the Ticketless Travel Survey Methodology.

2.4 RfL shall:

- (a) procure that the results of any Ticketless Travel Survey are provided to the Operator as soon as reasonably practicable following completion of such surveys; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to this paragraph 2.

2.5 The results of the Ticketless Travel Survey for any Ticketless Travel Survey Period shall be used by RfL to calculate in accordance with the Ticketless Travel Survey Methodology:

- (a) the Fare Evasion Rate for that Ticketless Travel Survey Period; and
- (b) the Fare Evasion Rate, measured as a moving annual average, for the immediately preceding year ending at the end of that Ticketless Travel Survey Period.

2.6 The Operator agrees that:

- (a) it shall only use the Ticketless Travel Survey Methodology as contemplated by this Agreement, including for the purposes of:
 - (i) determining whether RfL's nominee referred to in paragraph 2.2 has carried out any Ticketless Travel Survey in accordance with that methodology; and
 - (ii) the Operator itself analysing trends in ticketless travel on the Passenger Services; and
- (b) the Ticketless Travel Survey Methodology is subject to the terms of Schedule 20 (*Confidentiality*) and the Operator shall not disclose that methodology or any part of it except as it is permitted to do so under that Schedule.

Revenue Protection Incentive Adjustments

2.7 RfL shall use the results of any Ticketless Travel Survey to determine the Revenue Protection Incentive Adjustment that shall be made in respect of the relevant Ticketless Travel Survey Period in accordance with the following:

$$RPIA = (\pounds FETL - \pounds FER) \times 0.75$$

where:

RPIA means the Revenue Protection Incentive Adjustment for that Ticketless Travel Survey Period;

£FETL means the Fare Evasion Target Level expressed as a monetary value and calculated in accordance with the following:

$$TR \times 0.05$$

where:

TR means the amount of Ticket Revenue in that Ticketless Travel Survey Period, multiplied by the Total Revenue Factor; and

£FER means the Fare Evasion Rate expressed as a monetary value and calculated in accordance with the following:

$$TR \times \frac{FER}{100}$$

where:

TR has the meaning given to it in the definition of factor **£FETL**; and

FER means the Fare Evasion Rate for that Ticketless Travel Survey Period.

2.8 Where the Fare Evasion Rate for any Ticketless Travel Survey Period is less than the Fare Evasion Target Level, in each case, expressed in monetary terms, RfL will, in accordance with paragraph 2.11, pay to the Operator the resulting positive amount determined in accordance with paragraph 2.7.

2.9 Where the Fare Evasion Rate for any Ticketless Travel Survey Period is more than the Fare Evasion Target Level, in each case, expressed in monetary terms, the Operator will, in accordance with paragraph 2.11, pay to RfL (as a positive amount) the resulting negative amount determined in accordance with paragraph 2.7.

2.10 Where the Fare Evasion Rate for any Ticketless Travel Survey Period is equal to the Fare Evasion Target Level, in each case, expressed in monetary terms, no Revenue Protection Incentive Adjustment shall be made between the parties.

2.11 Any Revenue Protection Incentive Adjustment calculated pursuant to this paragraph 2 shall be made by way of an adjustment to Concession Payments in accordance with Schedule 11.1 (*Concession Payments*):

- (a) on the Payment Dates in each of the next three Reporting Periods after the completion of the related Ticketless Travel Survey Period; and
- (b) in the proportions of 35, 35 and 30 per cent. respectively of the full amount of that Revenue Protection Incentive Adjustment,

provided that, no Revenue Protection Incentive Adjustment shall be made in respect of the results of the first Ticketless Travel Survey carried out during the Concession Period.

Fare Evasion Default Level

2.12 Subject to paragraph 2.13, the Operator's performance against the Fare Evasion Default Level shall be determined on a moving annual average basis in accordance with the following:

- (a) the Fare Evasion Rate determined under the latest Ticketless Travel Survey (the **Relevant Ticketless Travel Survey**) shall be aggregated with each of the Fare Evasion Rates determined in respect of each of the Ticketless Travel Surveys carried out in the year ending on the last day of the Ticketless Travel Survey Period in which the Relevant Ticketless Travel Survey was carried out;
- (b) the resulting total shall then be divided by the number of Ticketless Travel Surveys carried out in the year ending on the last day of the Ticketless Travel Survey Period in which the Relevant Ticketless Travel Survey was carried out; and

(c) the outcome shall then be compared against the Fare Evasion Default Level.

2.13 Where RfL or its nominee has conducted less than four Ticketless Travel Surveys during the Concession Period, RfL shall, for the purposes of performing the comparison specified in paragraph 2.12(c), assume that the Operator has performed at the Fare Evasion Target Level for such number of notional Ticketless Travel Surveys as is necessary to generate a moving annual average, assuming four Ticketless Travel Surveys are to be carried out in each consecutive period of 12 months during the Concession Period.

2.14 Where the Fare Evasion Rate at the end of any Ticketless Travel Survey Period is, when measured in accordance with paragraph 2.12, equal to or more than the Fare Evasion Default Level, an Event of Default shall have occurred and the provisions of Schedule 14 (*Remedies, Termination and Expiry*) shall apply, provided that, no Event of Default shall have occurred if, when measured that way, the Fare Evasion Rate at the end of either of the first two Ticketless Travel Survey Periods during the Concession Period, is equal to or more than the Fare Evasion Default Level.

3. REVENUE SHARE ADJUSTMENT

3.1 In respect of each Revenue Share Period, RfL shall pay to the Operator an amount equal to 10 per cent. of Revenue for that Revenue Share Period by way of an adjustment to the Concession Payment payable:

- (a) for each Revenue Share Period other than the final Concession Year, on the next Revenue Share Adjustment Date; and
- (b) for the final Revenue Share Period of the final Concession Year, within 60 days after the end of such Concession Year.

3.2 Each Revenue Share Adjustment in respect of any Revenue Share Period shall be determined by RfL by reference to the Revenue disclosed for that Revenue Share Period through each of TfL's central data system, the RSP system and the LENNON System.

3.3 To the extent not already provided to RfL under Appendix 4 (*Ticket and Revenue Information*) to Schedule 16 (*Information and Industry Initiatives*), the Operator shall, within ten days after the last day of the sixth and thirteenth Reporting Period of each Concession Year, provide to RfL the following information relating to the period to which the relevant Revenue Share Adjustment relates, disaggregated (including by Route or Service Group) as RfL may reasonably specify:

- (a) revenue owed to or received by the Operator under the terms of the Ticketing and Settlement Agreement, excluding commission in respect of sales of TSA Fares for travel on railway passenger services other than the Passenger Services; and
- (b) the Operator's Ticketing and Scheme Liabilities.

3.4 RfL shall reduce the figures for calculation of Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) by applying to them the figures for calculation of Annual Concession Payments set out in the Appendix.

3.5 RfL shall adjust the figures for calculation of Annual Concession Payments set out in the Appendix and make the resulting adjustments to Concession Payments to compensate the Operator to the extent that the amount of any Revenue Share Adjustment that the Operator

receives is less than it forecast for the ELL (by reference to the section 18.6 of the Record of Assumptions entitled “Changes to the Model Inputs” as at the date hereof) solely because:

- (a) the Route specified in paragraph (af)(i) of the definition of Change has not been upgraded in the manner specified in the ELL Main Works Contract and is not available for use by the Operator from 7 November 2009;
- (b) the Route specified in paragraph (af)(ii) of the definition of Change has not been upgraded in the manner specified in the ELL Main Works Contract and is not available for use by the Operator from 12 December 2009; or
- (c) both of those Routes are upgraded in the manner specified in the ELL Main Works Contract and are available for use by the Operator to deliver the ELL Passenger Services within 12 months of 7 November 2009 and 12 December 2009 respectively, but the date of the actual completion of the upgrade of one such Route, relative to the date of the actual completion of the upgrade of the other and its availability for use by the Operator to deliver the ELL Passenger Services, is different by more than three months from the relative timing of those scheduled completion and availability dates.

4. REVENUE PROTECTION ENFORCEMENT

4.1 The Operator shall develop and operate a revenue protection policy for use by its revenue protection staff (the *Revenue Protection Policy*).

4.2 The Revenue Protection Policy shall be developed in accordance with the following:

- (a) the Operator shall submit the initial Revenue Protection Policy to RfL on or before the Start Date;
- (b) thereafter the Operator shall submit an update of the Revenue Protection Policy to RfL on or before each anniversary of the Start Date (but no earlier than 28 days prior to each such anniversary) containing such changes as its considers are necessary to reflect the Operator’s performance in implementing the Revenue Protection Policy in the preceding year;
- (c) RfL shall within 28 days of receipt of the initial or any updated Revenue Protection Policy, notify the Operator of any changes it reasonably requires to be made thereto; and
- (d) as soon as reasonably practicable after such notification, the Operator shall make those changes to the initial or any updated Revenue Protection Policy (as the case may be).

4.3 The Revenue Protection Policy is designed to ensure:

- (a) there is awareness of the need to purchase a valid ticket before travel;
- (b) that a target Fare Evasion Rate of five per cent. or below is achieved and maintained in the most cost-effective and efficient manner in order to protect the interests of RfL, the fare-paying passengers and the commercial viability of the LRC;
- (c) an adequate provision of facilities and staff to enable passengers to purchase tickets easily and swiftly, and to check tickets on trains and at stations;

- (d) the enforcement of a zero tolerance approach to fare evasion with offenders being issued Penalty Fares and/or prosecuted in accordance with the GLA Act; and
- (e) the provision of an effective back office service to process notices, payments, penalty fare appeals and prosecutions.

4.4 The Revenue Protection Policy will be enforced by way of a detailed and consistently applied “Revenue Protection Code of Conduct”.

4.5 The Revenue Protection Policy shall take account of and be consistent with the TfL Revenue Enforcement and Prosecutions Policy notified to it by RfL from time to time.

4.6 The Operator shall, having regard to its experience in implementing the Revenue Protection Policy during the course of any year, keep the Revenue Protection Policy under review and make recommendations for changes pursuant to paragraph 4.2(b) to ensure that:

- (a) its staff continue to be aware and its new staff are made aware of the Revenue Protection Policy; and
- (b) the relevant staff continue to act at all times with discretion and sensitivity in seeking efficiently and effectively to protect Ticket Revenue.

4.7 The Operator shall implement the Revenue Protection Policy in accordance with its terms.

4.8 The Operator shall co-operate with:

- (a) RfL, members of TfL’s Group and RfL’s businesses; and
- (b) other operators engaged by RfL in connection with the provision to RfL of revenue protection and enforcement services on railway passenger services and other transport modes,

for the purpose of developing a common approach across such organisations to the enforcement of revenue protection measures and implementing best practice principles in carrying out such activity.

4.9 The Operator shall co-operate pursuant to paragraph 4.8 by:

- (a) making appropriately skilled and qualified Concession Employees reasonably available, free of charge to:
 - (i) attend meetings with RfL, members of RfL’s Group and/or such other operators to discuss and review such a common approach and best practice principles;
 - (ii) provide the Operator’s opinion in the development of such a common approach and best practice principles; and
 - (iii) make recommendations for modifications to any agreed approach or principles from time to time; and
- (b) providing to RfL such information relating to the carrying out of its Revenue Protection Policy as RfL may reasonably require from time to time for the purpose referred to in that paragraph.

5. PENALTY FARES

5.1 The TfL Penalty Fares Scheme shall apply to the Passenger Services from the Start Date.

5.2 RfL hereby appoints the Operator as an “authorised person” pursuant to the provisions of Schedule 17 of the GLA Act (the *Penalty Fares Provisions*).

5.3 The Operator shall from the Start Date and for the remainder of the Concession Period:

- (a) collect on behalf of RfL any penalty fare payable to RfL by any passenger pursuant to the terms of the Penalty Fares Provisions; and
- (b) administer, or procure the administration of, the Penalty Fares Provisions’ appeal procedure,

in each case, in accordance with the Revenue Protection Policy.

5.4 The Operator shall, in addition to the collection of penalty fares, carry out all duties and responsibilities in relation to such collection as may ordinarily and properly be carried out by a penalty fare collector acting in the best interests of TfL and RfL.

5.5 Provided the Operator complies with paragraphs 5.3 and 5.4, it shall be entitled to retain £20 from each penalty fare collected pursuant to the TfL Penalty Fares Scheme. The remainder (where applicable) of any penalty fare shall be paid by the Operator into the Revenue Account promptly following collection.

5.6 It is TfL’s intention to introduce a penalty fares scheme that applies to the Passenger Services and which provides for a penalty fare of £50, discounted to £25 if paid immediately (the *New Penalty Fares Scheme*) by 31 December 2008. As and when required by RfL, the Operator shall publish, or procure the publication of, at Stations and Operator Access Stations, such information and make such announcements relating to the New Penalty Fares Scheme as, in either case, RfL may request from time to time.

6. COURT COSTS AND FINES

6.1 The Operator shall seek prosecution of (or otherwise settle out of court with) deliberate or persistent fare evaders or those attempting to defraud RfL of Ticket Revenue. In doing so, the Operator shall act with discretion and sensitivity and shall ensure that the Revenue Protection Policy contains a provision to this effect.

6.2 The Operator may employ an agent to progress prosecution cases, present them in court or recover civil debts.

6.3 The Operator may retain any costs awarded by the court and all fares paid as a result of the procedures referred to in this paragraph 6.

7. INDEMNITY

The Operator shall be responsible for, and shall indemnify RfL, its servants, agents, officers and employees from and against all liabilities, losses, cost and expenses suffered or incurred by such persons arising from any acts or omissions of the Operator acting as agent for RfL pursuant to paragraph 5.

8. RELEVANT DEBITS AND CREDITS

8.1 Subject to paragraph 8.2, on the Payment Date for the second Reporting Period of the Concession Period, the Operator shall pay to the Revenue Account an amount equal to the amount it has received in relation to any Relevant Debits and Credits.

8.2 On the Payment Date next following the date on which the Net Asset Statement is agreed or completed in accordance with the terms of the Silverlink Transfer Agreement, if the value allocated to Relevant Debits and Credits in such agreed or completed Net Asset Statement:

- (a) exceeds the amount paid by the Operator in accordance with paragraph 8.1, the Operator shall pay an amount equal to such excess to the Revenue Account; or
- (b) is less than the amount paid by the Operator in accordance with paragraph 8.1, RfL shall pay an amount equal to such shortfall to the Operator by way of an adjustment to the Concession Payments.

APPENDIX TO SCHEDULE 2.3

Revenue Share Adjustment to Annual Concession Payments

Figures for Calculation of Annual Concession Payments

This table sets out the reduction to be made pursuant to paragraph 3.5 of Schedule 2.3 (*Ticket Revenue and the Revenue Protection Incentive Regime*) to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	13					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

¹³ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

SCHEDULE 2.4

Changes to Fares and Fares Documents

1. CHANGE OF LEAD OPERATOR / MAJOR FLOW OPERATOR

1.1 The Operator shall not without RfL's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

1.2 The Operator shall inform RfL if it becomes the Lead Operator in respect of any Flow. Upon the Operator becoming the Lead Operator in respect of any Flow, RfL may update the Fares Document in accordance with paragraph 2.

1.3 The Operator shall inform RfL if it ceases to be a Major Flow Operator in respect of any Flow.

2. CHANGES TO THE FARES DOCUMENT

2.1 In specifying to the Operator the price or terms and conditions of any Fare pursuant to Schedule 2.1 (*Specification and Creation of Fares*), RfL shall, subject to paragraph 2.3, issue to the Operator a revised Fares Document.

2.2 Where RfL decides to issue a revised Fares Document pursuant to paragraph 2.1, RfL shall set out in that document all Fares, including their prices and other terms and conditions and, as soon as reasonably practicable thereafter, RfL shall issue that document to the Operator which, in any event, shall be no less than eight weeks prior to the Fares Setting Round to which the changes in that revised Fares Document relate.

2.3 Where the specification referred to in paragraph 2.1 does not, in RfL's reasonable opinion, constitute a material change to any previous specification by it, it shall not be obliged to issue a revised Fares Document, but instead shall provide the Operator with a summary (to such level of detail or generality as RfL may reasonably determine) of the changes to the specification previously in force.

SCHEDULE 2.5

Fares Information and Monitoring

1. INFORMATION

1.1 RfL shall notify, or procure the notification to, the Operator of any proposed increase to the price of any Fare or any change to the terms and conditions of that Fare in accordance with paragraph 2 of Schedule 2.4 (*Changes to Fares and Fares Documents*).

1.2 The Operator shall make available, or procure that RSP makes available, to RfL, for any Fares Setting Round during the Concession Period, such details (including the proposed prices) of the Initial Permanent Fare of any TSA Fare for each such Fares Setting Round as RfL may request from time to time.

1.3 The Operator shall provide to RfL or procure that RfL is provided with or otherwise has access to:

- (a) such information as the Operator is entitled to under the LENNON System; and
- (b) ad-hoc passenger counts and passenger loading systems,

and, in either case, RfL shall be entitled to share such information with LUL.

2. MONITORING

2.1 The Operator shall provide to RfL such access as RfL may require to information pertaining to the prices and other terms and conditions of Fares in respect of journeys on the Passenger Services from time to time.

2.2 By no later than week 17 of each Fares Setting Round, the Operator will provide to RfL written confirmation from a statutory director of the Operator of whether the Operator has complied with its obligations under this Schedule 2 in respect of TSA Fares during each such Fares Setting Round.

2.3 The Operator shall take such action as RfL may require following receipt of any details from the Operator pursuant to paragraph 1 in order to ensure that the Operator will comply with the provisions of this Schedule 2.

SCHEDULE 2.6

Transport, Travel and Other Fares Related Schemes

1. INTEGRATED TRANSPORT SCHEMES

1.1 The Operator shall participate in and comply with its obligations under any Integrated Transport Schemes.

1.2 As and when required by RfL, the Operator shall co-operate with any schemes proposed by any third party (including any Local Authority) and which relate to the integration of any other form of transport with the Concession Services.

1.3 If and to the extent that RfL designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme in accordance with paragraph 1.2, then the Operator shall participate in and comply with its obligations under such scheme and take such other steps as RfL may reasonably require.

1.4 RfL shall consult the Operator before designating any scheme an Integrated Transport Scheme under paragraph 1.2 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such designation.

2. CONCESSIONARY TRAVEL SCHEMES

2.1 The Operator shall subject to paragraph 2.2:

- (a) participate in and comply with its obligations under:
 - (i) the following concessionary travel schemes
 - (A) the London Boroughs Concessionary Travel Scheme; and
 - (B) the TfL Staff Travel Scheme; and
 - (ii) any other concessionary travel scheme which the Operator is required to participate in during the Concession Period pursuant to paragraph 2.1(b); and
- (b) if so requested by RfL, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in this Agreement the terms of which have been amended since the date of this Agreement; and
 - (ii) such other concessionary travel schemes as RfL may specify from time to time.

2.2 RfL shall consult the Operator before making any request of the Operator to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

2.3 The Operator shall supply to RfL, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as RfL may reasonably

require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

2.4 The Operator shall, as soon as reasonably practicable after receipt, pay to RfL, any sums to be paid to it under the terms of the London Boroughs Concessionary Travel Scheme.

3. MULTI-MODAL FARES SCHEMES

3.1 The Operator shall, subject to paragraph 3.2, if so requested by RfL, participate in and comply with its prospective obligations under:

- (a) such multi-modal fares schemes as any relevant Local Authority or funder may require or request it to participate in; and
- (b) such multi-modal fares scheme whose terms have been amended since the requirements to participate.

3.2 Subject to the terms of the relevant multi-modal fares scheme, the Operator shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of RfL:

- (a) the Operator's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail to leave the Operator financially no worse off.

3.3 RfL shall consult the Operator before making any request of the Operator to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

3.4 The Operator shall supply to RfL, in respect of any multi-modal fares schemes referred to in paragraph 3.1, such information within such period as RfL may reasonably require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

4. DISCOUNT FARE SCHEMES

4.1 The Operator shall participate in and comply with its obligations under the terms of each Discount Fare Scheme listed in this Agreement or any other scheme designated as such pursuant to paragraph 4.2.

4.2 RfL may designate any other discount fares scheme as a Discount Fare Scheme by notifying the Operator of such designation and informing the Operator of the terms of such scheme and the date by which it requires the Operator's participation.

4.3 RfL may de-designate any Discount Fare Scheme as such by notifying the Operator of such de-designation. Upon such de-designation, the Operator shall be entitled to cease to participate in that Discount Fare Scheme in accordance with its terms.

5. INTER-OPERATOR SCHEMES

5.1 To the extent not already required under paragraph 4.1, the Operator shall participate in and comply with its obligations under the terms of each Inter-Operator Scheme.

5.2 The Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of RfL.

5.3 The Operator shall not amend, or agree or propose to amend, any other Inter-Operator Scheme without the prior written consent of RfL.

5.4 The Operator shall provide reasonable notice to RfL of any proposal to amend any Inter-Operator Scheme which it receives notification of and which is reasonably likely materially to affect the provision of the Concession Services.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of RfL in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Operator makes a saving as a consequence of such amendment or proposed amendment.

6. VOTING ON INTER-OPERATOR SCHEME COUNCILS

6.1 The Operator shall give RfL reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Operator is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Operator has a permanent position; or
 - (B) where the Operator employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Operator’s voting recommendations.

6.2 The Operator shall:

- (a) attend such meetings referred to in paragraph 6.1(a)(i) as RfL notifies to it;
- (b) vote at any such meeting in the manner required by RfL; and
- (c) provide to RfL, copies of the minutes of any such meeting as soon as reasonably practicable after receipt.

SCHEDULE 3
STATIONS AND DEPOTS

- Schedule 3.1: Stations, Depots and Property Leases**
- Schedule 3.2: Station Enhancements**
- Schedule 3.3: Oyster Equipment**

SCHEDULE 3.1

Stations, Depots and Property Leases

1. STATION LEASES AND ACCESS AGREEMENTS

NLR Stations

1.1 The Operator shall be the Facility Owner at the following Stations (the *NLR Stations*) from the Start Date, except Imperial Wharf Station, where the Operator shall be the Facility Owner from the Principal Change Date occurring in December 2009 and, in each case, for the duration of the Concession Period:

1	Acton Central	14	Hackney Wick	27	Shepherds Bush
2	Brondesbury	15	Hampstead Heath	28	South Acton
3	Brondesbury Park	16	Harringay Green Lanes	29	South Hampstead
4	Bushey	17	Hatch End	30	South Tottenham
5	Caledonian Road & Barnsbury	18	Headstone Lane	31	Upper Holloway
6	Camden Road	19	Homerton	32	Walthamstow Queen's Road
7	Canonbury	20	Imperial Wharf	33	Wanstead Park
8	Carpenders Park	21	Kensal Rise	34	Watford High St
9	Crouch Hill	22	Kensington Olympia	35	West Hampstead
10	Dalston Kingsland	23	Kentish Town West	36	Willesden Junction
11	Finchley Road & Frognal	24	Kilburn High Road	37	Woodgrange Park
12	Gospel Oak	25	Leyton Midland Road		
13	Hackney Central	26	Leytonstone High Road		

1.2 The Operator shall comply with its obligation pursuant to paragraph 1.1 in respect of the NLR Stations (except Imperial Wharf) by:

- (a) either becoming a party from the Start Date in place of Silverlink:
 - (i) to the relevant station leases in force at the date of this Agreement between Network Rail and Silverlink; or
 - (ii) to novated station leases on the same terms as those station leases in force at the date of this Agreement;
- (b) entering into new Station Leases with Network Rail on or before the expiry of those station leases in accordance with paragraph 3; and
- (c) at Imperial Wharf Station by entering into a new Station Lease with Network Rail on or before the Principal Change Date occurring in December 2009.

1.3 At the NLR Stations, the Operator shall, amongst other things, carry out during the Concession Period the facilities management activities specified in each Station Lease relevant thereto.

- 1.4 (a) The Operator shall grant LUL access to Willesden Junction Station and Kensington Olympia Station (at no cost to LUL, subject to paragraph 1.4(c)) in order to allow certain railway passenger services operated by LUL to call at those stations. The Operator shall grant such access on or before the Start Date, by entering into appropriate Access Agreements with LUL in respect of each of those stations.
- (b) From the Start Date and for the duration of the Concession Period, the Operator shall provide to LUL (at no cost to LUL) the same Common Services at the stations specified in paragraph 1.4(a) as LUL received at those stations as at the date of this Agreement.
- (c) If LUL requires any Exclusive Services to be provided by LUL at any of the stations specified in paragraph 1.4(a), the Operator may negotiate the terms of such Exclusive Services with LUL and the cost of such Exclusive Services shall be for LUL's account.

Southern Stations

1.5 Responsibility for being the Facility Owner at the following stations (the *Southern Stations*) will transfer from Southern to the Operator on 31 May 2009, and the Operator will remain Facility Owner for the Southern Stations during the remainder of the Concession Period:

1	Anerley	6	New Cross Gate
2	Brockley	7	Norwood Junction
3	Crystal Palace	8	Penge West
4	Forest Hill	9	Sydenham
5	Honor Oak Park	10	West Croydon

1.6 The Operator shall comply with the requirements of paragraphs 1.2 and 1.3 in respect of the Southern Stations from the date of the transfer of Facility Owner responsibility to it, substituting references to Silverlink in paragraph 1.2 with references to Southern.

1.7 At the Southern Stations, the Operator shall, amongst other things, from the date of the transfer of Facility Owner responsibility to it and for the remainder of the Concession Period, carry out the facilities management activities specified in each Station Lease relevant thereto.

ELL Core Route Stations

1.8 The Operator shall be the Facility Owner at the following Stations (the *ELL Core Route Stations*) from the date when, following completion of the works specified in the ELL Main Works Contract, such works have been approved by the relevant safety authority as fit for operation, or from such later date as RfL shall notify to the Operator, and for the remainder of the Concession Period:

1	Dalston Junction	5	Shadwell
2	Haggerston	6	Wapping
3	Hoxton	7	Rotherhithe
4	Shoreditch High Street	8	Surrey Quays

1.9 The Operator shall comply with the requirements of paragraph 1.8 in respect of the ELL Core Route Stations from the date referred to therein by entering into Station Leases with LUL (at no cost to the Operator but otherwise on the same terms as would apply if such leases were entered into with Network Rail) in accordance with paragraph 3.

1.10 At the ELL Core Route Stations, the Operator shall, amongst other things, from the date referred to in paragraph 1.8 and for the remainder of the Concession Period, carry out the facilities management activities specified in each Station Lease relevant thereto.

1.11 In relation to the ELL Core Route Stations, TfL has invested in the provision of space for retail opportunities and the Operator acknowledges that TfL shall determine how that space is used, and receive all resulting income. The Operator shall, for the purposes of permitting the carrying out of those retail opportunities, grant leasing arrangements to any third parties notified by RfL to the Operator on such terms as RfL may require.

Stations at which Operator requires Station Access Agreements

1.12 The Operator shall have access at the following Operator Access Stations in order to allow certain of the Passenger Services to call at those stations:

1	Barking	8	Highbury and Islington	15	Richmond
2	Blackhorse Road	9	Kensal Green	16	South Kenton
3	Clapham Junction	10	Kenton	17	Stratford
4	Euston	11	Kew Gardens	18	Stonebridge Park
5	Gunnersbury	12	New Cross	19	Watford Junction
6	Harlesden	13	North Wembley	20	Wembley Central
7	Harrow and Wealdstone	14	Queens Park	21	West Brompton

1.13 (a) The Operator shall on or before the Start Date, enter into appropriate Access Agreements (or contracts for access) with the relevant Facility Owner (or equivalent thereof) at each of the stations listed in paragraph 1.12 and it shall secure access to those stations for the remainder of the Concession Term.

(b) Any contracts for access entered into pursuant to this paragraph 1.13 with LUL shall be on terms such that LUL provides Common Services at the relevant stations to the Operator at no charge to the Operator, but otherwise those terms shall be consistent with standard industry access terms regulated by the ORR (unless the Operator and LUL otherwise agree).

1.14 The Operator shall have access at Whitechapel and Canada Water stations (at no cost to it) in order to allow certain of the Passenger Services to call at those stations. The Operator shall secure such access by entering into a contract for access with LUL in respect of each of those stations, the terms of which shall be consistent with standard industry access terms regulated by the ORR (unless the Operator and LUL otherwise agree).

2. DEPOT LEASES AND ACCESS AGREEMENTS

Depots leased by Operator from Start Date

2.1 The Operator shall be the Facility Owner at the following Depots from the Start Date for the duration of the Concession Period:

Willesden TMD

2.2 The Operator shall comply with its obligation pursuant to paragraph 2.1 in respect of the Depots listed in paragraph 2.1 by entering into new Depot Leases with the relevant Infrastructure Manager in accordance with paragraph 3.

Depots at which Operator requires Depot Access Agreements

2.3 The Operator shall have access at the NXG Facility at zero charge for the duration of the Concession Period.

2.4 The Operator shall secure access to the Depot listed in paragraph 2.3 by entering into an appropriate Access Agreement with the New Trains Maintainer.

3. VESTING OF PROPERTY LEASES

3.1 The Operator shall not without the prior written consent of RfL, whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the Operator is required to do so by virtue of the Stations Code or the Depots Code.

3.2 No Property Lease shall have a term extending beyond the Expiry Date, unless RfL agrees otherwise.

3.3 In respect of the new Property Leases specified in paragraph 3.3 or any other new Property Lease with any Infrastructure Manager, the Operator shall enter into such Property Leases:

- (a) in the agreed terms marked *SL* and *DL* (as appropriate) attached to this Agreement;
- (b) agreeing only such amendments to that Property Lease, as are necessary to give effect to changes contemplated by the Stations Code or the Depots Code (as appropriate); and
- (c) on the basis that any such Property Lease is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

3.4 The Operator shall enter into the following leases with the relevant Infrastructure Manager:

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease once granted, shall be a Station Lease for the purposes of this Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of this Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR where appropriate) for including additional land within the

demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of this Agreement; and

- (d) a lease of any Infrastructure Manager-owned station or depot, which:
- (i) RfL consents to or requires the Operator to be a party to; and
 - (ii) the Operator was not a party to on the date hereof, but which has been contemplated by this Agreement,

and the Operator shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of this Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of this Agreement.

3.5 The Operator shall not be in contravention of paragraph 3.4 if and to the extent that the relevant Infrastructure Manager refuses to enter into any leases specified therein.

3.6 If the Operator requires any Exclusive Services to be provided by LUL at any Station, or any Operator Access Station, the Operator may negotiate the terms of such Exclusive Services with LUL and the cost of such Exclusive Services shall be for the Operator's account.

3.7 The Operator shall at all times during the Concession Period, make available to LUL free of charge, a room at Willesden Junction Station, such room being as LUL reasonably requires and notifies the Operator of for the purpose of locating those employees of LUL who will carry out train dispatch activities.

3.8 Notwithstanding the other provisions of this Schedule 3.1, the Operator shall, if RfL so requests, enter into a lease of any Station with a TfL Group company or other company nominated by RfL as the lessor, instead of a lease with the Infrastructure Manager, but otherwise in the agreed terms marked *SL* attached to this Agreement.

4. STATION AND DEPOT LEASES

4.1 The Operator shall at all times enforce its rights under each Station Lease and Depot Lease.

4.2 The Operator shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that RfL may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Operator has made arrangements, reasonably satisfactory to RfL, for the continued operation of such Station or Depot (as the case may be) for the

remainder of the Concession Period or if consent to the Closure of the relevant Station or Depot has been granted).

5. STATION SUBLEASES

5.1 Unless RfL agrees otherwise, the Operator shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) is terminable without compensation immediately upon the termination of this Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

5.2 If so requested by RfL, the Operator shall:

- (a) extend each Station Sublease on the same terms for such period as RfL may request (including a period equivalent to the franchise term or concession term (as the case may be) if the franchise agreement or concession agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Incumbent Operator was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as RfL may request (including a period equivalent to the franchise term or concession term (as the case may be) of the franchise agreement or concession agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party),

subject, where required, to the consent of the relevant Infrastructure Manager (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

5.3 The Operator shall notify RfL immediately on it becoming aware of any event which might give the Operator a right to forfeit or terminate any Station Sublease. The Operator shall notify RfL if it wishes to forfeit or terminate any such Station Sublease but shall not (without RfL's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

6. NOTICE OF PROPOSED STATION CHANGE

6.1 The Operator shall notify RfL:

- (a) as soon as reasonably practicable upon receiving any notification from any Station Party or Station Funder (each as defined in the Stations Code) pursuant to Part 5 of the Stations Code of any proposal to implement a Station Change; and
- (b) a reasonable period in advance of:
 - (i) responding to that Station Party or Station Funder (as the case may be) in respect of any notification referred to in paragraph 6.1(a);

- (ii) making an Objection or Representation (each as defined in the Stations Code) or otherwise commenting or instigating relevant proceedings in respect of any notification referred to in paragraph 6.1(a),

in order to allow the consultation pursuant to paragraph 6.2 to take place in a timely manner should it be required.

6.2 If and to the extent requested by RfL, the Operator shall:

- (a) consult it in relation to any of the matters referred to in paragraph 6.1; and
- (b) provide to RfL copies of any notices, correspondence or other information exchanged between any relevant party and the Operator in respect of those matters.

6.3 The Operator shall:

- (a) respond to Network Rail in relation to any of the matters referred to in paragraph 6.1 in accordance with RfL's reasonable direction; and
- (b) as directed by RfL, waive its rights to any Relevant Indemnity, Relevant Undertaking or any equivalent provision under the Stations Code in relation to those matters referred to in paragraph 6.1.

6.4 Where RfL directs the Operator pursuant to paragraph 6.3(b), RfL shall compensate the Operator to the extent that the Operator:

- (a) would have been entitled to exercise those rights; and
- (b) suffered any loss or other material adverse effect of the kind that is compensatable pursuant to those rights,

in each case, but for such direction.

6.5 The Operator shall provide to RfL such evidence as RfL requires in order to demonstrate to RfL's reasonable satisfaction the extent of any compensation to be paid pursuant to paragraph 6.4.

6.6 Where RfL does not direct the Operator pursuant to paragraph 6.3(b), but notifies the Operator that it reasonably believes the proposed Station Change will cause RfL losses or have a material adverse effect on its existing or future business, then the Operator shall use all reasonable endeavours to procure a Relevant Indemnity, Relevant Undertaking or equivalent protection under the Stations Code from the relevant party in favour of RfL or of sufficient extent in its favour to compensate RfL for those losses or effects.

6.7 Where the Operator does recover any compensation under the Stations Code in favour of RfL of the kind contemplated by paragraph 6.6, it shall pass any such compensation to RfL as soon as reasonably practicable after receipt.

6.8 The Operator shall not propose a Station Change to Network Rail, LUL or any other third party without RfL's prior written consent. In the case of the LUL Stations, the Operator shall consult with RfL, and comply with RfL's directions, in relation to any Station Change proposed by LUL.

7. IMPLEMENTATION OF STATION CHANGE WORKS

7.1 The Operator shall co-operate with Network Rail, RfL and any other relevant party in connection with any proposed works associated with any Station Change.

7.2 The Operator's obligations under paragraph 7.1 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

SCHEDULE 3.2

Station Enhancements

1. PHASE 1 ACTIVITIES

NLR Non-Passenger Operated Ticketing and Gateline Facilities

1.1 RfL shall procure that by the Start Date:

- (a) all ticket gatelines installed at NLR Stations as at the date of this Agreement are enabled to accept Oyster;
- (b) Oyster validators are available at all non-gated NLR Stations; and
- (c) new Oyster-compatible ticket gatelines have been commissioned at the following NLR Stations:

1	Homerton	5	West Hampstead
2	Hackney Central	6	Brondesbury
3	Canonbury	7	Acton Central
4	Hampstead Heath	8	Gospel Oak

1.2 RfL shall procure by 31 May 2009 that new Oyster-compatible ticket gatelines have been installed at Kensington Olympia Station.

1.3 RfL shall implement the introduction of Oyster with no reduction in the range of tickets and products that are available at the NLR Stations as at the date of this Agreement.

1.4 The Operator shall procure that by the Start Date there is at least one Oyster enabled TOM at each NLR Station where there is a ticket office.

NLR Passenger-operated Ticketing Facilities

1.5 RfL shall procure by the Start Date that the New POMs are installed at NLR Stations, such that there is at least one POM at each NLR Station (except for Imperial Wharf Station where such installation shall be procured by RfL by the Principal Change Date occurring in December 2009).

1.6 RfL shall procure by 31 December 2008 that all POMs installed at NLR Stations, including those installed pursuant to paragraph 1.5, are enabled to accept Oyster ticketing products (except for Imperial Wharf Station where such enabling shall be procured by RfL by the Principal Change Date occurring in December 2009).

ELL Ticketing Facilities

1.7 (a) RfL shall, prior to the Operator becoming the Facility Owner at the ELL Stations, improve the ticketing facilities at those stations in a similar manner to that described in paragraphs 1.1 to 1.4 inclusive.

(b) RfL shall procure that:

- (i) the ELL Core Route Stations are each equipped with ticket gatelines no later than the date the Operator becomes the Facility Owner at those Stations; and
 - (ii) the ELL Core Route Stations and the Southern Stations are each equipped with the ticketing facilities specified in paragraph 1.1 (other than paragraph 1.1(c)) and paragraph 1.5 no later than the scheduled date for commencement of the ELL Passenger Services.
- (c) The Operator shall procure that by the scheduled date for commencement of the ELL Passenger Services there is at least one Oyster enabled TOM at each ELL Station that has a ticket office.

Southern Stations

1.8 RfL shall procure that by the date on which the Operator first operates passenger revenue earning services to Crystal Palace and West Croydon, new Oyster-compatible gatelines have been commissioned at the following Southern Stations:

1	Brockley
2	Forest Hill
3	Honor Oak Park
4	New Cross Gate
5	Norwood Junction
6	Sydenham

POMs

1.9 RfL shall make available or procure availability to the Operator on the Start Date and for the duration of the Concession Period, the following chip and pin compliant Scheidt & Bachmann ticket vending machines installed at the NLR Stations:

Column 1	Column 2
Station	Quantity
Acton Central	1
Brondesbury	1
Brondesbury Park	1
Bushey	2
Caledonian Road & Barnsbury	1
Camden Road	1
Canonbury	1
Carpenders Park	2
Dalston Kingsland	1
Finchley Road & Frognal	1
Gospel Oak	1
Hackney Central	1
Hackney Wick	1
Hampstead Heath	1
Hatch End	1
Headstone Lane	1

Column 1	Column 2
Station	Quantity
Homerton	1
Kensal Rise	1
Kensington Olympia	2
Kensington Olympia Training School	1
Kentish Town West	1
Kilburn High Road	1
Shepherds Bush	2
South Acton	1
South Hampstead	1
Watford High Street	2
West Hampstead	1
Willesden Junction	3
	35

1.10 The Operator shall be responsible for arranging the maintenance of POMs and associated equipment and systems from the Start Date and for the remainder of the Concession Period as follows:

- (a) the Operator shall enter into maintenance agreements with the suppliers and/or maintainers of Existing POMs for the maintenance of Existing POMs (excluding the CIDs for Existing POMs, which, subject to the Operator complying with its relevant obligations under Schedule 3.3 (*Oyster Equipment*), shall be maintained by RfL). The Operator shall ensure that any maintenance arrangements agreed with such suppliers and/or maintainers in respect of Existing POMs are sufficient to enable the Operator to comply with its obligations under, and meet the service quality requirements of, this Agreement; and
- (b) the Operator shall, pursuant to the Conditions Precedent Agreement, enter into an agreement in respect of the existing maintenance agreements entered into between RfL and the New POMs Maintainer in relation to New POMs (including the CIDs for such New POMs).

1.11 If during any Reporting Period the Operator is obliged by any maintenance agreement referred to in paragraph 1.10(b) to make any maintenance payments (other than performance bonus payments) to the New POMs Maintainer:

- (a) RfL shall reimburse such maintenance payments (but excluding any performance bonus payments) to the Operator by an adjustment to the Concession Payment for that Reporting Period; and
- (b) consequential adjustments shall be made to paragraph 1.1 of Schedule 11.1 (*Concession Payments*), including to the formula contained in that paragraph to recognise those payments.

1.12 In the event that any of the New POMs do not function properly or have been damaged, the Operator will promptly notify the New POMs Maintainer and enforce its rights under the relevant maintenance agreement with the New POMs Maintainer.

Maintenance of Ticket Gatelines

1.13 Subject to the Operator complying with the provisions of Schedule 3.3, RfL shall be responsible for arranging the maintenance of ticket gatelines. RfL shall promptly enforce its rights under any contract for the maintenance of such ticket gatelines.

Maintenance of Other Ticket Retailing and Acceptance Equipment

1.14 The Operator shall be responsible for procuring and arranging the maintenance of all other appropriate ticket retailing and acceptance equipment and shall enter into novation agreements (in respect of existing maintenance agreements) or new maintenance agreements with the relevant equipment suppliers and/or maintainers. The Operator shall ensure that any maintenance arrangements agreed with such suppliers and/or maintainers are sufficient to enable the Operator to comply with its obligations under, and meet the service quality requirements of, this Agreement.

Related Support

1.15 To support the operation of the retail ticketing arrangements and gatelines described in paragraphs 1.1 to 1.4 inclusive and 1.7, RfL shall procure that the relevant staff of the Incumbent Operator will be trained in the operation, and where appropriate, the maintenance or fault finding of new equipment brought into operation:

- (a) at the NLR Stations (except for Imperial Wharf Station) no later than the Start Date; and
- (b) at the Southern Stations, no later than the scheduled date for commencement of the ELL Passenger Services,

and for the purpose of this paragraph 1.15, the relevant staff of the Incumbent Operator shall, in the case of the NLR Stations, be no more than the number of staff employed at the NLR Stations, and in the case of the Southern Stations, shall be no more than the number of staff employed at the Southern Stations, in each case as at the date of this Agreement.

1.16 The Operator shall co-operate with RfL and relevant third parties in the carrying out of the activities specified in this paragraph 1. Without limiting the foregoing, the Operator shall, during the Concession Period, provide RfL, TranSys and any other relevant third party nominated by RfL, reasonable access to Stations to enable RfL, TranSys or such third party to carry out any Oyster enabling activity, (including the retro-fitting of Existing POMs with a CID to enable passengers to top-up their Oystercards) and any maintenance activity.

1.17 Without prejudice to the provisions of Schedule 3.3, the Operator shall use all reasonable endeavours to manage the operation, use, repair and maintenance of all ticket retailing and acceptance equipment referred to in this paragraph 1 in order to optimise the use of such equipment, minimise any disruption to passengers and comply with its obligations under, and meet the service quality requirements of this Agreement.

The Wide Area Network

1.18 RfL shall procure the installation of a single wide area network that has the capabilities specified in paragraph 1.19 in relation to:

- (a) all Stations at which the Operator is Facility Owner by the later of:

- (i) the date on which the Operator becomes the Facility Owner of that Station;
and
- (ii) the date falling three months after the Start Date;
- (b) Willesden Junction Station control centre and Camden Road Station disaster recovery centre by 31 December 2009;
- (c) Willesden Junction Train Maintenance Depot by the date falling three months after the Start Date; and
- (d) the ELL OBC by the date by which the Operator is granted access to the ELL Control Centre.

1.19 The wide area network specified in paragraph 1.18 shall provide for:

- (a) at Stations, a synchronous circuit with no less bandwidth than two mbps, together with a backup ADSL circuit with two mbps downlink and 256kpbs uplink;
- (b) an ADSL 2 mbps / 256k primary connection with ISDN backup for all drivers depots;
- (c) train maintenance depots to have the same circuits as the Stations;
- (d) mainframe connections to have 2 mbps synchronous circuits with backup as required;
- (e) Willesden Junction Station control centre to have a 100 mbps primary and backup;
- (f) Camden Road Station disaster recovery centre to have a 10 mbps primary and ADSL 2 mbps / 256k backup;
- (g) all circuits to be uncontended except the ADSL backup circuits which will have 10:1 contention; and
- (h) all “SLAs” to vary from 99.9 per cent. per annum at Stations to 99.999 per cent. per annum in control centres.

1.20 RfL shall procure the installation of a wide area network at Willesden Junction Station control centre that has at least 10 mbps primary and backup by the date falling three months after the Start Date.

Electrical Circuits

1.21 RfL shall procure by the Start Date and for the duration of the Concession Period that there is an electrical supply to each Station at which the Operator is Facility Owner that is anticipated at the date hereof to be sufficient for each such station’s requirements, as those requirements are specified in the Stations Enhancements Works Agreement.

Revenue Protection Incentive Regime

1.22 If the Phase 1 Station Activities are not completed on time, such that a Change occurs pursuant to paragraph (r) of that definition, RfL shall also make such revisions to the Fare Evasion Target Level as it reasonably considers appropriate to hold constant the risk of the Operator failing to achieve that target level in any Ticketless Travel Survey Period that occurs following the late completion of the Phase 1 Station Activities and during the period until the completion of those activities.

2. STATIONS PHASE 2 WORKS

Programme, and Works Specification

2.1 The Operator shall carry out and complete the Stations Phase 2 Works in accordance with the Stations Phase 2 Specification.

Phase 2 Contract Price

2.2 The Phase 2 Contract Price is [REDACTED]¹⁴, which is allocated among the Stations as follows:

	NLR Stations	Price		NLR Stations	Price
1	Acton Central	¹⁵	19	Homerton	
2	Brondesbury		20	Kensal Rise	
3	Brondesbury Park		21	Kensington Olympia	
4	Bushey		22	Kentish Town West	
5	Caledonian Road & Barnsbury		23	Kilburn High Road	
6	Camden Road		24	Leyton Midland Road	
7	Canonbury		25	Leytonstone High Road	
8	Carpenders Park		26	South Acton	
9	Crouch Hill		27	South Hampstead	
10	Dalston Kingsland		28	South Tottenham	
11	Finchley Road & Frognal		29	Upper Holloway	
12	Gospel Oak		30	Walthamstow Queen's Road	
13	Hackney Central		31	Wanstead Park	
14	Hackney Wick		32	Watford High St	
15	Hampstead Heath		33	West Hampstead	
16	Harringay Green Lanes		34	Willesden Junction	
17	Hatch End		35	Woodgrange Park	
18	Headstone Lane				

	Southern Stations	Price		Southern Stations	Price
1	Anerley		6	New Cross Gate	
2	Brockley		7	Norwood Junction	
3	Crystal Palace		8	Penge West	
4	Forest Hill		9	Sydenham	
5	Honor Oak Park		10	West Croydon	

¹⁴ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

¹⁵ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

Inspections and assessments of Stations

2.3 When the Operator is satisfied that it has completed the Stations Phase 2 Works at any Station listed in paragraph 2.2, it shall submit to the Concession Manager a written request for a Compliance Certificate in respect of that Station.

2.4 RfL shall be entitled to inspect such Station within 30 days of receipt of that written request in order to carry out:

- (a) an exceptional Mystery Shopper Survey in respect of that Station in accordance with the Mystery Shopper Survey methodology and questionnaire in the agreed terms marked *MSSMQ*, provided that:
 - (i) the results of any such survey shall not be used to determine the Operator's performance against the MSS Regime; and
 - (ii) RfL shall not be obliged to give the Operator any prior notice thereof; and
- (b) technical assessments at that Station, on no less than three Business Days' notice (and that notice shall be included in that 30-day period), to assess whether:
 - (i) the following systems and equipment installed there are in good working order, taking account of the original functional design and age of any such system or equipment:
 - (A) CIS;
 - (B) public address systems;
 - (C) help points;
 - (D) CCTV;
 - (E) ticket vending machines; and
 - (F) lighting; and
 - (ii) the signage at that Station is consistent, clearly visible and adequate for passenger needs,

(together the *Technical Standard*).

2.5 If, subject to paragraph 2.7 and 2.8:

- (a) RfL fails within those 30 days to carry out the Mystery Shopper Survey and the technical assessments of that Station each as contemplated by paragraph 2.4; or
- (b) RfL carries out that survey within that time and issues a Compliance Certificate in respect thereof, but fails to carry out those technical assessments within that time (or vice versa),

then:

- (i) the Operator shall be deemed to have satisfied the Phase 2 Standards in respect of that Station; and

(ii) the provisions of paragraph 2.10 shall apply.

2.6 If, subject to paragraph 2.7 and 2.8:

- (a) RfL carries out the Mystery Shopper Survey but not the technical assessments (or vice versa), each as contemplated by paragraph 2.4 (the *Completed Phase 2 Assessment*) within those 30 days; and
- (b) in respect of the Completed Phase 2 Assessment, the Phase 2 Standard has not been met in respect of that Station,

then:

- (i) the provisions of paragraph 2.11 shall apply in relation to the Completed Phase 2 Assessment;
- (ii) RfL shall be entitled to carry out whichever of that survey or those assessments it failed within those 30 days to carry out (the *Pending Phase 2 Assessment*), provided that in doing so, RfL shall undertake the Pending Phase 2 Assessment as soon as reasonably practicable after the end of that 30-day period and in any event no later than the later of:
- (A) 14 days after the end of that 30-day period; and
- (B) the scheduled completion date of the revised programme, proposed pursuant to paragraph 2.11(d), for remedying the items specified in the Non-Compliance Certificate that relates to the Completed Phase 2 Assessment;
- (iii) the remainder of this paragraph 2.6 shall apply in relation to the carrying out of the Pending Phase 2 Assessment and RfL's findings in respect thereof; and
- (iv) if RfL fails to carry out the Pending Phase 2 Assessment within the time specified in paragraph 2.6(ii), then RfL shall issue to the Operator within three Business Days of the end of that further period, a Compliance Certificate in respect of the Station to which that Pending Phase 2 Assessment relates.

2.7 Upon receipt of any notice given by RfL to the Operator that RfL wishes to carry out the technical assessments referred to in paragraph 2.4(b), the Operator shall provide such co-operation to RfL as RfL reasonably requires in order to carry out those technical assessments, including assisting RfL to verify the functionality of the systems and equipment referred to in that paragraph. Without prejudice to paragraph 2.12, the period of time that RfL is entitled to carry out those technical assessments shall be extended for such time as the Operator fails to provide any such co-operation.

2.8 If a Force Majeure Event occurs which prevents RfL from carrying out the survey or the assessments of such Station, each as contemplated by this paragraph 2.8, then the relevant period specified in this paragraph 2.8 for carrying out that survey and those assessments shall be extended for the period during which that Force Majeure Event so prevents RfL.

Compliance Certificates and payment of Phase 2 Contract Price

2.9 Paragraph 2.10 shall apply where the following standards (the *Phase 2 Standards*) have been met for a Station:

- (a) a Station inspected by RfL pursuant to paragraph 2.4(a) achieves the Stations Phase 2 MSS Score; and
- (b) the technical assessments carried out at that Station pursuant to paragraph 2.4(b) demonstrate to RfL's reasonable satisfaction that the Technical Standard at that Station has been met, provided that, if in carrying out such a technical assessment of any system or equipment installed at that Station, RfL reasonably determines that that system or equipment (as the case may be) is not in good working order according to the Technical Standard, RfL shall nevertheless deem that that system or equipment (as the case may be) is in good working order where:
 - (i) a Key Performance Indicator applies to that system or equipment (as the case may be);
 - (ii) the fault which has caused that system or equipment (as the case may be) not to be in good working order has been duly reported in accordance with the Fault Management System; and
 - (iii) the fault rectification work needed to rectify that fault has not been outstanding for such a period that the Operator is in contravention of paragraph 4 of Schedule 8.1 (*KPI Regime*).

2.10 If the Phase 2 Standards have been met in respect of a Station following any Mystery Shopper Survey and the technical assessments, in each case carried out pursuant to this paragraph 2.10, or they are deemed met pursuant to paragraph 2.5, then:

- (a) the Concession Manager shall within three Business Days of the earlier of the completion of the Mystery Shopper Survey and technical assessments carried out pursuant to paragraph 2.4 and the 30-day period referred to in that paragraph, issue a Compliance Certificate to the Operator in respect of each of:
 - (i) the Mystery Shopper Survey carried out or deemed to be carried out at that Station; and
 - (ii) the technical assessments carried out or deemed to be carried out at that Station; and
- (b) RfL shall pay the Operator that amount of the Phase 2 Contract Price that relates to that Station on the next Payment Date after the issue of those Compliance Certificates, except that if RfL issues either of those Compliance Certificates less than seven days before such Payment Date, RfL shall pay that amount on the succeeding Payment Date.

Non-Compliance Certificates

2.11 If either of the Phase 2 Standards are not met at any Station following, as the case may be, the Mystery Shopper Survey or the technical assessments, in each case carried out pursuant to this paragraph 2.11, then, in either case:

- (a) the Concession Manager shall not be obliged to issue Compliance Certificates in respect of that Station;
- (b) RfL shall not be obliged to pay the Operator that amount of the Phase 2 Contract Price that relates to that Station;

- (c) the Concession Manager shall, within three Business Days of the completion of the Mystery Shopper Survey and/or the technical assessments (as the case may be) that relate to that Station, issue to the Operator one or more Non-Compliance Certificates, listing those aspects of that Mystery Shopper Survey and/or those technical assessments (as the case may be) where the Phase 2 Standards have not been met and giving in each case, brief reasons why RfL believes this is the case;
- (d) the Operator shall as soon as reasonably practicable after receipt of any Non-Compliance Certificate:
 - (i) provide to RfL full details of a revised programme for remedying the items set out in that Non-Compliance Certificate in order that the Phase 2 Standards can be met in respect of that Station, together with a new target date for achievement of those standards;
 - (ii) undertake that programme in accordance with its terms; and
 - (iii) notify the Concession Manager when the Operator is satisfied that it has undertaken the programme and achieved the Phase 2 Standards in respect of that Station;
- (e) upon receipt of such notice from the Operator, RfL may carry out a further exceptional Mystery Shopper Survey and/or technical assessments at that Station and the provisions of paragraphs 2.4 to 2.8 (inclusive) shall apply in respect thereof, provided that, any such survey shall not be limited to those items that were specified in the relevant Non-Compliance Certificate issued by the Concession Manager pursuant to paragraph 2.11(c), but any such assessments shall be so limited;
- (f) if having carried out the new survey and/or reassessments referred to in paragraph 2.11(e) the previously unsatisfied Phase 2 Standard:
 - (i) is now satisfied at that Station, then the Concession Manager shall issue to the Operator the relevant Compliance Certificate and, providing the other Phase 2 Standard relating that Station has been similarly satisfied, RfL shall pay the Operator, each such issue and payment being in accordance with paragraph 2.10; or
 - (ii) continues not to be satisfied at that Station, then the parties shall continue to follow the process specified in this paragraph 2.11 until that Phase 2 Standard is satisfied at that Station;
- (g) the Operator shall be liable on demand to pay RfL £500 in respect of RfL's costs in carrying out:
 - (i) a third exceptional Mystery Shopper Survey or third set of technical assessments at any Station, following the issue by RfL in accordance with this paragraph 2.11 of two Non-Compliance Certificates in respect of that Station; and
 - (ii) any further Mystery Shopper Survey or further set of technical assessments at that Station, following the issue by RfL in accordance with this paragraph 2.11 of any further Non-Compliance Certificates in respect of that Station;

- (h) if the Operator disputes the issue of a Non-Compliance Certificate, it may refer the matter in accordance with the Dispute Resolution Rules; and
- (i) paragraph 2.12 shall continue to apply until such time as the requisite Compliance Certificates in respect of that Station have been issued by RfL to the Operator.

Late Completion

2.12 If the Compliance Certificates contemplated by paragraph 2.10 are not issued by RfL or deemed issued by the following dates:

- (a) in the case of each NLR Station (except Imperial Wharf Station), by the end of the first seven Reporting Periods of the Concession Period;
- (b) in the case of Imperial Wharf Station, by the end of the seven Reporting Periods commencing on or around the Principal Change Date occurring in December 2009; or
- (c) in the case of each Southern Station, by the end of the seven Reporting Periods commencing on 31 May 2009,

then, subject to paragraph 2.13, in each case:

- (i) a contravention of this Agreement shall have occurred; and
- (ii) the Operator shall pay to RfL the sum of £250 per Station per day of delay during the period commencing on the relevant scheduled completion date specified above and ending on the date the requisite Compliance Certificates in respect of the relevant Station have actually been issued by RfL.

2.13 (a) A contravention of this Agreement shall not have occurred as contemplated by paragraph 2.12(i) and the Operator shall not be obliged to pay the sum specified in paragraph 2.12(ii) in each case to the extent that the reason for non-satisfaction of the condition specified in paragraph 2.12(a) or (b) (as the case may be) is the failure of RfL to comply with its obligations under this Schedule 3.2.

(b) [REDACTED]¹⁶

3. GENERAL PROVISIONS

3.1 The Operator shall be responsible for obtaining and maintaining all required licences, consents and approvals which it requires in connection with the Stations Phase 2 Works, including consents under Stations Leases. The Operator shall not be entitled to any additional time on account of any delay in obtaining any such licence, consent or approval.

3.2 If the Operator is entitled to recover all or part of the cost of any of the Stations Phase 2 Works from a third party (including from Network Rail as landlord under any Station Lease) the Operator shall take all reasonable steps to recover such cost of part thereof, and upon receipt of any such amount shall pay the same in full to RfL.

3.3 The aggregate daily amounts accrued during any Reporting Period under paragraph 2.12 shall be due at the end of such Reporting Period, and shall be treated as a

¹⁶ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

Committed Obligation Payment Adjustment and shall be payable in accordance with Schedule 11.1 (*Concession Payments*).

3.4 The issue or deemed issue of a Compliance Certificate shall not:

- (a) relieve or diminish the Operator's obligations to carry out the Stations Phase 2 Works in accordance with the Stations Phase 2 Specification at any Phase 2 Station; or
- (b) affect RfL's rights or remedies in respect of any failure of the Operator to carry out any of those works in accordance with this Schedule 3.2.

4. LONGER TERM STATION ENHANCEMENTS AND MODERNISATIONS

4.1 RfL will continue to review all Stations during the Concession Period, with the objective of identifying priorities for enhancements, modernisation or asset investment.

4.2 The Operator will be required to give reasonable assistance to RfL in developing the scope of such further stations enhancement and modernisation works or investment.

4.3 RfL shall be entitled to notify the Operator that it wishes to proceed with any Station works or investment contemplated by paragraph 4.1.

4.4 If RfL notifies the Operator that it wishes to proceed with the implementation of any such works or investment:

- (a) the Operator shall co-operate with RfL and undertake such activities as RfL reasonably requires to complete such implementation; and
- (b) a Change shall occur.

SCHEDULE 3.3

Oyster Equipment

1. ACCESS TO OYSTER EQUIPMENT

1.1 The Operator acknowledges that RfL will procure all Oyster Equipment from a third party or parties and that it is intended that the Oyster Equipment will during the Concession Period remain the property of RfL or a third party or parties, as appropriate. At no time shall the Oyster Equipment become the property of the Operator. The Operator shall not cause or permit any Oyster Equipment to be affixed to the Operator's property or any third party's property so as to become a fixture.

1.2 RfL shall, subject to availability, at no cost to the Operator, provide to the Operator by the Start Date, up to 200 MOVie Devices. Without prejudice to RfL's obligations under paragraph 3.3, RfL gives no warranty or assurance as to the quality of MOVie Devices supplied under this paragraph 1.2.

1.3 All MOVie Devices supplied under paragraph 1.2 shall remain the property of RfL, but each such device shall be the responsibility of the Operator unless and until RfL acknowledges return of such device, in compliance with paragraph 4, by way of signature of an authorised representative, and RfL shall not be liable to the Operator for:

- (a) any loss, theft, damage or destruction of or to the MOVie Devices or any part thereof;
or
- (b) any loss, damage or destruction of any other property caused by the MOVie Devices,

in either case which occurs prior to such return and whether such loss is caused by negligence, the strict liability of RfL or otherwise.

2. OPERATOR OBLIGATIONS

Use of, and No Alteration or Damage to, Oyster Equipment

2.1 The Operator shall not cause any damage to, make any alteration to, or interfere with the Oyster Equipment in any way, other than in order to comply with its obligations relating to cleaning as set out in this Agreement. The Operator shall not place advertising anywhere on the Oyster Equipment.

2.2 The Operator shall ensure that those MOVie Devices supplied to it under paragraph 1.2:

- (a) remain in its possession or the possession of its employees at all times unless any such device is returned to RfL or its nominee in accordance with this Schedule 3.3; and
- (b) are used in accordance with their purpose and shall maintain, protect and preserve such devices in good working order, subject to fair wear and tear.

Retailing and acceptance of Oyster

2.3 The Operator shall retail and accept Oyster travel products:

- (a) at all NLR Stations from the Start Date and for the duration of the Concession Period;
and
- (b) at any ELL Station from the date on which the Operator becomes the Facility Owner at that Station and for the duration of the Concession Period.

Theft, Vandalism

2.4 The Operator shall ensure that the Oyster Equipment is kept within a secure environment and shall be responsible for costs arising from any loss, theft or damage of such Oyster Equipment. The Operator shall take all reasonable measures to protect Oyster Equipment from damage, including damage caused by vandalism. The Operator shall reimburse RfL for all fees, costs and expenses incurred by RfL or its nominee in repairing Oyster Equipment damaged by the Operator or by third parties, including any costs incurred in cleaning graffiti.

Access, Power, Facilities

2.5 The Operator shall grant the right for RfL, TTL, TranSys and its subcontractors to have access, together with equipment, to the locations of all Oyster Equipment for the purposes of maintaining, repairing and upgrading Oyster Equipment at any time. The Operator shall, where such facilities exist, also provide the following, as required from time to time, in order for TranSys and its subcontractors to carry out any repair, maintenance or upgrade of Oyster Equipment:

- (a) a continuous supply of electricity, and shall allow TranSys and its subcontractors to connect into any electrical point and make available facilities for connection to sources of supply of electricity;
- (b) storage for TranSys' and its subcontractor's equipment and spare parts;
- (c) parking for TranSys' and its subcontractors' vehicles;
- (d) toilet and washroom facilities for TranSys and its subcontractors; and
- (e) free travel permits for TranSys and its subcontractors for use on the Passenger Services.

Cleaning

2.6 The Operator shall ensure that the casing surrounding the Oyster Equipment (excluding any cables) is kept clean at all times in accordance with training provided by RfL from time to time, and shall ensure that:

- (a) the Oyster Equipment is only wiped clean with a clean cloth or sponge which has been immersed in a solution of clean water and detergent and thoroughly wrung out;
- (b) once cleaned, the Oyster Equipment is wiped dry so as to be free from all cleaning residues whatsoever;
- (c) Oyster Equipment is not cleaned using an abrasive cleaning agent or applicator; and
- (d) if any cleaning by high-pressure water jet is carried out at any station, no contact is made between the water jet and the Oyster Equipment.

Storage of consumables

2.7 The Operator shall ensure that consumables (tickets, wallets, hand held devices, device keys for gates and passenger validators, device instruction labels for gates and passenger validators, gate permits) are kept within a secure environment. The Operator shall be responsible for any costs arising from loss, theft or damage of such consumables.

Fault Reporting

2.8 In the event that any Oyster Equipment does not function properly or has been damaged (including by vandalism or graffiti), the Operator shall notify the TranSys helpdesk within such period as is directed by RfL.

Operation of Oyster

2.9 The Operator shall ensure that passengers “touch in” and “touch out” when using Oystercards, in accordance with instructions provided to the Operator by RfL from time to time.

Space for signs

2.10 The Operator shall ensure that sufficient space is available for signage relevant to Oyster products and Oystercards.

Customer Information

2.11 The Operator shall make available to passengers information, including leaflets, provided to the Operator by RfL and make announcements as directed by RfL relating to Oyster services including fares revisions.

Intellectual Property

2.12 The Operator shall indemnify RfL and TTL on demand against any losses or claims arising from any breach by the Operator of the licence granted pursuant to paragraph 3.1.

Crisis Management

2.13 The Operator shall act in accordance with directions of RfL in respect of managing Oyster Equipment for the purposes of crisis management or business recovery.

Fraud Management, Hotlist

2.14 The Operator shall take appropriate action in respect of failed or fraudulently used Oystercards in accordance with training provided by RfL from time to time. The Operator shall request that Oystercards be hotlisted in the circumstances advised to the Operator by RfL and in accordance with directions provided by RfL.

Service Disruptions

2.15 In relation to service disruptions and special events, the Operator shall act as directed by the Network Operating Centre (*NOC*), and in particular shall allow adjustments to be made to central settings, make adjustments to local settings and advise the NOC of instructions that have been given to customers, in each case in accordance with training provided by RfL from time to time.

3. RfL OBLIGATIONS

Intellectual Property

3.1 RfL shall procure that TTL grants to the Operator a licence of certain intellectual property (which has been licensed to TTL by TranSys) for the purpose of the Operator complying with its obligations relating to Oyster.

Maintenance of Oyster Validators

3.2 Subject to the Operator complying with the provisions of this Schedule 3.3, RfL shall be responsible for arranging the maintenance of Oyster validators. RfL shall promptly enforce its rights under any contract for the maintenance of such Oyster validators.

Maintenance of MOVie Devices

3.3 RfL shall, at no cost to the Operator, procure replacement software upgrades for, and any repairs, maintenance and any other work necessary to maintain the functionality of any of the MOVie Devices supplied under paragraph 1.2, provided that:

- (a) the Operator has complied at all times with its obligations under paragraph 2.2; and
- (b) the Operator promptly delivers up all relevant MOVie Devices to RfL or its nominee in order that such upgrades, repairs, maintenance or other work (as the case may be) may be carried out.

4. RETURN OF MOVIE DEVICES, RETURN CONDITION AND AUDITS

Return of MOVie Devices for reasons other than for maintenance

4.1 If the Operator no longer requires any of the MOVie Devices supplied under paragraph 1.2 in order to comply with its obligations under Schedule 2 (*Fares and Ticketing*) or this Schedule 3.3, the Operator shall promptly return that device to RfL or its nominee.

4.2 The Operator shall at the end of the Concession Period, or on any earlier date notified to it by RfL, promptly return to RfL or its nominee, all MOVie Devices that RfL has supplied under paragraph 1.2, to the extent not already returned pursuant to paragraph 4.1.

Audits of MOVie Devices

4.3 Upon the return of any MOVie Devices supplied under paragraph 1.2, whether pursuant to paragraph 3.3, 4.1 or 4.2, RfL shall promptly carry out an audit of those devices to ascertain their condition. The Operator shall co-operate with RfL in the carrying out of any such audit.

4.4 As soon as reasonably practicable after the completion of any such audit, RfL shall inform the Operator of its findings as to the condition of the returned MOVie Devices.

MOVie Devices not in the return condition

4.5 If the Operator returns to RfL or its nominee, any MOVie Device supplied to the Operator under paragraph 1.2 that is, in RfL's reasonable opinion, not in good working order and in the condition in which it was provided, other than due to fair wear and tear, the Operator shall pay to RfL by way of an adjustment to Concession Payments, the costs reasonably incurred by RfL for repair or replacement (as required) of that device.

SCHEDULE 4

TRAINS

- Schedule 4.1:** **The Train Fleet – General**
- Appendix: The Train Fleet**
- Schedule 4.2:** **The Interim Fleet and the DMU Fleet**
- Appendix: NLR New Trains – Daily Rates**
- Schedule 4.3:** **The New Trains (Testing and Commissioning)**
- Schedule 4.4:** **The New Trains (Train Services Agreement)**

SCHEDULE 4.1

The Train Fleet - General

1. TRAIN FLEET

1.1 The Operator's Train Fleet:

- (a) as at the Start Date is as set out in Tables 1 and 2; and
- (b) from the dates specified in Table 3 and Table 4, is as set out in Tables 1, 2, 3 and 4, in each case contained in the Appendix to this Schedule 4.1.

1.2 The Operator shall comply with its obligations under:

- (a) paragraph 2 concerning changes to the composition and characteristics of the Train Fleet; and
- (b) paragraph 8 of Schedule 17.3 (*Key Contracts*) with respect to the Train Fleet.

2. CHANGES TO THE TRAIN FLEET

2.1 The Operator shall maintain the composition of the Train Fleet during the Concession Period, unless RfL otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

2.2 Subject to the other provisions of this Agreement, the Operator shall procure that the rolling stock vehicles specified in the Tables contained in the Appendix to this Schedule 4.1, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

2.3 During the Concession Period, the Operator shall advise RfL of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three consecutive Reporting Periods or more.

2.4 If any change is made to the Train Fleet in accordance with this paragraph 2, RfL may, after consulting the Operator, notify the Operator of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change and RfL may do so following the refurbishment of the DMU Fleet described in paragraph 5 of Schedule 4.2 (*The Interim Fleet and the DMU Fleet*).

APPENDIX TO SCHEDULE 4.1

The Train Fleet

1. THE COMPOSITION OF THE TRAIN FLEET

The Train Fleet consists of:

- (a) the rolling stock vehicles specified in Table 1 with the capacity characteristics referred to there, until the earlier of:
 - (i) the replacement of any such vehicle in passenger revenue earning service by a New Train; or
 - (ii) the lease expiry dates referred to in column 6 thereof;
- (b) the rolling stock vehicles specified in the third row of Table 2, with the capacity characteristics referred to there, until the earlier of:
 - (i) the replacement of any such vehicle in passenger revenue earning service by a New DMU Train; or
 - (ii) the lease expiry dates in column 6 thereof;
- (c) following any such lease expiry, substitute rolling stock vehicles having:
 - (i) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted; and
- (d) from the dates specified in column 1 and the fourth row of Table 2 and column 1 of Table 3, with the capacity characteristics referred to there, the rolling stock vehicles referred to against those dates.

Table 1 (Interim Fleet)

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner / Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
Start Date	508	9 (3 car)	222	278	500	222	Angel	31/1/10
Start Date	313	69 (3 car)	232	265	497	232	HSBC	31/12/10

Table 2 (DMU Fleet)

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner / Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
Start Date	150	12 (2 car)	132	151	283	132	Angel	30/6/10
From date of acceptance, scheduled as May 2009 – August 2009	172	16 (2-car)	136	225	361	136	The owner / lessor agreed by RfL acting reasonably	Expiry Date

Table 3 (New Trains)

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner / Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
NLR New Trains: From date of acceptance, scheduled as October 2008 - January 2009	378	72 (three-car)	105	389	494	105	RfL or as RfL may direct	Expiry Date
ELL New Trains: From date of acceptance, scheduled as August 2009	378	80 (four-car)	145	522	667	145	RfL or as RfL may direct	Expiry Date

SCHEDULE 4.2

The Interim Fleet and the DMU Fleet

1. RENTAL COST OF INTERIM FLEET AND DMU FLEET

1.1 The Operator shall be responsible for arranging the leasing of the Interim Fleet from the Start Date, subject to paragraphs 1.2 to 1.5 (inclusive).

1.2 As at the date of this Agreement, the ORR is conducting a market study into charges levied by the rolling stock vehicle lessors in the United Kingdom. To the extent that this study or any resulting competition inquiry results in any reduction of lease rentals or other charges payable by the Operator to the relevant rolling stock vehicle lessor for the Interim Fleet or DMU Fleet (either as a prospective reduction of future rentals or charges or as a rebate to the Operator of rentals or other charges paid by reference to prior periods commencing on or after the Start Date), the Operator shall promptly pass back such reduction to RfL.

1.3 If any NLR New Train is not accepted under the MSA on its scheduled acceptance date, then unless such delay arises as a result of failure by the Operator to perform its obligations under Schedule 4.3 (*The New Trains (Testing and Commissioning)*), RfL shall pay the Operator the Daily Rate in respect of each day during the period:

- (a) commencing on such scheduled acceptance date; and
- (b) ending on the earlier of:
 - (i) the actual acceptance date of such NLR New Train; and
 - (ii) 14 January 2010,

but so that no Daily Rate shall be payable after the actual acceptance date of the 22nd NLR New Train.

1.4 It shall be a Change if the Operator is required to continue leasing any unit or units forming part of the Interim Fleet (to be replaced by NLR New Trains) beyond 14 January 2010 or any other unit or units beyond such date by way of replacement for such Interim Fleet units as a result of the late acceptance of the New Trains.

1.5 The Operator may retain any saving which it makes as a result of the early return of the Interim Fleet, or part thereof, due to the early introduction into passenger revenue earning service of the New Trains.

2. MAINTENANCE AND REPAIR OF INTERIM FLEET

The Operator shall be responsible for arranging the maintenance, repair, stabling and service for the Interim Fleet from the Start Date and in respect of any rolling stock vehicle comprising the Interim Fleet, for so long as that vehicle continues to be operated by the Operator.

3. MAINTENANCE AND REPAIR OF DMU FLEET

The Operator shall be responsible for arranging the maintenance, repair, stabling and service for the DMU Fleet from the Start Date and in respect of any rolling stock vehicle comprising the DMU Fleet, for so long as that vehicle continues to be operated by the Operator.

4. REFRESHMENT PROGRAMME FOR INTERIM FLEET

4.1 The Operator shall procure that the Interim Fleet (excluding the Class 313 EMU supplied to the West Midlands Franchisee in accordance with paragraph 1 of Schedule 1.12 (*Silverlink Separation*)) is refurbished in accordance with the specification set out in Table 1:

Table 1: Interim Fleet Refurbishment Specification

Exterior
Application of “London Overground” branding and livery
Windows
Replacement of failed units
Interior
Deep clean throughout
Installation of new light tubes and reflective film
Retrimming of all cushions and seat squabs; changing seat cushions and seat fixings on condition
Making good interior panelling
Making good and touching up grab rails
Repainting and re-labelling door headers
Repainting door push button housings in RVAR-compliant colour
Re-labelling
Application of anti-scratch film on windows
Driver’s Cab
Retrimming of seats

4.2 The refurbishment specified in paragraph 4.1 shall be completed by 30 April 2008.

4.3 If the refurbishment specified in paragraph 4.1 is not completed by 30 April 2008, the Operator shall pay to RfL the sum of [REDACTED]¹⁷ for each day during the period commencing on 1 May 2008 and ending on the date on which the refurbishment is completed.

4.4 The Operator shall spend at least [REDACTED]¹⁸ on the refurbishment specified in paragraph 4.1.

¹⁷ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

4.5 If the Operator fails to spend at least [REDACTED]¹⁹ in accordance with paragraph 4.4, the Operator shall pay a Committed Obligation Payment Adjustment equal to the balance of [REDACTED]²⁰ that remains unspent by the Operator on the date on which the refurbishment is completed.

4.6 For the purpose of this paragraph 4, the date of completion of the refurbishment shall be the date on which the Operator issues the last relevant acceptance (or equivalent) certificate to the contractor carrying out the refurbishment, provided that the Operator:

- (a) shall grant RfL a reasonable opportunity to inspect sufficient rolling stock vehicles comprising the Interim Fleet to satisfy itself, acting reasonably, that the refurbishment of the Interim Fleet has been carried out, in all material respects, in accordance with the specification set out in paragraph 4.1; and
- (b) shall remain liable for amounts payable to RfL under paragraph 4.3, notwithstanding the issue by the Operator of the last relevant acceptance (or equivalent) certificate, where, acting reasonably, RfL is not satisfied on or after 1 May 2008 that that refurbishment has been carried out, in all material respects, in accordance with paragraph 4.1 in relation to any rolling stock vehicle comprising the Interim Fleet.

5. REFRESHMENT PROGRAMME FOR DMU FLEET

5.1 The Operator shall procure that the DMU Fleet (other than the New DMU Trains) is refurbished in accordance with the specifications set out in Table 2:

Table 2: **DMU Fleet Refurbishment Specification**

Exterior
Application of “London Overground” branding and livery
Windows
Replacement of failed units
Interior - Decor
Deep clean throughout
Application of anti-scratch film on windows
Repainting/re-vinyling ceiling
Repainting and re-labelling door headers
Repainting door leaves in contrasting colours

¹⁸ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

¹⁹ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

²⁰ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

Repainting door push button housings in RVAR-compliant colour
Re-labelling
Repainting heater grilles
Repainting interior doors
Interior – Lighting
Installation of new light fittings
Interior seating and layout
Removal of and making good toilet cubicles
Installation of new seating in 2+2 layout
Installation of new longitudinal seating in end saloons (3 tip up, 3 perch per side)
Vestibules
Installation of new, re-sited draft screens and grabpoles, including re-siting heater boxes; new labelling on draft screens

Interior - Other
Making good interior panelling (including in the cab)
Making good and repainting grab rails
Installation of new circular handrail in end saloon areas
Installation of new floor covering throughout
Passenger Systems
Installation of PIS display units and control system
Installation of CCTV
Installation of PassCom system for wheelchair spaces
Driver’s Cab
Installation of new flooring
Retrimming of seats

5.2 The refurbishment specified in paragraph 5.1 shall be completed by 31 May 2008.

5.3 If the refurbishment specified in paragraph 5.1 is not completed by 31 May 2008, the Operator shall pay to RfL the sum of [REDACTED]²¹ for each day during the period commencing on 1 June 2008 and ending on the date on which the refurbishment is completed.

5.4 The Operator shall spend at least [REDACTED]²² on the refurbishment specified in paragraph 5.1.

5.5 If the Operator fails to spend at least [REDACTED]²³ in accordance with paragraph 5.4, the Operator shall pay a Committed Obligation Payment Adjustment equal to the balance of [REDACTED]²⁴ that remains unspent by the Operator on the date on which the refurbishment is completed.

5.6 For the purposes of this paragraph 5, the date of completion of the refurbishment shall be the date on which the Operator issues the last relevant acceptance (or equivalent) certificate to the contractor carrying out the refurbishment, provided that the Operator:

- (a) shall grant RfL a reasonable opportunity to inspect sufficient rolling stock vehicles comprising the DMU Fleet (other than the New DMU Trains) to satisfy itself, acting reasonably, that the refurbishment of the DMU Fleet (other than the New DMU Trains) has been carried out, in all material respects, in accordance with the specification set out in paragraph 5.1; and
- (b) shall remain liable for amounts payable to RfL under paragraph 5.3, notwithstanding the issue by the Operator of the last relevant acceptance (or equivalent) certificate, where, acting reasonably, RfL is not satisfied on or after 1 June 2008 that that refurbishment has been carried out, in all material respects, in accordance with paragraph 5.1 in relation to any rolling stock vehicle comprising the DMU Fleet (other than the New DMU Trains).

²¹ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

²² This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

²³ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

²⁴ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 4.2

NLR New Trains – Daily Rates

Column 1	Column 2
Month	Daily Rate per NLR New Train
October 2008	25
November 2008	
December 2008	
January 2009	
February 2009	
March 2009	
April 2009	
May 2009	
June 2009	
July 2009	
August 2009	
September 2009	
October 2009	
November 2009	
December 2009	
January 2010	

²⁵ [FIGURES REDACTED]

SCHEDULE 4.3

The New Trains (Testing and Commissioning)

1. MANUFACTURE AND SUPPLY AGREEMENT

1.1 TTL has entered into the MSA with the New Trains Manufacturer for the design, construction, testing, acceptance and supply of the New Trains. LUL is also a party to the MSA, due to interface issues with the ELL infrastructure project.

1.2 TTL has agreed under the MSA:

(a) for operation on the ELL:

(i) to purchase 20 four-car Class 378 units, capable of operating on the Network Rail 3rd rail, with provision for subsequent conversion to dual voltage operation; and

(ii) at TTL's option, to purchase additional Class 378 units;

(together, the *ELL New Trains*); and

(b) for operation on the NLR (other than the GOB):

(i) to purchase 24 three-car Class 378 units, being dual voltage units equipped for both 3rd rail and 25kV operation;

(ii) at TTL's option, to purchase additional Class 378 units; and

(iii) at TTL's option, to purchase additional rolling stock vehicles to convert those three-car units to four-car units,

(together, the *NLR New Trains*).

1.3 TTL shall project-manage the supply of the New Trains under the MSA.

1.4 The scheduled acceptance dates for the New Trains under the MSA are:

(a) 24 October 2008 to 14 January 2009, for the NLR New Trains; and

(b) 14 August 2009, for the ELL New Trains,

in each case on the basis that a New Train will only be accepted in accordance with the provisions of D.7 of Appendix D to Schedule 3 (*Assurance*) of the MSA. ELL Trial Operations will then be undertaken in relation to the ELL New Trains, with ELL Passenger Services scheduled to commence from 17 October 2009.

1.5 RfL shall make the New Trains available to the Operator through lease arrangements substantially on the terms of the New Trains Lease Term Sheet, which leasing arrangements shall be entered into by the Operator and RfL (or another member of the TfL Group) on or prior to the Start Date.

1.6 RfL reserves the right to transfer ownership of the New Trains to any third party or parties without the prior consent of the Operator, and the Operator shall promptly enter into a lease or leases with such third party or parties when so directed by RfL. Any subsequent lease of the New Trains shall also be substantially on the terms of the New Trains Lease Term Sheet. If during any Reporting Period the Operator is obliged by any such lease to pay rental to the lessor:

- (a) RfL shall reimburse such rental to the Operator by way of adjustments to the Concession Payments in a timely manner so as to ensure that the Operator's cashflow is not adversely affected by the preferred payment cycle of the chosen lessor.; and
- (b) consequential adjustments shall be made to paragraph 1.1 of Schedule 11.1 (*Concession Payments*), including to the formula contained in that paragraph to recognise those payments.

1.7 If the Operator is unable to operate a New Train or New Trains in revenue earning passenger service from the acceptance date under the lease because the ELL infrastructure has not been completed, or has not been fully certified, RfL will compensate the Operator for its costs of storing and maintaining such New Train(s) during the period of delay, net of any savings realised by the Operator, provided RfL has approved in writing the storage and maintenance arrangements.

2. NEW TRAINS TESTING AND ACCEPTANCE

2.1 TTL shall be responsible for decisions relating to acceptance of the New Trains.

2.2 The New Trains Manufacturer shall be responsible for testing each New Train up to provisional acceptance, following which the Operator shall operate such New Train.

3. PROVISION OF TRAIN CREWS BY OPERATOR

The Operator shall provide suitably qualified train crew for acceptance testing of the New Trains by the New Trains Manufacturer, as follows:

- (a) as at the date of this Agreement, RfL considers that up to 20 train crew will be required in order to carry out acceptance testing (and the Operator shall provide such crew at no charge to RfL, TTL or the New Trains Manufacturer);
- (b) if RfL notifies the Operator that it requires more than 20 train crew for this purpose, a Change will arise;
- (c) the Operator shall ensure that all train crew are suitably trained in a timely manner, and operate the New Trains during testing in accordance with operational guidelines and all applicable laws and regulations. The Operator shall comply with Schedule 6 (*Training Services*) of the MSA; and
- (d) the Operator shall also provide sufficient driver managers and supervisors to support that train crew, and shall also provide any reasonable operational support requested by RfL.

4. PROCUREMENT OF TRACK ACCESS BY OPERATOR

4.1 The Operator shall use all reasonable endeavours to procure train paths from Network Rail for the testing of the New Trains by the New Trains Manufacturer (at no charge to RfL,

TTL or the New Trains Manufacturer), and shall not cancel any such train paths when booked unless requested in writing to do so by the New Trains Manufacturer.

4.2 The Operator shall comply with the NR Test Plan, Stage 1 Core ELL Test Plan, Stage 2 Core ELL Test Plan and Stage 3 Core ELL Test Plan, each as defined in the MSA.

5. SAFETY CERTIFICATE

5.1 The Operator shall make applications to the Infrastructure Managers for Route Acceptance of the New Trains in co-operation with the New Trains Manufacturer and in accordance with Railway Group Standard GE/RT/8270 Issue 1, February 2003 as described in the MSA and the ELLP Rolling Stock Approvals Plan.

5.2 The Operator shall be responsible for obtaining, in accordance with the MSA project programme set out in Schedule 4 (*Project Programme*) of the MSA (as amended from time to time in accordance with the provisions thereof):

- (a) the T Stage and S Stage Operational Certificates, as specified in paragraphs D.1 and D.2 of Appendix D to Schedule 3 (*Rolling Stock Requirements – Assurance*) of the MSA; and
- (b) the relevant Certificates of Authority to Operate, as specified in paragraph D.9 of Appendix D to that Schedule 3.

5.3 RfL shall take reasonable steps to enforce the New Trains Manufacturer's obligations under the MSA in order to assist the Operator in making the applications referred to in paragraph 5.1 and in obtaining the Safety Certificates and Certificates of Authority referred to in paragraph 5.2.

6. COMPENSATION BY OPERATOR FOR LATE ACCEPTANCES

6.1 If any New Train is accepted by TTL under the MSA later than its scheduled acceptance date (as set out in the MSA) as a result of any act or omission of the Operator or the Operator failing to perform in a timely manner any of its obligations under paragraphs 3, 4 or 5 with regard to that New Train, the Operator shall pay RfL the following amounts of liquidated damages:

- (a) in relation to the first 20 ELL New Trains:
 - (i) at the rate of [REDACTED]²⁶ per ELL New Train per week or part of a week during the period commencing prior to 15 August 2009 and ending on 16 October 2009; and
 - (ii) at the rate of [REDACTED]²⁷ per ELL New Train per week or part of a week in respect of New Trains scheduled to be delivered during each week on and from 17 October 2009;
- (b) in relation to any additional ELL New Trains, at the rate of [REDACTED]²⁸ per additional ELL New Train per week or part of a week; and

²⁶ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

²⁷ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

- (c) in relation to the NLR New Trains, at the rate of [REDACTED]²⁹ per NLR New Train per week or part of week.

6.2 The Operator shall pay such liquidated damages to RfL within 28 days after receipt of any invoice from RfL.

7. CAB SIMULATOR

RfL shall, no later than 3 June 2008, provide a Class 378 cab simulator to the Operator for its use, at no charge to the Operator. The Operator shall be responsible for securing maintenance arrangements for such simulator at its own expense.

8. GENERAL ASSISTANCE

In addition to the specific obligations specified in this Schedule 4.3 in relation to the New Trains, the Operator shall, to the extent reasonably requested by RfL and subject to payment of the Operator's reasonable costs by the relevant third party, co-operate with any third party which RfL may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail, TTL or RfL) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Concession Services, and may include:

- (a) the movement of test trains within and around depots;
- (b) making available personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

²⁸ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

²⁹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

SCHEDULE 4.4

The New Trains (Train Services Agreement)

1. GENERAL

1.1 TTL has entered into the TSA with the New Trains Maintainer. Under the TSA, the New Trains Maintainer agrees to provide maintenance and related services for the New Trains.

1.2 Under the TSA, TTL is entitled to nominate the Operator to exercise some or all of its rights or perform some or all of its obligations, in connection with the TSA. With effect from the date of the TSA Agency Agreement, TTL will nominate the Operator to exercise certain rights, and perform certain obligations, of TTL under the TSA.

1.3 RfL shall not take any action which impedes or frustrates the Operator's proper day-to-day exercise of rights and performance of obligations under the TSA, and shall not unreasonably delay giving any instruction or approval to the Operator which is necessary for such proper exercise or performance.

2. ADDITIONAL SERVICES

Pursuant to paragraph 1.2, the Operator shall be entitled to request that the New Trains Maintainer delivers Additional Services to the Operator in accordance with the TSA. The Operator shall pay for such Additional Services through an adjustment to the Concession Payments.

3. INTERIOR TRAIN CLEANING AND PREPARATION

3.1 The Operator shall procure that the interiors of the New Trains are cleaned to satisfy the Interior Cleaning Standard.

3.2 For the purposes of paragraph 3.1, the *Interior Cleaning Standard* means such standard of cleanliness as will satisfy the relevant:

- (a) Key Performance Indicator standards set out in Table 1 in the Appendix (*Key Performance Indicators*) to Schedule 8.1 (*KPI Regime*);
- (b) MSS Target Levels in the Appendix (*MSS Target Levels and MSS Benchmarks*) to Schedule 8.2 (*MSS Regime*); and
- (c) Target NPS Level in the Appendix (*NPS Target Levels and Remedial Plan NPS Benchmarks*) to Schedule 8.3 (*CSS Regime*).

3.3 It is acknowledged that the Operator may request TTL to exercise (or as TTL's agent under the TSA Agency Agreement, may itself exercise) the option under clause 9 of the TSA to secure provision of interior cleaning services (in which case the New Trains Maintainer shall procure such services) in order for the Operator to satisfy the requirements of paragraph 3.1.

4. PERFORMANCE REGIME

4.1 The performance regime for performance of the Services (as defined under the TSA) by the New Trains Maintainer is set out in Schedule 3 (*Rolling Stock Requirements – Assurance*) of the TSA.

4.2 The New Trains Maintainer's liability under the performance regime to the Operator is subject to an Annual Deductions Cap (as defined in Schedule 3 of the TSA), and if payments equal or exceed this cap, TTL will be entitled to terminate the TSA.

4.3 The Operator shall receive all performance regime Deductions payments due from the New Trains Maintainer and contribute a [REDACTED]³⁰ share of Impact Minute Bonus payments to the New Trains Maintainer under the TSA performance regime, in each case through an adjustment to the Concession Payments in accordance with paragraphs 3.13 and 3.14 of Schedule 7 (*Operational Performance*).

³⁰ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

SCHEDULE 5

ELL

Schedule 5:

ELL

SCHEDULE 5

ELL

1. OVERALL PURPOSE, AND ROLES OF OPERATOR

Overview of Operator Roles

1.1 The Operator shall carry out the following principal roles in assisting RfL in the delivery of the ELL and the operation of the ELL Passenger Services over that Route:

- (a) acting as adviser to the ELL Project Team and providing the services specified in this Schedule 5 in order to successfully complete the ELL;
- (b) taking safety responsibility in relation to its role in assisting the Main Works Contractor, and carrying out test running and trial operations, as described in this Schedule 5;
- (c) delivering an assurance regime that produces Technical Cases for the Operator's responsibilities during the Concession Period, in order to achieve a Safety Certificate and Safety Authorisation from ORR in relation to the ELL; and
- (d) retaining suitably trained staff and obtaining appropriate Train Slots and the necessary approvals for public and commercial operation of the ELL Passenger Services and the carrying out of other obligations specified in this Schedule 5 within the required timescales.

Infrastructure

1.2 Following the completion of the works to be carried out pursuant to the ELL Main Works Contract, the infrastructure for the ELL will be owned and operated in accordance with the following:

- (a) **ELL Core Route:**
 - (i) TfL or LUL will own the track between Dalston Western Junction in the north and New Cross Gate Junction and New Cross in the south (the *ELL Core Route*);
 - (ii) TfL or LUL will be the Infrastructure Manager of the ELL Core Route, including the NXG Facility;
 - (iii) signalling over the ELL Core Route will be controlled by that Infrastructure Manager from an ELL service control centre located at the NXG Facility; and
 - (iv) the electric traction supply will be remotely monitored and controlled by LUL;
- (b) **Non-Core Infrastructure:**
 - (i) Network Rail will retain its current ownership of the stations at New Cross and New Cross Gate, and track and signalling infrastructure in the vicinity of New Cross and New Cross Gate stations, and all track and signalling

infrastructure elsewhere on the ELL south of New Cross Gate Junction and north of Dalston Western Junction; and

- (ii) on such infrastructure, existing national rail arrangements that apply as at the date of this Agreement will continue for the duration of the Concession Period;
- (c) **Stations:**
- (i) LUL will continue to own and operate the interchange stations at Whitechapel and Canada Water; and
 - (ii) the Operator will become the Facility Owner of the ELL Core Route Stations, and a control office in the ELL OBC will be made available to the Operator to be used as a focus for operations activities.

(d) **Depot:**

A train maintenance depot will be built adjacent to New Cross Gate station, and such depot will:

- (i) be operated and maintained by the New Trains Maintainer;
- (ii) provide train crew depot facilities to be managed by the Operator; and
- (iii) include a signalling control centre, a control office, an information control room and an Operator security control room in each case for use by the Operator in the ELL OBC.

ELL Core Route TAA

1.3 On or prior to the start of ELL Trial Operations, the Operator shall enter into the ELL Core Route TAA with TfL or one of its subsidiaries. The ELL Core Route TAA shall be on similar terms to the regulated model track access agreement published by the ORR (October 2004 edition), other than in respect of:

- (a) the identity of the Infrastructure Manager;
- (b) the description of the relevant network to which the Operator is to be granted access;
- (c) the quantum, times and other characteristics of the access to that network;
- (d) the charges payable by the Operator for access to that network, which shall, except for charges relating to traction current, be nil; and
- (e) the performance regime, which shall have no monetary sanctions attached to it, but which shall require the Operator to monitor the Infrastructure Manager's performance.

1.4 If the ELL Core Route TAA is entered into by a member of the TfL Group other than LUL, the ELL Core Route TAA will contain provisions which:

- (a) entitle LUL, as Infrastructure Manager, to issue instructions to the Operator under the ELL Core Route TAA; and

- (b) provide for the Operator to indemnify LUL for any losses or liabilities which LUL incurs as a result of any breach by the Operator of the terms of the ELL Core Route TAA.

Network Rail ELL TAA

1.5 On or prior to the introduction of SLC1e, the Operator shall enter into the Network Rail ELL TAA with Network Rail pursuant to the ELL Access Option, for all parts of the network comprising the ELL (other than the ELL Core Route).

1.6 The Operator shall:

- (a) fully consult with RfL on each draft of the Network Rail ELL TAA before submitting its comments to Network Rail and shall use all reasonable endeavours to comply with any directions from RfL as to which provisions the Operator should seek to include or modify in the Network Rail ELL TAA;
- (b) ensure that all relevant provisions of the ELL Access Option are incorporated in the Network Rail ELL TAA;
- (c) if requested by RfL, provide RfL with a progress report at the end of each Reporting Period on the status of negotiations and issues with Network Rail, indicating matters discussed in such Reporting Period and their status, and matters due to be discussed or reviewed in the forthcoming Reporting Period;
- (d) as directed by RfL, the Operator shall make representations to ORR concerning the payment rate under the proposed Schedule 8 (*Performance Regime*) to the Network Rail ELL TAA;
- (e) if directed to do so by RfL, make an application to the ORR under Section 17 or Section 22A of the Act, in relation to any provisions of the Network Rail ELL TAA on which the Operator and Network Rail are unable to reach agreement;
- (f) finalise the negotiation of the Network Rail ELL TAA by 1 July 2008, so as to enable Network Rail and the Operator to submit an application under Section 18 or Section 22 of the Act to ORR by the date set out in clause 5.8.2 of the ELL Access Option;
- (g) not give its approval of the final form of the Network Rail ELL TAA unless RfL has approved such form in writing; and not sign the Network Rail ELL TAA until directed to do so by RfL;
- (h) following signature of the Network Rail ELL TAA, not consent to any amendment or variation to the Network Rail ELL TAA unless RfL has approved it in writing; and
- (i) if so directed to do so by RfL, exercise its rights under the Network Code in connection with the Network Rail ELL TAA.

1.7 RfL undertakes to provide reasonable support to the Operator in any negotiations with Network Rail and discussions with ORR concerning the form of the Network Rail ELL TAA, and if necessary, may procure that TfL enforces its rights under the ELL Access Option.

Proving Period

1.8 The Operator shall ensure that provisions relating to the implementation of the Proving Period are included in the Network Rail ELL TAA and that such provisions are

consistent with and no less favourable to TfL than those included in paragraph 2 of Schedule 11 of the ELL Access Option. Without limiting the foregoing, the Operator shall:

- (a) co-operate with the New Trains Maintainer, LUL, Network Rail and other Train Operators and use its best endeavours to maximise performance of the ELL Passenger Services during the Proving Period;
- (b) audit the processes adopted by Network Rail to collect data relating to Southern's performance, to ensure that TfL's and RfL's interests are protected;
- (c) ensure that delays attributed to the Operator by Network Rail during the Proving Period are strictly in accordance with the criteria set out in clause 2.6.1 of Schedule 11 of the ELL Access Option;
- (d) review the performance data provided by Network Rail relating to Southern's performance, challenge Network Rail as necessary to protect TfL's interests and negotiate and agree with Network Rail the Period PPM and MAA PPM;
- (e) co-operate with and support RfL in the post-Proving Period assessment and rectification activities set out in paragraphs 2.7 and 2.8 of Schedule 11 of the ELL Access Option;
- (f) co-operate with Network Rail, RfL, the New Trains Maintainer and other Train Operators and use all reasonable endeavours to recover the MAA PPM for Southern to a level no worse than 2 per cent. below that at the end of the period immediately prior to the introduction of the first ELL Passenger Services, if the MAA PPM has decreased;
- (g) negotiate amendments to the performance regime provisions included in the Network Rail ELL TAA with Network Rail at the end of the Proving Period; and
- (h) report to RfL on its implementation of the activities set out in paragraphs 1.7(a) to (g) at such times as may be specified by RfL.

Possession of ELL Core Route for Maintenance

1.9 The Operator acknowledges that the Infrastructure Manager may take possession of the ELL Core Route to carry out maintenance, seven days per week, during the period commencing 15 minutes after the last service train and ending 15 minutes before the first service train the following day.

Station Access Arrangements

1.10 The Operator shall enter into Station Leases and station Access Agreements in relation to the ELL in accordance with Schedule 3 (*Stations and Depots*).

2. ELL FACILITIES AND SYSTEMS AND OPERATOR RESPONSIBILITIES

Facilities and Systems to be procured by RfL

2.1 RfL shall, by the start of ELL Trial Operations, procure that the Main Works Contractor provides the facilities and systems contemplated by the MWIR-T at the ELL Core Route Stations.

Stations – Facilities Management by Operator

2.2 The Operator shall be responsible for carrying out the facilities management activities specified in each Station Lease relating to each of the ELL Stations, from the later of:

- (a) the date when the Operator becomes the Facility Owner at such ELL Station, which in the case of the ELL Core Route Stations shall be from the date specified in paragraph 1.7 of Schedule 3.1 (*Stations, Depots and Property Leases*); and
- (b) the date when the relevant facility or system has been handed over to and accepted by the Operator at that ELL Station,

and for the remainder of the Concession Period.

3. OPERATOR'S ADVICE AND CO-OPERATION

Advice on Operational Matters

3.1 The Operator shall, as and when reasonably requested, provide advice to the ELL Project Team on operational matters, including:

- (a) timetable planning, and the necessary support facilities;
- (b) driver (and driver manager) training programmes;
- (c) safety management issues;
- (d) requirements for staff accommodation within the NXG Facility, particularly the drivers' booking-on point and mess rooms;
- (e) the fit-out of facilities and systems requirements, both where the ELL Main Works Contract will provide for them and where provision should be made for subsequent supply by the Operator;
- (f) control, information and security requirements and the provision to be made for them; and
- (g) timescales for long-lead activities, particularly driver recruitment and training.

Steering Group and Working Groups

3.2 The Operator shall be a member of:

- (a) a project steering group comprising members of RfL, the ELL Project Team, representatives of the Main Works Contractor, representatives of the New Trains Manufacturer, representatives of the Infrastructure Managers, and representatives of the Operator (the *ELL Start of Service Steering Group*); and
- (b) such specific working groups as are established by that steering group that RfL reasonably requires the Operator to attend.

Meetings

3.3 RfL shall procure that the Operator is given reasonable notice of meetings of the ELL Start of Service Steering Group and the related working groups. The Operator shall procure

that an appropriate number of suitably qualified and experienced representatives of the Operator attend such meetings.

Discharge of Advisory Role

3.4 The Operator shall discharge its advisory role through attendance at the ELL Start of Service Steering Group, any specific working groups established by that steering group and otherwise as reasonably necessary to meet the requirements of the activities referred to in this Schedule 5.

General Co-operation

3.5 The Operator shall otherwise co-operate with RfL, and as reasonably directed by RfL, with the other members of the ELL Start of Service Steering Group, so as to ensure, to the best of the Operator's capabilities, that the various activities described in this Schedule 5 are delivered to time and budget. In so doing, the Operator shall:

- (a) participate in a positive and constructive manner with RfL and, as appropriate, the other members of the ELL Start of Service Steering Group, at the meetings referred to in paragraph 3.3 and otherwise;
- (b) be proactive in identifying solutions that minimise the overall cost of those activities to RfL, the Operator and the other members of the ELL Start of Service Steering Group; and
- (c) where reasonably directed by RfL, adopt and implement those initiatives and practices that RfL has already developed prior to the date of this Agreement, so as to avoid unnecessary expenditure being incurred.

Assisting with discharge of "Employer's" obligations under Main Works Contract

3.6 The Operator shall provide such assistance as is reasonable to LUL (Employer) and the Main Works Contractor in carrying out and completing the ELL Main Works Contract, and shall not hinder or obstruct either of them. Without prejudice to the generality of the foregoing, and the Operator's other obligations in this Schedule 5, the Operator shall provide support in relation to certain obligations of LUL (Employer) under the ELL Main Works Contract, as follows:

- (a) **Information:**
 - (i) reply to any requests for information from the ELL Main Works Contract Project Manager and/or the Main Works Contractor's Interface Manager (as defined in the ELL Main Works Contract) within ten days of the date of any such request; and
 - (ii) provide any information which LUL (Employer) may require in order to respond to an Information Request made of it under the ELL Main Works Contract in accordance with the FOI Legislation, the Environmental Information Regulations 1992 and any amendment or re-enactment of any of them, and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs and/or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

- (b) **Risk Reduction Meetings:** attend and participate in any risk reduction meetings when requested by the ELL Main Works Contract Project Manager;
- (c) **Access:** permit LUL (Employer), and any other person notified by LUL (Employer) to the Operator, to access those parts of the ELL which may be under the control of the Operator from time to time;
- (d) **Disputes:** if so requested by LUL (Employer), provide reasonable support and co-operation to LUL (Employer) in relation to any dispute or difference which may arise from time to time between LUL (Employer) and the Main Works Contractor in respect of the ELL Main Works Contract, and if requested by LUL (Employer) submit to the LUL Escalation Procedure (as defined in Schedule Y.2 of the Main Works Contract) in respect of such dispute or difference;
- (e) **Best Value:** assist LUL (Employer) in fulfilling its obligation, as a best value authority pursuant to the Local Government Act 1999, to make arrangements to secure continuous improvement in the way LUL (Employer) exercises its functions under the ELL Main Works Contract, having regard to a combination of economy, efficiency and effectiveness;
- (f) **Signals:** ensure that no act or omission of the Operator causes any signals on the ELL to become obscured in any way;
- (g) **Assurance Acceptance:** support LUL (Employer) in:
 - (i) providing reasonable assistance to the Main Works Contractor so as to permit the Main Works Contractor to obtain Assurance Acceptance of any submissions or Technical Cases which it submits pursuant to the MWIR; and
 - (ii) Assurance Acceptance of the works under the ELL Main Works Contract, to the extent that such works consist of systems, equipment or facilities for the use of the Operator;
- (h) **Specific Obligations:** support LUL (Employer) in co-operating with and providing reasonable assistance to the Main Works Contractor so as to permit the Main Works Contractor to fulfil the following obligations under the MWIR:
 - (i) the carrying out of any hazard identification;
 - (ii) the carrying out of any risk assessments and implementing any risk reduction measures (including, but not limited to, passenger risks and railway suicides);
 - (iii) the implementation of a safety regime;
 - (iv) the submission of Detailed Designs (as defined under the ELL Main Works Contract); and
 - (v) the creation of operational manuals, maintenance plans and training plans;
- (i) **Handover/Commissioning:** co-operate with LUL (Employer) in agreeing a handover and commissioning plan that describes the manner by which the Main Works Contractor proposes to commission and offer assets for operational service;

- (j) **Joint Proving Tests:** support LUL (Employer) in reaching agreement with the Main Works Contractor as to the tests which are necessary to undertake as part of the Joint Proving Tests, as required by the MWIR;
- (k) **Technical Interfaces:** support LUL (Employer) in co-ordinating with and providing all reasonable assistance to the Main Works Contractor in managing all technical interfaces (in particular, but not limited to, testing and test running of the ELL Core Route) which arise out of the Main Works Contract, so as to ensure the proper systems integration, co-ordination and compatibility of the various elements, one with another and with the adjoining network managed by Network Rail, and of the Plant and Materials (as defined in the ELL Main Works Contract) for inclusion in the ELL Core Route;
- (l) **Facilities and Systems:** support LUL (Employer) in co-operating with and providing all reasonable assistance to the Main Works Contractor in setting up and creating the facilities and systems which the Main Works Contractor is required to provide for the use of the Operator;
- (m) **Carbon Emissions:** support LUL (Employer) in using all reasonable endeavours to ensure that carbon emissions are minimised, without adversely impacting on the performance of ELL Passenger Services;
- (n) **Site Security:** comply with all directions and rules of the Main Works Contractor regarding on-site security and safety; and
- (o) **Ergonomic Design:** if requested by RfL, provide support and assistance to LUL (Employer) in finalising the ergonomic design of systems and accommodation that are to be supplied by the Main Works Contractor and will be used by the Operator.

New Stations Specification

3.7 The Operator acknowledges that the “New Station Specification” (as defined in MWIR-T) is a fixed specification. The Operator shall promptly notify RfL if the Operator determines that there is any aspect of the New Station Specification which should be modified in order to improve passenger or staff safety, or to reduce risks of such safety being compromised.

4. OPERATOR’S PRE-PASSENGER OPERATIONS ROLE

General

4.1 The Operator shall carry out the pre-passenger operations activities specified in the remainder of this paragraph 4 in a timely manner, in order that ELL Test Running and ELL Trial Operations may commence on the respective dates specified in paragraphs 5.1 and 6.1.

Service Planning and Negotiating of Access

4.2 The Operator shall:

- (a) develop the detailed timetable for completion of ELL Test Running and ELL Trial Operations, including reviewing the work undertaken by the ELL Project Team up to the date of this Agreement;
- (b) finalise and implement the necessary rolling stock diagrams;

- (c) finalise and resource the necessary train crew diagrams;
- (d) engage with Network Rail and LUL on track, station access and Vehicle Change, and conclude the necessary agreements for trial and service operation;
- (e) gain ORR approval of regulated agreements;
- (f) secure Access Agreements at stations with other Train Operators; and
- (g) bid for necessary Train Slots in accordance with paragraph 4.3.

Timetable Development Rights and Train Slots

4.3 Without limiting paragraph 9.2 of Schedule 1.1 (*Passenger Service Development*), but subject to paragraph 4.4, the Operator shall use its Timetable Development Rights and otherwise use all reasonable endeavours to secure the Train Slots that are required in order to operate:

- (a) rolling stock vehicles during ELL Test Running;
- (b) non-passenger services during ELL Trial Operations; and
- (c) the ELL Passenger Services, as specified in SLC1d and SLC1e.

Relinquishment of Timetable Development Rights

4.4 RfL may from time to time during the period of ELL Test Running or ELL Trial Operations, direct the Operator to relinquish any relevant Timetable Development Rights, including Train Slots that it is entitled to exercise/use and the Operator shall take such steps as are reasonably necessary to comply with such direction.

Build-up of Operational Capability

4.5 The Operator shall develop management and systems capability and build up numbers of trained staff so that, by the commencement of ELL Trial Operations and both during that phase and beyond, the Operator has the operational capability that it will require in order to commence the operation of the ELL Passenger Services.

Operational Capability Plan

4.6 The Operator shall demonstrate to RfL its proposals for having the operational capability referred to in paragraph 4.5 by submitting to RfL on or prior to the Start Date, a plan (the *Operational Capability Plan*) that specifies for each of ELL Test Running, ELL Trial Operations and ELL Passenger Services, the following:

- (a) the train crew establishment necessary to comply with paragraph 4.8;
- (b) the control arrangements necessary to comply with paragraph 4.9; and
- (c) the emergency and contingency arrangements necessary to comply with paragraph 4.10.

Updating Operational Capability Plan

4.7 The Operator shall update the Operational Capability Plan as and when reasonably required by RfL, but in any event, no less than every six months up to and including the end of the period of ELL Trial Operations.

Recruitment and training of train crew

4.8 The Operator shall develop the train crew (including driver) establishment required in order to comply with its obligations in respect of each of:

- (a) ELL Test Running pursuant to paragraph 5;
- (b) ELL Trial Operations pursuant to paragraph 6; and
- (c) ELL Passenger Services pursuant to SLC1e and any other Service Level Commitment issued by RfL from time to time,

in each case, in accordance with the Operational Capability Plan.

Establishing control arrangements

4.9 The Operator hereby acknowledges that operational control of the ELL infrastructure will be provided by the Infrastructure Manager over the ELL Core Route and by Network Rail over the ELL south of New Cross Gate. The Operator shall in respect of each of ELL Test Running, ELL Trial Operations and ELL Passenger Services, establish and continue to develop through co-operation with each Infrastructure Manager, robust working practices and the following control arrangements:

- (a) interface control arrangements, including incident management;
- (b) interfaces with the New Trains Maintainer in respect of, amongst other things, train movements into and out of the NXG Facility;
- (c) driver (and other train crew) control;
- (d) information control, for passenger information, staff information and public address systems; and
- (e) security control, for monitoring and control of CCTV systems and passenger 'Help Points'.

Contingency Plans

4.10 The Operator shall also in respect of each of ELL Test Running, ELL Trial Operations and ELL Passenger Services, establish, continue to develop, implement and manage appropriate contingency plans in the event of part of the ELL being disrupted.

Completing Fit-out of Facilities

4.11 The Operator shall supply all necessary non-passenger equipment and non-passenger loose furniture that will not be provided by the Main Works Contractor under the terms of the ELL Main Works Contract.

Specification and procurement of systems

4.12 The Operator shall be responsible for specifying and procuring all systems that it requires for the management of its operations, including rostering, human resources and financial systems, except for the following:

- (a) systems which the ELL Main Works Contract requires the Main Works Contractor to supply; and
- (b) the Oyster Equipment at the ELL Stations specified in paragraph 1.1 of Schedule 3.3 (*Oyster Equipment*).

Station Operations Manuals

4.13 The Operator shall establish and maintain a station operations manual for each ELL Station.

ELL OBC Operations Manual

4.14 The Operator shall establish and maintain an operations manual for the ELL OBC.

5. ELL TEST RUNNING

Commencement

5.1 ELL Test Running will commence when the Joint Proving Tests (as defined under the Main Works Contract) in respect of the ELL Core Route infrastructure works have been certified as successfully completed. RfL will determine the time at which such completion occurs. The Operator shall ensure that it is able to comply with its obligations under this Schedule 5 in respect of ELL Test Running in order that ELL Test Running may commence on 5 June 2009.

Purpose

5.2 The purpose of ELL Test Running pursuant to the ELL Main Works Contract is to prove, to agreed testing criteria:

- (a) first, the integrity of the infrastructure of the ELL Core Route; and
- (b) next, the successful operation of the ELL New Trains on the ELL Core Route prior to ELL Trial Operations.

5.3 In order to achieve the objective referred to in paragraph 5.2(b), the Operator may also be required to support the New Trains Manufacturer in proving, to agreed testing criteria, the functionality and performance of the ELL New Trains on the ELL (other than the ELL Core Route), as required by Schedule 4.3, (*The New Trains (Testing and Commissioning)*).

Train Crews

5.4 The Operator shall make available to either the Main Works Contractor or the New Trains Manufacturer (as directed by RfL from time to time):

- (a) at the start of ELL Test Running, no less than 20 fully trained and qualified train crew; and

- (b) by the date specified for this purpose prior to the end of ELL Test Running in the Operational Capability Plan, no less than 40 fully trained and qualified train crew,

in each case, dedicated to carrying out the ELL New Trains elements of ELL Test Running. The Operator shall also provide sufficient driver managers and supervisors to support the above train crews, and shall provide any reasonable operational support requested by the ELL Main Works Contract Project Manager during ELL Test Running.

Further Provisions on Train Crew

5.5 The train crew referred to in paragraph 5.4 shall at all relevant times:

- (a) be based at the ELL OBC;
- (b) work under the direction of either the Main Works Contractor or the New Trains Manufacturer (as directed by RfL from time to time);
- (c) be sufficiently trained and experienced to meet the requirements of Test Running; and
- (d) be capable of working on a shift basis to meet the requirements from time to time of the Main Works Contractor or the New Trains Manufacturer (as appropriate) in respect of the programme for completing the ELL Test Running.

Completion of ELL Test Running

5.6 The Operator shall complete all aspects of the ELL Test Running relevant to it to the satisfaction of RfL, so as to allow the commencement of ELL Trial Operations on the date specified in paragraph 6.1.

Network Charges and Performance Payments

5.7 The Operator shall not be responsible for meeting any performance payments under the Network Code arising from the use of the network in connection with ELL Test Running, except to the extent that those performance payments arise as a consequence of the Operator's failure to perform its obligations under this paragraph 5.

6. ELL TRIAL OPERATIONS

Commencement

6.1 RfL will determine the time at which ELL Trial Operations will commence. The Operator shall ensure that it is capable of commencing ELL Trial Operations by 5 September 2009.

Purpose

6.2 The purpose of the ELL Trial Operations is:

- (a) to operate on the ELL, on a phased basis, services that culminate in the operation of a level of service that correlates with the frequency and pattern of the initial ELL Passenger Services;
- (b) to demonstrate the robustness of developed operational plans and/or to identify where change is required and to instigate that change;

- (c) to enable the Operator and the Infrastructure Manager to obtain all necessary approvals to enable the ELL Passenger Services to commence, including:
 - (i) the Operator acquiring a Safety Authorisation for the ELL Stations,
 - (ii) the Operator acquiring a Safety Certificate for the ELL New Trains; and
 - (iii) the Infrastructure Manager acquiring a Safety Authorisation for the ELL Core Route infrastructure; and
- (d) to enable the Operator to complete those elements of its training programme that require access to the infrastructure and experience of actual operations.

Safety Authorisation/Certificate, Licences and Other Approvals

6.3 No later than the start of ELL Trial Operations, the Operator shall have applied for and obtained all Licences, safety and other approvals and agreements required in order to commence ELL Trial Operations, including by:

- (a) preparing applications for a Safety Certificate and Safety Authorisation, using the documentation, risk assessment safety argument, and preliminary safety approvals submissions produced by other members of the ELL Start of Service Steering Group (in particular, the ELL Project Team, the Main Works Contractor and the New Trains Manufacturer); and
- (b) submitting those applications and documentation to the relevant approving bodies.

6.4 The Operator shall complete and submit safety submissions for the New Trains in accordance with Schedule 4.3 (*The New Trains (Testing and Commissioning)*).

6.5 The Operator shall ensure that its safety management system demonstrates that the ELL Core Route Stations can be operated safely by the Operator.

Operator Obligations

6.6 The Operator shall:

- (a) specify in the Operational Capability Plan a detailed specification and programme for the successful completion of ELL Trial Operations; and
- (b) deliver the ELL Trial Operations in accordance with that plan.

6.7 During ELL Trial Operations, the Operator shall be responsible for security and safety at the ELL Stations.

Minimum Specification in Plan

6.8 The Operational Capability Plan shall also specify (as determined by RfL from time to time) the timing and extent of the train, station and other operations required to successfully complete ELL Trial Operations. Such specification shall prescribe as a minimum, on dates to be determined by RfL, that the Operator shall:

- (a) procure the operation of full station operations (on both a stand-alone and network basis) and retail operations at each ELL Core Route Station for at least eight consecutive hours; and

- (b) carry out no less than two days full operation (with passengers) of railway passenger services, of the frequency and pattern of the ELL Passenger Services to be operated in December 2009.

Incidents to be Tested

6.9 In order to demonstrate the resilience of the service pattern and frequency of the ELL Passenger Services to be operated in December 2009, and the speed at which the Operator can recover from disruption, RfL shall from time to time specify a number of “incidents” to occur during ELL Trial Operations. The incidents that the Operator may be required by RfL to test may include:

- (a) a failed train in a station;
- (b) a failed train in the Thames tunnel, including its evacuation;
- (c) a suspect package at Wapping Station; and
- (d) a train failing on handover at the NXG Facility.

6.10 RfL shall specify to the Operator in a timely manner, the precise nature and extent of the incidents that must be tested during the ELL Trial Operations and the Operator shall comply with that specification.

Successful Completion

6.11 The Operator shall demonstrate:

- (a) to the reasonable satisfaction of RfL that:
 - (i) the ELL Trial Operations have been successfully completed; and
 - (ii) the Operator is capable of commencing ELL Passenger Services in accordance with paragraph 7; and
- (b) to the Infrastructure Managers and appropriate regulatory authorities that the Operator is capable of operating a safe railway.

6.12 RfL shall confirm such completion to the Operator when RfL is satisfied that the following have been achieved:

- (a) the Operator has received the Safety Authorisation and Safety Certificate mentioned in paragraph 6.2(c);
- (b) the Operator has completed its PSO Technical Case for ELL Passenger Services and has received an Assurance Acceptance;
- (c) the Operator has ensured that all its staff are in place and have demonstrable competency; and
- (d) the Operator has all other equipment, facilities and systems, and all necessary agreements in place which are required for ELL Passenger Services, having at all Stations the timetable and other public information contemplated by Schedule 1.3 (*Passenger Facing Obligations*) and an appropriate plan for advance publicity of the ELL Passenger Services.

7. ELL PASSENGER SERVICES

Commencement of ELL Passenger Services

7.1 Subject to RfL complying with its obligations pursuant to this Schedule 5, at the conclusion of ELL Trial Operations, the Operator shall by carrying out its obligations pursuant to this Schedule 5, procure that ELL Passenger Services shall be operated:

- (a) from 7 November 2009, over the ELL between Dalston Junction Station and New Cross / New Cross Gate (as required by SLC1d); and
- (b) from 13 December 2009, over the ELL between Dalston Junction Station and West Croydon / Crystal Palace / New Cross (as required by SLC1e).

Establishing facilities maintenance and cleaning regimes

7.2 From the start of ELL Passenger Services and for the remainder of the Concession Period, the Operator shall ensure that appropriate cleaning arrangements are in place in order that it may comply with those requirements of Schedule 8 (*Service Quality and Passenger Perception*) that will apply to the ELL, the ELL Stations and the ELL Passenger Services and are concerned with cleanliness.

8. TECHNICAL CASES

Outline Technical Case

8.1 In this paragraph 8, *PSO Technical Case* means together, the Outline Technical Case referred to in this paragraph 8.1 and each Technical Case referred to in paragraph 8.3. The Operator shall submit to RfL an outline technical case for the ELL, which defines the structure of lower level Technical Cases (Level 3 and below) which the Operator shall submit to adequately structure its complete argument (the *Outline Technical Case*). Following the Technical Case Development Procedure (or any revised or replacement version of such document issued by RfL), the Operator shall develop the goal structuring notation (*GSN*) which identifies the key evidence to be provided, supported by tabular information to support this. The Operator shall have identified the stage in the process at which the supporting evidence will be provided to RfL and populated in the Technical Case. The Outline Technical Case shall consist of:

- (a) introductory text describing the context, scope and issues covered by the Outline Technical Case;
- (b) a GSN; and
- (c) supporting evidence tables.

8.2 The Operator shall make its final submission of the Outline Technical Case to RfL in sufficient time to enable RfL to grant Assurance Acceptance of the Outline Technical Case by the Start Date.

Timing for Technical Cases

8.3 The Outline Technical Case (as accepted by RfL) shall be progressively populated throughout the Concession Period and re-submitted (with the evidence populated), in each case by the Operator, for acceptance by RfL so as to produce a Technical Case as follows prior to commencement of each of the following phases:

- (a) Technical Case for ELL Test Running;
- (b) Technical Case for ELL Trial Operations; and
- (c) Technical Case for ELL Passenger Services.

8.4 RfL may audit the Operator to ensure progressive population of the PSO Technical Case. The Operator shall respond in detail within 20 Business Days to any comments from RfL on the Outline Technical Case and each subsequent PSO Technical Case, and shall otherwise comply with any Assurance Acceptance procedures notified to it by RfL.

8.5 RfL's response to a proposed Outline Technical Case or subsequent PSO Technical Case will be either:

- (a) **Category 1:** No Assurance Acceptance;
- (b) **Category 2:** Assurance Acceptance Granted with Comments; or
- (c) **Category 3:** Assurance Acceptance Granted.

8.6 In providing any such response, RfL shall include comments in support, which will be classified as follows:

- (a) "**Category A Comments**" where there are concerns, errors, omissions or questions that have a direct bearing on the acceptability of the information, drawings and/or documents (as the case may be) which it is necessary to resolve immediately;
- (b) "**Category B Comments**" where there are concerns, errors, omissions or questions that require satisfactory resolution within a defined time period (not to exceed 20 Business Days); and
- (c) "**Category C Comments**" where there are minor errors, syntax, spelling and/or minor technical errors which have no direct significant implications. In the case of Category C Comments, the Operator shall correct such errors for clarity, and retain the corrected revision of the document and, if requested by the ELL Main Works Contract Project Manager, provide him with a copy of the same.

General Requirements

8.7 Each PSO Technical Case shall be developed in accordance with a framework notified by RfL to the Operator from time to time, and shall contain such information and other evidence as is necessary to demonstrate to RfL that the Operator will, in the implementation of the relevant phase referred to in paragraph 8.3, comply with:

- (a) all applicable Laws, applicable standards and relevant consents;
- (b) the operational requirements of the LRC; and
- (c) any other requirements set out in this Agreement.

8.8 The Operator acknowledges that RfL intends to use the PSO Technical Case in preparing a technical case relating to the principal ELL sub-systems (**Level 2 Technical Case**) and a technical case relating to the overall operation of the ELL (**Level 1 Technical Case**).

Updating at RfL Request

8.9 If RfL is not satisfied that a PSO Technical Case demonstrates the Operator's compliance with the requirements referred to in paragraph 8.7, RfL shall notify the Operator and the Operator shall, within such time period as RfL requires, update that Technical Case in order that it demonstrates that compliance.

Lower Level Technical Cases

8.10 The Operator may be required to produce lower level PSO Technical Cases as reasonably directed by RfL, including to confirm that sub-systems within a wider system to which a PSO Technical Case relates are fit for purpose.

Continued Development

8.11 The Operator shall continue to develop each PSO Technical Case which it is required to develop pursuant to this paragraph 8 during each of the phases referred to in paragraph 8.3.

Hazard Log

8.12 RfL has established a "hazard log" (the *Hazard Log*) and a hazard management procedure (the *ELL Hazard Management Procedure*) as part of the Risk Register, as the means of managing all hazards and safety risks on the ELL, in order to ensure that a system level Safety Certificate can be successfully obtained. The Operator and RfL shall comply with the following:

- (a) RfL will hold the Hazard Log, and will provide reasonable access to the Operator;
- (b) the Operator shall use the Hazard Log in accordance with the ELL Hazard Management Procedure to track, manage, control and mitigate those hazards and actions for which it is responsible; and
- (c) the Operator shall during the Concession Period submit to RfL any new hazards identified by the Operator, in accordance with the ELL Hazard Management Procedure.

9. INSURANCE

The Operator shall at all times during ELL Test Running and ELL Trial Operations maintain a level of third party liability insurance cover that insures in respect of, and is proportionate to, the risks associated with the activities of its employees in carrying out the Operator's obligations under this Schedule 5 regarding ELL Test Running and ELL Trial Operations.

10. ELL COMPLETION INCENTIVES

ELL Commencement Date Payment

10.1 Subject to paragraph 10.3, RfL shall pay the Operator [REDACTED]³¹ on the next Payment Date falling no less than seven days after the date (the *ELL Commencement Date*) when:

³¹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

- (a) the Operator first operates in passenger revenue earning service at least 90 per cent. of ELL Passenger Services scheduled in the relevant Plan of the Day to operate on the full line of route between Dalston Junction and West Croydon, Crystal Palace and New Cross;
- (b) 90 per cent. of the ELL Passenger Services scheduled in the relevant Plan of the Day arrive at their scheduled destination within five minutes of their scheduled arrival time, each as specified in that Plan of the Day; and
- (c) each of the ELL Passenger Services first operated in accordance with paragraph 10.1(a) is operated with the passenger carrying capacity specified for that ELL Passenger Service in the relevant Train Plan.

Proving Period Payment

10.2 Subject to paragraph 10.3, RfL shall pay the Operator [REDACTED]³² on the next Payment Date falling no less than seven days after the date (the *Proving Period Date*) when RfL, acting reasonably, confirms to the Operator, following completion of the Proving Period (as defined in the ELL Access Option), that TfL has retained all of the firm access rights reserved to TfL under the ELL Access Option.

Event of Default

10.3 If an Event of Default is continuing on the ELL Commencement Date or the Proving Period Date, RfL's obligation to make the payment specified in paragraph 10.1 or 10.2 (as the case may be) shall automatically lapse on that date, and the Operator shall have no entitlement on any date to any part of such payment.

³² This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

SCHEDULE 6
EQUALITY AND DIVERSITY REQUIREMENTS AND THE LONDON LIVING
WAGE

Schedule 6: Equality and Diversity Requirements and the London Living Wage

SCHEDULE 6

Equality and Diversity Requirements and the London Living Wage

1. COMPLIANCE

1.1 Without limiting any other provision of this Agreement, the Operator:

- (a) shall not unlawfully discriminate,
- (b) shall procure that the Concession Employees do not unlawfully discriminate, and
- (c) shall use reasonable endeavours to procure that its Subcontractors do not unlawfully discriminate,

in relation to the Operator's rights and obligations under this Agreement, within the meaning and scope of the Sex Discrimination Act 1975, Race Relations Act 1976, the Disability Discrimination Act 1995, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003 and any other relevant enactments in force from time to time relating to discrimination in employment.

1.2 The Operator acknowledges that RfL is under a duty under section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In the performance of this Agreement, the Operator shall, and shall use reasonable endeavours to procure that its Subcontractors, assist and co-operate with RfL where possible in satisfying this duty.

1.3 The Operator acknowledges that RfL is under a duty under section 49A of the DDA to have due regard to the need to eliminate unlawful discrimination and harassment of disabled persons, to promote equality of opportunity, take account of disabled persons' disabilities, promote positive attitudes towards and encourage participation by disabled persons. In the performance of this Agreement, the Operator shall, and shall use reasonable endeavours to procure that its Subcontractors, assist and co-operate with RfL where possible in satisfying this duty.

1.4 The Operator acknowledges that RfL is under a duty by virtue of a Mayor's direction under Section 155 of the GLA Act (in respect of the Greater London Authority's duty under Section 404(2) of the GLA Act) to have due regard to the need to:

- (a) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in the performance of this Agreement, the Operator shall, and shall use reasonable endeavours to procure that its Subcontractors, assist and co-operate with RfL where possible to enable RfL to satisfy its duty.

1.5 TfL's workplace harassment policy (the *Policy*) as up-dated from time to time (copies of which are available on request from RfL) requires RfL's own staff and those of its direct

and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Operator shall:

- (a) ensure that its staff, and those of its Subcontractors who are engaged in the performance of this Agreement are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

2. EQUALITY POLICY

2.1 During the Concession Period, the Operator shall comply with the Agreed Equality Policy and shall procure that each of its Direct Subcontractors adopts and implements an equality and diversity policy in respect of that Direct Subcontractor's employees engaged in the performance of this Agreement, which is at least as extensive in scope as the Agreed Equality Policy.

2.2 The Operator shall procure that each Direct Subcontractor that appoints an Indirect Subcontractor, uses all reasonable endeavours to procure that any such Indirect Subcontractor adopts and implements an equality and diversity policy in respect of that Indirect Subcontractor's employees engaged in the performance of this Agreement, which is at least as extensive in scope as the Agreed Equality Policy.

2.3 Where a Direct Subcontractor has, pursuant to paragraph 2.1 or otherwise, adopted an equality and diversity policy, the Operator shall procure that that Direct Subcontractor provides a copy of its equality and diversity policy (and any amendments thereto) to RfL as soon as reasonably practicable.

2.4 Where an Indirect Subcontractor has, pursuant to paragraph 2.2 or otherwise, adopted an equality and diversity policy, the Operator shall procure that the Direct Subcontractor that appointed that Indirect Subcontractor, uses all reasonable endeavours to procure that that Indirect Subcontractor provides a copy of its equality and diversity policy (and any amendments thereto) to RfL as soon as reasonably practicable.

3. DIVERSITY TRAINING

3.1 During the Concession Period, the Operator shall comply with the Agreed Training Plan in relation to all Concession Employees and shall procure that each of its Direct Subcontractors adopts and implements a diversity training plan in respect of that Direct Subcontractor's employees engaged in the performance of this Agreement, which is at least as extensive in scope as the Agreed Training Plan.

3.2 The Operator shall procure that each Direct Subcontractor that appoints an Indirect Subcontractor, uses all reasonable endeavours to procure that any such Indirect Subcontractor adopts and implements a diversity training plan in respect of that Indirect Subcontractor's employees engaged in the performance of this Agreement, which is at least as extensive in scope as the Agreed Training Plan.

3.3 Where a Direct Subcontractor has, pursuant to paragraph 3.1 or otherwise, adopted a diversity training plan, the Operator shall procure that that Direct Subcontractor provides a

copy of its diversity training plan (and any amendments thereto) to RfL as soon as reasonably practicable.

3.4 Where an Indirect Subcontractor has, pursuant to paragraph 3.2 or otherwise, adopted a diversity training plan, the Operator shall procure that the Direct Subcontractor that appointed that Indirect Subcontractor, uses all reasonable endeavours to procure that that Indirect Subcontractor provides a copy of its equality and diversity policy (and any amendments thereto) to RfL as soon as reasonably practicable.

4. SUPPLIER DIVERSITY

4.1 During the Concession Period, the Operator shall comply with the Agreed Supplier Diversity Plan and shall procure that each of its Direct Subcontractors adopts and implements a supplier diversity plan in relation to the performance of this Agreement, which is at least as extensive in scope as the Agreed Supplier Diversity Plan.

4.2 The Operator shall procure that each Direct Subcontractor that appoints an Indirect Subcontractor, uses all reasonable endeavours to procure that any such Indirect Subcontractor adopts and implements a supplier diversity plan in relation to the performance of this Agreement, which is at least as extensive in scope as the Agreed Supplier Diversity Plan.

4.3 Where a Direct Subcontractor has, pursuant to paragraph 4.1 or otherwise, adopted a supplier diversity plan, the Operator shall procure that that Direct Subcontractor provides a copy of its supplier diversity plan (and any amendments thereto) to RfL as soon as reasonably practicable.

4.4 Where an Indirect Subcontractor has, pursuant to paragraph 4.2 or otherwise, adopted a supplier diversity plan, the Operator shall procure that the Direct Subcontractor that appointed that Indirect Subcontractor, uses all reasonable endeavours to procure that that Indirect Subcontractor provides a copy of its supplier diversity plan (and any amendments thereto) to RfL as soon as reasonably practicable.

5. LOCAL COMMUNITY RELATIONS

During the Concession Period, and in all dealings with the local community, the Operator shall comply with the Agreed Communications Plan.

6. MONITORING AND REPORTING

6.1 Subject to paragraph 6.2, the Operator shall use reasonable endeavours to provide to RfL on or before the Start Date and subsequently every six months from the Start Date (or at such lesser or greater intervals as agreed between RfL and the Operator) the following information:

- (a) the proportion of Concession Employees and, to the extent reasonably possible, the employees of its Subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of this Agreement, who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the local community; and/or

- (iv) disabled; and
- (b) the proportion of its Subcontractors that are SMEs and/or BMEs.

6.2 The Operator shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to RfL pursuant to paragraph 6.1.

7. DIVERSITY INFRACTIONS

7.1 If the Operator or any of its Direct Subcontractors commits a Diversity Infraction, RfL shall be entitled (but not obliged) to act as follows:

- (a) if a Diversity Infraction is committed by the Operator, then RfL may serve written notice upon the Operator identifying in reasonable detail the nature of the Diversity Infraction, and the Operator shall cease committing and remedy the Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (b) if the Diversity Infraction is committed by a Direct Subcontractor of the Operator, RfL may serve written notice upon the Operator identifying in reasonable detail the nature of the Diversity Infraction, and the Operator shall procure that Direct Subcontractor ceases committing and remedies the Diversity Infraction within 30 days of receipt by the Operator of such notice (or such longer period as may be specified in the notice).

7.2 If the Operator fails to procure the remedy of any Diversity Infraction of the kind referred to in paragraph 7.1(b), RfL may serve a further written notice upon the Operator and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Operator shall terminate, the engagement of the relevant Direct Subcontractor under the relevant contract with that Direct Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 1 to 6.

8. EQUALITY AND DIVERSITY AUDIT

8.1 RfL may from time to time undertake any audit or check of any and all information regarding the Operator's compliance with paragraphs 1 to 6. RfL's rights pursuant to this paragraph 8 shall include any and all documents and records of the Operator and its Direct Subcontractors and, where applicable, subject to the provisions of paragraphs 2 to 4, Indirect Subcontractors and shall include the Minimum Records.

8.2 The Operator shall, and shall procure that each of its Direct Subcontractors and, where applicable subject to the provisions of paragraphs 2 to 4, Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of 12 years with respect to all matters in respect of the performance of paragraphs 1 to 6. The Operator shall procure that each subcontract between it and its Direct Subcontractors and, where applicable, subject to the provisions of paragraphs 2 to 4, each subcontract between any Direct Subcontractor and any Indirect Subcontractor and each subcontract between any Indirect Subcontractors shall contain rights of audit in favour of and enforceable by RfL substantially equivalent to those granted by the Operator pursuant to paragraph 8.1.

8.3 RfL shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Operator and

each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under this Agreement and/or relevant subcontract (as the case may be).

8.4 The Operator shall promptly provide, and procure that its Direct Subcontractors and, where applicable subject to the provisions of paragraphs 2 to 4, Indirect Subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in the Operator's performance of this Agreement or in the relevant Subcontractor's performance of its subcontract, whether the Operator's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Operator's or the relevant Subcontractor's obligations specified in paragraphs 1 to 6, wherever situated and whether the Operator's own equipment or otherwise; and
- (c) complying with RfL's reasonable requests for access to senior personnel engaged in the Operator's performance of this Agreement or the relevant Subcontractor's performance of its subcontract.

9. LONDON LIVING WAGE

9.1 The Operator shall procure that each London Living Wage Employee is paid at all times during the Concession Period while so employed, an hourly wage (or equivalent of an hourly wage) that is no less than the London Living Wage.

9.2 The Operator shall procure that each Concession Employee, and to the extent not covered by that definition, each London Living Wage Employee, is paid no less than the amount to which any such employee is entitled by his contract of employment.

9.3 The Operator shall:

- (a) provide to RfL such information concerning the London Living Wage as RfL may reasonably require from time to time;
- (b) disseminate or procure the dissemination of on behalf of RfL to its Concession Employees, or the employees of any Subcontractor, such perception questionnaires as RfL may reasonably require from time to time and promptly collate and return to RfL responses to such questionnaires; and
- (c) co-operate in and provide all reasonable assistance in, monitoring the effect of the London Living Wage.

9.4 A Change shall occur where the Operator's direct employment costs or the employment costs of its Subcontractors change as a result of RfL notifying the Operator of a change to the applicable rate of the London Living Wage.

9.5 For the purposes of this paragraph 9, *London Living Wage Employees* means the Concession Employees and employees of any Subcontractor who are employed for substantially all of their time:

- (a) in the performance of the Operator's rights and obligations under this Agreement; and

(b) within the Greater London Area (as defined in the GLA Act).

9.6 For the purposes of this paragraph 9, *London Living Wage Employees* means the Concession Employees and employees of any Subcontractor who are employed wholly:

(a) in the performance of the Operator's rights and obligations under this Agreement; and

(b) within the GLA Area (as defined in the GLA Act).

SCHEDULE 7
OPERATIONAL PERFORMANCE

Schedule 7:

Operational Performance

Appendix 1: Operational Benchmarks Table

Appendix 2: PPM Targets

SCHEDULE 7

Operational Performance

1. BENCHMARKS

Location of Benchmarks

- 1.1 The Operational Benchmarks are set out in the table in Appendix 1.
- 1.2 The PPM Targets are set out in Appendix 2.

2. INFORMATION

2.1 At the end of each Reporting Period, the Operator shall, in accordance with the relevant requirements of Appendix 3 (*Operational Information*) to Schedule 16 (*Information and Industry Initiatives*), report to RfL the total number of:

- (a) Minutes Delay in that Reporting Period attributed to the Operator;
- (b) minutes of delay to the Passenger Services in that Reporting Period for which the attribution as Minutes Delay is in dispute between any Infrastructure Manager and the Operator;
- (c) minutes of delay to the Passenger Services from the 12 preceding Reporting Periods for which the attribution as Minutes Delay remains in dispute; and
- (d) Minutes Delay from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Operator's last report pursuant to this paragraph 2.1, and the number of such Minutes Delay attributed to each of the Operator and each Infrastructure Manager as a result of such resolution or determination.

2.2 At the end of each Reporting Period, the Operator shall, in accordance with the relevant requirements of Appendix 3 to Schedule 16, report to RfL the total number of Cancellations, Partial Cancellations and Short Formations.

2.3 At the end of each Reporting Period, the Operator shall, in accordance with the relevant requirements of Appendix 3 to Schedule 16, report to RfL the number of Impact Minutes and whether an Impact Minute Bonus or Impact Minute Deduction is payable under the TSA in respect of that Reporting Period, and if so, the extent of that bonus or deduction.

2.4 At the end of each Reporting Period, the Operator shall, in accordance with the relevant requirements of Appendix 3 to Schedule 16, report to RfL its PPM performance by Route and across the LRC.

2.5 As soon as reasonably practicable after the end of each Reporting Period, RfL shall notify the Operator of the results of the calculations performed pursuant to paragraph 3.

3. CALCULATIONS

Target Operational Benchmarks Calculation

3.1 For each Reporting Period, RfL shall determine the Operator's performance against the Target Operational Benchmarks by:

- (a) aggregating the number of Minutes Delay that are attributable to the Operator in that Reporting Period in respect of each Route; and
- (b) calculating (as a positive or negative number) the difference between that number and the Target Operational Benchmark for that Reporting Period.

Operational Performance Adjustments against the Target Operational Benchmarks

3.2 For each Reporting Period, RfL shall calculate an Operational Performance Adjustment in respect of the Target Operational Benchmarks as follows:

$$\text{OPA} = \text{£TOB} - \text{£MD}$$

where:

OPA means the Operational Performance Adjustment (subject to paragraph 3.3);

£TOB means $\text{TOB} \times ([\text{REDACTED}] \times \text{RPI})^{33}$

where:

TOB means the Target Operational Benchmark for that Reporting Period; and

RPI is determined as follows:

$$\frac{\text{CRPI}}{\text{ORPI}}$$

where:

CRPI means the Retail Prices Index published in the March immediately preceding the commencement of that Concession Year; and

ORPI means the Retail Prices Index for the March 2007,

provided that, for the first Concession Year, RPI shall be one; and

£MD means $\text{MD} \times ([\text{REDACTED}] \times \text{RPI})^{34}$

where:

MD means $\text{RPMD} + \text{FAMD} - \text{PAMD}$

where:

RPMD means the aggregate of Minutes Delay attributable to the Operator in respect of each Route in that Reporting Period;

³³ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

³⁴ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

FAMD means, in relation to any minutes of delay to the Passenger Services previously disputed between the Operator and any Infrastructure Manager, the Minutes Delay finally attributed to the Operator in that Reporting Period, in each case, in accordance with the relevant Track Access Agreement; and

PAMD means, in relation to those previously disputed minutes of delay, the Minutes Delay allocated to the Operator pursuant to paragraph 4.2; and

RPI has the meaning given to it in the definition of £TOB.

3.3 Where any Operational Performance Adjustment calculated in accordance with paragraph 3.2 constitutes:

- (a) a negative number, the Operator shall pay that Operational Performance Adjustment to RfL; and
- (b) a positive number, RfL shall pay that Operational Performance Adjustment to the Operator,

in each case, in accordance with Schedule 11.1 (*Concession Payments*).

Remedial Plan Operational Benchmarks Calculation

3.4 For each Reporting Period, RfL shall separately calculate the Operator's performance against the Remedial Plan Operational Benchmark for each Route by:

- (a) ascertaining the number of Minutes Delay in relation to each Route that are attributable to the Operator in that Reporting Period; and
- (b) comparing each such number against the relative Remedial Plan Operational Benchmark for each such Route for that Reporting Period.

Performance against the Remedial Plan Operational Benchmarks

3.5 If in any Reporting Period, the number of Minutes Delay attributable to the Operator in relation to each Route is less than (that is, better than) the relative Remedial Plan Operational Benchmark for each such Route, then no further action shall arise.

3.6 If:

- (a) the number of Minutes Delay attributable to the Operator in relation to any Route exceeds (that is, is equal to or worse than) the relative Remedial Plan Operational Benchmark for that Route in any Reporting Period; but
- (b) the same does not occur in respect of that Route or any other Remedial Plan Operational Benchmark in one of the next two Reporting Periods,

then no further action shall arise.

3.7 If:

- (a) the number of Minutes Delay attributable to the Operator in relation to any Route exceeds (that is, is equal to or worse than) the Remedial Plan Operational Benchmark for that Route in any Reporting Period; and

- (b) the same occurs in respect of that Route or any other Route in one of the next two Reporting Periods,

then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 of Schedule 14.1 (*Remedial Plans and Remedial Agreements*) shall apply.

Default Operational Benchmarks Calculation

3.8 For each Reporting Period, RfL shall separately calculate the Operator’s performance against the Default Operational Benchmark for each Route, subject to paragraph 3.9, in accordance with the following:

$$OP_{\text{maa}} = \text{DOB} - \left(\frac{\text{LMD} + \text{PMD}}{13} \right)$$

where:

- OP_{maa} means the operational performance moving annual average;
- DOB means the relevant Default Operational Benchmark for that Reporting Period;
- LMD means the latest Minutes Delay ascertained pursuant to paragraph 3.4(a) in relation to that Default Operational Benchmark (the **Relevant Default Operational Benchmark**) for that Reporting Period; and
- PMD means the number of Minutes Delay attributable to the Operator in respect of the Relevant Default Operational Benchmark in the 12 preceding Reporting Periods.

3.9 For as long as fewer than 13 Reporting Periods have elapsed following the Start Date, RfL shall for the purpose of performing the calculation referred to in paragraph 3.8 in relation to each of the following Routes:

- (a) WLL;
- (b) NLL;
- (c) GOB; and
- (d) WJELL,

assume that the Operator has performed at the relevant Target Operational Level set out in the table in paragraph 3.11 in respect of each of the 12 Reporting Periods that precede the Start Date.

3.10 For the 12 Reporting Periods immediately preceding the Reporting Period in which ELL Passenger Services commence passenger revenue earning service, RfL shall for the purpose of performing the calculation referred to in paragraph 3.8 in relation to the ELL, assume that the Operator has performed at the ELL Target Operational Level set out in the table in paragraph 3.11 for those 12 Reporting Periods.

3.11 The Target Operational Levels are as follows:

WLL Minutes Delay (Concession)	NLL Minutes Delay (Concession)	GOB Minutes Delay (Concession)	WJELL Minutes Delay (Concession)	ELL Minutes Delay (Concession)
--------------------------------------	--------------------------------------	--------------------------------------	--	--------------------------------------

Year 1, Reporting Period 9)	Year 1, Reporting Period 9)	Year 1, Reporting Period 9)	Year 1, Reporting Period 9)	Year 4, Reporting Period 10)
1,322	7,450	3,638	1,843	5,175

Performance against the Default Operational Benchmarks

3.12 If, when expressed as a moving annual average, the number of Minutes Delay attributable to the Operator in relation to any Route exceeds (that is, is equal to or worse than) the Default Operational Benchmark in any Reporting Period, then an Event of Default shall have occurred and the provisions of Schedule 14 (*Remedies, Termination and Expiry*) shall apply.

TSA Adjustment

3.13 For each Reporting Period, TfL shall calculate a TSA Adjustment as follows:

$$TSAA = TSAPRD + TSAAS + TSAIMB$$

where:

TSAA means the TSA Adjustment;

TSAPRD means (expressed as a positive amount) the aggregate Deductions deducted from the Monthly Service Payment payable by TTL under the TSA in relation to such Reporting Period;

TSAAS means (expressed as a negative amount) the amount paid by TTL to the New Trains Maintainer for Additional Services under the TSA in relation to such Reporting Period; and

TSAIMB means (expressed as a negative amount) an amount equal to [REDACTED]³⁵ of the amount paid by TTL to the New Trains Maintainer as an Impact Minute Bonus under the TSA in relation to such Reporting Period.

3.14 Where any TSA Adjustment calculated in accordance with paragraph 3.13 constitutes:

- (a) a negative number, the Operator shall pay that TSA Adjustment to RfL; and
- (b) a positive number, RfL shall pay that TSA Adjustment to the Operator,

in each case, in accordance with Schedule 11.1.

4. GENERAL PRINCIPLES FOR CALCULATIONS IN PARAGRAPH 3

Attribution

4.1 In performing the calculations pursuant to paragraph 3, RfL shall disregard any Minutes Delay that:

- (a) are caused by the occurrence or continuing effect of a Force Majeure Event;

³⁵ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

- (b) are imputed to Passenger Services that were the subject of a Cancellation, Partial Cancellation or Short Formation as a result of the implementation of any Service Recovery Plan; and
- (c) occur as a result of the testing of the New Trains by or on behalf of the New Trains Manufacturer pursuant to the MSA.

4.2 Where the attribution of any Minutes Delay pursuant to any Track Access Agreement is in dispute between the relevant Infrastructure Manager and the Operator at the end of a Reporting Period, RfL shall, for the purpose of performing the calculations referred to in paragraph 3, allocate those Minutes Delay between the Operator and that Infrastructure Manager in the proportions of:

A to B

where:

- A is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to the Operator pursuant to the relevant Track Access Agreement; and
- B is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to the relevant Infrastructure Manager pursuant to the relevant Track Access Agreement.

4.3 RfL shall for the purposes of performing the calculations referred to in paragraph 3 in any Reporting Period (the **Relevant Reporting Period**), make provision for any Minutes Delay attributable to the Operator under any Track Access Agreement where the attribution of any Minutes Delay occurring:

- (a) in the Relevant Reporting Period is resolved between the relevant Infrastructure Manager and the Operator in accordance with the terms of that Track Access Agreement during the Relevant Reporting Period; and
- (b) in any previous Reporting Period is, following any prior dispute between the relevant Infrastructure Manager and the Operator, resolved between them in accordance with the terms of that Track Access Agreement during the Relevant Reporting Period. In the Relevant Reporting Period, RfL shall make such provision in the case of any previously disputed Minutes Delay in accordance with the terms of factor **MD** in paragraph 3.2.

4.4 Where the attribution of any Minutes Delay pursuant to any Track Access Agreement is resolved between the relevant Infrastructure Manager and the Operator in accordance with the terms of that Track Access Agreement during any Reporting Period, RfL shall, for the purposes of performing the calculations referred to in paragraph 3, make provision for any resulting increase or decrease in Minutes Delay attributable to the Operator.

4.5 The Operator agrees with RfL to comply with the requirements of the relevant Track Access Agreement in respect of Minutes Delay attribution.

Cancellations, Partial Cancellations and Short Formations

4.6 For the purpose of the calculations referred to in paragraph 3:

- (a) each Cancellation that occurs in the relevant Reporting Period shall count as [REDACTED]³⁶ Minutes Delay attributable to the Operator for that Reporting Period;
- (b) each Partial Cancellation that occurs in the relevant Reporting Period shall count as [REDACTED]³⁷ Minutes Delay attributable to the Operator for that Reporting Period; and
- (c) each Short Formation that occurs in the relevant Reporting Period shall count as [REDACTED]³⁸ Minutes Delay attributable to the Operator for that Reporting Period.

Roundings

4.7 RfL shall perform the calculations referred to in paragraph 3 rounded to the nearest ten minutes of delay, with the midpoint (that is, 5,005) rounded upwards (that is, 5,010).

Meaning of Train Plan

4.8 For the purposes of calculating the number (if any) of Short Formations in any Reporting Period, *Train Plan* shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 12.2 of Schedule 1.1 (*Passenger Service Development*) and which includes any amendments thereto:

- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (*Passenger Service Operating Obligations*);
- (b) pursuant to paragraph 4 of Schedule 1.2, where:
 - (i) such amendments are required as a consequence of any Infrastructure Manager exercising its rights pursuant to the relevant Track Access Agreement; and
 - (ii) the Operator has complied with the provisions of such paragraph in respect thereof; and
- (c) pursuant to paragraph 3.3 of Schedule 1.2, where such amendments are agreed by RfL in accordance with such paragraph.

5. OPERATIONAL BENCHMARK ADJUSTMENTS

5.1 Other than in respect of the issue of SLC1a, SLC1b, SLC1c, SLC1d, SLC1e or SLC2, in respect of which no revisions shall be made, the Operational Benchmarks for any Reporting Period commencing next after a Passenger Change Date shall be revised as follows:

³⁶ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

³⁷ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

³⁸ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

$$NB = OB \times \frac{NM}{OM}$$

where:

NB is the new Operational Benchmark after revision in accordance with this paragraph 5.1;

OB is the old Operational Benchmark prior to revision in accordance with this paragraph 5.1;

NM is the scheduled Train Mileage of the Passenger Services in the Timetable immediately after the Passenger Change Date; and

OM is the scheduled Train Mileage of the Passenger Services in the Timetable immediately before the Passenger Change Date.

5.2 If:

- (a) there is a change as a result of the issue of a new Service Level Commitment (other than the issue of SLC1a, SLC1b, SLC1c, SLC1d or SLC1e as specified in paragraph (c) of the definition of Change); and
- (b) RfL reasonably considers that any revision to the Operational Benchmarks pursuant to paragraph 5.1 is inappropriate to hold constant the risk of the Operator failing to satisfy the requirements of such Operational Benchmark,

then RfL shall make such revisions to the Operational Benchmarks as it reasonably considers appropriate to hold constant such risk.

5.3 RfL shall notify the Operator in accordance with the procedural stipulations pursuant to paragraph 4.2 of Schedule 1.1 (*Passenger Service Development*) of any revision to the Operational Benchmarks.

6. NETWORK RAIL PAYMENTS

6.1 The Operator shall in each Reporting Period pay to RfL in accordance with Schedule 11.1 (*Concession Payments*), such part of any Network Rail Payment to the Operator as is necessary to compensate RfL for the revenue loss, and any other RfL costs and expenses, attributable to the performance by Network Rail of:

- (a) its performance obligations; and/or
- (b) its rights in respect of any Restriction of Use, including any extended Restriction of Use required as part of a Network Change,

in each case, under any Network Rail TAA.

6.2 The Operator may retain the remainder of any such Network Rail Payment.

6.3 RfL shall in each Reporting Period pay to the Operator in accordance with Schedule 11.1, a sum that is equivalent to any Network Rail Payment that the Operator is obliged to make to Network Rail under the terms of Schedule 8 (*Performance Regime*) of any Network Rail TAA in relation to a Reporting Period where the Network Rail Performance Sum (as defined therein) is greater than zero in that Reporting Period.

6.4 To the extent that the testing of the New Trains by the New Trains Manufacturer causes any delays or cancellations in any Reporting Period, RfL shall, in relation to that Reporting Period, pay the Operator on the next Payment Date, a sum that is equivalent to the difference between:

- (a) what the Operator would have received from or paid to Network Rail in relation to that Reporting Period under Schedule 8 of the Network Rail TAA in respect of the Operator's performance thereunder, had those delays or cancellations not occurred; and
- (b) what the Operator did receive from or pay to Network Rail in respect of the Operator's performance thereunder in relation to that Reporting Period.

6.5 Any payment to be made by the Operator to RfL pursuant to paragraph 6.1 in any Reporting Period shall be set off against any payment to be made in the same Reporting Period by RfL to the Operator pursuant to paragraphs 6.3 and 6.4.

6.6 The Operator acknowledges that any Minutes Delay occurring during the operation of the Passenger Services on the ELL Core Route will be allocated by Network Rail to the Operator for purposes of Schedule 8 (*Performance Regime*) to the Network Rail ELL TAA.

7. LUL PERFORMANCE

7.1 Subject to paragraph 7.1(b), if for any Reporting Period the Operator is required to pay Network Rail a "Train Operator Performance Sum (TPS)" under Schedule 8 (*Performance Regime*) of the Network Rail TAA (*TAA Schedule 8*), then:

- (a) if the solution for *LULPA* in the following formula is less than zero, RfL shall pay to the Operator, in accordance with Schedule 11.1 (*Concession Payments*), an amount (the *LUL Performance Adjustment*) equal to the lesser of:
 - (i) the amount of such Train Operator Performance Sum; and
 - (ii) the absolute value of *LULPA* (if *LULPA* is a negative number) in the following formula:

$$LULPA = 0.95 \times (LPP - LWAML) \times BF \times TPR$$

where:

- LULPA* means the LUL Performance Adjustment;
- LPP* is the following LUL Performance Point: in the case of SLC1e, 0.248 (Peak) and 0.280 (Off-Peak), and in the case of SLC2, 0.251 (Peak) and 0.284 (Off-Peak);
- LWAML* has the same meaning as "TWAML" in TAA Schedule 8, save that "MLT" shall mean Minutes Late allocated to LUL using the same methodology as specified in paragraph 8 of TAA Schedule 8;
- BF* has the same meaning as in paragraph 10 of TAA Schedule 8; and
- TPR* has the same meaning as in paragraph 10 of TAA Schedule 8; or

- (b) if the solution for LULPA is greater than or equal to zero, then no such payment shall be made.

7.2 Where in any Reporting Period, LUL has disputed any Minutes Delay under the terms of the ELL Core Route TAA, RfL shall be obliged to make any LUL Performance Adjustment:

- (a) on the next Payment Date falling no less than seven days after such dispute is resolved in accordance with the terms of the ELL Core Route TAA; and
- (b) only to the extent that following such resolution, any such Minutes Delay are allocated to LUL.

8. LATE DELIVERY OF NEW TRAINS

8.1 If the NLR New Trains have not all entered passenger revenue earning service by 14 January 2009, the Operational Benchmarks in columns 2 (LRC) and 4 (NLL) of the table in Appendix 1 shall be amended with effect from that date so that:

- (a) the trajectories commencing in Period 12 in Year 2 which are stated in such columns at the date hereof shall only apply with effect from the actual date when all the NLR New Trains have entered passenger revenue earning service; and
- (b) the benchmarks stated in such columns for Period 11 in Year 2 shall continue to apply until such actual date.

8.2 If the ELL New Trains have not all entered passenger revenue earning service by 14 August 2009, the Operational Benchmarks in columns 2 (LRC) and 7 (ELL) of the table in Appendix 1 shall be amended with effect from that date so that:

- (a) the trajectories commencing in Period 6 in Year 3 which are stated in such columns at the date hereof shall only apply with effect from the actual date when all the ELL New Trains have entered passenger revenue earning service; and
- (b) the benchmarks stated in such columns for Period 5 in Year 3 shall continue to apply until such actual date.

9. PPM ACHIEVEMENT

PPM Targets

9.1 No later than one Reporting Period after 31 March in each Concession Year, RfL shall determine the Operator's performance against the relevant PPM Target for the preceding Concession Year in accordance with this paragraph 9.

ELL

9.2 The PPM Route Target in relation to the ELL assumes that ELL Passenger Services have commenced by no later than 1 June 2010.

9.3 If ELL Passenger Services commence later than 1 June 2010 but before 31 March 2011:

- (a) the PPM Route Target in relation to the ELL for the Concession Year ending on 31 March 2011 shall be adjusted in accordance with the following formula:

$$RPPMT = \frac{(DL \times 90\%) + (PPMT \times (365 - DL))}{365} \times 100$$

where:

RPPMT is the revised PPM Route Target in relation to the ELL for the Concession Year ending on 31 March 2011 (expressed as a percentage and rounded to one decimal place);

DL is the number of days by which the ELL Passenger Services commence later than 1 June 2010; and

PPMT is the PPM Route Target in relation to the ELL for the Concession Year ending on 31 March 2011;

(b) the PPM Concession Target for the Concession Year ending on 31 March 2011 shall be adjusted accordingly;

(c) the PPM Route Target in relation to the ELL for each subsequent Concession Year (the **Relevant Year**) shall be adjusted in accordance with the following formula:

$$SRPPMT = \frac{(DL \times PPMT_{-1}) + (PPMT_0 \times (365 - DL))}{365} \times 100$$

where:

SRPPMT is the revised PPM Route Target in relation to the ELL for the Relevant Year (expressed as a percentage and rounded to one decimal place);

DL has the meaning given to it in paragraph 9.3(a);

PPMT₋₁ is the PPM Route Target in relation to the ELL for the Concession Year immediately preceding that Relevant Year, as specified in the related cell in the Table in Appendix 2; and

PPMT₀ is the PPM Route Target in relation to the ELL for that Relevant Year, as specified in the related cell in the table in Appendix 2; and

(d) the PPM Concession Target for each subsequent Concession Year shall be adjusted accordingly.

9.4 If the ELL Passenger Services commence later than 31 March 2011, the provisions of paragraph 9.3 shall apply with necessary consequential amendments to reflect the date on which the ELL Passenger Services commence, provided that:

(a) the PPM Route Target in relation to the ELL to apply in the Concession Year in which the ELL Passenger Services commence shall be that specified for the Concession Year ending on 31 March 2011 as at the date of this Agreement (subject to adjustment in accordance with paragraph 9.3); and

(b) for each Concession Year following that in which the ELL Passenger Services commence, the immediately following PPM Route Target in relation to the ELL as specified at the date of this Agreement (subject to adjustment in accordance with paragraph 9.3).

Force Majeure

9.5 In calculating the PPM for the purposes of this paragraph 9, any Passenger Service that does not arrive (including as a result of a Cancellation or Partial Cancellation) at its destination within five minutes of the arrival time scheduled in the Plan of the Day because of the occurrence or continuing effect of a Force Majeure Event, shall be deemed to have arrived at its destination within five minutes of the arrival time scheduled in the Plan of the Day.

PPM Route Failure Situation

9.6 If, on a moving annual average basis for the relevant Concession Year that has ended on 31 March, the Operator fails to achieve the specified PPM Route Target, a **PPM Route Failure Situation** in respect of that Route for that Concession Year shall be deemed to have occurred.

9.7 If a PPM Route Failure Situation occurs, the Operator shall pay to RfL a single payment for that PPM Route Failure Situation for that Concession Year of [REDACTED]³⁹ for every 0.1 per cent. by which the Operator fails to equal the relevant PPM Route Target, provided that the amount that the Operator is required to pay under this paragraph shall not exceed the amount that equates to a failure to equal the relevant PPM Route Target by 1 per cent..

9.8 Any payment due under paragraph 9.7 shall be treated as a single Committed Obligation Payment Adjustment and shall be payable in accordance with Schedule 11.1 (*Concession Payments*) provided that it shall be payable on the last Business Day of the first Reporting Period of the Concession Year that immediately follows the Concession Year in respect of which the payment is due.

PPM Concession Failure Situation

9.9 If, on a moving annual average basis for the relevant Concession Year that has ended on 31 March, the Operator fails to achieve the specified PPM Concession Target, a **PPM Concession Failure Situation** in respect of that Concession Year shall be deemed to have occurred.

9.10 Subject to paragraph 9.11, if a PPM Concession Failure Situation occurs, in addition to any payment that the Operator may be required to make in accordance with paragraph 9.7, the parties shall agree (or RfL shall reasonably determine) what, if any, action it is appropriate for the Operator to take in all the circumstances in order to ensure that the PPM Concession Target in the next Concession Year is achieved, including supporting Network Rail in any performance improvement initiatives.

9.11 The action that the Operator may be required to take in accordance with paragraph 9.10, shall not require the Operator to spend more than [REDACTED]⁴⁰ in respect of the relevant PPM Concession Failure.

No contravention

9.12 Any PPM Route Failure Situation or PPM Concession Failure Situation shall not constitute a contravention of this Agreement.

³⁹ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

⁴⁰ This information is exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

APPENDIX 1 TO SCHEDULE 7

Operational Benchmarks

Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC		WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	
Year 1	Period 9	13,642	1,653	1,734	8,896	9,754	4,548	4,755	1,955	2,406	N/A	N/A	
	Period 10	13,640	1,652	1,731	8,896	9,741	4,547	4,749	1,955	2,404	N/A	N/A	
	Period 11	13,639	1,651	1,728	8,896	9,728	4,546	4,744	1,955	2,402	N/A	N/A	
	Period 12	13,638	1,651	1,726	8,896	9,716	4,545	4,739	1,955	2,400	N/A	N/A	
	Period 13	13,637	1,650	1,723	8,896	9,704	4,545	4,734	1,955	2,398	N/A	N/A	
Year 2	Period 1	12,616	1,440	1,705	7,985	9,610	4,506	4,730	1,839	2,373	N/A	N/A	
	Period 2	12,614	1,439	1,687	7,985	9,517	4,505	4,725	1,839	2,349	N/A	N/A	
	Period 3	12,613	1,438	1,669	7,985	9,424	4,505	4,721	1,839	2,324	N/A	N/A	
	Period 4	12,612	1,438	1,651	7,985	9,332	4,504	4,716	1,839	2,300	N/A	N/A	
	Period 5	12,611	1,437	1,633	7,985	9,240	4,503	4,712	1,839	2,276	N/A	N/A	
	Period 6	12,609	1,436	1,615	7,985	9,148	4,502	4,708	1,839	2,252	N/A	N/A	
	Period 7	11,797	1,312	1,588	7,247	8,992	4,501	4,704	1,687	2,209	N/A	N/A	
	Period 8	11,218	1,232	1,554	6,737	8,793	4,500	4,701	1,553	2,154	N/A	N/A	
	Period 9	11,217	1,231	1,521	6,737	8,594	4,500	4,697	1,553	2,100	N/A	N/A	
	Period 10	11,217	1,231	1,487	6,737	8,396	4,499	4,693	1,553	2,045	N/A	N/A	
	Period 11	11,216	1,230	1,453	6,737	8,197	4,498	4,689	1,553	1,990	N/A	N/A	

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 2	Period 12	11,215	1,230	1,420	6,737	7,999	4,498	4,685	1,553	1,936	N/A	N/A
	Period 13	11,214	1,230	1,386	6,737	7,800	4,497	4,681	1,553	1,881	N/A	N/A
Year 3	Period 1	9,623	956	1,347	5,390	7,576	4,459	4,678	1,223	1,819	N/A	N/A
	Period 2	9,622	955	1,308	5,390	7,351	4,458	4,674	1,223	1,757	N/A	N/A
	Period 3	9,621	955	1,270	5,390	7,127	4,458	4,670	1,223	1,695	N/A	N/A
	Period 4	9,620	954	1,231	5,390	6,902	4,457	4,666	1,223	1,633	N/A	N/A
	Period 5	9,619	954	1,192	5,390	6,678	4,456	4,663	1,223	1,571	N/A	N/A
	Period 6	9,616	954	1,154	5,388	6,454	4,456	4,659	1,223	1,509	N/A	N/A
	Period 7	9,564	946	1,125	5,338	6,292	4,455	4,655	1,216	1,465	N/A	N/A
	Period 8	9,529	942	1,101	5,308	6,170	4,455	4,652	1,207	1,432	N/A	N/A
	Period 9	9,528	941	1,078	5,307	6,048	4,455	4,648	1,207	1,399	N/A	N/A
	Period 10	14,701	941	1,055	5,306	5,927	4,455	4,645	1,206	1,366	6,468	7,077
	Period 11	14,658	941	1,032	5,305	5,805	4,454	4,641	1,206	1,333	6,416	7,017
	Period 12	14,615	941	1,009	5,305	5,684	4,454	4,638	1,206	1,300	6,364	6,959
	Period 13	14,573	941	986	5,304	5,563	4,454	4,634	1,206	1,266	6,312	6,901
Year 4	Period 1	14,351	915	982	5,174	5,545	4,417	4,631	1,170	1,262	6,261	6,844
	Period 2	14,310	915	979	5,174	5,527	4,417	4,627	1,170	1,257	6,211	6,788
	Period 3	14,269	915	976	5,173	5,509	4,417	4,624	1,169	1,252	6,162	6,732
	Period 4	14,229	915	973	5,172	5,492	4,417	4,621	1,169	1,247	6,113	6,677
	Period 5	14,189	915	970	5,171	5,474	4,417	4,618	1,169	1,242	6,065	6,623

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 4	Period 6	14,150	915	967	5,171	5,457	4,417	4,615	1,169	1,237	6,017	6,569
	Period 7	14,083	911	964	5,145	5,441	4,416	4,612	1,161	1,233	5,970	6,517
	Period 8	14,027	908	961	5,128	5,427	4,416	4,608	1,157	1,229	5,924	6,464
	Period 9	13,989	908	958	5,128	5,413	4,416	4,605	1,157	1,225	5,878	6,413
	Period 10	13,952	908	956	5,127	5,398	4,416	4,602	1,156	1,221	5,833	6,362
	Period 11	13,915	908	953	5,126	5,384	4,416	4,599	1,156	1,217	5,788	6,312
	Period 12	13,879	908	950	5,125	5,369	4,416	4,596	1,156	1,213	5,744	6,262
	Period 13	13,843	907	948	5,125	5,355	4,415	4,593	1,156	1,209	5,701	6,213
Year 5	Period 1	13,680	891	946	5,040	5,344	4,379	4,590	1,133	1,206	5,658	6,165
	Period 2	13,645	891	944	5,039	5,334	4,379	4,587	1,133	1,203	5,615	6,118
	Period 3	13,611	890	942	5,038	5,323	4,379	4,584	1,132	1,200	5,573	6,070
	Period 4	13,577	890	940	5,038	5,312	4,379	4,581	1,132	1,197	5,532	6,024
	Period 5	13,543	890	938	5,037	5,301	4,378	4,578	1,132	1,194	5,491	5,978
	Period 6	13,510	890	936	5,036	5,291	4,378	4,575	1,132	1,192	5,451	5,933
	Period 7	13,456	887	934	5,017	5,280	4,378	4,572	1,127	1,189	5,411	5,888
	Period 8	13,411	885	932	5,005	5,270	4,378	4,569	1,123	1,186	5,372	5,844
	Period 9	13,379	885	930	5,004	5,261	4,378	4,566	1,123	1,183	5,333	5,800
	Period 10	13,347	885	929	5,003	5,251	4,378	4,562	1,123	1,181	5,295	5,757
	Period 11	13,316	885	927	5,003	5,241	4,378	4,559	1,123	1,178	5,257	5,715
	Period 12	13,285	885	925	5,002	5,231	4,377	4,556	1,123	1,175	5,220	5,673
	Period 13	13,255	884	923	5,001	5,221	4,377	4,553	1,123	1,173	5,183	5,631

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 6	Period 1	13,112	871	921	4,928	5,212	4,341	4,550	1,103	1,170	5,146	5,590
	Period 2	13,082	870	920	4,927	5,203	4,341	4,547	1,103	1,168	5,110	5,550
	Period 3	13,053	870	918	4,926	5,194	4,341	4,544	1,103	1,166	5,075	5,510
	Period 4	13,024	870	917	4,926	5,185	4,341	4,541	1,103	1,163	5,040	5,471
	Period 5	12,995	870	915	4,925	5,176	4,341	4,538	1,103	1,161	5,005	5,432
	Period 6	12,967	870	913	4,924	5,167	4,340	4,535	1,103	1,159	4,971	5,393
	Period 7	12,921	867	912	4,908	5,159	4,340	4,532	1,098	1,156	4,938	5,356
	Period 8	12,882	866	910	4,897	5,150	4,340	4,529	1,095	1,154	4,904	5,318
	Period 9	12,855	866	909	4,896	5,141	4,340	4,526	1,095	1,152	4,871	5,281
	Period 10	12,828	866	907	4,896	5,133	4,340	4,523	1,095	1,150	4,839	5,245
	Period 11	12,801	865	906	4,895	5,124	4,340	4,520	1,095	1,147	4,807	5,209
	Period 12	12,775	865	904	4,894	5,115	4,340	4,517	1,095	1,145	4,775	5,173
	Period 13	12,749	865	903	4,894	5,107	4,339	4,514	1,095	1,143	4,744	5,138
Year 7	Period 1	12,629	854	901	4,836	5,099	4,304	4,511	1,080	1,141	4,713	5,104
	Period 2	12,604	854	900	4,835	5,092	4,304	4,508	1,080	1,139	4,683	5,069
	Period 3	12,579	854	899	4,834	5,085	4,303	4,505	1,079	1,137	4,653	5,036
	Period 4	12,555	854	897	4,834	5,077	4,303	4,502	1,079	1,135	4,623	5,002
	Period 5	12,530	854	896	4,833	5,070	4,303	4,499	1,079	1,133	4,594	4,969
	Period 6	12,506	854	895	4,832	5,063	4,303	4,496	1,079	1,132	4,565	4,937
	Period 7	12,475	852	893	4,825	5,056	4,303	4,493	1,077	1,130	4,536	4,905

Column 1	Column 2	Column 3		Column 4		Column 5		Column 6		Column 7		
Route	LRC	WLL		NLL		GOB		WJELL		ELL		
Concession Year / Reporting Period	Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	
Year 7	Period 8	12,446	852	892	4,820	5,050	4,303	4,490	1,076	1,128	4,508	4,873
	Period 9	12,423	851	891	4,819	5,044	4,303	4,487	1,075	1,127	4,480	4,842
	Period 10	12,400	851	890	4,818	5,037	4,302	4,484	1,075	1,125	4,453	4,811
	Period 11	12,377	851	889	4,817	5,031	4,302	4,481	1,075	1,124	4,426	4,780
	Period 12	12,355	851	888	4,817	5,025	4,302	4,478	1,075	1,122	4,399	4,750
	Period 13	12,333	851	887	4,816	5,019	4,302	4,475	1,075	1,120	4,373	4,721
Year 8	Period 1	12,243	844	886	4,780	5,014	4,267	4,472	1,066	1,119	4,347	4,691
	Period 2	12,222	844	885	4,780	5,010	4,266	4,469	1,066	1,118	4,321	4,662
	Period 3	12,200	844	884	4,779	5,006	4,266	4,466	1,066	1,117	4,295	4,634
	Period 4	12,179	844	884	4,778	5,001	4,266	4,463	1,066	1,116	4,270	4,605
	Period 5	12,159	844	883	4,778	4,997	4,266	4,460	1,066	1,115	4,245	4,578
	Period 6	12,138	844	882	4,777	4,992	4,266	4,457	1,065	1,114	4,221	4,550
	Period 7	12,118	844	881	4,776	4,988	4,266	4,454	1,065	1,113	4,197	4,523
	Period 8	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496

Up to 7 Reporting Period Extension	Period 1	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 2	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 3	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 4	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 5	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 6	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496
	Period 7	12,098	843	881	4,775	4,985	4,266	4,451	1,065	1,112	4,173	4,496

Column 1	Column 2	Column 3		Column 4		Column 5		Column 6		Column 7		
Route	LRC	WLL		NLL		GOB		WJELL		ELL		
Concession Year / Reporting Period	Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	
Balance of Year 8 if LRC continued pursuant to Schedule 21	Period 9	12,078	843	880	4,775	4,981	4,265	4,448	1,065	1,111	4,149	4,469
	Period 10	12,077	843	879	4,774	4,978	4,265	4,445	1,065	1,110	4,149	4,469
	Period 11	12,076	843	879	4,773	4,974	4,265	4,442	1,065	1,110	4,149	4,469
	Period 12	12,075	843	878	4,772	4,971	4,265	4,439	1,065	1,109	4,149	4,469
	Period 13	12,074	843	877	4,772	4,967	4,265	4,436	1,064	1,108	4,149	4,469
Year 9	Period 1	12,018	838	877	4,747	4,964	4,230	4,433	1,059	1,107	4,149	4,469
	Period 2	12,017	838	876	4,746	4,962	4,230	4,430	1,059	1,107	4,149	4,469
	Period 3	12,017	838	876	4,745	4,959	4,229	4,427	1,058	1,106	4,149	4,469
	Period 4	12,016	838	875	4,745	4,956	4,229	4,425	1,058	1,106	4,149	4,469
	Period 5	12,015	838	875	4,744	4,954	4,229	4,422	1,058	1,105	4,149	4,469
	Period 6	12,014	838	874	4,743	4,951	4,229	4,419	1,058	1,104	4,149	4,469
	Period 7	12,013	837	874	4,743	4,948	4,229	4,416	1,058	1,104	4,149	4,469
	Period 8	12,012	837	873	4,742	4,946	4,229	4,413	1,058	1,103	4,149	4,469
	Period 9	12,011	837	873	4,741	4,943	4,229	4,410	1,058	1,103	4,149	4,469
	Period 10	12,010	837	872	4,740	4,940	4,228	4,407	1,057	1,102	4,149	4,469
	Period 11	12,009	837	872	4,740	4,938	4,228	4,404	1,057	1,101	4,149	4,469
	Period 12	12,008	837	871	4,739	4,935	4,228	4,401	1,057	1,101	4,149	4,469
	Period 13	12,007	837	871	4,738	4,932	4,228	4,398	1,057	1,100	4,149	4,469

Column 1	Column 2	Column 3		Column 4		Column 5		Column 6		Column 7		
Route	LRC	WLL		NLL		GOB		WJELL		ELL		
Concession Year / Reporting Period	Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	
Year 10	Period 1	11,856	832	870	4,714	4,930	4,073	4,386	1,051	1,100	4,149	4,469
	Period 2	11,855	832	870	4,713	4,927	4,073	4,373	1,051	1,099	4,149	4,469
	Period 3	11,854	832	869	4,712	4,924	4,073	4,361	1,051	1,098	4,149	4,469
	Period 4	11,853	832	869	4,712	4,922	4,073	4,348	1,051	1,098	4,149	4,469
	Period 5	11,852	832	868	4,711	4,919	4,073	4,336	1,051	1,097	4,149	4,469
	Period 6	11,851	831	868	4,710	4,916	4,073	4,323	1,051	1,097	4,149	4,469
	Period 7	11,850	831	867	4,709	4,914	4,073	4,311	1,050	1,096	4,149	4,469
	Period 8	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
Up to 7 Reporting Period Extension	Period 1	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 2	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 3	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 4	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 5	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 7	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469
	Period 8	11,850	831	867	4,709	4,911	4,072	4,298	1,050	1,095	4,149	4,469

APPENDIX 2 TO SCHEDULE 7

PPM Targets

		Concession Year as at 31 March								
		2009	2010	2011	2012	2013	2014	2015	2016	2017
PPM Route Target (%)	WJELL	92.4	94.5	95.0	95.5	95.5	95.5	95.5	95.5	95.5
	NLL	88.0	91.0	91.5	91.8	91.8	91.8	91.8	91.8	91.8
	WLL	95.0	96.5	96.8	97.0	97.0	97.0	97.0	97.0	97.0
	GOB	94.2	93.3	93.8	94.5	95.0	95.0	95.0	95.0	95.0
	ELL	-	-	92.5	93.7	94.0	94.0	94.0	94.0	94.0
PPM Concession Target (%)		91.7	93.4	93.2	94.0	94.2	94.2	94.2	94.2	94.2

SCHEDULE 8

SERVICE QUALITY AND PASSENGER PERCEPTION

Schedule 8.1:

KPI Regime

Appendix: Key Performance Indicators

Schedule 8.2:

MSS Regime

Appendix: MSS Target Levels and MSS Benchmarks

Schedule 8.3:

CSS Regime

Appendix: NPS Target Levels and Remedial Plan NPS Benchmarks

SCHEDULE 8.1

KPI Regime

1. INTRODUCTION

This Schedule 8.1 provides for:

- (a) the service quality management arrangements to be put in place by the Operator for the management and delivery of service quality for the Concession Period in respect of the Concession Services;
- (b) the responsibilities, including auditing, and reporting requirements of the Operator;
- (c) the audits that may be carried out by RfL;
- (d) the rights of RfL to witness any audit carried out by the Operator; and
- (e) the remedies available to RfL if the Operator under-performs against the Key Performance Indicators.

2. FAULT REPORTING

Fault Management System

2.1 The Operator shall establish on or prior to the Start Date, and throughout the Concession Period implement, a Fault Management System to cover all faults associated with this KPI Regime.

2.2 The Fault Management System shall as a minimum:

- (a) manage automatically and manually reported faults, in each case, in a timely manner;
- (b) provide:
 - (i) where appropriate, for devices to which Key Performance Indicators relate, to automatically report faults to the system's central monitoring system; and
 - (ii) otherwise provide for manual reporting of faults to devices to which Key Performance Indicators relate;
- (c) make provision for the inclusion of any faults reported by RfL;
- (d) permit RfL to extract fault resolution reports to such level of disaggregation as is necessary to verify the Operator's performance in respect of the KPI Regime;
- (e) incorporate the Fault Tracking Database;
- (f) provide details of the resources allocated by the Operator, including any contractual arrangements in place, to ensure the provision by it of a level of service quality across the LRC that is consistent with the standards specified in this KPI Regime;

- (g) measure the Operator's compliance with the standards set out in this KPI Regime and calculate KPI Adjustments; and
- (h) set out procedures, including in respect of the auditing requirements specified in paragraph 5, for identifying and rectifying failures against the Key Performance Indicators.

Fault Tracking Database

2.3 The Operator shall implement a real-time facilities management fault tracking database to enable RfL and the Operator to monitor fault resolution (the ***Fault Tracking Database***). The Fault Tracking Database shall have the functionality to be able to specify, as a minimum, information in respect of the following categorisations:

- (a) fault number;
- (b) station or location;
- (c) device reference;
- (d) fault description;
- (e) time of fault report;
- (f) current status of repair/response;
- (g) name of individual/organisation responsible for the repair;
- (h) estimated repair time;
- (i) comments/issues; and
- (j) a programme of any future maintenance activities planned.

2.4 The Fault Tracking Database shall also:

- (a) contain a record of all maintenance activities carried out over time;
- (b) have the functionality for RfL to:
 - (i) generate reports from that record in order to carry out separate statistical analysis; and
 - (ii) export that record or those reports into separate software packages to be notified by RfL to the Operator from time to time for such purpose.

2.5 The Operator shall ensure that RfL has real-time access to the Fault Tracking Database from a website.

Regular Review of Fault Management System and Fault Tracking Database

2.6 The Operator shall review the effectiveness of the Fault Management System and, within that, the Fault Tracking Database, at reasonable intervals throughout the Concession Period (each such interval being no more than 12 months) and propose changes to RfL as appropriate, with a view to ensuring the level of service quality provided across the LRC is consistent with the level specified in this KPI Regime.

2.7 The Operator shall not make any changes to the Fault Management System or the Fault Tracking Database without the prior written consent of RfL.

Service Quality at Operator Access Stations

2.8 The Operator shall:

- (a) use all reasonable endeavours to procure, including by:
 - (i) entering into new agreements with relevant third parties; and/or
 - (ii) varying existing agreements with relevant third parties; and
- (b) enforce any rights it may have under any Access Agreement in respect of any Operator Access Station in order,

that any services equivalent to the Concession Services that are provided by the Facility Owner at any Operator Access Station are provided at a level of service quality that is consistent with the level specified under this KPI Regime.

3. CHANGING THE KEY PERFORMANCE INDICATORS

3.1 RfL may amend the requirements of any Key Performance Indicator from time to time and shall promptly notify the Operator of its intention to do so.

3.2 If RfL notifies the Operator of its intention pursuant to paragraph 3.1:

- (a) a Change shall occur; and
- (b) the Operator shall no later than 28 days thereafter advise RfL of those amendments (if any) it believes are reasonably required to the Fault Management System in order that that system continues to meet the requirements specified in paragraphs 2.1 and 2.2.

4. CARRYING OUT FAULT REPAIRS

The Operator shall carry out or procure the carrying out of all fault rectification work identified by the Fault Management System in a timely manner and with that degree of skill and care as would be exercised by a skilled and experienced Train Operator of the LRC.

5. AUDITING

5.1 The Operator shall establish an audit programme by the Start Date which shall provide for a reasonable spread and frequency of audits across the LRC and across those facilities that are the subject of the Key Performance Indicators in order to ascertain the extent to which the Operator is implementing the Fault Management System in accordance with its terms (the *KPI Audit Programme*).

5.2 The Operator shall implement the KPI Audit Programme in accordance with its terms.

5.3 RfL, and its nominees on its behalf, shall have the right to:

- (a) verify any reports provided by the Operator pursuant to paragraph 7.1(b);
- (b) witness any audits carried out by the Operator under the KPI Audit Programme; and

(c) carry out its own independent audits of the extent to which the Operator is implementing the Fault Management System in accordance with its terms, in addition to any further independent audits it may carry out pursuant to paragraph 2 of Schedule 14.3 (*Other RfL Remedies*).

5.4 The Operator shall co-operate with RfL, and its nominees on its behalf, in permitting RfL and its nominees to exercise their respective rights under paragraph 5.3 and shall provide to RfL, within 48 hours of RfL's request, any underlying data relating to any report provided by the Operator pursuant to paragraph 7.1(b).

5.5 RfL shall use all reasonable endeavours to ensure that the persons employed in undertaking independent audits carried out pursuant to paragraph 5.3(c), carry out such audits diligently and objectively.

5.6 RfL shall use all reasonable endeavours to notify the Operator of the result of any independent audit that is undertaken within any Reporting Period no later than the last day of such Reporting Period where any such audit is conducted five days or more prior to the last day of such Reporting Period. Otherwise, RfL shall notify the Operator as soon as reasonably practicable thereafter.

5.7 The Operator shall grant such access to the facilities under its control as is necessary to enable RfL and RfL's employees and nominees on its behalf to witness any audits conducted by the Operator pursuant to the KPI Audit Programme and exercise its independent audit rights under paragraph 5.3(c).

5.8 In carrying out any independent audit pursuant to paragraph 5.3(c), or witnessing any audits conducted by the Operator pursuant to the KPI Audit Programme, RfL shall, subject to paragraph 5.9, ensure that its employees or nominees:

- (a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and
- (b) obey any location-specific rules and regulations in respect of security and access.

5.9 The Operator shall provide notice from time to time of current location-specific access, security and safety rules and regulations to RfL or its nominees for the purpose of ensuring that RfL or its nominees can carry out RfL's auditing rights in an efficient, secure and safe manner.

6. CALCULATION OF KPI ADJUSTMENTS

6.1 If the Operator fails to meet any Key Performance Indicator standard in any Reporting Period it shall be liable to pay to RfL in the next Reporting Period, unless such failure is directly caused by the occurrence or continuing effect of a Force Majeure Event, the performance failure payment in respect of that standard in the amount specified for that standard in column 3 and 5 (as appropriate) of Table 1 in the Appendix to this Schedule 8.1, multiplied by RPI, where RPI has the meaning given to it in Schedule 11.2 (*Annual Concession Payments*).

6.2 The Operator shall calculate the KPI Adjustment for any Reporting Period, within the time period contemplated by paragraph 7, by aggregating all performance failure payments for the immediately preceding Reporting Period, including within that calculation any sums required to be included pursuant to paragraph 8.1.

7. REPORTING AND PAYMENT REQUIREMENTS OF THE OPERATOR

7.1 The Operator shall within 14 days of the end of each Reporting Period (except during the first Reporting Period of the Concession Period) provide to RfL:

- (a) a statement of the amount of the KPI Adjustment that should be made in respect of the preceding Reporting Period;
- (b) an accurate report of its performance, providing its assessment of that performance and the reasons for any failures against any Key Performance Indicator;
- (c) a breakdown, where required by RfL, of that amount, disaggregated by Service Group; and
- (d) copies, where required by RfL, of the records of the audits carried out pursuant to the KPI Audit Programme.

7.2 The Operator shall self-certify (such certification to be made by a director of the Operator) to RfL every six Reporting Periods its compliance with its obligations under this KPI Regime.

7.3 The Operator shall pay to RfL in accordance with Schedule 11.1 (*Concession Payments*) any KPI Adjustment determined pursuant to this Schedule 8.1.

8. REMEDIES AVAILABLE TO RFL

Material Inconsistencies

8.1 If either any investigation carried by RfL or its nominees pursuant to paragraph 5.3 or any report produced by the Operator pursuant to paragraph 7.1(b) reveals material inconsistencies in the Operator’s performance in respect of this KPI Regime in any Reporting Period, including failures by the Operator:

- (a) to accurately calculate its performance in accordance with paragraph 6.2 (except to the extent the Operator can demonstrate to the reasonable satisfaction of RfL that any such inconsistency is due to manifest error);
- (b) to report faults in accordance with the Fault Management System; or
- (c) to audit its performance in accordance with the KPI Audit Programme,

then the Operator shall include in the next calculation it makes pursuant to paragraph 6.2, an amount determined in accordance with the following:

$$KPII = (CKPIA - IKPIA) \times [\text{REDACTED}]^{41}$$

where:

KPII means the KPI incentive payment to be made in any Reporting Period pursuant to this paragraph 8.1;

⁴¹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

CKPIA means the KPI Adjustment that should have been made in that Reporting Period, but for the material inconsistencies in the Operator's compliance with this KPI Regime; and

IKPIA means the KPI Adjustment made in that Reporting Period.

8.2 Any amount calculated pursuant to paragraph 8.1 shall be taken account of in the determination of whether the Operator has contravened the Remedial Plan KPI Benchmark.

Independent Remedial Plan

8.3 If in any year there are two or more instances where the Operator is required to carry out the calculation pursuant to paragraph 8.1, then:

- (a) RfL may require the Operator to instruct an independent third party nominated by RfL to carry out an investigation (at the Operator's cost);
- (b) such investigation shall focus on recommending changes to ensure that the Operator complies with its obligations in relation to this KPI Regime and is not therefore required to carry out the calculation pursuant to paragraph 8.1; and
- (c) those recommendations shall be specified in a draft Remedial Plan that that independent third party shall submit to RfL and the Operator within such time period as RfL may specify.

8.4 The Operator shall:

- (a) co-operate with the investigation carried out pursuant to paragraph 8.1;
- (b) assist the independent third party nominated by RfL to carry out that investigation in the finalisation of any related Remedial Plan; and
- (c) implement in accordance with its terms any Remedial Plan agreed or determined pursuant to paragraph 8.5.

8.5 RfL and the Operator shall agree, or in the absence of such agreement, RfL shall reasonably determine the terms of the Remedial Plan prepared pursuant to paragraph 8.3(c).

8.6 Any expenditure incurred by the Operator in complying with its obligations pursuant to paragraph 8.4 shall not be included in the remedial spending cap referred to in paragraph 5.1 of Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*).

Contraventions

8.7 It shall be a contravention of this Agreement if:

- (a) the Operator is obliged to make KPI Adjustment payments to RfL in three consecutive Reporting Periods, in each case equal to or in excess of £15,000 (the ***Remedial Plan KPI Benchmark***);
- (b) the Operator fails to implement the Fault Reporting System in accordance with its terms;
- (c) the Operator fails to implement the KPI Audit Programme in accordance with its terms; or

(d) the circumstances described in paragraph 8.1 occur.

8.8 If any of the contraventions referred to in paragraph 8.7 occur, then:

(a) RfL shall be entitled to exercise its rights pursuant to Schedule 14.2, save that if the contravention referred to in paragraph 8.7(d) occurs, then the provisions of paragraph 8.3 shall apply; and

(b) the Operator shall pay RfL's reasonable costs incurred in respect of any independent audits RfL specifically carries out and RfL notifies the Operator of in order for RfL to satisfy itself that such contraventions will not occur again.

8.9 Without prejudice to the provisions of paragraph 2.22 of Schedule 14.5 (*Events of Default and Termination Event*), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 8.7 occurs.

Performance against the Default KPI Benchmarks

8.10 If following any calculation pursuant to paragraph 6.2, the Operator is obliged to make KPI Adjustment payments to RfL in three consecutive Reporting Periods, in each case equal to or in excess of [REDACTED]⁴² (the *Default KPI Benchmark*), then an Event of Default shall have occurred and the provisions of Schedule 14 (*Remedies, Termination and Expiry*) shall apply, provided that no Event of Default shall occur where those circumstances arise in three Consecutive Reporting Periods which all occur during the first six Reporting Periods of the Concession Period.

⁴² This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 8.1

Key Performance Indicators

TABLE 1

KEY PERFORMANCE INDICATOR:
STAFFING LEVELS AND CUSTOMER SERVICE STANDARDS

Column 1	Column 2	Column 3
Input (per unit unless otherwise stated)	Availability Standard	Payment to RfL (£) x RPI⁴³
Ticket office opening hours	Hours of operation at each Station as at the date of this Agreement	[REDACTED] per hour per failure
Station presence	The total number of Station Staff on duty 15 minutes prior to, during and 15 minutes after each Traffic Day shall be no less than the total number of Stations at any give time during the Concession Period	[REDACTED] per hour per failure
Ticket barrier staffing	All gatelines at all Stations to be operated (such operation being permissible from the relevant Station ticket office) and supervised between 0700 (or from no less than five minutes before the departure of the first train from the relevant Station, whichever is the later) and 2100 on all days of operation	[REDACTED] per hour per failure
Ticket queuing at all stations	95 per cent. of people queuing are served within three minutes of joining queue, measured over any one hour period	[REDACTED] per Station per day
Staffing of CCTV / Help Points / CIS Control Centre	From the start of the operation of the first train to the end of the operation of last train, Monday to Sunday	[REDACTED] per hour
Help Point response standards	All emergency calls to be answered within 15 seconds (or automatically routed to police); 95 per cent. of information calls answered within 30 seconds	[REDACTED] per failure
Live CCTV monitoring standards	All cameras on all Stations to be monitored in a manner so as to achieve an effective level of real time surveillance and so contribute to a safe and secure environment for all passengers	[REDACTED]

⁴³ All financial figures set out in this Schedule are exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3
Input (per unit unless otherwise stated)	Availability Standard	Payment to RfL (£) x RPI⁴³
Passenger Call Centre. Open for phone calls	0900 to 1700 Monday to Friday, excluding Bank Holidays	[REDACTED] per hour per failure
Provision of support at LUL Stations:		
Overground and Underground service updates	Provided the existing announcing equipment supports simultaneous broadcast to all LUL Stations, every 15 minutes at every LUL Station for the first 26 Reporting Periods of the Concession Period except where RfL and the Operator agree that such announcements would be a noise nuisance	[REDACTED] per day where fewer than 90% of announcements made
Next train “arrival” announcements	Provided the existing announcing equipment supports the generation of automatic announcements, from the start of the operation of the first train to the end of the operation of last train, Monday to Sunday	[REDACTED] per day where fewer than 90% of announcements made
Train running message boards	Provided at all Stations containing headline information about: (a) significant disruption to the Passenger Services; (b) interconnecting services; and (c) services operated by LUL, subject to the information first being provided to the Operator	[REDACTED] per Station per day
Availability of printed materials:		
Printed Timetable booklets	Provided at all Stations	[REDACTED] per Station per day
Passenger’s Charter leaflets	Provided at all Stations	[REDACTED] per Station per day
Guide to the Passenger Services	Provided at all Stations from 1 February 2008	[REDACTED] per Station per day
Line of Route maps	Provided at all Stations from 1 February 2008	[REDACTED] per Station per day
Station surrounding maps	Provided at all Stations from 1 February 2008	[REDACTED] per Station per day

**KEY PERFORMANCE INDICATOR:
EQUIPMENT AVAILABILITY STANDARDS**

Column 1	Column 2	Column 3	Column 4	Column 5	
Input (per unit unless otherwise stated)	Availability - Permissible downtime per annum	Fix time: Category A Stations	Fix Time: Category B Stations	Payment to RfL (£) x RPI	
				Failed availability	Failed fix
Ticket Office Machines	100 hours per machine	Within 24 opening hours, Monday to Sunday	Within 24 opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
Passenger Operated Machines	100 hours per machine	Within 24 opening hours, Monday to Sunday	Within 24 opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
Digital Video Recorders	44 hours per machine	Within eight opening hours, Monday to Sunday	Within eight opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
CCTV cameras	44 hours per camera	Within 12 opening hours, Monday to Sunday	Within 12 opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
Clocks	12 hours per clock	Within 24 hours, Monday to Sunday	Within 72 hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
CIS Central Control System	8 hours	Within 24 hours, Monday to Sunday	Within four hours, Monday to Sunday	[REDACT -ED] per hour	N/A
CIS Station Control System	44 hours per station	Within four opening hours, Monday to Sunday	Within eight opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour
CIS Visual Displays	44 hours per device	Within eight opening hours, Monday to Sunday	Within 12 opening hours, Monday to Sunday	[REDACT -ED] per hour	[REDACT -ED] per hour

Column 1	Column 2	Column 3	Column 4	Column 5	
Input (per unit unless otherwise stated)	Availability - Permissible downtime per annum	Fix time: Category A Stations	Fix Time: Category B Stations	Payment to RfL (£) x RPI	
				Failed availability	Failed fix
Station Public Address System	44 hours per station	Within eight opening hours, Monday to Sunday	Within 24 opening hours, Monday to Sunday	[REDACT- ED] per hour	[REDACT- ED] per hour
Individual Public Address Speakers or Public Address Zones	44 hours per speaker or zone	Within 24 opening hours, Monday to Sunday	Within 72 opening hours, Monday to Sunday	[REDACT- ED] per hour	[REDACT- ED] per hour
Help Points	24 hours per device	Within 12 opening hours, Monday to Sunday	Within 12 opening hours, Monday to Sunday	[REDACT- ED] per hour	[REDACT- ED] per hour
Trip Hazards	N/A	Within 24 hours, Monday to Sunday	Within 24 hours, Monday to Sunday	N/A	[REDACT- ED] per hour
Broken Windows	N/A	Within 24 hours, Monday to Friday	Within 24 hours, Monday to Friday	N/A	[REDACT- ED] per hour
Damaged / defaced Posters	N/A	Within 24 hours, Monday to Friday	Within 24 hours, Monday to Friday	N/A	[REDACT- ED] per 24 hours
Damaged / defaced Poster boards	N/A	Within 24 hours, Monday to Friday	Within 24 hours, Monday to Friday	N/A	[REDACT- ED] per 24 hours
Leaking canopies	N/A	Within ten working days	Within ten working days	N/A	[REDACT- ED] per 24 hours
Lifts	264 hours per lift	Within 24 hours, Monday to Friday	Within 24 hours, Monday to Friday	N/A	[REDACT- ED] per 24 hours
Escalators	175 hours per lift	Within 24 hours, Monday to Friday	Within 24 hours, Monday to Friday	N/A	[REDACT- ED] per 24 hours
Fencing – allowing unauthorised access	N/A	Exit/egress holes fixed within 24 hours Monday to Sunday	Exit/egress holes fixed within 24 hours Monday to Sunday	N/A	[REDACT- ED] per 24 hours

**KEY PERFORMANCE INDICATOR:
STATION MAINTENANCE STANDARDS**

Column 1	Column 2	Column 3	Column 4	Column 5
Input (per unit unless otherwise stated)	Standard	Cleaning time: Category A Stations	Cleaning Time: Category B Stations	Payment to RfL (£) x RPI
Daily Light Cleaning	Sweep all public areas. Pick litter and empty bins. Damp wipe all seats and handrails. Remove leaves, rain, snow, ice	Twice daily before Morning Peak and Evening Peak	Twice daily before Morning Peak and Evening Peak	Failure to undertake a visit at [REDACTED] per visit
Heavy Cleaning	Machine scrub all floors including forecourts and passages. Remove impact dirt. Wash all windows and paintwork. Cut vegetation. Remove litter from vegetation. Remove fly stickers.	Fortnightly except for canopies every six months	Fortnightly except for canopies every six months	Failure to undertake a visit at [REDACTED] per visit
Chewing Gum cleaning	No chewing gum acceptable. Enforced only after Phase 3 Stations Works are completed to the relevant standard. Prior to that completion, Operator to monitor and to use all reasonable endeavours to remove	All gum cleaned / removed within 24 hours, Monday to Friday	All gum cleaned / removed within 24 hours, Monday to Friday	Failure at [REDACTED] per rectifying visit per day
Hazardous / non-hygienic substances	N/A	Cleaned within four hours, Monday to Sunday	Cleaned within four hours, Monday to Sunday	Failure at [REDACTED] per incident per hour
Infestations of mice, insects, other pests	N/A	Removed within 24 hours, Monday to Friday	Removed within 24 hours, Monday to Friday	Failure at [REDACTED] per incident per day
Bird nest or roost	N/A	Removed within 48 hours, Monday to Friday	Removed within 48 hours, Monday to Friday	Failure at [REDACTED] per incident per day

Column 1	Column 2	Column 3	Column 4	Column 5
Input (per unit unless otherwise stated)	Standard	Cleaning time: Category A Stations	Cleaning Time: Category B Stations	Payment to RfL (£) x RPI
Toilets (both public and staff)	Open and available for use during all Station opening hours. Available for the purposes of this Key Performance Indicator means: (1) stocked with consumables; (2) fully functioning water supply, drains and hand drying facilities; (3) clean, including any mirrors (4) free from graffiti, water on floor, offensive odours	Rectified within four hours	Rectified within four hours	Failure at [REDACTED] per incident per hour
Shelters and Waiting Rooms	Open and available for use during all Station opening hours. Available for the purposes of this Key Performance Indicator means: (1) free from graffiti, water on floor, hazardous or non-hygienic substances, offensive odours; (2) all seats are available, complete and unlikely to mark or damage clothing (3) any means of heating or cooling is operational, if required	Rectified within 24 hours, Monday to Sunday	Rectified within 24 hours, Monday to Sunday	Failure at [REDACTED] per incident per hour
Cleaning CIS Displays	N/A	Monthly cleaning	Three-monthly cleaning	Delayed cleaning at [REDACTED] per Station per day
Cleaning CCTV Cameras and lenses	N/A	Monthly cleaning	Monthly cleaning	Delayed cleaning at [REDACTED] per camera per day
Vegetation	No vegetation overhanging any part of Station or approaches. Grass maximum length of 150mm. No Litter	Rectified within 48 hours, Monday to Sunday	Rectified within 48 hours, Monday to Sunday	Failure at [REDACTED] per station per day

Column 1	Column 2	Column 3	Column 4	Column 5
Input (per unit unless otherwise stated)	Standard	Cleaning time: Category A Stations	Cleaning Time: Category B Stations	Payment to RfL (£) x RPI
Graffiti	None acceptable in any part of Station	Cleaned / painted out within 12 opening hours, Monday to Sunday	Cleaned / painted out within 12 opening hours, Monday to Sunday	Failure at [REDACTED] per Station per hour
Scratch Graffiti 1	None acceptable in any part of Station	Scratched paint repaired within 24 hours, Monday to Sunday	Scratched paint repaired within 24 hours, Monday to Sunday	Failure at [REDACTED] per Station per day
Scratch Graffiti 2	No scratched glass or Perspex in any part of Station	Replaced within 24 hours	Replaced within 24 hours	Failure at [REDACTED] per Station per day
Scratch Graffiti 3	No scratched notices / poster boards	Repaired within 24 hours	Repaired within 24 hours	Failure at [REDACTED] per Station per day
Fly Posting	None acceptable in any part of Station	Removed within 24 hours	Removed within 24 hours	Failure at [REDACTED] per Station per day
Night Lighting	Lux level equivalent to that required for a Secure Station. Photo-electric cell controls to ensure sufficient lighting, Lighting to be on 15 minutes before first train and 15 minutes after last actual train	All light failures: repaired within 24 hours if below minimum lux level repaired within seven days if above minimum lux levels	All light failures: repaired within 24 hours if below minimum lux level repaired within seven days if above minimum lux levels	Failure at [REDACTED] per light per Station per day
Day Lighting	Lux Level equivalent to that required for a Secure Station. For subways and other internal areas as required. Lighting to be on 15 minutes before first train and 15 minutes after last actual train	All light failures: repaired within 24 hours if below minimum lux level repaired within seven days if above minimum lux levels	All light failures: repaired within 24 hours if below minimum lux level repaired within seven days if above minimum lux levels	Failure at [REDACTED] per Station per day

**KEY PERFORMANCE INDICATOR:
TRAIN MAINTENANCE STANDARDS**

Column 1	Column 2		Column 3
Input (per unit unless otherwise stated)	Availability Standard / Cleaning	Compliance	Payment to RfL (£) x RPI
Exterior Washing	Every 48 hours	90 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Interior Cleaning	Daily: Floor sweep, remove litter, empty bins, remove spillages	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Interior turnaround cleaning	Every other turnaround: Remove litter, empty bins, remove spillages	100 per cent. compliance	[REDACTED] per non- compliant incident
Interior heavy cleaning	Weekly: Remove litter, empty bins, remove spillages, vacuum seats, replace soiled seat covers, wet wash floors, clean windows	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Train Public Address	Fully operational: Clear, audible transmission that is not too loud and with no interference	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Train CCTV (where fitted)	Fully operational: Recording all cameras with clear images of the agreed views	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Train graffiti	None allowed prior to train entering daily service	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Train graffiti (offensive)	All rolling stock vehicles bearing graffiti of an offensive nature (for example containing sexual, racial, intimidating or terrorism related images or messages) to be removed from service as soon as reasonably practicable	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit
Train scratch graffiti	Remove / replace within 48 hours	100 per cent. compliance	[REDACTED] per day or part of day per non-

Column 1	Column 2		Column 3
Input (per unit unless otherwise stated)	Availability Standard / Cleaning	Compliance	Payment to RfL (£) x RPI
			compliant unit
Seating	Fully serviceable: No missing seats or covers. No torn or soiled covers	100 per cent. compliance	[REDACTED] per day or part of day per non- compliant unit

STATION CATEGORIES:

TABLE 2

CATEGORY A STATIONS					
1	Acton Central	12	Hackney Central	23	Rotherhithe
2	Anerley	13	Haggerston	24	Shadwell
3	Brockley	14	Hampstead Heath	25	Shepherds Bush
4	Brondesbury	15	Homerton	26	Shoreditch High St
5	Camden Road	16	Honor Oak Park	27	Surrey Quays
6	Canonbury	17	Hoxton	28	Sydenham
7	Crystal Palace	18	Imperial Wharf	29	Wapping
8	Dalston Junction	19	Kensington Olympia	30	West Croydon
9	Dalston Kingsland	20	New Cross Gate	31	West Hampstead
10	Forest Hill	21	Norwood Junction	32	Willesden Junction
11	Gospel Oak	22	Penge West		

TABLE 3

CATEGORY B STATIONS					
1	Brondesbury Park	9	Hatch End	17	South Hampstead
2	Bushey	10	Headstone Lane	18	South Kenton
3	Caledonian Road & Barnsbury	11	Kensal Rise	19	South Tottenham
4	Carpenders Park	12	Kentish Town West	20	Upper Holloway
5	Crouch Hill	13	Kilburn High Road	21	Walthamstow Queen's Road
6	Finchley Road & Frognal	14	Leyton Midland Road	22	Wanstead Park
7	Hackney Wick	15	Leytonstone High Road	23	Watford High St
8	Harringay Green Lanes	16	South Acton	24	Woodgrange Park

SCHEDULE 8.2

MSS Regime

1. INTRODUCTION

Throughout the Concession Period, RfL or its nominee will conduct Mystery Shopper Surveys to ascertain the experience of passengers on Passenger Services and at Stations. Each Mystery Shopper Survey will investigate the following main aspects of that experience:

- (a) train condition;
- (b) train cleanliness;
- (c) station condition;
- (d) station cleanliness; and
- (e) staff behaviour.

2. METHODOLOGY AND SURVEYS

2.1 The Mystery Shopper Survey methodology and questionnaire is in the agreed terms marked *MSSMQ*.

2.2 Mystery Shopper Surveys will:

- (a) be conducted quarterly:
 - (i) if not by RfL, by a specialist contractor appointed by RfL with experience of conducting similar surveys for RfL; and
 - (ii) in accordance with the Mystery Shopper Survey questionnaire and methodology;
- (b) consist of a number of visits to Stations and a number of trips on the Passenger Services to complete the questionnaire; and
- (c) be conducted across all days of the week and times of day, and then weighted according to passenger usage.

2.3 RfL shall:

- (a) procure that the results of any Mystery Shopper Survey are provided to the Operator as soon as reasonably practicable following completion of such surveys; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to this paragraph 3.

2.4 The results of any Mystery Shopper Survey will be used to determine the Operator's performance against this MSS Regime in accordance with paragraph 3.

2.5 In respect of the ELL, the following provisions shall apply:

- (a) the MSS Regime shall only apply to relevant trains with effect from the date of commencement of ELL Passenger Services, but the Target MSS Level, Remedial Plan MSS Benchmark and Default MSS Benchmark shall apply (commencing in the year 2009/2010) to those ELL Stations for which the Operator is Facility Owner (irrespective of whether ELL Passenger Services have commenced, and regardless of the number of ELL Stations for which the Operator is Facility Owner); and
- (b) the MSS Regime shall apply to a particular ELL Station from the date when the Operator becomes Facility Owner at such ELL Station.

3. CALCULATION OF PERFORMANCE

3.1 Each Mystery Shopper Survey will produce a score of the Operator’s performance against All Measures (as defined in the methodology comprising part of the Mystery Shopper Survey methodology and questionnaire in the agreed terms marked *MSSMQ*) in relation to each MSS Route in the quarter to which it relates, against the criteria specified in that document (each an *MSS Score*).

3.2 As soon as reasonably practicable after completion of any such survey, RfL shall calculate the Operator’s performance in respect of the quarter to which that survey relates in accordance with the following:

$$MSSP = RMSSB - MSS_{maa}$$

where:

MSSP means the Operator’s performance, being the difference between the MSS Benchmark for any MSS Route and the MSS Regime moving annual average of MSS Scores, determined in accordance with this paragraph 3.2, that relate to that MSS Route;

RMSSB means the relevant MSS Benchmark for that MSS Route for the year in which that quarter occurs; and

MSS_{maa} means:

$$\frac{LMSSS + PMSSS}{n}$$

LMSSS means the latest MSS Score for that MSS Route determined pursuant to that Mystery Shopper Survey;

PMSSS means each previous MSS Score for that MSS Route for the number of Mystery Shopper Surveys determined pursuant to factor *n*, other than the latest MSS Score for that MSS Route; and

n means the number of Mystery Shopper Surveys carried out in the period of twelve consecutive months, ending on the completion of that Mystery Shopper Survey.

3.3 For as long as RfL or its nominee has conducted less than three Mystery Shopper Surveys during the Concession Period in relation to the following MSS Routes:

- (a) the WJELL;
- (b) the NLL and the WLL; and
- (c) the GOB,

RfL shall, for the purposes of performing the calculation specified in paragraph 3.2 in relation to each of those MSS Routes, assume that the Operator has performed at the MSS Target Level for 2007/2008 that relates to each such MSS Route, as specified in the Appendix.

3.4 For as long as RfL or its nominee has conducted less than three Mystery Shopper Surveys during the Concession Period in relation to the ELL, RfL shall, for the purposes of performing the calculation specified in paragraph 3.2 in relation to that MSS Route, assume that each MSS Score comprising the factor *PMSSS* is equal to the MSS Target Level for 2009/2010 that relates to that MSS Route, as specified in the Appendix.

3.5 The MSS Target Levels and the MSS Benchmarks are specified in the Appendix.

4. REMEDIES AVAILABLE TO RFL

Performance against the Remedial Plan MSS Benchmarks

4.1 If following the latest Mystery Shopper Survey, the number calculated pursuant to paragraph 3.2 in respect of any MSS Route is, by reference to the Remedial Plan MSS Benchmark for that MSS Route and the year in which that Mystery Shopper Survey occurred, equal to or exceeds zero, then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 of Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

Performance against the Default MSS Benchmarks

4.2 If following the latest Mystery Shopper Survey, the number calculated pursuant to paragraph 3.2 in respect of any MSS Route is, by reference to the Default MSS Benchmark for that MSS Route and the year in which that Mystery Shopper Survey occurred, equal to or exceeds zero, then an Event of Default shall have occurred and the provisions of Schedule 14 (*Remedies, Termination and Expiry*) shall apply.

APPENDIX TO SCHEDULE 8.2

MSS Target Levels and MSS Benchmarks

Column 1	Column 2			Column 3			Column 4			Column 5		
MSS Route	WJELL			NLL + WLL			GOB			ELL		
Year	Target MSS Level	Remedial Plan MSS Benchmark	Default MSS Benchmark	Target MSS Level	Remedial Plan MSS Benchmark	Default MSS Benchmark	Target MSS Level	Remedial Plan MSS Benchmark	Default MSS Benchmark	Target MSS Level	Remedial Plan MSS Benchmark	Default MSS Benchmark
2007/2008	67	65	62	67	65	62	65	63	60	N/A	N/A	N/A
2008/2009	68	66	63	68	66	63	66	64	61	N/A	N/A	N/A
2009/2010	69	67	64	69	67	64	67	65	62	69	67	64
2010/2011	70	68	65	70	68	65	68	66	63	70	68	65
2011/2012	72	70	67	72	70	67	69	67	64	72	70	67
2012/2013	74	72	68	74	72	68	70	68	65	74	72	68
2013/2014	76	74	70	76	74	70	72	70	67	76	74	70
2014/2015	76	74	70	76	74	70	72	70	67	76	74	70
2015/2016	77	75	71	77	75	71	73	71	68	77	75	71

SCHEDULE 8.3

CSS Regime

1. INTRODUCTION

1.1 The purpose of this CSS Regime is to take account of the experience of passengers on Passenger Services and at Stations, in order to monitor customer perception of the services provided by the Operator. RfL intends that the monitoring of that customer perception will be carried out:

- (a) from the Start Date until the second anniversary of the Start Date, by using the results of National Passenger Surveys in accordance with paragraph 3; and
- (b) thereafter and for the remainder of the Concession Period, by using the results of Customer Satisfaction Surveys in accordance with paragraph 4.

1.2 RfL may serve a notice on the Operator requiring the Operator to implement the customer satisfaction regime developed pursuant to paragraph 4, specifying in such notice, the date from which that implementation shall apply.

1.3 If RfL serves such notice on the Operator, then a Change shall occur.

2. NATIONAL PASSENGER SURVEYS

2.1 The Rail Passengers' Council will, for the purposes of this CSS Regime, carry out National Passenger Surveys twice a year in accordance with a National Passenger Survey methodology and questionnaire to be agreed between the parties, acting in good faith, prior to the Start Date. If the parties cannot agree the terms of that methodology and questionnaire, then RfL shall reasonably determine such terms.

2.2 The Operator shall co-operate with the carrying out of any National Passenger Survey in accordance with the requirements of paragraph 2 of Schedule 1.5 (*Information about Passengers*).

2.3 The results of any National Passenger Survey carried out during the Concession Period will be used to determine the Operator's performance against this CSS Regime in accordance with paragraph 3.

2.4 When the Operator becomes the Facility Owner for the ELL Stations:

- (a) customer perception of the services provided by the Operator at those stations will be surveyed for the purposes of this CSS Regime as part of any National Passenger Survey yet to be carried out in that year and for the remainder of the Concession Period; but
- (b) the NPS Target Levels and the Remedial Plan NPS Benchmarks will remain the same.

3. CALCULATION OF PERFORMANCE

3.1 Each National Passenger Survey carried out will produce a score against the criteria specified in the questionnaire and methodology (each an *NPS Score*) of customer perception of the services provided by the Operator in the six months to which the National Passenger Survey relates.

3.2 As soon as reasonably practicable after completion of any such survey, RfL shall calculate the Operator's performance in respect of the six months to which that survey relates in accordance with the following:

$$\text{NPSP} = \text{NPSB} - \text{NPS}_{\text{maa}}$$

where:

NPSP means the Operator's performance, being the difference between the NPS Benchmark for the year in which those six months occur and the NPS Regime moving annual average of NPS Scores, determined in accordance with this paragraph 3.2;

NPSB means the NPS Remedial Plan Benchmark for the year in which those six months occur; and

NPS_{maa} means:

$$\frac{\text{LNPSS} + \text{PNPSS}}{n}$$

LNPSS means the latest NPS Score determined pursuant to that National Passenger Survey;

PNPSS means each NPS Score for the number of National Passenger Surveys determined pursuant to factor *n*, other than the latest NPS Score; and

n means the number of National Passenger Surveys carried out in the period of twelve consecutive months, ending on the completion of that National Passenger Survey.

3.3 For as long as the Rail Passengers' Council has conducted less than two National Passenger Surveys during the Concession Period, RfL shall, for the purposes of performing the calculation specified in paragraph 3.2, assume that the factor *PNPSS* is equal to the Target NPS Level for 2007/2008, as specified in the Appendix.

3.4 The Target NPS Levels and the Remedial Plan NPS Benchmarks are specified in the Appendix.

4. CUSTOMER SATISFACTION SURVEYS

4.1 As and when required by RfL, the Operator shall co-operate with RfL to facilitate the migration from using National Passenger Surveys under this CSS Regime to monitor customer perception of the services provided by the Operator, to using Customer Satisfaction Surveys for that purpose.

4.2 Such co-operation on the part of the Operator shall include meeting with RfL as and when reasonably required and providing RfL with its informed opinion for the purpose of agreeing amongst other things:

- (a) the criteria by which customer perception of the services provided by the Operator will be measured;
- (b) the changes that need to be made to this Schedule 8.3 and the remainder of this Agreement to give effect to RfL's intention set out in paragraph 1.1.

4.3 The parties hereby agree that the following shall apply in respect of the CSS Regime that is to be operated following the service of the notice referred to in paragraph 1.2:

- (a) Customer Satisfaction Surveys will be carried out, if not by RfL, by a specialist contractor appointed by RfL;
- (b) Customer Satisfaction Surveys will be carried out quarterly in accordance with Customer Satisfaction Survey methodology and questionnaire to be agreed between the parties, acting in good faith prior to the Start Date. If the parties cannot agree the terms of that methodology and questionnaire, then RfL shall reasonably determine such terms;
- (c) the Customer Satisfaction Survey methodology and questionnaire will be based on the methodology and questionnaire used on the LUL network as at the date of this Agreement;
- (d) no less than four Customer Satisfaction Surveys will be carried out each year and the results of such surveys shall be used by the parties to determine the Target CSS Levels and the Remedial Plan CSS Benchmarks for the remainder of the Concession Period;
- (e) in determining each Remedial Plan CSS Benchmark, the parties hereby agree that those benchmarks shall represent 95 per cent. of the relative agreed or determined Target CSS Level;
- (f) once the Target CSS Levels and the Remedial Plan CSS Benchmarks have been set, the results of any further Customer Satisfaction Survey shall produce a score against the criteria referred to in paragraph 4.2(a) (a *CSS Score*), which will be used to monitor customer perception of the services provided by the Operator on a moving annual average in accordance with paragraph 3.2 against those benchmarks, substituting references to National Passenger Surveys and NPS in that paragraph with references to Customer Satisfaction Survey and CSS; and
- (g) for so long as RfL or its nominee has conducted less than four Customer Satisfaction Surveys during the Concession Period, RfL shall, for the purposes of performing the calculation specified in paragraph 3.2, assume that the Operator has performed at the Target CSS Level for the first year in which the new CSS Regime is to apply.

4.4 If the parties cannot agree the requirements of the CSS Regime contemplated by this paragraph 4, then RfL shall reasonably determine the requirements of the CSS Regime.

4.5 In agreeing or reasonably determining the features of the CSS Regime contemplated by this paragraph 4, the parties or RfL (as the case may be) shall do so with the purpose of ensuring that the Operator does not suffer a loss or is not subject to an increased risk as a consequence of the implementation of that regime.

- 4.6 To the extent the CSS Regime is to be implemented, the Operator shall:
- (a) grant access on Passenger Services and at Stations to RfL or its specialist contractor to carry out Customer Satisfaction Surveys; and
 - (b) otherwise co-operate with RfL or its specialist contractor as reasonably requested by RfL in that implementation.

5. REMEDIES AVAILABLE TO RFL

If following the latest National Passenger Survey or Customer Satisfaction Survey (as the case may be), the number calculated pursuant to paragraph 3.2. is, by reference to the Remedial Plan NPS Benchmark or Remedial Plan CSS Benchmark (as the case may be) for the year in which that National Passenger Survey or Customer Satisfaction Survey (as the case may be) occurred, equal to or exceeds zero, then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 of Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

APPENDIX TO SCHEDULE 8.3

Target NPS Levels and Remedial Plan NPS Benchmarks

Column 1	Column 2	Column 3
Year	Target NPS Level	Remedial Plan NPS Benchmark
2007/2008	72	68
2008/2009	73	69
2009/2010	74	70
2010/2011	75	71
2011/2012	76	72
2012/2013	78	74
2013/2014	80	76
2014/2015	80	76
2015/2016	81	77

SCHEDULE 9

COMMITTED OBLIGATIONS

Schedule 9.1: List of Committed Obligations and Related Provisions

Schedule 9.2: Miscellaneous Provisions

Schedule 9.3: Late/Non Completion of Committed Obligations

**Appendix: Committed Obligations to which Committed
Obligation Payment Adjustments Apply**

SCHEDULE 9.1

List of Committed Obligations and Related Provisions

Column 1	Column 2	Column 3
No.	Committed Obligation⁴⁴	Delivery Date
<p>1.</p>	<p>WILLESDEN DEPOT IMPROVEMENTS</p> <p>(a) The Operator shall install at Willesden Depot an automated carriage wash plant.</p> <p>(b) The Operator shall spend at least [REDACTED] All financial figures set out in this Schedule at Willesden Depot on the installation of the automated carriage wash plant referred to in paragraph 1(a) and associated works, including concrete base provision, plant room, and utilities provision.</p> <p>(c) The Operator shall spend at least [REDACTED] on improvements to Willesden Depot which may include:</p> <ul style="list-style-type: none"> (i) installation of an underframe washer; (ii) installation of additional cleaning walkways, lighting, access staging and water points; (iii) provision of new security fencing on depot boundaries, where necessary, and gating on all road and vehicle entrances; (iv) installation of CCTV; (v) improved amenities; and (vi) improved fume extraction. 	<p>30 April 2008</p> <p>30 April 2008</p> <p>31 December 2008</p>
<p>2.</p>	<p>FLEET RELIABILITY MANAGEMENT PROCESS</p> <p>The Operator shall develop a fleet reliability management process which shall incorporate all of the elements of the “20 Point Plan” produced by the National Fleet Reliability</p>	<p>31 October 2008</p>

⁴⁴ All financial figures set out in this Schedule are exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
	Improvement Programme coordinated by ATOC.	
3.	<p>BEHAVIOURAL ACCIDENT PREVENTION PROCESS</p> <p>The Operator shall establish a 'Human Factors Working Group' to develop a behavioural accident prevention process and to undertake post incident analysis.</p>	31 May 2008
4.	<p>REGENERATIVE BRAKING PREPARATION WORK</p> <p>(a) By 1 September 2007 the Operator shall have initiated discussions by having held meetings with Network Rail, TfL, LUL and the New Trains Manufacturer in relation to the use of regenerative braking on all Routes.</p> <p>(b) By 1 September 2007 the Operator shall appoint a project manager to oversee its work programme to introduce regenerative braking.</p> <p>(c) The Operator shall use reasonable endeavours to obtain approvals from the New Trains Manufacturer and the relevant Infrastructure Manager (as necessary) to allow operation using regenerative braking on all relevant Routes.</p>	<p>1 September 2007</p> <p>1 September 2007</p> <p>None</p>
5.	<p>REGENERATIVE BRAKING IMPLEMENTATION</p> <p>As soon as (i) any of the Infrastructure Managers and (ii) the New Trains Manufacturer indicate that approval has been obtained to use regenerative braking on any part of any Route, the Operator shall train its drivers such that operation using regenerative braking:</p> <p>(a) on that Route (being a Route other than the ELL Core Route) commences as soon as practicable; and</p> <p>(b) on the ELL Core Route commences on or before the commencement of ELL Passenger Services.</p>	<p>As soon as both approvals are confirmed to the Operator</p> <p>(a) As soon as practicable thereafter</p> <p>(b) Commencement of ELL Passenger Services</p>
6.	<p>NEW DMU TRAINS</p> <p>The Operator shall introduce the New DMU Trains into the Train Fleet to replace the interim DMU Fleet (as set out in row 3 of Table 2 in the Appendix (<i>The Train Fleet</i>) to Schedule 4.1 (<i>The Train Fleet - General</i>)).</p>	30 September 2009

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
7.	<p>BRANDING</p> <p>The Operator shall apply the London Overground logotype to the exterior of the Interim Fleet and the interim DMU Fleet (as set out in row 3 of Table 2 in the Appendix (<i>The Train Fleet</i>) to Schedule 4.1 (<i>The Train Fleet - General</i>)) within one Reporting Period after the Start Date in accordance with TfL's branding requirements notified to the Operator in accordance with paragraph 2.3 of Schedule 17.2 (<i>Maintenance of Operating Assets</i>).</p>	One Reporting Period after the Start Date
8.	<p>PERFORMANCE MANAGEMENT SYSTEM</p> <p>The Operator shall procure the "Compass" performance management system with necessary availability for access by Network Rail, LUL and RfL, such management system to include a "Real Time Train Service Alterations" feature.</p>	31 December 2007
9.	<p>PERFORMANCE AND SECURITY INITIATIVES</p> <p>The Operator shall spend at least [REDACTED] on joint initiatives with Network Rail relating to performance and/or security measures which the Operator may, in its absolute discretion, select.</p>	31 December 2009
10.	<p>LEARNING CENTRE</p> <p>(a) The Operator shall establish a learning centre with classrooms and appropriate support facilities, which will be used to deliver all classroom based training.</p> <p>(b) The Operator shall spend at least [REDACTED] to equip the learning centre.</p>	31 December 2008 31 December 2008
11.	<p>LEARNING AND DEVELOPMENT MANAGER</p> <p>The Operator shall appoint a Learning and Development Manager by the Start Date to coordinate the Operator's training and development programme and to be responsible for the Learning Centre.</p>	Start Date

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
<p>12.</p>	<p>TRAINING</p> <p>(a) The Operator shall develop the following training courses such that they can be taken up as appropriate by members of staff:</p> <ol style="list-style-type: none"> 1. 'Conflict Avoidance'; 2. 'Discrimination and Hate Crime'; 3. 'Community Engagement and Consultation'; 4. 'Equality and Inclusion'; and 5. 'Diversity Competency'. <p>(b) The Operator shall ensure that 95 per cent. of the number of employees employed by the Operator at the Start Date shall have taken up courses 2, 4 and 5 referred to in paragraph 12(a) within six months of the Start Date.</p> <p>(c) The Operator shall identify those of its employees dealing with passengers that need to attend course 1 in paragraph 12(a) and shall produce a programme within three months after the Start Date to deliver this course to those employees.</p> <p>(d) The Operator shall spend at least [REDACTED] by 31 March 2009 on staff training activities and [REDACTED] per Concession Year thereafter excluding, in each case, amounts comprising staff time costs.</p>	<p>Six months after the Start Date</p> <p>Six months after the Start Date</p> <p>Three months after the Start Date</p> <p>31 March 2009 and end of each subsequent Concession Year</p>
<p>13.</p>	<p>EMPLOYEE QUALIFICATIONS</p> <p>The Operator shall undertake an audit of, and establish a database of, its employees' qualifications within six months after the Start Date.</p>	<p>6 months after the Start Date</p>
<p>14.</p>	<p>STAFF ATTITUDE SURVEY</p> <p>The Operator shall carry out a survey amongst a reasonably representative selection of its employees in order to monitor their opinions, concerns and motivations. The first survey shall be completed by 31 March 2008 and thereafter a further survey shall be completed by the end of each Concession Year.</p>	<p>31 March 2008 and thereafter annually</p>

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
<p>15.</p>	<p>VIRTUAL EXECUTIVE TEAM, VIRTUAL OPERATIONS TEAM AND LRC DELIVERY</p> <p>(a) (i) The Operator shall form a team, chaired by the Operator’s Managing Director and including senior representatives from Network Rail, subject to Network Rail’s co-operation with the purpose to provide an integrated strategic focus for the LRC Routes, with principal emphasis on performance improvement, infrastructure enhancement, Station refurbishment and timetable development (the <i>Virtual Executive Team</i>).</p> <p>(ii) The Virtual Executive Team shall meet at least four times per calendar year from 31 January 2008.</p> <p>(b) (i) The Operator shall form a virtual operations team (including control manager representatives from Network Rail and LUL, subject to Network Rail’s and LUL’s cooperation) with the purpose of providing an integrated focus on current operations, seasonal performance planning and the development of procedures for service control and service recovery (the <i>Virtual Operations Team</i>).</p> <p>(ii) The Virtual Operations Team shall meet at least once each calendar month from 31 January 2008.</p> <p>(c) (i) The Operator shall form an LRC delivery group (including representatives from Network Rail, subject to Network Rail’s cooperation). Its purpose will be to focus on driving the development of the annual Joint Performance Improvement Plan.</p> <p>(ii) This group shall meet at least once each calendar month from 31 January 2008.</p>	<p>31 January 2008</p> <p>Each calendar year from 31 January 2008</p> <p>31 January 2008</p> <p>Each calendar month from 31 January 2008</p> <p>31 January 2008</p> <p>Each calendar month from 31 January 2008</p>
<p>16.</p>	<p>CONTROL CENTRES</p> <p>Subject to receipt of appropriate safety validation, the Operator shall:</p>	

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
	<p>(a) establish the NLR Control Centre at its headquarters while retaining a continuing presence in Network Rail's Anglia Integrated Control Centre;</p> <p>(b) at least two months prior to the commencement of ELL Test Running, establish the ELL Control Centre at the ELL OBC; and</p> <p>(c) transfer the location of the control of passenger information and security systems for the Southern Stations to the ELL OBC from their location as at the date of transfer of Facility Owner responsibility to the Operator.</p>	<p>3 months after the Start Date</p> <p>Two months prior to commencement of ELL Test Running</p> <p>No later than the commencement of ELL Passenger Services operated between Dalston Junction Station and West Croydon / Crystal Palace / New Cross</p>
17.	REVIEW OF CONTROL ARRANGEMENTS	
	<p>(a) The Operator shall spend at least [REDACTED] on engaging an operational consultancy whose identity and scope of instruction has been discussed with RfL to:</p> <p>(i) review the NLR Control Centre arrangements and associated interfaces, such review to be completed no later than 12 months after the Start Date; and</p> <p>(ii) review the ELL Control Centre arrangements and associated interfaces such review to be completed no later than 12 months after the ELL Commencement Date.</p> <p>(b) The reports produced as a result of each review specified in paragraph 17(a) will be made available to RfL, LUL and Network Rail and will be discussed at the next meeting of the Virtual Executive Team following the completion of each review, after which the Operator will take such appropriate actions as it considers necessary.</p>	<p>12 months after the Start Date</p> <p>12 months after the ELL Commencement Date</p>

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
18.	<p>JOINT EMERGENCY. CONTINGENCY AND RECOVERY PLANS</p> <p>The Operator shall establish with Network Rail, LUL and other train and freight operating companies joint emergency, contingency and recovery plans, which will outline principles and details for dealing with different disruption scenarios, strategies for diversionary routes, emergency timetable arrangements, station management, communication management and arrangements for restoring the full extent of the Concession Services at the earliest opportunity, together with the resumption priorities for all train and freight operating companies on shared route sections.</p>	30 June 2008
19.	<p>TMIS</p> <p>The Operator shall provide enhanced “TMIS” for operations control, information control and traincrew control as a common train mapping system.</p>	31 May 2008
20.	<p>SEVERE WEATHER PREPAREDNESS</p> <p>The Operator shall develop an integrated management plan for severe weather.</p>	1 December 2007
21.	<p>WILLESDEN JUNCTION STATION BUS FORECOURT</p> <p>The Operator shall spend at least [REDACTED] to improve, at Willesden Junction Station, the bus forecourt and station approaches from Old Oak Lane.</p>	3 years after the Start Date
22.	<p>STATION ENHANCEMENTS: NETWORK RAIL TECHNICAL APPROVAL RESOURCE</p> <p>The Operator shall provide at least [REDACTED] of funding to Network Rail to provide a dedicated resource within Network Rail to manage and work on the technical approval and consent processes for the Stations Phase 2 Works and Stations Phase 3 Works.</p>	Issue of final Compliance Certificate in respect of all Milestones (as defined in the Stations Enhancements Works Agreement) of the Stations Phase 3 Works

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
<p>23.</p>	<p>STATIONS SIGNAGE</p> <p>(a) The Operator shall spend at least [REDACTED] on signage at Stations within six months of the Start Date.</p> <p>(b) The Operator shall:</p> <p>(i) provide a summary sign or poster at Stations in relevant minority ethnic languages where more than 15 per cent. of the local community speak such minority ethnic languages; and</p> <p>(ii) provide appropriate minority ethnic language labelling on POMs where more than 15 per cent. of the local community speak such minority ethnic languages.</p> <p>(c) The Operator shall provide additional signage in French, Spanish, German and Italian focused on travel to and from venues to be used in the Games at the following Stations:</p> <p>(i) Willesden Junction;</p> <p>(ii) West Hampstead;</p> <p>(iii) Gospel Oak;</p> <p>(iv) Camden Road;</p> <p>(v) Dalston Kingsland;</p> <p>(vi) Kensington Olympia;</p> <p>(vii) Dalston Junction;</p> <p>(viii) Shadwell;</p> <p>(ix) New Cross Gate;</p> <p>(x) Norwood Junction; and</p> <p>(xi) West Croydon.</p>	<p>6 months after the Start Date</p> <p>In time for the Games</p>
<p>24.</p>	<p>STAFF ACCOMMODATION AT STATIONS ON THE GOB ROUTE</p> <p>The Operator shall spend at least [REDACTED] on the provision of staff accommodation at Stations on the GOB Route, such accommodation to be provided in accordance with paragraph 2.8 of Schedule 1.11 (<i>Staffing</i>).</p>	<p>31 May 2010</p>

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
25.	<p>CYCLE FACILITIES</p> <p>The Operator shall spend at least [REDACTED] on cycle facilities at Stations within the first three years after the Start Date.</p>	3 years after the Start Date
26.	<p>SUSTAINABILITY REVIEW</p> <p>(a) The Operator shall undertake a review of the sustainability issues at Willesden Junction Station and shall produce a written report covering as a minimum the following issues:</p> <ul style="list-style-type: none"> (i) energy and water consumption; (ii) thermal insulation; and (iii) waste management and recycling opportunities. <p>(b) The purpose of such review is for the Operator to identify measures that could improve the sustainability of Willesden Junction Station and, in particular, to identify those measures that could be incorporated into the Stations Phase 3 Works specification to achieve this.</p> <p>(c) If the results of such review indicate that there are significant opportunities to improve the sustainability of Willesden Junction Station, the Operator shall discuss with RfL whether further reviews should be undertaken to identify further measures that could be incorporated into the Stations Phase 3 Works to improve the sustainability of other Stations.</p>	29 February 2008
27.	<p>ASSET MANAGEMENT</p> <p>The Operator shall implement, or procure the implementation of a computer-based asset management, maintenance and performance system. Its purpose shall be to ensure efficient management of Station maintenance and Station cleaning activities and to provide information required to operate the KPI Regime.</p>	31 May 2008
28.	<p>REMODELLED TICKET OFFICE AT ACTON CENTRAL</p> <p>The Operator shall spend at least [REDACTED] on the provision of a remodelled ticket office at Acton Central Station to trial a “Travel Point” design concept to provide</p>	1 September 2008

Column 1	Column 2	Column 3
No.	Committed Obligation ⁴⁴	Delivery Date
	information and assistance to passengers in addition to retailing tickets.	
29.	<p>POCKET TIMETABLES</p> <p>(a) The Operator shall publish pocket timetables in Bengali, Hindi, Punjabi, Gujarati and Urdu in accordance with paragraph 1.1(a)(i) of Schedule 1.3 (<i>Passenger Facing Obligations</i>).</p> <p>(b) After their publication by 31 October 2008, such timetables shall be updated in accordance with paragraph 1.2(a) of Schedule 1.3.</p>	<p>31 October 2008</p> <p>N/A</p>
30.	<p>SMS TRAIN SERVICE UPDATE</p> <p>The Operator shall introduce a real-time SMS train information update service for use by passengers at no cost to them.</p>	31 October 2008
31.	PASSENGER CALL CENTRE	
	The Operator shall ensure that there are staff available through the Passenger Call Centre, at its times of opening, who are able to respond, within 12 working hours, to queries in Bengali and Hindi.	31 May 2008
32.	<p>STREET SIGNAGE ON STATION APPROACHES</p> <p>The Operator shall:</p> <p>(a) spend at least [REDACTED] per Concession Year on signage improvement schemes to better identify access to Stations; and</p> <p>(b) within six months of the Start Date, undertake an audit of each Station to assess the adequacy of street signage within a half-mile radius for the purposes of facilitating access to the Station.</p>	<p>Annual from the Start Date</p> <p>Six months after the Start Date</p>
33.	<p>REVENUE PROTECTION INITIATIVES</p> <p>The Operator shall:</p> <p>(a) procure a back office system for the purposes of:</p>	

Column 1	Column 2	Column 3																						
No.	Committed Obligation ⁴⁴	Delivery Date																						
	<p>(i) providing support to revenue protection staff during their undertaking of revenue protection activities on trains operating the Passenger Services and at Stations; and</p> <p>(ii) assisting with the administration associated with the collection of penalty fares pursuant to the TfL Penalty Fares Scheme and with the operation of the associated appeal system;</p> <p>(b) use all reasonable endeavours to introduce a new incentive scheme for the Operator's revenue protection employees to replace the commission-based system operated by Silverlink; and</p> <p>(c) spend at least [REDACTED] on a publicity campaign to create awareness of the unacceptability of travelling without a valid ticket.</p>	<p>Start Date</p> <p>21 January 2008</p> <p>One month after the Start Date</p>																						
<p>34.</p>	<p>SECURE STATION ACCREDITATION</p> <p>(a) The Operator shall ensure that the total number of Stations that are Secure Stations (as defined at the date hereof under the Secure Stations Accreditation Scheme) as at the dates specified in column 1 is equal to the number specified in column 2, in each case in the table below:</p> <table border="1" data-bbox="518 1335 1093 1765"> <thead> <tr> <th data-bbox="518 1335 758 1370">Column 1</th> <th data-bbox="758 1335 1093 1370">Column 2</th> </tr> <tr> <th data-bbox="518 1370 758 1438">Date</th> <th data-bbox="758 1370 1093 1438">Total Number of Secure Stations</th> </tr> </thead> <tbody> <tr> <td data-bbox="518 1438 758 1473">30 June 2008</td> <td data-bbox="758 1438 1093 1473">4</td> </tr> <tr> <td data-bbox="518 1473 758 1509">30 June 2009</td> <td data-bbox="758 1473 1093 1509">8</td> </tr> <tr> <td data-bbox="518 1509 758 1545">30 June 2010</td> <td data-bbox="758 1509 1093 1545">18</td> </tr> <tr> <td data-bbox="518 1545 758 1581">30 June 2011</td> <td data-bbox="758 1545 1093 1581">28</td> </tr> <tr> <td data-bbox="518 1581 758 1617">30 June 2012</td> <td data-bbox="758 1581 1093 1617">38</td> </tr> <tr> <td data-bbox="518 1617 758 1653">30 June 2013</td> <td data-bbox="758 1617 1093 1653">38</td> </tr> <tr> <td data-bbox="518 1653 758 1688">30 June 2014</td> <td data-bbox="758 1653 1093 1688">38</td> </tr> <tr> <td data-bbox="518 1688 758 1724">30 June 2015</td> <td data-bbox="758 1688 1093 1724">38</td> </tr> <tr> <td data-bbox="518 1724 758 1760">30 June 2016</td> <td data-bbox="758 1724 1093 1760">38</td> </tr> </tbody> </table>	Column 1	Column 2	Date	Total Number of Secure Stations	30 June 2008	4	30 June 2009	8	30 June 2010	18	30 June 2011	28	30 June 2012	38	30 June 2013	38	30 June 2014	38	30 June 2015	38	30 June 2016	38	
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Column 1	Column 2	Column 3																																	
No.	Committed Obligation	Delivery Date																																	
	<p>(b) The Operator shall ensure that the difference between its scores for personal security (percentage rating “good” or “satisfied”) in National Passenger Surveys (averaged over each Concession Year and per stations and trains) and those obtained by Chiltern (or a Successor Operator thereto) shall be no greater than the relevant percentages in the following table:</p> <table border="1"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> <th>Column 3</th> </tr> <tr> <th>Concession Year</th> <th>Maximum % difference in NPS personal security score for Stations</th> <th>Maximum % difference in NPS personal security score for Trains</th> </tr> </thead> <tbody> <tr><td>1</td><td>23</td><td>38</td></tr> <tr><td>2</td><td>20</td><td>34</td></tr> <tr><td>3</td><td>18</td><td>29</td></tr> <tr><td>4</td><td>16</td><td>25</td></tr> <tr><td>5</td><td>15</td><td>21</td></tr> <tr><td>6</td><td>14</td><td>17</td></tr> <tr><td>7</td><td>12</td><td>16</td></tr> <tr><td>8</td><td>11</td><td>16</td></tr> <tr><td>9</td><td>11</td><td>16</td></tr> </tbody> </table>	Column 1	Column 2	Column 3	Concession Year	Maximum % difference in NPS personal security score for Stations	Maximum % difference in NPS personal security score for Trains	1	23	38	2	20	34	3	18	29	4	16	25	5	15	21	6	14	17	7	12	16	8	11	16	9	11	16	
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35.	<p>TRAVEL SAFE OFFICERS</p> <p>The Operator shall [REDACTED]⁴⁵, employ 25 ‘Travel Safe Officers’, the job descriptions for such roles to include specific security responsibilities, but to be determined by the Operator at the relevant time.</p>	[REDACTED]																																	
36.	<p>CORPORATE ACCREDITATIONS</p> <p>The Operator shall use and continue to use all reasonable endeavours to:</p> <p>(a) achieve Investors in People accreditation by 31 December 2010;</p> <p>(b) achieve ISO 9001 accreditation for train planning and control activities and depot operations by 31 December 2010;</p> <p>(c) develop an environmental management system which is accredited to ISO 14001 by 31 December 2010; and</p> <p>(d) develop a safety management system which is accredited to ISO 18001 by 31 December 2009.</p>	<p>31 December 2010</p> <p>31 December 2010</p> <p>31 December 2010</p> <p>31 December 2009</p>																																	

⁴⁵ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
37.	<p>TECHNICAL SUPPORT FROM PARENTS</p> <p>(a) Effective from the date of signature of this Agreement, the Operator shall ensure that by 11 May 2008 at least four members of its senior management team shall have spent at least five Business Days in Hong Kong to learn about techniques and skills employed by MTR.</p> <p>(b) The Operator shall provide the Managing Director of RfL or his alternate with an annual opportunity to have a meeting with members of the senior management team of either of the Parents to discuss the performance of the Operator.</p> <p>(c) The Operator shall procure that MTR provides time equivalent to that of two full-time employees of secondment and/or project resource to the Operator over the first two years of the Concession Period. The Operator shall hold discussions with RfL to demonstrate the appropriateness of its resourcing plans to ensure on-time delivery of the ELL Passenger Services and the Passenger Services comprising SLC2 if Priced Option 3 (SLC2) is called.</p> <p>(d) The Operator shall procure that, from the Start Date, the relevant members of senior management of either of its Parents are available to mentor their identified counterparts within the Operator's organisation by way of:</p> <ul style="list-style-type: none"> (i) regular dialogue; and (ii) ongoing availability to be contacted at any time; and (iii) a minimum of two face to face meetings per Concession Year. <p>(e) The Operator shall procure that:</p> <ul style="list-style-type: none"> (i) MTR shall undertake detailed reviews, at an appropriate time, to assess the Operator's preparedness to introduce the ELL Passenger Services and to introduce the Passenger Services anticipated to be introduced if Priced Option 3 is called; 	<p>11 May 2008</p> <p>31 December 2008 and annually thereafter</p> <p>Two years after the signature date of this Agreement</p> <p>End of each Concession Year</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	<p>(ii) at least one member of the MTR 'Executive Directorate' be available to conduct such reviews each of which shall result in a report being produced on behalf of the Operator;</p> <p>(iii) such reports are reviewed by the MTR Executive Directorate;</p> <p>(iv) following such review those reports are made available to the Virtual Executive Team and RfL; and</p> <p>(v) the relevant member of the MTR Executive Directorate is available to discuss such reports with RfL, provided reasonable notice is given.</p> <p>(f) RfL acknowledges that any report provided to it under this paragraph does not create any liability on the part of MTR and RfL shall have no additional rights or remedies against the Operator in relation to such report over and above those available to it under this Agreement.</p>	
<p>38.</p>	<p>CONTINUOUS IMPROVEMENT</p> <p>The Operator shall support "Continuous Improvement" by providing training to at least 66 per cent. of the managers of the Operator in the areas of performance analysis, problem identification and problem solving.</p>	<p>Six months after the Start Date</p>
<p>39.</p>	<p>ENVIRONMENTAL FRAMEWORK</p> <p>The Operator shall prepare an environmental framework based on the results of an environmental review of current activities and operations.</p>	<p>12 months after the Start Date</p>
<p>40.</p>	<p>PASSENGER BOARD</p> <p>(a) The Operator shall establish a "Passenger Board" as a forum for communicating with passengers and their representatives.</p> <p>(b) The Operator shall use reasonable endeavours to ensure that its representative on such Passenger Board is the Managing Director or a manager reporting directly to him.</p>	<p>31 May 2008</p> <p>N/A</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
41.	<p>STAKEHOLDER FORUM</p> <p>(a) The Operator shall establish a “Stakeholder Forum” for communicating with external and industry stakeholders (including representatives from local authorities through which the Routes pass, London TravelWatch, and local business representation groups).</p> <p>(b) The Operator shall use reasonable endeavours to ensure that its representative on such Stakeholder Forum is the Managing Director or a manager reporting directly to him.</p>	<p>31 May 2008</p> <p>N/A</p>
42.	<p>MEET THE MANAGER SESSIONS</p> <p>(a) The Operator shall from 1 January 2008 hold at least 15 “Meet the Manager” sessions at Stations per calendar year. This commitment shall increase to at least 20 such sessions each calendar year on and from the ELL Commencement Date.</p> <p>(b) The Operator shall use reasonable endeavours to ensure that, as a minimum, its representatives at such sessions shall be the Managing or a manager reporting directly to him and the appropriate local manager on the Route where the session is held.</p>	<p>31 December 2008 and annually thereafter</p> <p>N/A</p>
43.	<p>OLYMPIC DEVELOPMENT AUTHORITY</p> <p>(a) The Operator shall establish a “Joint Working Group” with the Olympic Development Authority.</p> <p>(b) The Operator shall use reasonable endeavours to ensure that its representative on such Joint Working Group is the Managing Director or a manager reporting directly to him.</p>	<p>31 May 2008</p> <p>N/A</p>
44.	<p>STAFF UNIFORMS</p> <p>The Operator shall use all reasonable endeavours to introduce new staff uniforms (branded in accordance with the branding requirements issued pursuant to paragraph 2.3 of Schedule 17.2 (<i>Maintenance of Operating Assets and Branding</i>) on the Start Date, but in any event shall introduce such uniforms by no later than eight weeks after the Start Date.</p>	<p>Eight weeks after the Start Date</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
<p>45.</p>	<p>ISSUE OF SERVICE LEVEL COMMITMENTS</p> <p>If Priced Option 3 is called by RfL and RfL amends the terms of SLC2 as specified in the agreed terms marked SLC2, or, notwithstanding the issue by RfL of Priced Option 5, RfL subsequently amends the terms of either or all of SLC1a, SLC1b, SLC1c, SLC1d and SLC1e, the Operator shall:</p> <ul style="list-style-type: none"> (a) use industry best-practice modelling systems (comprising ‘CMS’, ‘TRACS’ and ‘RailSys’ as appropriate) for the development of a Timetable that is compliant with the relevant Service Level Commitment and shall produce associated resource plans; (b) maintain the planned levels and introduction dates of Hot Standbys (both with and without drivers) that the Operator has included in the Operational Model for the Timetables to operate SLC1c and SLC1e; (c) provide the number of maintenance spare Rolling Stock Units for the New Trains as calculated in accordance with paragraph 1.2.1 of Schedule 2 to the TSA; and (d) calculate the level of spare train crew resources by using the methodology specified in the Operational Model. 	<p>No later than three months after Priced Option 3 is called by RfL, and SLC2 is amended</p>
<p>46.</p>	<p>“FIRST 100 DAYS” PROJECT MANAGER</p> <p>The Operator shall appoint a dedicated Project Manager to oversee the delivery of its Committed Obligations and other changes that will have a visible impact on passengers) that are required to be delivered within 100 days of the Start Date.</p>	<p>2 July 2007</p>
<p>47.</p>	<p>MOBILE TRAIN CARE STAFF</p> <p>The Operator shall deploy two squads of cleaners to address in-service heavy soiling, litter clearance and removal of graffiti “tags” during the hours of 0730 to 1930 Monday to Saturday and 1200 to 1900 on Sundays on the Train Fleet as follows:</p>	

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	(a) for the NLL, WLL and WJELL, based at Willesden Junction Station; and (b) for the ELL, based at Dalston Junction Station.	From the Start Date; and From the start of ELL Passenger Services
48.	RECYCLING COMMITMENTS (a) The Operator shall consult with the “Waste and Resources Action Programme” with a view to increasing its use of recycled products in performing the Concession Services and shall share the findings of this consultation with RfL. (b) The Operator shall recycle where practicable all waste products produced by the Operator, taking into account the viability of separation, the market for separated wastes and the quantity of waste generated. (c) The Operator shall install, where practicable, and, if so installed, maintain during the Concession Period, recycling litter facilities at the Stations. (d) The Operator shall review its waste management systems to identify how waste can be reduced, the use of recycled products and the recycling of waste products can be increased and shall share the findings of this review with RfL.	Within 6 months from the Start Date From 11 May 2009 and for the duration of the Concession Period From 11 May 2009 By 11 May 2009 and by each anniversary thereafter
49.	ON-TRAIN ANNOUNCEMENTS The Operator shall prepare policy statement that: (a) specifies the standards for conductors (and drivers on DOO railway passenger services) to announce the final destination of the train and the next station stop after departure from each station, and to make announcements regarding service disruption and delays; (b) specifies the standards for the relevant customer service control to keep conductors informed via paged messages and SMS text and for drivers of DOO railway passenger services to obtain information about delays via the cab secure radio or signal post telephone;	Within six months of the Start Date or on delivery of the New Trains as relevant

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
	<p>(c) provides that a minimum of two hours of training in those standards will be provided to all existing drivers and conductors;</p> <p>(d) provides that compliance with such standards shall be required of the Operator's staff and that an assessment of compliance will form part of the annual performance reviews of the relevant staff; and</p> <p>(e) is updated upon delivery of the New Trains to ensure that the use of the announcement technology installed thereon is maximised.</p>	
<p>50.</p>	<p>SECURITY MEASURES AT CAR PARKS AND STATION APPROACHES</p> <p>The Operator shall ensure that on all Station approaches and car parks at Stations:</p> <p>(a) a minimum of 90 per cent. CCTV coverage is provided; and</p> <p>(b) a minimum lighting level of 100 lux is achieved.</p>	<p>(i) By 11 November 2008 at Kensington Olympia and Willesden Junction</p> <p>(ii) All other NLR Stations by the end of the first 30 Reporting Periods</p> <p>(iii) Southern Stations by the end of the first 10 Reporting Periods after the date on which the Operator becomes Facility Owner</p>

Column 1	Column 2	Column 3
No.	Committed Obligation	Delivery Date
51.	<p>CCTV AT SIDINGS</p> <p>The Operator shall:</p> <p>(a) spend at least [REDACTED] on relaying feed to the NLR Control Centre from CCTV cameras that at the Start Date cover stabling sidings used by the Train Fleet; and</p> <p>(b) carry out a feasibility study into the fitting of CCTV with images being transmitted back to the NLR Control Centre to those sidings where CCTV cameras are not fitted at the Start Date.</p>	<p>11 May 2008</p> <p>11 January 2008</p>
52.	<p>QUALITY OF AGENCY STAFF</p> <p>The Operator shall conduct a quality audit of agency staff used in the first six months of the Concession Period to ensure that a satisfactory quality of temporary staff are being deployed in passenger-facing roles. The audit will include an assessment of compliance with the Operator's specification for each role in respect of recruitment and training.</p>	<p>11 May 2008</p>
53.	<p>AWARENESS OF OYSTER</p> <p>The Operator shall within the first full year of the Concession Period spend at least [REDACTED] on activities to promote the use of Oyster.</p>	<p>End of the first full year of the Concession Period</p>

SCHEDULE 9.2

Miscellaneous Provisions

1. APPLICATION

This Schedule 9.2 sets out further terms which apply to the Committed Obligations set out in Schedule 9.1 (*List of Committed Obligations*) and the references to Committed Obligations in this Schedule 9 are only to the Committed Obligations in Schedule 9.1.

2. CONTINUATION OF AVAILABILITY

2.1 Save as expressly provided in this Schedule 9, the Operator shall maintain facilities established in accordance with its Committed Obligations throughout the remainder of the Concession Period.

2.2 The Operator shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence (for sickness or holiday), subject in each case to the Operator taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Schedule 9.1 (*List of Committed Obligations*) includes a commitment regarding staffing or particular appointments it plans to make:

- (a) the obligation of the Operator applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Operator is recruiting for that post, subject to the Operator using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Operator's rights in relation to the numbers or deployment of its other staff remain unaffected.

3. EXPENDITURE COMMITMENTS

Annual Expenditure

3.1 Where Schedule 9.1 (*List of Committed Obligations*) provides for the expenditure of an annual amount (or an amount over some other period) by the Operator, that amount:

- (a) is net of Value Added Tax;
- (b) is the amount required to be expended by the Operator itself or procured by the Operator to be expended; and

- (c) will be reduced pro-rata (unless otherwise stated in Schedule 9.1) where the commitment is for the expenditure of an amount per Concession Year or calendar year, for those Concession Years of less than 12 months.

Expenditure Commitments in real amounts

3.2 All expenditure commitments set out in Schedule 9.1, to the extent they have not already been incurred by the Operator, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 11.2 (*Annual Concession Payments*)).

Expenditure by Network Rail

3.3 All amounts which the Operator has committed (whether unconditionally or otherwise) pursuant to Schedule 9.1 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Operator.

4. LIAISON AND CO-OPERATION

Where the Operator is committed to liaison and co-operation under Schedule 9.1 (*List of Committed Obligations*), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Operator reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. NATURE OF COMMITMENT

5.1 Any Committed Obligation shall be in addition to any obligation of the Operator elsewhere in this Agreement and nothing in this Schedule 9 shall limit or restrict an obligation imposed on the Operator elsewhere in this Agreement.

5.2 Where in Schedule 9.1 (*List of Committed Obligations*), references are made to particular manufacturers or suppliers of equipment or services, the Operator may fulfil its relevant commitment by using reasonable equivalents.

5.3 Each commitment under this Schedule 9 shall come to an end on expiry of the Concession Period for whatever reason, save in respect of any accrued payments owed pursuant to Schedule 9.3 (*Late/Non-Completion of Committed Obligations*) but not yet paid.

6. REVIEW OF COMPLIANCE

6.1 Progress with Committed Obligations is an agenda item for Concession Performance Meetings and the Operator shall ensure that at such meetings, RfL is given such progress reports as it may reasonably request in such format as it may reasonably request.

6.2 In addition to its obligation under paragraph 6.1, the Operator shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as RfL may reasonably request.

SCHEDULE 9.3

Late/Non Completion of Committed Obligations

1. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

If the Operator fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 9.1 (*List of Committed Obligations and Related Provisions*), such late, partial or non-delivery shall constitute a contravention of this Agreement.

2. COMMITTED OBLIGATION PAYMENT ADJUSTMENT

2.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table set out in the Appendix (*Committed Obligations to which Committed Obligation Payment Adjustments Apply*) is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, the Operator shall pay to RfL the relevant Committed Obligation Payment Adjustment as indicated in column 4 of the Table.

Nature of Committed Obligation Payment Adjustment

2.2 Where “RP” is marked in column 4 of that Table next to the Committed Obligation Payment Adjustment in column 4 of that Table then the Operator shall pay:

- (a) in respect of each relevant period (including being a Reporting Period or Concession Year, as the case may be) or part thereof for which that Committed Obligation remains undelivered in full; and
- (b) until the Committed Obligation is delivered in full,

Committed Obligation Payment Adjustment, being the amount set out in column 5 of that Table, as adjusted in accordance with paragraph 2.4 (if appropriate) and column 6 of that Table shall specify whether paragraph 2.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of that Table.

2.3 Where “PB” is marked in column 4 of that Table next to the Committed Obligation Payment Adjustment in column 4 of that Table then the Operator shall pay a Committed Obligation Payment Adjustment equal to the balance of the amount set out in column 5 of that Table that remains unspent by the Operator by the date specified for delivery of that Committed Obligation in column 3 of that Table.

Pro-rating of Committed Obligation Payment Adjustment where partial delivery

2.4 Where:

- (a) in relation to any Committed Obligation that is to be subject to the terms of this paragraph 2.4 is expressed in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

- (b) the Operator has delivered or carried out the relevant activity in respect of one or more but not all of the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

Adjustment to Committed Obligation Payment Adjustment where partial spend

- 2.5 (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective, the Operator is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Operator may apply to RfL for the consent referred to in paragraph 2.5(b).
- (b) RfL's consent for the purposes of paragraph 2.5(a) is its consent for the Operator to invest any unspent amount towards the fulfilment of such other commitments as the Operator proposes at that time. That consent may not be unreasonably withheld.
- (c) If RfL consents to an application pursuant to paragraph 2.5(a) in respect of any Committed Obligation, then:
 - (i) Schedule 9.1 (*List of Committed Obligations and Related Provisions*) and this Schedule 9.3 shall be amended to reflect the terms of any new commitments; and
 - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

2.6 Any Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 11.1 (*Concession Payments*).

3. WAIVER OF PAYMENTS UNDER THIS SCHEDULE 9.3

3.1 RfL may at its reasonable discretion decide to waive its right to receive any Committed Obligation Payment Adjustment.

3.2 In deciding whether to waive such rights RfL may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

APPENDIX TO SCHEDULE 9.3

**Committed Obligations to which Committed Obligation
Payment Adjustments Apply**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA (“RP” or “PB”)	Committed Obligation Payment Adjustment (£) ⁴⁶	Does paragraph 2.4 apply to the “RP” COPA?
1	Willesden Depot Improvements	(a) 30 April 2008	RP	[REDACTED]	N/A
		(b) 30 April 2008	PB	[REDACTED]	N/A
		(c) 31 December 2008	PB	[REDACTED]	N/A
2	Fleet Reliability Management Process	31 October 2008	RP	[REDACTED]	N/A
3	Behavioural Accident Prevention Process	31 May 2008	RP	[REDACTED]	N/A
4	Regenerative Braking Preparation Work	(a) 1 September 2007	RP	[REDACTED]	N/A
		(b) 1 September 2007	RP	[REDACTED]	N/A
5	Regenerative Braking Implementation	(a) Notice from any Infrastructure Manager and the New Trains Manufacturer	RP	[REDACTED]	N/A
		(b) Commence-ment of ELL Passenger Services	RP	[REDACTED]	2.4
6	New DMU Trains	30 September 2009	RP	[REDACTED] per Rolling Stock Unit	2.4
7	Branding	One Reporting Period after the Start Date	RP	[REDACTED] per Interim Fleet [REDACTED] per DMU Fleet	2.4 2.4
8	Performance Management System	31 December 2007	RP	[REDACTED]	N/A
9	Performance and Security Initiatives	31 December 2009	PB	[REDACTED]	N/A

⁴⁶ All financial figures set out in this Schedule are exempt from disclosure under [REDACTED] and 43(2) of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA ("RP" or "PB")	Committed Obligation Payment Adjustment (£)	Does paragraph 2.4 apply to the "RP" COPA?
10	Learning Centre	(a) 31 December 2008	RP	[REDACTED]	N/A
		(b) 31 December 2008	PB	[REDACTED]	N/A
11	Learning and Development Manager	Start Date	RP	[REDACTED]	N/A
12	Training	(a) 6 months after the Start Date	(a) RP	[REDACTED]	2.4
		(b) 6 months after the Start Date	(b) RP	[REDACTED]	N/A
		(c) 3 months after the Start Date	(c) RP	[REDACTED]	N/A
		(d) 31 March 2009 and end of each subsequent Concession Year	(d) PB	[REDACTED] to 31 March 2009 and [REDACTED] each Concession Year thereafter	N/A
13	Employee Qualifications	6 months after the Start Date	RP	[REDACTED]	N/A
14	Staff Attitude Survey	31 March 2008 and thereafter by the end of each Concession Year	RP	[REDACTED] per Concession Year	N/A
15	Virtual Executive Team, Virtual Operations Team and LRC Delivery Group	(a) (i) 31 January 2008	RP	[REDACTED]	N/A
		(ii) Each calendar year from 31 January 2008	RP	[REDACTED] per meeting not held	N/A
		(b) (i) 31 January 2008	RP	[REDACTED]	N/A
		(ii) Each calendar year from 31 January 2008	RP	[REDACTED] per meeting not held	N/A
		(c) (i) 31 January 2008	RP	[REDACTED]	N/A
		(ii) Each calendar year from 31 January 2008	RP	[REDACTED] per meeting not held	N/A

Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA (“RP” or “PB”)	Committed Obligation Payment Adjustment (£)	Does paragraph 2.4 apply to the “RP” COPA?
16	Control Centres	(a) 3 months after the Start Date	RP	[REDACTED]	N/A
		(b) 2 months prior to commencement of ELL Test Running	RP	[REDACTED]	N/A
		(c) Commencement of ELL Passenger Services operated between Dalston Junction Station and West Croydon/ Crystal Palace/ New Cross	RP	[REDACTED]	
17	Review of Control Arrangements	(a) (i) 12 months after the Start Date	PB	[REDACTED]	N/A
		(ii) 12 months after the ELL Commencement Date	PB	[REDACTED]	N/A
18	Joint Emergency, Contingency and Recovery Plans	30 June 2008	RP	[REDACTED]	N/A
19	TMIS	31 May 2008	RP	[REDACTED]	N/A
20	Severe Weather Preparedness	1 December 2007	RP	[REDACTED]	N/A
21	Willesden Junction Station bus forecourt	3 years after the Start Date	PB	[REDACTED]	N/A
22	Station Enhancements: Network Rail technical approval resource	Issue of final Compliance Certificate in respect of all Milestones (as defined in the Stations Enhancements Works Agreement) for the Stations Phase 3 Works	PB	[REDACTED]	N/A

Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA ("RP" or "PB")	Committed Obligation Payment Adjustment (£)	Does paragraph 2.4 apply to the "RP" COPA?
23	Stations signage	(a) 6 months after the Start Date	RP	[REDACTED] until at least [REDACTED] is spent [REDACTED] [REDACTED] per Station if signage not applied	N/A
		(b) 11 November 2008	RP		N/A
		(c) In time for the Games	RP		N/A
24	Staff accommodation at GOB Route Stations	31 May 2010	PB	[REDACTED]	N/A
25	Cycle Facilities	3 years after the Start Date	PB	[REDACTED]	N/A
26	Sustainability Review	29 February 2008	RP	[REDACTED]	N/A
27	Asset Management	31 May 2008	RP	[REDACTED]	N/A
28	Remodelled Ticket Office at Acton Central	1 September 2008	PB	[REDACTED]	N/A
29	Pocket Timetables	31 October 2008	RP	[REDACTED]	N/A
30	SMS Train Service Update	31 October 2008	RP	[REDACTED]	N/A
31	Passenger Call Centre	31 May 2008	RP	[REDACTED]	N/A
32	Street Signage on Station approaches	(a) At the end of each Concession Year	PB	[REDACTED]	N/A
		(b) 6 months after the Start Date	RP	[REDACTED]	N/A
33	Revenue Protection Initiatives	(a) Start Date	RP	[REDACTED]	N/A
		(b) 21 January 2008	RP	[REDACTED]	N/A
		(c) one month after Start Date	PB	[REDACTED]	N/A

Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA ("RP" or "PB")	Committed Obligation Payment Adjustment (£)	Does paragraph 2.4 apply to the "RP" COPA?
34	Secure Station Accreditation	(a) Dates set out in the Table in paragraph 34(a) of Schedule 9.1	RP	[REDACTED] below per each Station below the target	N/A
		(b) Concession Years set out in the Table in paragraph 34(b) of Schedule 9.1	RP	None	N/A
35	Travel Safe Officers	[REDACTED]	RP	[REDACTED] per officer not employed	N/A
36	Corporate Accreditations	(a) 31 December 2010	RP	[REDACTED]	N/A
		(b) 31 December 2010	RP	[REDACTED]	N/A
		(c) 31 December 2010	RP	[REDACTED]	N/A
		(d) 31 December 2009	RP	[REDACTED]	N/A
37	Technical Support from Parents	(a) 11 May 2008	RP	[REDACTED]	2.4
		(b) 31 December 2008 and annually thereafter	RP	[REDACTED] per Concession Year if fails to provide access	N/A
		(c) Two years after signature date of this Agreement	RP	[REDACTED] per RP of resource not provided	N/A
		(d) End of each Concession Year	RP	[REDACTED] per Concession Year	N/A
38	Continuous Improvement	6 months after the Start Date	RP	[REDACTED]	N/A
39	Environmental Framework	12 months after the Start Date	RP	[REDACTED]	N/A
40	Passenger Board	31 May 2008	RP	[REDACTED]	N/A
41	Stakeholder Forum	31 May 2008	RP	[REDACTED]	N/A
42	Meet the Manager Sessions	31 December 2008 and annually thereafter	RP	[REDACTED] per session not held	N/A
43	ODA	31 May 2008	RP	[REDACTED]	N/A

Reference in Schedule 9.1 (paragraph)	Summary Description	Deadline	Nature of COPA ("RP" or "PB")	Committed Obligation Payment Adjustment (£)	Does paragraph 2.4 apply to the "RP" COPA?
44	Staff Uniforms	8 weeks after the Start Date	RP	[REDACTED]	2.4
47	Mobile Train Care Staff	(a) Start Date (b) Start of ELL Passenger Services	RP	[REDACTED] per Reporting Period in which non-provision occurs	N/A
48	Recycling Commitments	(a) 6 months of Start Date (b) 11 May 2009 (c) 11 May 2009 (d) 11 May 2009	RP None RP	[REDACTED] one-off payment for breach None [REDACTED] one-off payment for breach	N/A
49	On-Train Announcements	Within six months of the Start Date or on delivery of the New Trains as relevant	RP	[REDACTED] one-off payment for breach	N/A
50	Security Measures at Car Parks and Stations Approaches	(i) 11 November 2008 at Kensington Olympia and Willesden Junction Stations (ii) By the end of the first 30 Reporting Periods at all other NLR Stations (iii) At the Southern Stations, by the end of the first 10 Reporting Periods after the date on which the Operator becomes Facility Owner	RP RP RP	For each of (a) and (b): [REDACTED] per Station per Reporting Period	N/A
51	CCTV at Sidings	(a) 11 May 2008 (b) 11 January 2008	PB RP	[REDACTED] [REDACTED] one-off for non-delivery	N/A N/A
52	Quality of Agency Staff	11 May 2008	RP	[REDACTED] one-off payment for breach	N/A
53	Awareness of Oyster	End of the first Concession Year	PB	[REDACTED]	N/A

Note: Column 2 (*Summary Description*) in the Table should be read in conjunction with the relevant Committed Obligation in Schedule 9.1 (*List of Committed Obligations*) set out in the paragraph specified in column 1 (*Reference*).

SCHEDULE 10
PRICED OPTIONS

Schedule 10.1:	List of Priced Options
Schedule 10.2:	General
Schedule 10.3:	Adjustments to Concession Payments
Schedule 10.4:	Provisional Operational Benchmarks for SLC2

SCHEDULE 10.1

List of Priced Options

1. PRICED OPTION 1: STATIONS AND TRAIN ADVERTISING REVENUE

Description, objective and specification

1.1 RfL, in place of the Operator, will manage and undertake all aspects of on-train, station and other premises advertising and receive all revenue derived therefrom. RfL's management of advertising will either:

- (a) not extend to railway-style poster boards used for the display of timetables and LRC-related information; or
- (b) extend to such poster boards, in which case the Operator will receive free access to such boards for the display of LRC-related information.

Price for exercising Priced Option 1 (in £ base date)

1.2 Where this Priced Option 1 is called by RfL in accordance with its terms, the price for this Priced Option 1 shall be the price set out in Table 1 in Schedule 10.3 (*Adjustments to Concession Payments*), and adjustments to Concession Payments shall be made accordingly.

Latest date for calling Priced Option 1, and timescale for implementation

1.3 The price specified in paragraph 1.2 will be maintained provided RfL calls this Priced Option 1 on any date up to (and including) 11 September 2007. In that case, this Priced Option 1 shall be implemented from the Start Date.

Other effects on the Concession Agreement

1.4 If RfL calls this Priced Option 1 in accordance with its terms, the following amendments shall be made to this Agreement:

- (a) an exclusion shall be added to paragraph 5(c) of Schedule 1.6 (*Concession Services*) to the effect that the Operator shall not be permitted, as between the parties, to manage or undertake any aspects of on-train, station or other premises advertising under any Station Lease or Rolling Stock Lease, or receive any revenue derived therefrom;
- (b) the Operator shall no longer be required to be a party to any LOCOG Option Agreement entered into pursuant to the Conditions Precedent Agreement, and the definition of LOCOG Option Agreement shall be deleted;
- (c) the Marketing Plan shall be updated to reflect the implementation of this Priced Option 1;
- (d) an acknowledgement shall be added in clause 3.1 (*Commencement*) of this Agreement to the effect that, RfL's ability to call this Priced Option 1 takes effect on signature of

the Agreement, with any abortive expenditure if the Agreement does not take effect in its entirety being for the Operator's account;

- (e) paragraph 1.3 of Schedule 1.3 (*Passenger Facing Obligations*) shall be amended; and
- (f) the lines relating to advertising revenue information shall be deleted from the table in Appendix 4 (*Ticket and Revenue Information*) to Schedule 16 (*Information and Industry Initiatives*).

2. PRICED OPTION 2: PROVISION OF CLASS 150 UNITS TO WEST MIDLANDS FRANCHISEE

Description, objective and specification

2.1 The provision by the Operator of two Class 150 Rolling Stock Units to the West Midlands Franchisee in accordance with the following:

- (a) the units shall be made available by the Operator:
 - (i) Monday to Saturday (inclusive); and
 - (ii) from the Start Date until the Passenger Change Date in December 2008;
- (b) the West Midlands Franchisee shall use the units to operate Bletchley – Bedford railway passenger services:
 - (i) as part its service level commitment pursuant to the franchise agreement in respect of the West Midlands Franchise; and
 - (ii) in accordance with the relevant part of the Summer 2006 timetable specified in the National Rail Timetable;
- (c) drivers employed by the West Midlands Franchisee shall be responsible for the movement of the units between Bletchley and Willesden train maintenance depot; and
- (d) there will be one overnight movement each day, six days per week.

Price for exercising Priced Option 2 (in £ base date)

2.2 Where this Priced Option 2 is called in accordance with its terms, the price for this Priced Option 2 shall be the price set out in Table 2 in Schedule 10.3 (*Adjustments to Concession Payments*) and adjustments to Concession Payments shall be made accordingly.

Latest date for calling Priced Option 2, and timescale for implementation

2.3 The price specified in paragraph 2.2 will be maintained provided RfL calls this Priced Option 2 on any date up to (and including) the date of this Agreement. In that case, this Priced Option 2 shall be implemented from the Start Date.

Other effects on the Concession Agreement

2.4 If RfL calls this Priced Option 2, the following amendments shall be made to this Agreement:

- (a) an acknowledgement shall be added in clause 3.1 (*Commencement*) of this Agreement to the effect that, RfL's ability to call this Priced Option 2 takes effect on signature of this Agreement, with any abortive expenditure if this Agreement does not take effect in its entirety being for the Operator's account; and
- (b) a new paragraph 1.4 shall be inserted in Schedule 1.12 (*Silverlink Separation*) as follows:
 - “1.4 The Operator shall be obliged:
 - (a) to lease two Class 150 Rolling Stock Units over and above those Rolling Stock Units listed in row three of Table 2 in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet – General*), provided that those two additional Rolling Stock Units shall not comprise part of the Train Fleet at any time during those leasing arrangements; and
 - (b) to make those two additional Rolling Stock Units available to the West Midlands Franchisee in accordance with the provisions of paragraph 2.1 of Schedule 10.1 (*List of Priced Options*).”

3. PRICED OPTION 3: ISSUE OF SLC2

Description, objective and specification

- 3.1 The provision by the Operator of an enhanced train service, which requires the following to occur, subject to the conditions specified in paragraph 3.2:
- (a) the issue by RfL to the Operator of the Service Level Commitment specified in the document in the agreed terms marked **SLC2**;
 - (b) the Operator promptly using all reasonable endeavours to obtain the timetable development rights from the Infrastructure Managers that are necessary to permit the operation of a Timetable that is compliant with SLC2;
 - (c) the operation by the Operator of that Timetable from the Principal Change Date specified in paragraph 3.5 and until either:
 - (i) the date the Operator is required by RfL to operate an alternative Timetable through the issue of a new Service Level Commitment in accordance with the passenger service development procedure set out in Schedule 1.1 (*Passenger Service Development*); or
 - (ii) the end of the Concession Period if RfL does not so require; and
 - (d) the operation by the Operator of the NLR New Trains as three-car units in delivering the railway passenger services specified in that Timetable unless the terms of paragraph 3.3 are satisfied, in which case, the Operator shall deliver those services by operating the NLR New Trains as four-car units.

Conditions for implementation of Priced Option 3

- 3.2 The implementation of this Priced Option 3 is subject to the following conditions:

- (a) appropriate infrastructure that is necessary for the operation of the services that are over and above those specified in any of SLC0, SLC1a, SLC1b, SLC1c, SLC1d, SLC1e, shall be provided by third parties, without any charge to the Operator;
- (b) the Infrastructure Managers shall have granted the required timetable development rights to the Operator (the Operator having first used all reasonable endeavours to obtain those rights) to permit the operation of a Timetable that is compliant with SLC2; and
- (c) RfL procuring sufficient New Trains pursuant to the options referred to in paragraphs 1.2(a)(ii) and 1.2(b)(ii) of Schedule 4.3 (*The New Trains (Testing and Commissioning)*) such that the New Trains Maintainer will be required under paragraph 1.2 of Schedule 2 (*Maintenance and Cleaning Services*) of the TSA to make available to the Operator to operate on any Weekday, no less than:
 - (i) 26 NLR Units (as defined in the TSA); and
 - (ii) 20 ELR Units (as defined in the TSA).

3.3 The implementation of Priced Option 3 by the operating of the NLR New Trains as four-car units is subject to:

- (a) RfL having exercised the option referred to in paragraph 1.2(b)(iii) of Schedule 4.3; and
- (b) consequently, RfL or a third party lessor making the additional rolling stock vehicles referred to in that paragraph available to the Operator under lease arrangements consistent with paragraph 1.5 of Schedule 4.3.

Price for exercising Priced Option 3 (in £ base date)

3.4 Where this Priced Option 3 is called in accordance with its terms, the price for this Priced Option 3 shall be the price set out in Table 3 in Schedule 10.3 (*Adjustments to Concession Payments*) and adjustments to Concession Payments shall be made accordingly.

Earliest and latest dates for calling Priced Option 3, and timescale for implementation

3.5 The price specified in paragraph 3.4 will be maintained provided RfL calls Priced Option 3 on any date up to (and including) 31 December 2008. In that case, this Priced Option 3 shall be implemented from the Principal Change Date occurring in December 2010.

Other effects on the Concession Agreement

3.6 If RfL calls this Priced Option 3:

- (a) RfL may make revisions to the Operational Benchmarks to hold constant the risk of the Operator failing to satisfy the requirements of the Operational Benchmarks, provided that, in doing so RfL shall:
 - (i) take the provisional benchmarks in Schedule 10.4 (*Provisional SLC2 Operational Benchmarks*) as its starting point, whilst also having regard to the increased fleet mileage, different Train Fleet composition and other characteristics of SLC2, compared to any other Service Level Commitment identified in this Agreement as at the date hereof; and

- (ii) have reasonable regard to any representations from the Operator concerning such revisions;
- (b) from the date of implementation of this Priced Option 3, SLC2 shall be the Service Level Commitment for the purposes of the remainder of this Agreement unless and until the earlier of:
 - (i) the issue of any other Service Level Commitment by RfL in accordance with the passenger service development procedure set out in Schedule 1.1; and
 - (ii) the end of the Concession Period; and
- (c) consequential changes shall be made to the tables in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet - General*), and RfL shall consent to such changes in the Train Fleet for the purposes of paragraph 2 of Schedule 4.1.

4. [INTENTIONALLY LEFT BLANK]

5. PRICED OPTION 5: SLC1

Description, objective and specification

5.1 The provision by the Operator of an enhanced train service, which requires the following to occur, subject to the conditions specified in paragraph 5.3:

- (a) the issue by RfL to the Operator of one, some or all of the Service Level Commitments: SLC1a, SLC1b, SLC1c, SLC1d or SLC1e, each as specified in the document in the agreed terms marked *SLC1*;
- (b) the Operator promptly using all reasonable endeavours to obtain the timetable development rights from the Infrastructure Managers that are necessary to permit the operation of a Timetable that is compliant with the relevant iteration of SLC1; and
- (c) the operation by the Operator of that Timetable from the relevant date specified in paragraph 5.6 and until either:
 - (i) the date the Operator is required by RfL to operate an alternative Timetable through the issue of either a further iteration of SLC1 or a new Service Level Commitment in accordance with the passenger service development procedure set out in Schedule 1.1 (*Passenger Service Development*); or
 - (ii) the end of the Concession Period if RfL does not so require.

5.2 The Operator acknowledges that RfL may call this Priced Option 5 by issuing any combination of SLC1a, SLC1b, SLC1c, SLC1d and SLC1e and that the implementation of any of those Service Level Commitments is not contingent on the prior issue of any other.

Conditions for implementation of Priced Option 5

5.3 The implementation of this Priced Option 5 is subject to the Infrastructure Managers having granted the required timetable development rights to the Operator (the Operator having first used all reasonable endeavours to obtain those rights) to permit the operation of a Timetable that is compliant with the relevant iteration of SLC1.

Price for exercising Priced Option 5 (in £ base date)

5.4 Where this Priced Option 5 is called in accordance with its terms, the price for each of SLC1a, SLC1b, SLC1c, SLC1d and SLC1e shall be the price set out in Tables 5a, 5b, 5c, 5d and 5e respectively in Schedule 10.3 (*Adjustments to Concession Payments*), and adjustments to Concession Payments shall be made accordingly.

Latest date for calling Priced Option 5, and timescale for implementation

5.5 The relevant price specified in paragraph 5.4 will be maintained provided RfL calls the related iteration of SLC1 on any date up to (and including) the date of this Agreement.

5.6 Subject to the other terms of this paragraph 5, each iteration of SLC1 shall be implemented from the following relevant implementation dates:

- (a) SLC1a: the Principal Change Date occurring in December 2007;
- (b) SLC1b: the Principal Change Date occurring in December 2008;
- (c) SLC1c: 20 September 2009;
- (d) SLC1d: [REDACTED]⁴⁷; and
- (e) SLC1e: [REDACTED]⁴⁸.

Other effects on the Concession Agreement

5.7 If RfL calls any aspect of this Priced Option 5, the relevant iteration of SLC1 shall be the Service Level Commitment for the purposes of the remainder of this Agreement from the relevant date of its implementation unless and until the earlier of:

- (a) the date of implementation of any other iteration of SLC1;
- (b) the issue of any other Service Level Commitment by RfL in accordance with the passenger service development procedure set out in Schedule 1.1; or
- (c) the end of the Concession Period.

⁴⁷ This information is exempt from disclosure under [REDACTED] of the Freedom of Information Act 2000.

⁴⁸ This information is exempt from disclosure under [REDACTED] of the Freedom of Information Act 2000.

SCHEDULE 10.2**General****1. TERMS ON WHICH PRICED OPTIONS MAY BE CALLED**

1.1 RfL may call any Priced Option by serving written notice on the Operator:

- (a) at any time on or prior to the last date for the call of such Priced Option and on the terms of such Priced Option, in which case the terms of such Priced Option, including the agreed cost and revenue amounts for that Priced Option, shall apply and the Operator shall implement such Priced Option in accordance with those terms; and
- (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option, in which case such call shall be a Change.

1.2 Where any condition specified in Schedule 10.1 (*List of Priced Options*) in relation to such Priced Option is not satisfied (other than by reason of failure by the Operator to take reasonable steps to satisfy such condition, where appropriate), then that shall constitute “different terms” for purposes of this paragraph 1.2 and paragraph (ak) of the definition of Change.

SCHEDULE 10.3

Adjustments to Concession Payments

1. PRICED OPTION 1: STATIONS AND TRAINS ADVERTISING REVENUE

Table 1: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) where this Priced Option 1 is called in accordance with paragraph 1 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	49					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁴⁹ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

2. PRICED OPTION 2: PROVISION OF CLASS 150 UNITS TO WEST MIDLANDS FRANCHISEE

Table 2: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) where this Priced Option 2 is called in accordance with paragraph 2 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	50					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵⁰ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

3. PRICED OPTION 3: ISSUE OF SLC2

Table 3: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) where this Priced Option 3 is called in accordance with paragraph 3 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	51					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵¹ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

[4. INTENTIONALLY LEFT BLANK]

5(a) PRICED OPTION 5: SLC1a

Table 5a: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) as SLC1a has been called in accordance with paragraph 5 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	52					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵² All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

5(b) PRICED OPTION 5: SLC1b

Table 5b: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) as SLC1a and SLC1b have been called in accordance with paragraph 5 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	53					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵³ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

5(c) PRICED OPTION 5: SLC1c

Table 5c: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) as SLC1a, SLC1b and SLC1c have been called in accordance with paragraph 5 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	54					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵⁴ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

5(d) PRICED OPTION 5: SLC1d

Table 5d: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) as SLC1a, SLC1b, SLC1c and SLC1d have been called in accordance with paragraph 5 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	55					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵⁵ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

5(e) PRICED OPTION 5: SLC1e

Table 5e: Figures for Calculation of Annual Concession Payments

This table sets out the increment to the figures for calculation of the Annual Concession Payments set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) as SLC1a, SLC1b, SLC1c, SLC1d and SLC1e have been called in accordance with paragraph 5 of Schedule 10.1 (*List of Priced Options*).

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	56					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵⁶ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

SCHEDULE 10.4

Provisional Operational Benchmarks for SLC2

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 1	Period 9	14,253	1,651	1,513	9,304	8,522	4,548	4,755	2,303	2,406	N/A	N/A
	Period 10	14,248	1,651	1,513	9,304	8,522	4,547	4,749	2,303	2,404	N/A	N/A
	Period 11	14,243	1,651	1,513	9,304	8,522	4,546	4,744	2,303	2,402	N/A	N/A
	Period 12	14,239	1,651	1,513	9,304	8,522	4,545	4,739	2,303	2,400	N/A	N/A
	Period 13	14,235	1,651	1,513	9,304	8,522	4,545	4,734	2,303	2,398	N/A	N/A
Year 2	Period 1	12,929	1,333	1,513	7,500	8,522	4,506	4,730	2,005	2,373	N/A	N/A
	Period 2	12,923	1,333	1,513	7,500	8,522	4,505	4,725	2,004	2,349	N/A	N/A
	Period 3	12,919	1,333	1,513	7,500	8,522	4,505	4,721	2,004	2,324	N/A	N/A
	Period 4	12,914	1,333	1,513	7,500	8,522	4,504	4,716	2,004	2,300	N/A	N/A
	Period 5	12,910	1,333	1,513	7,500	8,522	4,503	4,712	2,004	2,276	N/A	N/A
	Period 6	12,904	1,333	1,513	7,500	8,522	4,502	4,708	2,003	2,252	N/A	N/A
	Period 7	11,956	1,333	1,513	7,500	8,522	4,501	4,704	1,770	2,209	N/A	N/A
	Period 8	11,347	1,333	1,513	7,500	8,522	4,500	4,701	1,621	2,154	N/A	N/A
	Period 9	11,343	1,333	1,488	7,500	8,378	4,500	4,697	1,620	2,100	N/A	N/A
	Period 10	11,341	1,333	1,462	7,500	8,233	4,499	4,693	1,620	2,045	N/A	N/A
	Period 11	11,337	1,333	1,437	7,500	8,089	4,498	4,689	1,620	1,990	N/A	N/A

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 2	Period 12	11,334	1,333	1,411	7,500	7,945	4,498	4,685	1,620	1,936	N/A	N/A
	Period 13	11,331	1,333	1,386	7,500	7,800	4,497	4,681	1,619	1,881	N/A	N/A
Year 3	Period 1	9,637	948	1,355	5,349	7,628	4,459	4,678	1,230	1,819	N/A	N/A
	Period 2	9,633	948	1,324	5,349	7,456	4,458	4,674	1,230	1,757	N/A	N/A
	Period 3	9,631	948	1,294	5,349	7,284	4,458	4,670	1,230	1,695	N/A	N/A
	Period 4	9,626	948	1,263	5,349	7,112	4,457	4,666	1,229	1,633	N/A	N/A
	Period 5	9,623	948	1,232	5,349	6,940	4,456	4,663	1,229	1,571	N/A	N/A
	Period 6	9,622	948	1,201	5,349	6,768	4,456	4,659	1,229	1,509	N/A	N/A
	Period 7	9,564	948	1,170	5,349	6,596	4,455	4,655	1,216	1,465	N/A	N/A
	Period 8	9,530	948	1,140	5,349	6,424	4,455	4,652	1,207	1,432	N/A	N/A
	Period 9	9,528	948	1,109	5,349	6,252	4,455	4,648	1,207	1,399	N/A	N/A
	Period 10	14,701	948	1,078	5,349	6,079	4,455	4,645	1,206	1,366	6,469	6,413
	Period 11	14,658	948	1,047	5,349	5,907	4,454	4,641	1,206	1,333	6,416	6,413
	Period 12	14,616	948	1,016	5,349	5,735	4,454	4,638	1,206	1,300	6,364	6,413
	Period 13	14,574	948	986	5,349	5,563	4,454	4,634	1,206	1,266	6,313	6,413
Year 4	Period 1	16,117	1,258	1,010	7,098	5,703	4,417	4,631	1,170	1,262	6,261	6,413
	Period 2	16,077	1,258	1,035	7,098	5,843	4,417	4,627	1,170	1,257	6,211	6,413
	Period 3	16,037	1,258	1,060	7,098	5,983	4,417	4,624	1,169	1,252	6,163	6,413
	Period 4	15,998	1,258	1,085	7,098	6,123	4,417	4,621	1,169	1,247	6,113	6,413
	Period 5	15,959	1,258	1,110	7,098	6,262	4,417	4,618	1,169	1,242	6,065	6,413

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 4	Period 6	15,921	1,258	1,135	7,098	6,402	4,417	4,615	1,169	1,237	6,018	6,413
	Period 7	15,876	1,258	1,159	7,098	6,542	4,416	4,612	1,161	1,233	5,970	6,413
	Period 8	15,836	1,258	1,184	7,098	6,682	4,416	4,608	1,157	1,229	5,924	6,413
	Period 9	15,799	1,258	1,209	7,098	6,822	4,416	4,605	1,157	1,225	5,879	6,413
	Period 10	15,763	1,258	1,234	7,098	6,962	4,416	4,602	1,156	1,221	6,819	6,441
	Period 11	15,727	1,258	1,259	7,098	7,102	4,416	4,599	1,156	1,217	6,775	6,470
	Period 12	15,691	1,258	1,283	7,098	7,242	4,416	4,596	1,156	1,213	6,730	6,499
	Period 13	15,656	1,258	1,308	7,098	7,381	4,415	4,593	1,156	1,209	6,688	6,529
Year 5	Period 1	17,254	1,576	1,334	8,942	7,529	4,379	4,590	1,133	1,206	6,474	6,546
	Period 2	17,219	1,576	1,359	8,942	7,677	4,379	4,587	1,133	1,203	6,431	6,564
	Period 3	17,185	1,576	1,385	8,942	7,824	4,379	4,584	1,132	1,200	6,390	6,582
	Period 4	17,152	1,576	1,410	8,942	7,972	4,379	4,581	1,132	1,197	6,349	6,601
	Period 5	17,118	1,576	1,435	8,942	8,119	4,378	4,578	1,132	1,194	6,307	6,620
	Period 6	17,086	1,576	1,461	8,942	8,267	4,378	4,575	1,132	1,192	6,267	6,640
	Period 7	17,050	1,576	1,486	8,942	8,414	4,378	4,572	1,127	1,189	6,227	6,661
	Period 8	17,016	1,576	1,512	8,942	8,562	4,378	4,569	1,123	1,186	6,187	6,682
	Period 9	16,985	1,576	1,537	8,942	8,709	4,378	4,566	1,123	1,183	6,149	6,704
	Period 10	16,954	1,576	1,563	8,942	8,857	4,378	4,562	1,123	1,181	6,111	6,647
	Period 11	16,924	1,576	1,588	8,942	9,004	4,378	4,559	1,123	1,178	6,074	6,591
	Period 12	16,894	1,576	1,613	8,942	9,152	4,377	4,556	1,123	1,175	6,036	6,535
	Period 13	16,864	1,576	1,639	8,942	9,299	4,377	4,553	1,123	1,173	5,999	6,480

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 6	Period 1	16,592	1,543	1,636	8,727	9,282	4,341	4,550	1,103	1,170	5,908	6,435
	Period 2	16,563	1,543	1,634	8,727	9,265	4,341	4,547	1,103	1,168	5,872	6,390
	Period 3	16,535	1,543	1,631	8,727	9,248	4,341	4,544	1,103	1,166	5,837	6,346
	Period 4	16,507	1,543	1,628	8,727	9,230	4,341	4,541	1,103	1,163	5,802	6,302
	Period 5	16,479	1,543	1,626	8,727	9,213	4,341	4,538	1,103	1,161	5,767	6,259
	Period 6	16,451	1,543	1,623	8,727	9,196	4,340	4,535	1,103	1,159	5,733	6,216
	Period 7	16,421	1,543	1,621	8,727	9,179	4,340	4,532	1,098	1,156	5,700	6,174
	Period 8	16,391	1,543	1,618	8,727	9,162	4,340	4,529	1,095	1,154	5,666	6,132
	Period 9	16,365	1,543	1,616	8,727	9,144	4,340	4,526	1,095	1,152	5,633	6,091
	Period 10	16,339	1,543	1,613	8,727	9,127	4,340	4,523	1,095	1,150	5,601	6,050
	Period 11	16,313	1,543	1,610	8,727	9,110	4,340	4,520	1,095	1,147	5,570	6,010
	Period 12	16,288	1,543	1,608	8,727	9,093	4,340	4,517	1,095	1,145	5,537	5,970
	Period 13	16,262	1,543	1,605	8,727	9,076	4,339	4,514	1,095	1,143	5,506	5,931
Year 7	Period 1	16,069	1,520	1,603	8,590	9,065	4,304	4,511	1,080	1,141	5,439	5,893
	Period 2	16,045	1,520	1,601	8,590	9,054	4,304	4,508	1,080	1,139	5,407	5,856
	Period 3	16,019	1,520	1,599	8,590	9,043	4,303	4,505	1,079	1,137	5,377	5,819
	Period 4	15,995	1,520	1,598	8,590	9,032	4,303	4,502	1,079	1,135	5,349	5,783
	Period 5	15,972	1,520	1,596	8,590	9,021	4,303	4,499	1,079	1,133	5,319	5,747
	Period 6	15,949	1,520	1,594	8,590	9,010	4,303	4,496	1,079	1,132	5,290	5,711
	Period 7	15,924	1,520	1,592	8,590	8,999	4,303	4,493	1,077	1,130	5,261	5,676

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 7	Period 8	15,901	1,520	1,590	8,590	8,988	4,303	4,490	1,076	1,128	5,234	5,642
	Period 9	15,877	1,520	1,588	8,590	8,977	4,303	4,487	1,075	1,127	5,205	5,608
	Period 10	15,855	1,520	1,586	8,590	8,966	4,302	4,484	1,075	1,125	5,177	5,574
	Period 11	15,833	1,520	1,584	8,590	8,955	4,302	4,481	1,075	1,124	5,151	5,540
	Period 12	15,812	1,520	1,582	8,590	8,944	4,302	4,478	1,075	1,122	5,124	5,507
	Period 13	15,791	1,520	1,580	8,590	8,933	4,302	4,475	1,075	1,120	5,097	5,474
Year 8	Period 1	15,649	1,503	1,579	8,498	8,926	4,267	4,472	1,066	1,119	5,029	5,442
	Period 2	15,628	1,503	1,578	8,498	8,919	4,266	4,469	1,066	1,118	5,004	5,409
	Period 3	15,607	1,503	1,576	8,498	8,911	4,266	4,466	1,066	1,117	4,978	5,377
	Period 4	15,587	1,503	1,575	8,498	8,904	4,266	4,463	1,066	1,116	4,953	5,346
	Period 5	15,567	1,503	1,574	8,498	8,897	4,266	4,460	1,066	1,115	4,928	5,314
	Period 6	15,547	1,503	1,573	8,498	8,889	4,266	4,457	1,065	1,114	4,904	5,283
	Period 7	15,528	1,503	1,571	8,498	8,882	4,266	4,454	1,065	1,113	4,879	5,253
	Period 8	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
Up to 7 Reporting Period Extension	Period 1	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 2	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 3	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 4	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 5	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 6	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223
	Period 7	15,508	1,503	1,570	8,498	8,875	4,266	4,451	1,065	1,112	4,855	5,223

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Balance of Year 8 if LRC continued pursuant to Schedule 21	Period 9	15,488	1,503	1,569	8,498	8,867	4,265	4,448	1,065	1,111	4,855	5,195
	Period 10	15,488	1,503	1,567	8,498	8,860	4,265	4,445	1,065	1,110	4,855	5,169
	Period 11	15,488	1,503	1,566	8,498	8,853	4,265	4,442	1,065	1,110	4,855	5,145
	Period 12	15,488	1,503	1,565	8,498	8,845	4,265	4,439	1,065	1,109	4,855	5,124
	Period 13	15,488	1,503	1,564	8,498	8,838	4,265	4,436	1,064	1,108	4,855	5,104
Year 9	Period 1	15,387	1,491	1,563	8,426	8,832	4,230	4,433	1,059	1,107	4,823	5,088
	Period 2	15,387	1,491	1,562	8,426	8,827	4,230	4,430	1,059	1,107	4,823	5,073
	Period 3	15,386	1,491	1,561	8,426	8,821	4,229	4,427	1,058	1,106	4,799	5,059
	Period 4	15,386	1,491	1,560	8,426	8,815	4,229	4,425	1,058	1,106	4,799	5,047
	Period 5	15,386	1,491	1,559	8,426	8,809	4,229	4,422	1,058	1,105	4,799	5,037
	Period 6	15,386	1,491	1,558	8,426	8,803	4,229	4,419	1,058	1,104	4,799	5,028
	Period 7	15,386	1,491	1,557	8,426	8,798	4,229	4,416	1,058	1,104	4,799	5,022
	Period 8	15,386	1,491	1,556	8,426	8,792	4,229	4,413	1,058	1,103	4,799	5,017
	Period 9	15,386	1,491	1,555	8,426	8,786	4,229	4,410	1,058	1,103	4,799	5,013
	Period 10	15,384	1,491	1,554	8,426	8,780	4,228	4,407	1,057	1,102	4,799	5,009
	Period 11	15,384	1,491	1,553	8,426	8,774	4,228	4,404	1,057	1,101	4,799	5,004
	Period 12	15,384	1,491	1,552	8,426	8,768	4,228	4,401	1,057	1,101	4,799	5,000
	Period 13	15,384	1,491	1,551	8,426	8,763	4,228	4,398	1,057	1,100	4,799	4,995

Column 1		Column 2	Column 3		Column 4		Column 5		Column 6		Column 7	
Route		LRC	WLL		NLL		GOB		WJELL		ELL	
Concession Year / Reporting Period		Target Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)	Remedial Plan Operational Benchmarks (Minutes Delay)	Default Operational Benchmarks (Minutes Delay)
Year 10	Period 1	15,192	1,479	1,550	8,358	8,757	4,073	4,386	1,051	1,100	4,769	4,991
	Period 2	15,192	1,479	1,549	8,358	8,752	4,073	4,373	1,051	1,099	4,769	4,987
	Period 3	15,192	1,479	1,548	8,358	8,746	4,073	4,361	1,051	1,098	4,769	4,984
	Period 4	15,192	1,479	1,547	8,358	8,741	4,073	4,348	1,051	1,098	4,769	4,982
	Period 5	15,192	1,479	1,546	8,358	8,735	4,073	4,336	1,051	1,097	4,769	4,979
	Period 6	15,192	1,479	1,545	8,358	8,730	4,073	4,323	1,051	1,097	4,769	4,977
	Period 7	15,191	1,479	1,544	8,358	8,725	4,073	4,311	1,050	1,096	4,769	4,974
	Period 8	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972

Up to 7 Reporting Period Extension	Period 1	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 2	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 3	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 4	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 5	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 7	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972
	Period 8	15,190	1,479	1,543	8,358	8,719	4,072	4,298	1,050	1,095	4,769	4,972

SCHEDULE 11

PAYMENTS

Schedule 11.1: **Concession Payments**

Schedule 11.2: **Annual Concession Payments**

Appendix: **Figures for Calculation of Annual Concession Payments**

Schedule 11.3: **Access Charge Adjustments**

Schedule 11.4: **[REDACTED]⁵⁷**

Appendix: **[REDACTED]⁵⁸**

⁵⁷ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

⁵⁸ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

SCHEDULE 11.1

Concession Payments

1. CONCESSION PAYMENTS

1.1 The Concession Payment for any Reporting Period shall be an amount equal to:

$$\pounds\text{CP} = \text{PCP} + \text{RE} + \text{RR} + \text{RShA} + \text{RPIA} + \text{OPA} + \text{TSAA} + \text{NRP} + \text{LULPA} - \text{KPIA} + \text{TAA} + \text{SCA} - \text{COPA}$$

where:

$\pounds\text{CP}$ means the Concession Payment for that Reporting Period;

PCP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{ACP} \right)$

where:

RPD means the number of days in that Reporting Period;

FYD is equal to the number of days:

- (i) in the Concession Year; or
- (ii) that would apply, where an extension of the LRC is required by RfL pursuant to paragraph 1.3 of Schedule 21 (*Continuation of LRC*), if the duration of that extension was specified for a full seven Reporting Periods,

in either case, in which that Reporting Period occurs; and

ACP means the Concession Payment for:

- (i) that Concession Year; or
- (ii) that extension pursuant to paragraph 1.3 of Schedule 21,

in either case, as determined in accordance with Schedule 11.2 (*Annual Concession Payments*);

RE means the Revenue Estimate to be made on that Reporting Period's Payment Date;

RR means the Revenue Reconciliation to be made on that Reporting Period's Payment Date;

RShA means the amount of any Revenue Share Adjustment to be paid on that Reporting Period's Payment Date;

RPIA means any Revenue Protection Incentive Adjustment to be made on that Reporting Period's Payment Date;

- OPA means any Operational Performance Adjustment to be made on that Reporting Period's Payment Date;
- TSAA means the TSA Adjustment to be made on that Reporting Period's Payment Date;
- NRP means the net of (i) the revenue elements of any Network Rail Payments received by the Operator and (ii) the Network Rail Payments the Operator has paid to Network Rail, in each case, in that Reporting Period and on that Reporting Period's Payment Date;
- LULPA means the LUL Performance Adjustment to be made on that Reporting Period's Payment Date;
- KPIA means any KPI Adjustment to be made on that Reporting Period's Payment Date;
- TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;
- SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date; and
- COPA means any Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date.

1.2 Where a Concession Year starts or ends during a Reporting Period, £CP and PCP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Concession Year start or end, and the Concession Payment for such Reporting Period shall be the sum of £CP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) each of £CP, RE, RR, RPIA, OPA, TSAA, NRP, TAA and SCA, may be a positive or negative number;
- (b) where £CP is a positive number, RfL shall pay that amount to the Operator on the Payment Date for that Reporting Period; and
- (c) where £CP is a negative number, the Operator shall pay the corresponding positive amount to RfL on the Payment Date for that Reporting Period.

2. PAYMENT OF CONCESSION PAYMENTS

2.1 RfL shall notify the Operator, no less than seven days prior to the end of each Reporting Period, of the amount of the Concession Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Concession Payment has been calculated.

2.3 The Payment Date for a Reporting Period shall be the last Business Day of that Reporting Period.

2.4 Each Concession Payment shall be payable by the Operator or, as the case may be, RfL in the amount notified by RfL in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

- 2.5 Each Concession Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.

2.6 If either party disputes the amount of a Concession Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of either party to pay a Concession Payment notified in accordance with this paragraph 2.

2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

2.8 If the amount of any Concession Payment is agreed or determined to be incorrect and:

- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Concession Payment had been correct, then the recipient shall repay the excess within three Business Days of the agreement or determination; or
- (b) either party has made a payment to the other party which is less than it would have made if the amount of the Concession Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three Business Days of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Concession Payment was paid until the date on which such excess amount or shortfall is paid.

3. PAYMENTS FREE AND CLEAR

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

4. VALUE ADDED TAX

4.1 Subject to paragraph 4.2(a), all Concession Payments payable by RfL to the Operator under this Agreement are exclusive of Value Added Tax.

4.2 If Value Added Tax is properly chargeable on the supply for which any such Concession Payment is the consideration:

- (a) RfL shall:
 - (i) make, in a timely manner, such adjustments to the Concession Payments as are necessary to ensure that the Operator is in funds to meet its Value Added Tax liability arising on those Concession Payments; and
 - (ii) in any event, pay the balance of that Value Added Tax liability to the Operator by way of a further adjustment to Concession Payments following

delivery of an appropriate Value Added Tax invoice to RfL and such payment shall be made no less than five days before the Operator is required to account to HM Revenue & Customs for the balance of that Value Added Tax liability; and

- (b) the parties shall agree on or before the Start Date the process for the submission of such invoices by the Operator to RfL, including the timing of such submissions and the content of such invoices.

4.3 If it is subsequently determined by HM Revenue & Customs that Value Added Tax was not properly chargeable on the supply for which any such Concession Payment is the consideration, then the Operator shall, promptly following notification of such determination, issue a credit note to RfL and repay such Value Added Tax to RfL.

SCHEDULE 11.2

Annual Concession Payments

1. ANNUAL CONCESSION PAYMENTS

The Concession Payment for any Concession Year is an amount equal to:

$$ACP = FXD + (VCRPI \times RPI) + (VCAEI \times AEI) + (PRPI \times RPI) + (TRRPI \times RPI) + (EC4T \times EC4TI)$$

where:

ACP equals the Concession Payment in the relevant Concession Year;

FXD means the figure shown in respect of the relevant Concession Year or extension period in column 2 of the Table set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to this Schedule 11.2, representing the Operator's fixed costs;

VCRPI means the figure shown in respect of the relevant Concession Year or extension period in column 3 of the Table set out in the Appendix to this Schedule 11.2, representing the Operator's variable costs which are to be inflated by the Retail Prices Index;

RPI is ascertained as follows:

$$\frac{CRPI}{ORPI}$$

where:

CRPI means the Retail Prices Index published in the March immediately preceding the relevant Concession Year or extension period; and

ORPI means the Retail Prices Index for March 2007,

provided that, for the first Concession Year RPI shall be one;

VCAEI means the figure shown in respect of the relevant Concession Year or extension period in column 4 of the Table set out in the Appendix to this Schedule 11.2, representing the Operator's variable costs which are to be inflated by the Average Earnings Index;

AEI is ascertained as follows:

$$\frac{CAEI}{OAEI}$$

where:

CAEI means the Average Earnings Index published in the March immediately preceding the relevant Concession Year or extension period; and

OAEI means the Average Earnings Index for March 2007,

provided that, for the first Concession Year, AEI shall be one;

PRPI means the figure shown in respect of the relevant Concession Year or extension period in column 5 of the Table set out in the Appendix to this Schedule 11.2, representing the Operator's profit which is to be inflated by the Retail Prices Index;

TRRPI means the figure shown in respect of the relevant Concession Year in column 6 of the table set out in the Appendix to this Schedule 11.2, representing the Operator's total revenue which is to be inflated by the Retail Prices Index;

EC4T means the figure shown in respect of the relevant Concession Year or extension period in column 7 of the Table set out in the Appendix to this Schedule 11.2, representing the Operator's costs for traction current consumed by rolling stock vehicles operated by or on behalf of the Operator over the networks operated by the Infrastructure Manager, which are to be inflated or deflated (as the case may be) by EC4TI; and

EC4TI is ascertained as follows:

$$\frac{\text{CIIEC}}{\text{OIIEC}}$$

where:

CIIEC means the amount stated for moderately large consumers in Great Britain, as published by the Department of Trade and Industry in its quarterly Energy Prices Table 3.1.1 for the 2nd quarter immediately preceding the start of the relevant Concession Year or extension period; and

OIIEC means 5.23,

provided that, for the first Concession Year, EC4TI shall be one.

2. REAL AMOUNTS

Each amount determined in paragraph 1 shall be expressed in real terms.

APPENDIX TO SCHEDULE 11.2

Figures for Calculation of Annual Concession Payments

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Concession Year	FXD (£) (expressed in real terms)	VCRPI (£) (expressed in real terms)	VCAEI (£) (expressed in real terms)	PRPI (£) (expressed in real terms)	TRRPI (£) (expressed in real terms)	EC4T (£) (expressed in real terms)
Year 1 (R.P.s 9-13)	59					
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8 (R.P.s 1-8)						
Year 8 (R.P.s 9-13)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 8					
	Comprising Year 9					
Year 9						
Year 10 (R.P.s 1-8)						
Up to 7 R.P. extension	TOTAL					
	Comprising Year 10					
	Comprising Year 11					

⁵⁹ All financial figures in this table are exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

SCHEDULE 11.3

Access Charge Adjustments

1. TRACK ACCESS ADJUSTMENTS

1.1 The Track Access Adjustment for each Network Rail TAA to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{TAA} = (\text{L} + \text{GCA} - \text{W}) \times \frac{\text{RPD}}{\text{FYD}}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

L is the value of “L_t” for the Concession Year in which the Reporting Period falls under Part 3 of Schedule 7 (*Track Charges*) of such Network Rail TAA;

GCA is the value of “GC” for the Concession Year in which the Reporting Period falls under Part 3A of Schedule 7 of such Network Rail TAA;

W is the value of “W_t” for the Concession Year in which the Reporting Period falls under Part 2 of Schedule 7 of such Network Rail TAA;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Concession Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Operator shall notify RfL upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise its rights under each Network Rail TAA in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for “W_t”, “L_t” or “GC” under Parts 2, 3 or 3A of Schedule 7 of that Network Rail TAA.

1.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the value of W, L and GCA under paragraph 1.1.

1.4 If no value is ascertained for W, L or GCA prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when

such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of W, L and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

2. STATION CHARGE ADJUSTMENT

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of each adjustment determined in accordance with the following formula for each Station and each Operator Access Station that both the Operator and Network Rail or LUL have an interest in (each, an *Individual Station Charge Adjustment*):

$$\text{ISCA} = L \times \frac{\text{RPD}}{\text{FYD}}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L means:

- (a) the value of “L_t” under Condition 23.1 of the Stations Code relating to such station for the Concession Year in which that Reporting Period falls; but
- (b) only to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Operator on its own behalf under the relevant Station Lease or Access Agreement (excluding any amount payable to Network Rail by the Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls except that, where a Reporting Period occurs during two Concession Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

2.2 The Operator shall notify RfL upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise such rights as it may have under any relevant Station Lease or Access Agreement in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute under any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for “L_t” under any relevant Station Lease or Access Agreement.

2.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the value of L under paragraph 2.1.

2.4 If no value is ascertained for L prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.5 The value of L when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments it represents by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

3. CHARGE FOR ACCESS TO ELL CORE ROUTE AND/OR STATIONS

If the Operator is charged for access to:

- (a) the ELL Core Route network; and/or
- (b) the ELL Core Route Stations,

RfL shall, by way of adjustment(s) to Concession Payments, pay to the Operator an amount equal to the amount(s) the Operator is charged for such access.

SCHEDULE 11.4

[REDACTED]⁶⁰

⁶⁰ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 11.4

[REDACTED]⁶¹

⁶¹ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

SCHEDULE 12

CHANGES

Schedule 12.1: Financial Consequences of Change

Schedule 12.2: Identity of the Financial Model etc.

Schedule 12.3: Runs of the Financial Model

SCHEDULE 12.1

Financial Consequences of Change

1. FINANCIAL CONSEQUENCES OF A CHANGE

- 1.1 When there is or is to be a Qualifying Change,
- (a) the values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T specified for each Concession Year in the table set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*) shall be restated in the amounts and values ascertained by a Run of the Financial Model in accordance with Schedule 12.3 (*Runs of the Financial Model*); but
 - (b) after taking into account any reconciliation payment relating to Estimated Revisions pursuant to paragraph 8 of Schedule 12.3.
- 1.2 Where a Run of the Financial Model is required it shall be performed:
- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Qualifying Change; or
 - (b) as soon as reasonably practicable thereafter.
- 1.3 The restated amounts and values shall have effect on and from the later of:
- (a) the date of the Qualifying Change or the date of the last Change pursuant to paragraph 3.1 (as the case may be); and
 - (b) the date on which RfL approves or the auditor certifies the results of the Run of the Financial Model.
- 1.4 RfL may stipulate (on or before the date on which RfL approves or the auditor certifies the results of the Run of the Financial Model) that those amounts and values are to apply for a limited period of time only, with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs based on information available at that time.

2. ESTIMATED FINANCIAL CONSEQUENCES

- 2.1 Where:
- (a) there is or is to be a Change before there is a Run of the Financial Model in relation to it; and
 - (b) RfL reasonably determines that the Change is likely to be a Qualifying Change,

then RfL shall notify to the Operator a reasonable estimate of the values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T specified for each Concession Year in the table set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*), which a Run of the Financial Model using RfL's view of Revised Inputs and any Model Changes would produce (*Estimated Revisions*).

2.2 In the circumstances described in paragraph 2.1, the values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T specified for each Concession Year in the table set out in the Appendix to Schedule 11.2, shall be restated in the amounts and values of the Estimated Revisions, and Concession Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.

2.3 RfL shall use all reasonable endeavours to provide the notification required by paragraph 2.1 at least two Reporting Periods before it considers the Change is likely to occur. If, having exercised all reasonable endeavours, RfL cannot provide two Reporting Periods' notice, it shall provide such notification as soon as reasonably practicable afterwards.

2.4 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Change; and
- (b) the date on which RfL notifies the Operator of the Estimated Revisions.

3. CHANGES BENEATH THRESHOLD AMOUNT

3.1 Paragraph 1 shall also apply to any two or more Changes of which the Operator is notified or of which it becomes aware in any Concession Year which do not exceed the Threshold Amount taken alone but which do exceed it when taken together.

3.2 If either party wishes to be able to claim an adjustment pursuant to paragraph 3.1 as and when the Threshold Amount is exceeded, such party shall notify the other party after the individual Change occurs within the time limit prescribed in paragraph 4.1(b)(iii) that such party reserves its rights to accumulate that Change with others pursuant to paragraph 3.1.

4. TIME LIMITS

4.1 Either party may require there to be a Run of the Financial Model in respect of a Change provided that:

- (a) there are good reasons for considering that a Change is likely to be a Qualifying Change; and
- (b) that party notifies the other party of its requirement within six months of:
 - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 1 of Schedule 22 (*Other Provisions*);
 - (ii) becoming aware of any other Change; or
 - (iii) where the claim is pursuant to paragraph 3.1, the occurrence of the last Change.

4.2 Unless otherwise agreed between the parties, there shall be no entitlement to a Run of the Financial Model unless the claiming party has notified the other party within the six-month period referred to in paragraph 4.1.

SCHEDULE 12.2

Identity of the Financial Model etc.

1. OPERATOR'S OBLIGATIONS

1.1 The Operator shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM and in hard format) (the *Escrow Documents*) to RfL in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:

- (a) on the date of this Agreement;
- (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
- (c) within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 1.3 of Schedule 12.3 (*Runs of the Financial Model*), but updated with the Revised Inputs and any Model Changes.

1.2 The Operator shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:

- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
- (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
- (c) if required by RfL, a certificate from independent auditors approved by RfL, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1(a) or (as the case may be) is in accordance with paragraphs 1.1(b) or (c).

2. RFL'S OBLIGATIONS

2.1 RfL shall:

- (a) within three days following receipt, acknowledge receipt to the Operator of any version of the Escrow Documents delivered to it for the purposes of being Placed in Escrow;
- (b) save as provided under paragraph 2(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing RfL shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of this Agreement;

- (c) notify the Operator if it becomes aware at any time during the term of this Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed; in such an event, RfL shall be permitted to create a new copy of the Escrow Documents or part thereof from any the other copy Placed in Escrow and shall within seven days notify the Operator accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a “complete and accurate” copy has been made. Following the making of such a new copy of the Escrow Documents, RfL shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Operator stating that the Escrow Documents are required for the purposes of an indicative or actual Run of the Financial Model in relation to any Change, or should RfL himself so decide release one copy of the Escrow Documents to the Operator and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b):
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Operator arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Operator fails to perform a Run of the Financial Model pursuant to paragraph 1.1(a) of Schedule 12.3 (*Runs of the Financial Model*) and fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to return the released copy to RfL shall be a contravention of this Agreement;
- (b) RfL may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the ***Replacement Copy***) in order that RfL may perform a Run of the Financial Model pursuant to paragraph 1.1(b) of Schedule 12.3;
- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 1.3 of Schedule 12.3, the Replacement Copy shall also be Placed in Escrow.

SCHEDULE 12.3

Runs of the Financial Model

1. RUN OF THE FINANCIAL MODEL

1.1 Any Run of the Financial Model that is required for the purposes of this Agreement shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:

- (a) the Operator promptly on receiving notification of the Revised Inputs and any Model Changes from RfL pursuant to paragraph 2.3; or
- (b) RfL if the Operator fails to do so.

1.2 The party that performs the Run of the Financial Model pursuant to paragraph 1.1 shall provide the non-performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.

1.3 RfL, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:

- (a) certify to the Operator its approval of the New Results; or
- (b) notify the Operator that it requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by RfL with the approval (not to be unreasonably withheld) of the Operator.

1.4 For purposes of paragraph 1.3(b), the requirement for an audit is one that requires the auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3); or
- (b) the restated values of FXD, VCRPI, VCAEI, PRPI, TRRPI and EC4T to be specified for each Concession Year in the table set out in the Appendix (*Figures for Calculation of Annual Concession Payments*) to Schedule 11.2 (*Annual Concession Payments*), by itself applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3).

1.5 The parties shall procure that any auditor is, as soon as reasonably practicable after its appointment, able to discharge the audit requirements.

1.6 The results as certified by RfL pursuant to paragraph 1.3 or by the auditor pursuant to paragraph 1.4 shall be final and binding on the parties, except in the case of manifest error.

1.7 The costs of any audit shall be met as the auditor may direct.

2. REVISED INPUTS AND MODEL CHANGES

2.1 *Revised Inputs* means:

- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 12.2 (*Identity of the Financial Model etc.*) or released by RfL pursuant to paragraph 2.2 of Schedule 12.2 for the purposes of a Run of the Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or RfL may reasonably determine is required by the provisions of paragraphs 3 to 8 (inclusive) of this Schedule 12.3 in respect of a Change in order to produce the New Results.

2.2 ***Model Changes*** means any changes that the parties may agree or RfL may reasonably determine are required to the Financial Model and/or the Operational Model, as released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 12.2 or released by RfL pursuant to paragraph 2.2 of Schedule 12.2 for purposes of a Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

2.3 RfL shall provide a written statement of the Revised Inputs and any Model Changes to the Operator for purposes of paragraph 1.1 promptly after they have been agreed or determined.

3. AGREEMENT OR DETERMINATION OF REVISED INPUTS

The parties shall agree or RfL shall reasonably determine the Revised Inputs that are required in respect of a Change:

- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 4;
- (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 5;
- (c) so as to provide for profit in accordance with paragraph 6; and
- (d) so as to provide for Estimated Revisions in accordance with paragraph 7.

4. GENERAL ADJUSTMENTS/ASSUMPTIONS

4.1 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any reduction in costs relating to a Change; and/or

- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be taken into account.

4.3 Revised Inputs are also to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) the Operator will use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and
 - (ii) increase any revenue that may arise and avoid any cost that may be avoided, as a consequence of a Change; and
- (b) any requirement for borrowing in respect of Capital Expenditure by the Operator is dealt with in accordance with paragraph 2 of Schedule 22 (*Other Provisions*).

5. ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS

5.1 The parties shall (unless to do so would be contrary to paragraph 4) agree or RfL shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 5.2 or paragraph 5.3.

5.2 Where RfL reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or RfL shall reasonably determine additional assumptions for this purpose.

5.3 Where RfL reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Operator and the revenues of the Operator; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient Train Operator,

then the parties shall agree or RfL shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient Train Operator.

6. REVISED INPUT FOR PROFIT

6.1 The parties shall agree or RfL shall reasonably determine Revised Inputs in relation to profit:

- (a) where a Change is forecast to result in an increase to the Operator’s costs, that provide for an increase in the amount of profit in any Concession Year equal to the lower of:
 - (i) **[REDACTED]**; or

- (ii) the average profit margin in the current Business Plan for the remaining Concession Term,

of the forecast increase in costs for that Concession Year; and/or

- (b) where a Change is forecast to result in a reduction in the Operator's costs, that provide for a decrease in the amount of profit in any Concession Year equal to [REDACTED]⁶² of the forecast decrease in costs for that Concession Year, [REDACTED]⁶³

provided that, there shall be no Revised Input in relation to profit where any such Change is a Charge Variation.

6.2 In agreeing or determining Revised Inputs in respect of any Change, the parties or RfL shall effect such change (if any) in the amount attributable to profit in paragraph 6.1 as they agree or RfL reasonably determines to reflect the risk for the Operator in continuing to operate the Concession on the terms of this Agreement after and as a result of the Change.

6.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or RfL shall effect such change (if any) to the amount attributable to profit as they agree or RfL reasonably determines:

- (a) fairly rewards the Operator for proposing the Protected Proposal; and
- (b) reasonably incentivises the Operator to propose further Protected Proposals,

by sharing with the Operator a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

7. ESTIMATED REVISIONS

7.1 This paragraph 7 applies only where and to the extent that, prior to the Run of the Financial Model, payments made between RfL and the Operator have been altered in accordance with Estimated Revisions notified by RfL to the Operator pursuant to paragraph 2 of Schedule 12.1 (*Financial Consequences of Change*).

7.2 No Revised Inputs shall be made for Estimated Revisions that have been paid or are to be paid in respect of any Change.

7.3 Where Estimated Revisions have been paid and/or are to be paid then, as soon as reasonably practicable after the performance of the related Run of the Financial Model, the parties shall agree or RfL shall reasonably determine the difference (the **Reconciliation Amount**) between:

- (a) the total amount of Estimated Revisions paid and/or to be paid; and
- (b) the total amount of the payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which Estimated Revisions have been paid/or are to be paid.

⁶² This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

⁶³ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

7.4 The Reconciliation Amount shall be paid by the Operator to RfL where it is positive and paid by RfL to the Operator where it is negative, in either case, on the first Payment Date after agreement or determination.

SCHEDULE 13
FINANCIAL OBLIGATIONS AND COVENANTS

Schedule 13: Financial Obligations and Covenants

Appendix: Form of Performance Bond

Annex A: Reduction Notice

Annex B: Bond Release Notice

Annex C: Form of Demand

SCHEDULE 13

Financial Obligations and Covenants

1. OBLIGATIONS

Except to the extent provided for under this Agreement, or as RfL may otherwise agree from time to time, the Operator shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Concession Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Concession Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. CASH BUFFER FUND

2.1 The Operator shall establish, no later than the Start Date, a cash buffer fund of [REDACTED]⁶⁴ (the *Fund*) in an account in London with a first-class bank, under a mandate which excludes set-off rights and rights to combine or sweep accounts, and which is on terms that may not be changed without RfL's prior written consent.

2.2 The Operator shall:

- (a) increase the amount of the Fund by four per cent. on each anniversary of the Start Date; and
- (b) maintain the Fund throughout the Concession Period, subject to paragraph 2.4.

2.3 The Operator shall not create or permit to subsist any Security Interest over the Fund or the account.

2.4 Subject to paragraph 2.6, the Operator may withdraw amounts from the Fund only:

- (a) to meet extraordinary, unbudgeted expenditure (which shall not include unbudgeted expenditure required as part of the implementation of any Remedial Agreement or Corrective Action Notice); or
- (b) for so long as LUL is retailing agent of the Operator at the Stations specified in paragraph 1 of Schedule 1.14 (*Services to LUL*), to make up any shortfall in the amount credited to the Revenue Account (up to a maximum of £100,000 on each occasion) which is solely caused by LUL (as the Operator's ticket retail agent) failing

⁶⁴ This information is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

to pay into the Revenue Account the value of sales by LUL of Fares of other Train Operators that is required to be paid to such other Train Operators under the terms of the Ticketing and Settlement Agreement. The Operator shall restore the Fund to the required level no later than seven days after each such withdrawal.

2.5 Subject to paragraph 2.6, the Operator shall promptly report any withdrawal from the Fund to RfL, providing a detailed explanation of why the withdrawal is necessary and when the Operator expects the Fund to be returned to the required level.

2.6 The Operator shall be entitled to earn interest on the amount held in the Fund from time to time, subject to the terms of this paragraph 2. Provided that no Event of Default has occurred and is continuing and provided such withdrawal does not take the Fund below the level specified in paragraph 2.1, the Operator may withdraw interest accrued on the amount held in the Fund and shall not be required to comply with paragraph 2.5 in respect of such withdrawal.

3. LOCK-UP PERIOD

3.1 *Lock-up Period* means any period commencing when a withdrawal has been made from the Fund taking the Fund below the level specified in paragraph 2.1 (as inflated in accordance with paragraph 2.2(a)) and ending when RfL is satisfied that the Fund has been restored to that level.

3.2 The Operator shall not during any Lock-up Period do any of the following without RfL's prior written consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Operator, without the prior written consent of RfL;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings.

3.3 Failure by the Operator at any time to comply with the requirements of paragraph 2 or this paragraph 3 shall be an Event of Default.

4. PERFORMANCE BOND

Provision of Initial Performance Bond

4.1 The Operator shall procure that there shall be a valid and effective Performance Bond with a minimum initial duration of three years in place:

- (a) with effect:
 - (i) from the date of this Agreement;
 - (ii) throughout the Concession Period; and
 - (iii) for a period of seven Reporting Periods after the end of the Concession Period;

- (b) substantially in the form of the Appendix (*Form of Performance Bond*) to this Schedule 13;
- (c) duly executed and delivered by a Bond Provider acceptable to RfL (and in compliance with paragraphs 4.5 to 4.7 (inclusive)); and
- (d) having an initial value of [REDACTED]⁶⁵. RfL will reduce the amount of the Performance Bond to [REDACTED] on the ELL Commencement Date (by issuing a Reduction Notice in the form of Annex A to the Performance Bond to the Performance Bond Provider), unless an Event of Default has occurred and is continuing on that date, in which case RfL will only reduce such amount to [REDACTED] on such later date as RfL is satisfied that no Event of Default is continuing. The said amounts of [REDACTED] and [REDACTED] shall be subject to indexation in accordance with the Retail Prices Index on each anniversary of the Start Date.

Provision of Replacement Performance Bond

4.2 The Operator may replace the Performance Bond at any time, provided that such replacement Performance Bond is:

- (a) substantially in the form of the Appendix (or in any other form acceptable to RfL in its discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to RfL (and in compliance with paragraphs 4.5, to 4.7 (inclusive)); and
- (c) in an amount complying with paragraph 4.1(d).

4.3 The Operator shall replace any Performance Bond at least six months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Demands under the Performance Bond

- 4.4 (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to RfL in full in London on first written demand by RfL on the Bond Provider.
- (b) As between RfL and the Operator, RfL may issue a demand to the Bond Provider in any of the following circumstances:
 - (i) if this Agreement:
 - (A) is terminated early or expires and, in either case, there are liabilities or obligations outstanding from the Operator to RfL; or
 - (B) is terminated early (solely as a consequence of the occurrence of one or more Events of Default) in circumstances where RfL has incurred or expects to incur additional costs in connection with early termination of this Agreement;

⁶⁵ All redacted information in this paragraph is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

- (ii) if a railway administration order is made in relation to the Operator pursuant to Sections 60 to 62 of the Act;
 - (iii) if an Event of Default occurs:
 - (A) under paragraph 2.15(a) of Schedule 14.5 (*Events of Default and Termination Event*) in relation to the Performance Bond; or
 - (B) under paragraph 2.15(b) of Schedule 14.5,
(whether or not this Agreement is, or is to be, terminated as a result thereof);
 - (iv) if the Operator fails to perform or comply with its obligations under any Supplemental Agreement;
 - (v) if the Operator fails to provide a replacement Performance Bond complying with this paragraph 4; or
 - (vi) if the Operator fails to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to RfL when required to do so in accordance with this paragraph 4.
- (c) If RfL makes a demand under the Performance Bond, it shall account to the Operator for the proceeds of such Performance Bond remaining following settlement in full by the Operator to RfL's satisfaction of all liabilities or obligations from the Operator to RfL and reimbursement of all additional costs incurred by RfL in connection with early termination of this Agreement within a reasonable period.

Characteristics of Performance Bond Provider

4.5 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, RfL may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.

4.6 The Operator shall provide such information relating to any Bond Provider or proposed Bond Provider as RfL may require from time to time.

4.7 If at any time RfL reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, RfL may require the Operator within 20 Business Days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to RfL. This applies:

- (a) notwithstanding the other provisions of this paragraph 4; and
- (b) irrespective of the scheduled expiry date of the then current Performance Bond.

APPENDIX TO SCHEDULE 13

Form of Performance Bond

To: Rail for London Limited
 Windsor House
 42-50 Victoria Street
 London
 SW1H 0TL
 (RfL)

[Date]

Performance Bond No. [_____]

1. We understand that under the terms of the Concession Agreement dated [_____] 2007 between Rail for London Limited (*RfL*) and MTR Laing Metro Limited (the *Operator*) (as amended, supplemented and/or varied from time to time) (the *Contract*), you require the provision of a bond in the form of this Bond. This Bond is the Performance Bond, as defined in the Contract.

2. We, [_____] , at the request of the Operator, hereby provide this Bond to you on the terms set out below.

3. Our maximum liability for a principal payment under paragraph 6 shall be limited to [REDACTED] (the *Maximum Aggregate Amount*), as such Maximum Aggregate Amount may be reduced from time to time in accordance with the provisions of paragraph 4.

4. Upon our receipt from you of a notice in the form of Annex A signed by an authorised signatory of RfL (or an assignee permitted under paragraph 10) (a *Reduction Notice*) the Maximum Aggregate Amount applicable in relation to this Bond shall be the Pounds Sterling amount set out in such Reduction Notice. Any demand for payment of an amount which exceeds the Maximum Aggregate Amount after such reduction shall be rejected as not in compliance with the terms hereof.

5. Our liability under paragraph 6 shall cease (irrespective of any assignment of this Bond by RfL) on the earlier of:

- (a) our receipt from you of a notice in the form of Annex B signed by an authorised signatory of RfL (or an assignee permitted under paragraph 10) (the *Bond Release Notice*); or
- (b) 17.00 hours (London time) on [_____] 200[_____] (the *Bond Expiry Date*),

except to the extent of any outstanding demand made hereunder on or before the applicable date (and, if relevant, time) (under paragraphs 5(a) and (b)) which has not been satisfied, settled or abandoned in full.

6. Subject always to paragraph 3, we hereby unconditionally and irrevocably undertake that forthwith upon RfL (or an assignee permitted under paragraph 10) issuing a written demand to us substantially in the form of Annex C, we shall pay RfL the sum so demanded within seven days of such demand being received by our issuing office in accordance with paragraph 7(c) below.

7. (a) All correspondence, notifications, or demands under this Bond by you must be delivered or sent to the address and/or facsimile number below:

[_____]

Attention: [_____] [_____]]
Facsimile Number: [_____] [_____]]

or to such other address and/or facsimile number as we may notify to you by not less than 10 business days' prior written notice. For the purposes of this Bond, a business day shall be a day (other than Saturday or Sunday) on which banks are open for general business in London.

- (b) All correspondence or notifications under this Bond by us must be delivered or sent to the address and/or facsimile number below:

Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Attention: [_____] [_____]]
Facsimile Number: [_____] [_____]]

or to such other address and/or facsimile number as you may notify to us by not less than 10 business days' prior written notice.

- (c) Any such correspondence, notification and/or demand referred to in paragraph 7(a) or (b) shall be deemed to have been duly given or made as follows:

- (i) if personally delivered, upon delivery at the relevant above address;
- (ii) if sent by first class post, two days after the date of posting; or
- (iii) if sent by fax, when despatched (subject to confirmation of full and uninterrupted transmission by a transmission report),

provided that:

- (A) a demand by you must be made by personal delivery or first class post in accordance with paragraph 7(c)(i) or (ii); and
- (B) if, in accordance with the above provisions, any such notice, demand or other communication would otherwise be deemed to be given or made later than 17.00 hours (London time), such notice, demand or other communication shall be deemed to be given or made at 09.00 hours (London time) on the next business day.

8. If a demand by you under this Bond does not conform to the provisions of this Bond, we shall give you prompt notice of such non-conformity, stating the reasons therefor.

9. Reference in this Bond to the Contract is for identification purposes only. The terms and conditions of the Contract are not incorporated in or made part of this Bond. This Bond is independent of the Contract, and our obligations under this Bond are direct, primary, continuing, irrevocable and unconditional obligations.

10. This Bond is issued to RfL and its successors in title or assignees as permitted under the Contract and may be assigned to its financier as security for any of its obligations to its financier (provided notice of such assignment is given to us promptly following such assignment).

11. This Bond shall enter into full force and effect on the date hereof, and shall remain in full force and effect until (irrespective of any assignment of this Bond by RfL) the earlier of:

- (a) receipt by us of the Bond Release Notice; and
- (b) 17.00 hours (London time) on the Bond Expiry Date,

when it should be returned to us for cancellation, except to the extent of any outstanding demand made hereunder on or before 17.00 hours (London time) on the Bond Expiry Date which has not been satisfied, settled or abandoned in full.

12. Any payment by us under this Bond shall be made in Pounds Sterling (or other lawful currency of the United Kingdom) to such bank account as may be specified in your demand, in immediately available funds, without set-off or counterclaim, and free and clear of any deduction or withholding. We hereby agree to pay to you default interest (after as well as before judgement), at a rate equal to the base rate for the time being of HSBC Bank plc plus four per cent., on any amounts properly demanded hereunder which are not paid in full on the due date (namely the date seven days after receipt by us of the demand) until the date on which the demand is paid by us in full.

13. This Bond shall be governed by and construed in accordance with English law, and shall be subject to the exclusive jurisdiction of the English courts.

14. Capitalised terms not otherwise defined in this Bond shall have the meanings given to them in the Contract.

15. This Bond is subject to the Uniform Rules for Demand Guarantees of the International Chamber of Commerce (Publication No. 458), save that Articles 4 and 20(a) of the said Rules shall not apply.

16. This Bond shall not confer any benefit on, or be enforceable by, any third party, other than an assignee of RfL permitted by paragraph 10.

IN WITNESS of which this Bond has been executed and delivered as a deed on the date below.

Dated this [_____] day of [_____] 200[_____]

Signed as a deed by [_____] , acting by [_____] under power of attorney, in the presence of:

[_____]
Witness: [_____]

ANNEX A TO THE APPENDIX TO SCHEDULE 13

REDUCTION NOTICE

[_____] [_____]

[Address]

Attention: [_____] [_____]

Facsimile Number: [_____] [_____]

[Date]

Performance Bond No. [_____]

1. We, Rail for London Limited, hereby refer to the bond dated [_____] [_____] 200[_____] (as amended, restated, supplemented and/or varied from time to time) issued by you to us titled “[_____] [_____]” and with Bond No. [_____] (the **Bond**).
2. Any capitalised term not defined herein shall have the meaning given to it in the Bond or the Contract (as such term is defined in the Bond).
3. This is a Reduction Notice for the purposes of paragraph 4 of the Bond.
4. For the purposes of, subject to, and in accordance with paragraph 4 of the Bond, we hereby notify you that the Maximum Aggregate Amount applicable in relation to the Bond shall be **[REDACTED]**.
5. We confirm that we have not assigned our rights under the Bond. [*If Bond has been assigned by RfL, assignee should issue the Reduction Notice.*]

Signed by [*insert name*] (an authorised signatory)

For and on behalf of
Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

ANNEX B TO THE APPENDIX TO SCHEDULE 13

BOND RELEASE NOTICE

[_____]]

[Address]

Attention: [_____]]

Facsimile Number: [_____]]

[Date]

Performance Bond No. [_____]]

1. We, Rail for London Limited, hereby refer to the bond dated [_____]] 200[_____] (as amended, restated, supplemented and/or varied from time to time) issued by you to us titled “[_____]]” and with Bond No. [_____] (the **Bond**).

2. Any capitalised term not defined herein shall have the meaning given to it in the Bond or the Contract (as such term is defined in the Bond).

3. This is the Bond Release Notice for the purposes of paragraphs 5 and 11 of the Bond.

4. We hereby notify you, in accordance with and subject to paragraph 5 of the Bond, that your liability to make a payment under paragraph 6 of the Bond with respect to any future demand made by us in relation to the Bond shall cease on receipt by you of this Bond Release Notice.

5. We confirm that we have not assigned our rights under the Bond. [*If Bond has been assigned by RfL, assignee should issue the Release Notice.*]

Signed by [*insert name*] (an authorised signatory)

For and on behalf of
Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

ANNEX C TO THE APPENDIX TO SCHEDULE 13

FORM OF DEMAND

[_____] [_____]

[Address]

Attention: [_____] [_____]

Facsimile Number: [_____] [_____]

[Date]

Performance Bond No. [_____]

1. We, Rail for London Limited, hereby refer to the bond dated [_____] [_____] 200[_____] (as amended, restated, supplemented and/or varied from time to time) issued by you to us titled “[_____] [_____]” and with Bond No. [_____] (the **Bond**).

2. Any capitalised term not defined herein shall have the meaning given to it in the Bond or the Contract (as such term is defined in the Bond).

3. This is a demand for the purposes of paragraph 6 of the Bond.

4. We certify that we are entitled to make this demand under the terms of the Contract.

5. We demand payment (pursuant to paragraph 6 of the Bond) of £[_____]. Payment should be made within the 7 day time period contemplated by paragraph 6 of the Bond, and otherwise in accordance with the Bond to [specify account details].

6. We confirm that the amount demanded under the Bond pursuant to paragraph 5 does not exceed the Maximum Aggregate Amount.

7. We confirm that we have not assigned our rights under the Bond. [If Bond has been assigned by RfL, assignee should issue the Demand.]

Signed by [insert name] (an authorised signatory)

For and on behalf of
Rail for London Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

SCHEDULE 14
REMEDIES, TERMINATION AND EXPIRY

- Schedule 14.1: Remedial Plans and Remedial Agreements**
- Schedule 14.2: Quality Regime Remedial Plans and Remedial Agreements**
- Schedule 14.3: Other RfL Remedies**
- Schedule 14.4: Termination and Expiry**
- Schedule 14.5: Events of Default and Termination Event**
- Schedule 14.6: Force Majeure**
- Schedule 14.7: Liability**

SCHEDULE 14.1

Remedial Plans and Remedial Agreements

1. REMEDIAL PLAN NOTICES AND REMEDIAL AGREEMENTS

1.1 Without limiting its other rights under this Schedule 14, if RfL is satisfied that the Operator is contravening or is likely to contravene any term of this Agreement, RfL may serve a notice on the Operator requiring it to propose such steps as the Operator considers appropriate for the purpose of securing or facilitating compliance with the term in question (a *Remedial Plan Notice*).

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of this Agreement that RfL is satisfied that the Operator is contravening or is likely to contravene (each a *Relevant Term*); and
- (b) the time period within which RfL requires the Operator to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a *Remedial Plan*).

Obligation to submit Remedial Plan

1.3 If RfL issues a Remedial Plan Notice, the Operator shall submit a Remedial Plan to RfL within the period specified in such Remedial Plan Notice.

Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused a Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the Operator proposes to implement those steps.

2. REMEDIAL AGREEMENTS

2.1 If RfL is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) it may, without limiting its other rights under this Agreement or otherwise, require the Operator to enter into a supplemental agreement (the *Remedial Agreement*) with RfL to implement those matters.

2.2 It is a term of this Agreement that the Operator complies with the Remedial Agreement in accordance with its terms.

3. EVENT OF DEFAULT

If the parties enter into a Remedial Agreement or RfL issues a Corrective Action Notice, in each case in relation to a Relevant Term that is not a Remedial Plan Quality Benchmark, and the Operator is non-compliant with that Relevant Term by the end by the end of the relevant period for implementation, an Event of Default shall occur.

SCHEDULE 14.2

Quality Regime Remedial Plans and Remedial Agreements

1. APPLICATION OF THIS SCHEDULE 14.2

The provisions of this Schedule 14.2 supplement the provisions of Schedule 14.1 (*Remedial Plans and Remedial Agreements*) and apply in relation to any contravention of a Remedial Plan Quality Benchmark.

2. REMEDIAL PLAN NOTICES

If RfL is satisfied that the Operator is contravening or is likely to contravene any Remedial Plan Quality Benchmark, it may serve a Remedial Plan Notice on the Operator in accordance with paragraph 1.1 of Schedule 14.1.

3. REMEDIAL PLANS

Where RfL has served on the Operator a Remedial Plan Notice in respect of any Remedial Plan Quality Benchmark, the Operator shall submit to RfL a Remedial Plan in accordance with paragraph 1.3 of Schedule 14.1.

4. REMEDIAL AGREEMENTS

RfL may, subject to paragraph 5, require the Operator to enter into a Remedial Agreement in accordance with paragraph 2.1 of Schedule 14.1 in relation to any Remedial Plan that concerns a Remedial Plan Quality Benchmark.

5. REMEDIAL SPENDING CAP

5.1 Subject to this paragraph 5, RfL may require the Operator to spend (from unbudgeted resources and not internal spend) up to [REDACTED]⁶⁶ in any Concession Year in carrying out the steps specified in any Remedial Agreement or Corrective Action Notice for securing or facilitating compliance with a Relevant Term which is a Remedial Plan Quality Benchmark.

5.2 The amount referred to in paragraph 5.1 is a combined annual limit for all remedial expenditure carried out pursuant to any Remedial Agreement or Corrective Action Notice in relation to the KPI Regime, the MSS Regime and the CSS Regime.

5.3 RfL may not require the Operator to enter into a Remedial Agreement or require a Corrective Action Notice to be complied with, in each case relating to any Remedial Plan Quality Benchmark, where the solutions proposed in that agreement or notice would require the Operator to incur expenditure in excess of the combined annual limit referred to in paragraph 5.1.

5.4 The Operator shall promptly inform RfL where it reasonably believes that the circumstances referred to in paragraph 5.3 apply. If RfL agrees, acting reasonably, that those circumstances do apply, then RfL and the Operator shall promptly discuss whether alternative

⁶⁶ This information is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

solutions can be identified that will not require the Operator to incur expenditure in excess of that combined annual limit.

5.5 If such solutions can be identified, the parties shall promptly enter into a Remedial Agreement or RfL shall reissue the Corrective Action Notice (as the case may be), in each case, on that basis. If such solutions cannot be identified or the combined annual limit has already been reached, then the Operator shall not be required to enter into a related Remedial Agreement or comply with the related Corrective Action Notice, but shall use all reasonable endeavours to continue to achieve compliance with the relevant Remedial Plan Quality Benchmark, including by identifying and implementing solutions which do not require external expenditure, or (where applicable) solutions which will only require the Operator to incur expenditure up to the combined annual limit.

6. EVENT OF DEFAULT

If the parties enter into a Remedial Agreement or RfL issues a Corrective Action Notice, in each case in relation to a Remedial Plan Quality Benchmark and the Operator has not materially complied with the terms, as the case may be, of that Remedial Agreement or Corrective Action Notice (subject to paragraph 5) by the end of the relevant period for implementation, an Event of Default shall occur.

SCHEDULE 14.3

Other RfL Remedies

1. CORRECTIVE ACTION NOTICES

1.1 Without limiting its other rights under this Schedule 14, RfL may issue a Corrective Action Notice to the Operator in any case where:

- (a) RfL is satisfied that the Operator is contravening or is likely to contravene any term of this Agreement that is not a contravention of a Remedial Plan Quality Benchmark (as to which Schedule 14.1 (*Remedial Plans and Remedial Agreements*) and Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) apply in the first instance);
- (b) RfL does not approve of the terms of any Remedial Plan submitted to it by the Operator (including a Remedial Plan submitted under Schedule 14.2); or
- (c) the Operator fails to comply with its obligations in respect of the implementation of any Remedial Agreement or prior Corrective Action Notice (including a Remedial Agreement or prior Corrective Action Notice relating to a breach of any Remedial Plan Quality Benchmark issued pursuant to paragraph 1.1(b) or this 1.1(c)), but, notwithstanding the consequent occurrence of an Event of Default, RfL does not wish to terminate this Agreement.

1.2 Each Corrective Action Notice shall specify the following:

- (a) the Relevant Term that RfL is satisfied that the Operator is contravening or is likely to contravene;
- (b) the action that it reasonably requires the Operator to take or procure and/or the outputs it reasonably requires to see delivered to facilitate or secure compliance with that Relevant Term; and
- (c) the time period within which RfL requires the Operator to take that action or see those outputs delivered.

1.3 Any Corrective Action Notice served in relation to the Operator's performance against any Remedial Plan Quality Benchmark, is subject to the same limitations regarding the cap on the Operator's annual expenditure as apply in respect of relevant Remedial Agreements specified in paragraph 5 of Schedule 14.2. Consequently, RfL is not entitled to issue a Corrective Action Notice to the Operator where the effect of such notice would require the Operator to incur expenditure in excess of the relevant annual cap.

2. INCREASED MONITORING BY RFL

2.1 Following the occurrence of a contravention of this Agreement, RfL may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Operator's performance of any relevant obligation until such time as the Operator demonstrates, to RfL's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.

2.2 The Operator shall co-operate fully with RfL in relation to such monitoring referred to in paragraph 2.1.

2.3 The results of such monitoring will be reviewed at each Concession Performance Meeting held pursuant to Schedule 15 (*Agreement Management Provisions*).

2.4 The Operator shall compensate RfL for all reasonable costs incurred by RfL in carrying out such monitoring and if such monitoring is in respect of a contravention of any Remedial Plan Quality Benchmark, such compensation shall not be included in any remedial spending required in respect of any Remedial Plan pursuant to Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and capped pursuant to paragraph 5 thereof.

3. EFFECT OF FORCE MAJEURE EVENT

Without prejudice to the operation of paragraph **Error! Reference source not found.** of Schedule 14.6 (*Force Majeure*), the following provisions shall apply in relation to Force Majeure Events affecting performance of the requirements of a Remedial Agreement or a Corrective Action Notice:

- (a) the Operator shall give written notice to RfL promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Operator's ability to comply with a Remedial Agreement or a Corrective Action Notice within the period specified therein;
- (b) each notice submitted in accordance with paragraph 3(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Operator considers it likely to occur;
- (c) the Operator shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement or a Corrective Action Notice; and
- (d) the Operator shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement or a Corrective Action Notice in order to take account of the effect of a Force Majeure Event which has occurred on the Operator's ability to comply with any Remedial Agreement or a Corrective Action Notice.

4. RfL STEP-IN RIGHT

Step-In

4.1 Where an Event of Default has occurred and is continuing and RfL has decided not to terminate this Agreement at that time, it may instead serve notice on the Operator (a ***Step-In Notice***), informing the Operator of the following:

- (a) the Event of Default that has occurred and is continuing;
- (b) the extent to which, if any, RfL wishes to expel the Operator from the infrastructure and/or facilities related to the LRC and, subject to paragraph 4.1(a), the date from which RfL requires that expulsion to apply;
- (c) the steps that RfL intends to take itself or the steps that RfL intends its nominee to take on its behalf, each in relation to the operation or the carrying out of the

Concession Services or of any of the Operator's obligations under this Agreement to ensure the continuity or delivery of those services and/or obligations;

- (d) the identity of its nominee, if relevant and known at the time; and
- (e) the date on which RfL expects those steps to first be taken (which may be the date of the Step-In Notice) and the time period that RfL estimates is reasonably necessary to take those steps.

4.2 Where RfL indicates in any Step-In Notice that it wishes to expel the Operator from some or all of the infrastructure and/or facilities related to the LRC:

- (a) the date referred to in paragraph 4.1(b) shall be no less than seven days after the date of the relevant Step-In Notice;
- (b) the Operator shall comply with the terms of any such expulsion; and
- (c) in so requiring, neither RfL will have avoided this Agreement nor the Operator have been released from any of its obligations or liability under this Agreement.

4.3 To the extent RfL has not already notified the Operator in the Step-In Notice, RfL shall, where relevant, notify the Operator of the identity of its nominee as soon as reasonably practicable after that nominee's appointment.

4.4 RfL or its nominee shall be entitled to take such steps during any Step-In Period as RfL or that nominee (as the case may be) reasonably considers necessary in order to fulfil the objective referred to in paragraph 4.1(c).

4.5 The Operator shall co-operate with RfL and/or its nominee during any Step-In Period to assist RfL and/or its nominee (as the case may be) in fulfilling the objective referred to in paragraph 4.1(c), including by:

- (a) providing to RfL and/or its nominee (as the case may be) on reasonable notice, access to or copies of such financial, operational, management or other information relevant to the Concession Services or any of the Operator's obligations under this Agreement;
- (b) granting or procuring the grant to RfL and/or its nominee of such access as RfL or its nominee (as the case may be) reasonably requires to the infrastructure and/or facilities, including Computer Systems, related to the LRC;
- (c) procuring the prompt assistance and availability to RfL and/or its nominee of all relevant Concession Employees; and
- (d) taking such other action or omitting to take such action as RfL reasonably requires.

4.6 Where RfL and/or its nominee takes any steps pursuant to paragraph 4.4, RfL may recover all costs that either or both reasonably incur (including their respective administrative expenses, staff costs, other overheads and in the case of the nominee, a reasonable profit element) in relation to the taking of those steps.

Step-Out

4.7 Concession Payments shall continue to be payable by the Operator or, as the case may be, RfL in accordance with Schedule 11.1 (*Concession Payments*) during any Step-In Period.

4.8 Following service of a Step-In Notice, where so requested by RfL, the Operator shall as soon as reasonably practicable after that request, submit to RfL proposals that demonstrate that the Operator is and will continue to be capable of ensuring the continuity or delivery of the Concession Services and/or its obligations under this Agreement in relation to which that Step-In Notice was served.

4.9 RfL may in its discretion, regardless of whether it has asked for the Operator to provide the proposals referred to in paragraph 4.8, serve on the Operator a notice (a *Step-Out Notice*) specifying the following:

- (a) the extent to which RfL wishes the Operator to resume providing those Concession Services and/or meeting those obligations under this Agreement in relation to which the relevant Step-In Notice was served; and
- (b) the date on which the Operator is to resume providing those services and/or obligations, provided that the Operator shall be given no less notice than a skilled and experienced Train Operator of the LRC would require in order to resume those services and/or obligations.

4.10 The Operator shall comply with the requirements of any Step-Out Notice.

4.11 RfL may:

- (a) serve more than one Step-Out Notice in relation to those Concession Services and/or those obligations under this Agreement that are the subject of a single Step-In Notice; and
- (b) require the Operator to resume the provision of those services and/or obligations in full, partially or gradually.

4.12 RfL:

- (a) shall or shall procure that its nominee shall use all reasonable endeavours to ensure that:
 - (i) the Operator does not suffer or incur any cost, loss, damage or claim; or
 - (ii) the Operator's ability to deliver the Concession Services and/or its obligations under this Agreement is not materially diminished,

in either case arising from RfL's or its nominee's actions or omissions during any Step-In Period; but

- (b) shall not be liable for any such cost, loss, damage or claim suffered or incurred by the Operator or any reduction in such ability, in either case arising from those actions or omissions during any Step-In Period.

SCHEDULE 14.4

Termination and Expiry

1. TERMINATION NOTICES

1.1 RfL may, on and at any time after the occurrence of:

- (a) an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and which RfL considers to be material; or
- (b) a Termination Event which is unremedied or continuing,

terminate this Agreement by serving a Termination Notice on the Operator. This Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 RfL may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Operator is required to deliver to RfL the Remedial Plan specified in such Remedial Plan Notice.

1.3 RfL may not serve a Termination Notice in respect of an Event of Default for which the Operator is implementing a Remedial Agreement in accordance with its terms.

2. CONSEQUENCES OF TERMINATION OR EXPIRY

2.1 Upon termination of this Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of this Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of this Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

2.2 Nothing in this paragraph 2 shall prevent RfL from bringing an action against the Operator in connection with the termination of this Agreement prior to the expiry of the Concession Term.

SCHEDULE 14.5

Events of Default and Termination Event

1. PROVISIONS RELATING TO EVENTS OF DEFAULT

Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Operator.

Notification of Event of Default

1.2 The Operator shall notify RfL as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Operator shall take such action or steps as RfL may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 14.4 (*Termination and Expiry*) shall apply, but the provisions of Schedule 14.1 (*Remedial Plans and Remedial Agreements*), Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and Schedule 14.3 (*Other RfL Rights*) shall also continue to apply.

2. EVENTS OF DEFAULT

Each of the following is an Event of Default:

Insolvency

2.1 (a) **Administration:** Any step being taken by any person with a view to the administration of the Operator or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;

(b) **Insolvency:** Any of the Operator or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:

- (i) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as RfL may from time to time notify in writing to the Operator; and
- (iii) any of the Operator or the Parent or any Bond Provider shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such

demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;

- (c) **Arrangements with Creditors:** The directors of the Operator or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Operator or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Operator or the whole or a substantial part of the assets or undertaking of the Operator, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Operator, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Operator or the Parent or any Bond Provider 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 RfL before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Operator under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

unless, in the case of paragraphs 2.1(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt and subject, in the case of any relevant event occurring in relation to a Bond Provider where no other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Operator to replace the relevant Bond Provider.

Non-payment

2.2 The Operator failing to pay to RfL any amount due under this Agreement within 28 days of the due date for such payment.

Change of Control

2.3 Without the prior consent of RfL:

- (a) a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Operator or the Parent on and from the date of this Agreement and during the Concession Period, which shall include a person, or

two or more persons acting by agreement, ceasing to Control the Operator or the Parent at any time during the Concession Period, whether or not any other person Controls the Operator or the Parent at the same time and, for the purposes of this paragraph 2, two or more persons shall be deemed to be acting by agreement in relation to the Operator or the Parent if, assuming the Operator or the Parent was a target company as defined in Section 204(1) of the Companies Act 1985, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons; or

- (b) Laing Rail Limited ceasing to Control (where references to 30 per cent. in that definition shall be read as references to 50 per cent.) Chiltern.

Revocation of Licence

2.4 Revocation of any Licence required to be held by the Operator in order to comply with its obligations under this Agreement.

Safety Certificate and Safety Authorisation

2.5 Any Safety Certificate and/or Safety Authorisation of the Operator being withdrawn or terminated.

Breach of Law

- 2.6 (a) It becoming unlawful for the Operator to provide all or a material part of the Passenger Services or to operate all or a material number of the Stations or Depots (except to the extent not required so to do under this Agreement).
- (b) The Operator or any of the directors or senior managers of the Operator being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Concession Services.
- (c) The Operator being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Operator makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.6(c) until such appeal has been determined to be unsuccessful.

Revenue Protection

2.7 The Fare Evasion Rate at the end of any Ticketless Travel Survey Period, when measured on a moving annual average in accordance with paragraph 2 of Schedule 2.3 (*Ticket Revenue and Revenue Protection Incentive*), is equal to or more than the Fare Evasion Default Level, provided that it shall not be an Event of Default if the Fare Evasion Rate at the end of either of the first two Ticketless Travel Survey Periods during the Concession Period, when measured that way, is equal to or more than the Fare Evasion Default Level.

Non-membership of Inter-Operator Schemes

2.8 The Operator ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Stations Enhancements Works Agreement

2.9 If the Operator is in material breach of any provisions of the Station Enhancements Works Agreement (and where such material breach is in the reasonable opinion of RfL capable of remedy and the Operator has not remedied such material breach).

Diversity Infraction

2.10 (a) Following receipt of a notice given pursuant to paragraph 7.1(a) or (b) of Schedule 6 (*Equality and Diversity Requirements and the London Living Wage*), the Operator failing to remedy a Diversity Infraction to the satisfaction of RfL within the timescale prescribed in that paragraph 7.1(a) or (b), as appropriate.

(b) Following receipt of a notice given pursuant to paragraph 7.2 of Schedule 6, the Operator, failing to terminate the engagement of its direct subcontractor under its contract with that subcontractor and procuring performance by another person on the terms specified in that paragraph within the further timescale prescribed in paragraph.

Passenger Service Performance

2.11 The number of Minutes Delay attributable to the Operator in relation to any Route in any Reporting Period (calculated on a moving annual average basis) being equal to or worse than the related Default Operational Benchmark.

KPI Regime

2.12 The Operator is required to make performance failure payments to RfL under the KPI Regime that exceed (that is, equal to or worse than) the Default KPI Benchmark, provided that, it shall not be an Event of Default where the Operator is required to make those performance failure payments to that extent in the first six Reporting Periods of the Concession Period.

MSS Regime

2.13 The Operator's MSS Score for any quarter, when measured as a moving annual average, exceeds (that is, is equal to or worse than) the Default MSS Benchmark for that quarter.

Financial Covenants

2.14 Breach by the Operator of paragraph 2 or paragraph 3 of Schedule 13 (*Financial Obligations and Covenants*).

Performance Bond

2.15 (a) Any Performance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder; or

(b) A failure by the Operator to procure the provision to RfL of a Performance Bond which fulfils the requirements of Schedule 13.

Remedial Agreements and Corrective Action Notices

2.16 The Operator is non-compliant with a Relevant Term after the implementation of:

- (a) a Remedial Agreement; or
- (b) a Corrective Action Notice,

in each case, (i) relating to that Relevant Term and (ii) entered into pursuant to Schedule 14.1 (*Remedial Plans and Remedial Agreements*) by the end of the relevant period for implementation.

2.17 The Operator is materially non-compliant with:

- (a) a Remedial Agreement; or
- (b) a Corrective Action Notice,

in each case, entered into pursuant to Schedule 14.2 (*Quality Regime Remedial Plans and Remedial Agreements*) by the end of the relevant period for implementation.

Enforcement Orders

2.18 Non-compliance by the Operator with:

- (a) a provisional order;
- (b) a final order;
- (c) a penalty; or
- (d) any other order made relating to a contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order.

Other Concessions

2.19 Termination, as a result of an event of default (excluding termination as a result of non-satisfaction of a condition precedent), of any other train operating agreement (whether heavy or light rail) or bus contract to which RfL or a member of the TfL Group and the Operator or an Affiliate of the Operator are a party.

Key Contracts

2.20 Termination of any Key Contract except where requested by RfL or to the extent that the Operator has demonstrated to the reasonable satisfaction of RfL that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Concession Services.

Security over Primary Concession Assets

2.21 If the Security Interest granted by the Operator pursuant to paragraph 5 of Schedule 17.6 (*Dealing with Concession Assets*) ceases to be valid, binding and enforceable as a first priority Security Interest, unless the Operator replaces such security with replacement security acceptable to RfL within five days after written notice from RfL.

Contravention of Other Obligations

2.22 The occurrence of the following:

- (a) the Operator contravening to a material extent or persistently contravening any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 14.5, other than this paragraph 2.22);
- (b) the service by RfL on the Operator of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Operator is required to so remedy; and
- (c) the Operator contravening or persistently contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as RfL has specified in the notice served pursuant to paragraph 2.22(b)(ii).

3. TERMINATION EVENT

RfL may terminate this Agreement in accordance with Schedule 14.4 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six consecutive months (a *Termination Event*).

SCHEDULE 14.6

Force Majeure

1. FORCE MAJEURE EVENTS

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1.1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Operator is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) **Contingency Plan** means a contingency plan (as defined in Condition H of the Network Code) implemented by and at the instigation of Network Rail or any plan implemented by and at the instigation of LUL that has substantially the same effect as such a contingency plan, or such other contingency or recovery plan as RfL may agree from time to time;
- (b) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Operator) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or

- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two Rolling Stock Units and ten per cent. of all rolling stock vehicles used by the Operator in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Operator prevents or restricts the operation of any train on safety grounds, provided that:

- (i) the Operator has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and

- (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the HSE or other relevant body;

- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion or the act of any government instrumentality (including the ORR but excluding RfL), provided that there shall be no Force Majeure Event under this paragraph 1.1(e) by reason of:

- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;

- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or

- (iii) an act of God which results in the Operator or its agents or subcontractors being prevented or restricted by any Infrastructure Manager from gaining access to any relevant section or part of track;

- (f) **[REDACTED]**⁶⁷

- (g) **[REDACTED]**⁶⁸

- 1.2 **[REDACTED]**⁶⁹

⁶⁷ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

⁶⁸ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

⁶⁹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

2. CONDITIONS TO FORCE MAJEURE EVENTS

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) the Operator notifies RfL within two Business Days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Operator's performance of the Passenger Services;
- (c) at the same time as the Operator serves notification on RfL under paragraph 2.1(b), it informs RfL of the steps taken and/or proposed to be taken by the Operator to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) **[REDACTED]**⁷⁰
 - (ii) the Operator's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Operator used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Operator shall, to the extent reasonably so requested by RfL, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 **[REDACTED]**⁷¹

3. [REDACTED]⁷²

⁷⁰ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

⁷¹ This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000.

⁷² This information is exempt from disclosure under **[REDACTED]** and 43(2) of the Freedom of Information Act 2000.

SCHEDULE 14.7

Liability

1. EXCLUSION OF LIABILITY

Liability with respect to Passengers and Third Parties

1.1 The Operator hereby acknowledges that RfL will not be responsible for the actions of the Operator or any Affiliate of the Operator and that, except as expressly provided in this Agreement, the Operator shall provide and operate the Concession Services without recourse to RfL or government funds or guarantees.

1.2 The Operator, on demand, shall hold RfL fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on RfL in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Concession Services which is caused or contributed to by the Operator, any Affiliate of the Operator, or any employee, agent, contractor or sub-contractor of the Operator or of any Affiliate of the Operator.

Liability of RfL

1.3 Neither RfL nor any of its officers, agents or employees shall in any circumstances be liable to the Operator for any loss or damage caused by the negligent exercise of any powers reserved to RfL under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of RfL under this Agreement. The Operator may not recover from RfL or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

Operator Indemnity for Contravention of this Agreement

1.4 The Operator shall indemnify each of RfL, TfL, TTL and LUL and each other member of the TfL Group in full on demand against any losses, liabilities, costs, fees, expenses, claims or damages suffered or incurred by RfL, TfL, LUL or any other member of the TfL Group as a result of any contravention of this Agreement by the Operator, its employees, servants, agents, Subcontractors, directors or officers. This indemnity shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement.

2. REVIEW OR MONITORING BY RfL

2.1 RfL may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Operator under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of RfL during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under this Agreement.

2.2 The exercise by or on behalf of RfL of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall

not in any way impose any liability, express or implied, on RfL to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by RfL of an express provision of this Agreement and RfL does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under this Agreement.

SCHEDULE 15
AGREEMENT MANAGEMENT PROVISIONS

Schedule 15: Agreement Management Provisions

SCHEDULE 15

Agreement Management Provisions

1. RfL'S CONCESSION MANAGER

1.1 RfL shall appoint a competent Concession Manager who shall have power and authority delegated to it by RfL to act and to make decisions on behalf of RfL in relation to this Agreement and amend this Agreement on behalf of RfL. The principal responsibilities of the Concession Manager to RfL shall be, amongst other things:

- (a) to manage this Agreement on behalf of RfL;
- (b) to monitor the Operator's performance of its obligations under this Agreement;
- (c) to ensure that the necessary resources within RfL are made available expeditiously for the performance of RfL's obligations under this Agreement; and
- (d) to facilitate RfL in fulfilling its obligations under this Agreement to the Operator.

1.2 The Concession Manager may from time to time delegate any of the powers, functions and authorities vested in it to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Concession Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Operator is deemed to have received notice of it in writing in accordance with paragraph 5.2 of Schedule 22 (*Other Provisions*).

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of RfL, RfL shall give the Contract Manager reasonable notice of a proposal to replace the Concession Manager.

2. OPERATOR'S CONTRACT MANAGER

2.1 The Operator shall appoint a competent Contract Manager who shall have power and authority delegated to it by the Operator to act and to make decisions on behalf of the Operator in relation to this Agreement. The principal responsibilities of the Contract Manager to the Operator shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Operator;
- (b) to ensure that the necessary resources within the Operator's organisation are made available expeditiously for the performance of the Operator's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate the Operator in fulfilling its obligations under this Agreement to RfL.

2.2 The Contract Manager may from time to time delegate any of the powers, functions and authorities vested in it to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Contract Manager and shall state which power, function or authority is thereby delegated or revoked

and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until RfL is deemed to have received notice of it in writing in accordance with paragraph 5.2 of Schedule 22 (*Other Provisions*).

2.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Operator, a minimum of one month's notice must be given to the Concession Manager of a proposal to replace the Contract Manager.

3. KEY PERSONNEL

3.1 The Operator shall identify a schedule of Key Personnel who shall be employed by the Operator in the performance of this Agreement. This shall include but not be limited to the following persons:

- (a) a Contract Manager;
- (b) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Operator with Schedule 7 (*Operational Performance*) (the *Operations Director*);
- (c) a safety manager, whose role will include responsibility for ensuring that the Operator complies with its legal obligations in relation to the Concession Services including the Safety Certificate (the *Safety Director*); and
- (d) a finance manager, whose role will include responsibility in relation to the Financial Model (the *Finance Director*).

3.2 The Operator shall procure that, provided they remain in the employment of a Parent, the following individuals shall, unless RfL otherwise agrees:

- (a) remain in the related posts for at least the related periods set out in paragraph 3.2(b) and not transferred within the group of any Parent; and
- (b) devote substantially all of their time to performing the duties attached to those posts:
 - (i) **[REDACTED]**⁷³ as Managing Director until three years after the Start Date;
 - (ii) **[REDACTED]**⁷⁴ as 'Deputy Managing Director' (whose duties include responsibility for the introduction of ELL Passenger Services) until three years after the date of this Agreement; and
 - (iii) all other directors until two years after the date of this Agreement.

3.3 The Operator shall not appoint the Managing Director, the Finance Director, the Operations Director, the ELL Project Director or the Safety Director without the prior written consent of RfL (such consent not to be unreasonably withheld).

3.4 The Operator shall provide to RfL an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel on or prior to the Start Date and shall update such chart (and provide a copy to RfL promptly thereafter) as and when any changes occur.

⁷³ This information is exempt from disclosure under sections 40 and 4.3(2) of the Freedom of Information Act 2000.

⁷⁴ This information is exempt from disclosure under sections 40 and 4.3(2) of the Freedom of Information Act 2000.

4. CONTROL OF COMMUNICATIONS, INFORMATION AND DOCUMENTS

4.1 All correspondence between the Operator and RfL (other than correspondence in connection with the matters referred to in paragraph 5.1(a) of Schedule 22 (*Other Provisions*)) shall be sent to the Contract Manager and/or the Concession Manager (as appropriate) in accordance with the terms of paragraph 5.1(b) of Schedule 22.

4.2 (a) The Operator shall use a logical and structured system for correspondence reference. All correspondence between the Operator and RfL shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement, as the context may require.

(b) The Operator shall maintain a sequentially numbered register of all correspondence relating to LRC. Such register shall record the reference number for each piece of correspondence, its date, a brief description of the topic covered in the correspondence, the date on which a response is due and the date on which a response was made or received.

(c) The correspondence register referred to in paragraph 4(b) and any outstanding items shall be reviewed at each Concession Performance Meeting.

5. CONCESSION PERFORMANCE MEETINGS

5.1 (a) The parties shall hold a Concession Performance Meeting once in each Reporting Period at a time and location notified to the Operator by RfL.

(b) The parties shall review the financial, operational and contractual performance of the Operator at each Concession Performance Meeting.

(c) Each Concession Performance Meeting shall be minuted by the Concession Manager and the minutes shall be published within seven Business Days of each such meeting.

(d) The Concession Manager shall chair all Concession Performance Meetings.

5.2 Regarding attendance at each Concession Performance Meeting:

(a) the Operator shall ensure that its Managing Director, the Finance Director, Operations Director (or equivalent) and its Safety Director shall attend each such meeting and each such representative shall have full power and authority delegated to him by the Operator to act and to make binding decisions on behalf of the Operator; and

(b) in addition to representatives of RfL, representatives of other members of the TfL Group may attend any such meeting provided that RfL has confirmed to the Operator such attendance in advance.

5.3 Each Concession Performance Meeting shall, to the extent applicable, include as a minimum the following agenda items:

(a) confirmation of the accuracy of the minutes of the previous Concession Performance Meeting;

(b) the latest Fare Evasion Rate and the Operator's implementation of its Revenue Protection Policy;

- (c) the station enhancements works specified in Schedule 3 (*Stations and Depots*);
- (d) the following:
 - (i) the introduction of the New Trains into passenger revenue earning service;
 - (ii) the phasing of the return of the Interim Fleet;
 - (iii) the ongoing relationship with the New Trains Maintainer; and
 - (iv) any other issues in respect of the Train Fleet;
- (e) the progress of the construction of the ELL, the ELL Test Running and the ELL Trial Operations;
- (f) the Infrastructure Manager's respective performance and payments made to or received therefrom;
- (g) performance by the Operator by reference to the Operational Benchmarks;
- (h) service quality performance against Schedule 8.1 (*KPI Regime*), Schedule 8.2 (*MSS Regime*) and Schedule 8.3 (*CSS Regime*);
- (i) performance by the Operator of its financial obligations under Schedule 13 (*Financial Obligations and Covenants*);
- (j) compliance by the Operator with its obligations under Schedule 16 (*Information and Industry Initiatives*);
- (k) any Remedial Plans, Remedial Agreements and/or Corrective Action Notices discussed at a previous Concession Performance Meeting and any suggested improvements to the Operator's performance;
- (l) a review of the progress of the implementation of any obligations in respect of enhancements contained in this Agreement or any Variations previously authorised;
- (m) adjustments to Concession Payments;
- (n) outstanding correspondence and identification of matters in dispute and actions towards resolution;
- (o) any obligations of the Operator which RfL is monitoring following a contravention of this Agreement;
- (p) a review of the progress of Variations or Changes, and any new or proposed Variations or Changes;
- (q) any outstanding action of RfL identified in previous Concession Performance Meetings; and
- (r) such other matters as may from time to time be determined to be necessary by the Operator or RfL.

5.4 No later than the third Business Day prior to each Concession Performance Meeting, the Operator shall provide to RfL, in accordance with any guidance RfL may issue to the

Operator from time to time, a report detailing the Operator's performance with respect to the items referred to in paragraphs 5.3(b) to (o) inclusive.

5.5 The Operator shall prepare and present such additional reports to each Concession Performance Meeting as RfL may reasonably request. The Operator's obligations under this paragraph 4.5 are subject to the Operator receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

5.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by RfL or any other member of the TfL Group at such meetings will relieve the Operator of any of its obligations under this Agreement.

6. RIGHT OF ASSESSMENT OR INSPECTION

6.1 The Operator shall, if requested by RfL, allow RfL:

- (a) to inspect and copy any records referred to in Schedule 16 (*Information and Industry Initiatives*) and RfL may verify any such records; and
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Operator and/or its auditors and any assets (including the Concession Assets) used by the Operator in connection with the Concession Services.

6.2 The Operator shall make available to RfL the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as RfL shall reasonably require in connection therewith.

6.3 RfL shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

6.4 If any inspection reveals that information previously supplied to RfL was in any material respect inaccurate or if such inspection reveals any other material contravention of the Operator's obligations under this Agreement, the costs of any such inspection shall be borne by the Operator.

SCHEDULE 16
INFORMATION AND INDUSTRY INITIATIVES

Schedule 16:	Information and Industry Initiatives
	Appendix 1: Efficient Operator
	Appendix 2: Key Assets
	Appendix 3: Operational Information
	Appendix 4: Ticket and Revenue Information
	Appendix 5: Sustainability Plans

SCHEDULE 16

Information and Industry Initiatives

1. GENERAL INFORMATION

Corporate Information

1.1 The Operator shall provide the following information to RfL on or before the Start Date and shall notify RfL of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Operator's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Operator.

1.2 The Operator shall inform RfL of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Operator or the Parent.

Operational and Performance-related Information to be provided by the Operator

1.3 The Operator shall provide to RfL the information specified in the Appendices to this Schedule 16 at the times specified therein.

1.4 The Appendices to this Schedule 16 shall be interpreted in accordance with any guidance issued by RfL from time to time for that purpose.

1.5 The Operator shall work with RfL to develop and implement a mechanism to monitor train services on a "headway interval" basis, in a manner similar to that used by LUL.

1.6 The Operator shall:

- (a) provide RfL with regular updates (on a "real time" basis) on service and safety information, including details of any significant disruption, peak performance, cancellations, stations or route closures, major incidents (whether resulting in a disruption to Passenger Services or a serious crime or death or injury to any person using or on the railway), and any incidents classified as near misses and any other information reasonably requested by RfL;
- (b) provide RfL with daily performance information concerning the Passenger Services (which shall be supplied for each day on the following day), including PPM per Route, relevant incident logs and Network Rail performance summaries;

- (c) inform RfL promptly of the occurrence of any serious accident or incident (including any incident likely to cause major disruption to the Passenger Services involving criminal activities or causing major disruption to the Passenger Services), whether “reportable” or not, and co-operate fully and promptly with RfL and other TfL Group companies concerning such accident or incident, including by the provision of all information requested by RfL;
- (d) provide RfL with regular information on safety issues, including provision of annual safety objectives, progress reports on achievement of such objectives, and a safety performance report at the end of each Reporting Period, and comply promptly with any other request from RfL (or any other member of the TfL Group) for information concerning any safety-related matter connected with the Concession Services. Such reports shall include the following: dangerous occurrences (RIDDOR), major customer accidents, major employee accidents, major employee assaults, major contractor incidents, procedural irregularities, and incidents of trespass;
- (e) co-operate with any safety auditors appointed by RfL, and respond promptly to any safety issues raised by such auditors; and
- (f) provide RfL with copies of all relevant material correspondence from or to the Operator concerning health, safety and environmental matters, including correspondence with regulatory bodies, incident reports, accident reports and any correspondence relating to accidents, incidents and significant occurrences.

1.7 Notwithstanding the reporting obligations in this Schedule 16, the Operator shall remain fully responsible for the proper discharge of all its safety-related obligations and duties under this Agreement and all applicable laws and regulations (including the Safety Regulations).

Maintenance of Records

1.8 The Operator shall maintain true, up to date and complete records of all of the information required to be provided by the Operator under this Agreement.

1.9 Each record required to be maintained by the Operator in accordance with this Schedule 16 shall be held for a period of six years following the date on which such record was required to be created.

1.10 References to records in this Schedule 16 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the Concession Services and the Operator has access to them (which it shall use all reasonable endeavours to secure).

1.11 The Operator shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.8, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Operator shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to the Rail Passengers’ Council and Local Authorities

1.12 The Operator shall comply with any reasonable requests and guidance issued by RfL from time to time in respect of the provision of information to and co-operation and consultation with the Rail Passengers’ Council and Local Authorities.

Electronic Library

1.13 The Operator shall maintain and update throughout the Concession Period an electronic library containing such information about the LRC (including copies of associated contracts and information necessary for the reletting of the Concession Services) as RfL may require. Such electronic library shall be developed in accordance with a structure and format approved by RfL. The Operator shall make such electronic library immediately available to RfL and its advisers (via a web browser) at all times during the Concession Period, and similarly accessible to any potential Successor Operator and its advisers.

2. BUSINESS PLANS

Initial Business Plan

2.1 No later than 31 August 2007, the Operator shall deliver to TfL or RfL its Initial Business Plan, describing its planned activities for each Concession Year during the Concession Term, which shall include:

- (a) a description as to how the Operator will be able to meet its obligations under this Agreement for the Concession Term, supported by operational plans demonstrating this;
- (b) details of any investments proposed to be made or procured by the Operator in relation to the Concession Services during the Concession Term;
- (c) a Financial Model, Operational Model and Record of Assumptions in the agreed form (in addition to the two copies of each such document required pursuant to Schedule 12.2 (*Identity of the Financial Model etc.*)); and
- (d) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

2.2 RfL may require the resubmission of the Initial Business Plan on the Start Date, adjusted to the extent necessary to reflect any difference between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan submitted in accordance with paragraph 2.1.

Updated Business Plans

2.3 Not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Concession Year (other than the first Concession Year), the Operator shall deliver to RfL an Updated Business Plan:

- (a) in substantially the same form as the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, revised to include the information available to the Operator as at the date of its delivery, describing the Operator's planned activities for each Concession Year during the remainder of the Concession Term;
- (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, together with an explanation of such differences;

- (c) containing revised financial and operational models, together with a detailed statement and explanation of any material difference in the outputs provided by such financial and operational models and any such models provided in the immediately preceding Business Plan;
- (d) containing details of any Business Action Plan notified to RfL and any progress made in respect of such Business Action Plans; and
- (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Concession Year.

Further Updated Business Plans

2.4 The Operator shall:

- (a) notify RfL as soon as reasonably practicable if the business outlook or prospective financial results of the Operator are likely to be materially different from those specified in the most recent Business Plan; and
- (b) within one month of any request by RfL following receipt of a notification in accordance with paragraph 2.4(a), supply RfL with a revised Updated Business Plan for the remainder of the Concession Term which reflects the latest view of its business.

Provisions relating to Business Plans

2.5 The Operator shall:

- (a) comply with any guidance issued by RfL from time to time as to its reasonable requirements for the format of any Business Plan. The contents and assumptions to be included in any Business Plan shall, unless the parties otherwise agree, be consistent with the Record of Assumptions; and
- (b) attend such meetings and make such presentations as RfL shall request in connection with any Business Plan.

2.6 The Operator shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by RfL on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by RfL at any time.

2.7 RfL may at any time require the Operator to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:

- (a) timetable development;
- (b) performance management improvement;
- (c) customer service improvement; and
- (d) improvements in the quality of service delivery or the efficiency of delivery of the Concession Services.

2.8 The Operator shall confirm with each Updated Business Plan submitted to RfL, that that plan has been approved by the Operator's board.

3. FINANCIAL AND OPERATIONAL INFORMATION

Accounting Records

3.1 The Operator shall prepare and at all times during the Concession Period maintain true, up to date and complete accounting records as are required to be kept under Section 221 of the Companies Act 1985. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

3.2 The Operator shall deliver to RfL, within two weeks of the end of each Reporting Period, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Concession Year to date.

3.3 The Management Accounts shall also set out:

- (a) a statement confirming the amount in the Fund at the end of that Reporting Period and the movement (if any) in amounts held in the Fund account during that Reporting Period save that the timely provision of the statement required pursuant to paragraph 3.4(b) shall satisfy the requirement to provide a statement under this paragraph 3.3(a) in respect only of those Reporting Periods referred to in paragraph 3.4;
- (b) a comparison of the Operator's performance during such period against the forecast provided by the Operator in the then current Business Plan;
- (c) a comparison of the Operator's cumulative performance during the Concession Year in which such period occurs against the forecast referred to in paragraph 3.3(b);
- (d) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(b), cross-referring to deviations from the applicable Operational Models; and
- (e) where the level of financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Operator shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

3.4 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Concession Year, the Operator shall deliver to RfL the following information:

- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(e), for each of the following 13 Reporting Periods; and
- (b) a statement confirming the amounts in the Fund at the end of each quarter referred to in this paragraph 3.4 and the movement (if any) in amounts held in the Fund account during each such quarter.

3.5 Where any Reporting Period falls partly within one Concession Year and partly within another, the results for each section of such Reporting Period falling either side of such Concession Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

3.6 Within three weeks of the end of each Concession Year, the Operator shall deliver to RfL its Annual Management Accounts for that Concession Year.

3.7 Within four Reporting Periods after the end of each Concession Year, the Operator shall deliver to RfL the following information:

- (a) certified true copies of its annual report and Annual Audited Accounts for that Concession Year, together with copies of all related directors' and auditors' reports;
- (b) a reconciliation to the Management Accounts for the same period; and
- (c) a statement from the Operator's auditors confirming compliance with the requirements in relation to the Fund in paragraph 2 of Schedule 13 (*Financial Obligations and Covenants*).

Accounting Standards and Practices

3.8 Each set of Management Accounts and Annual Management Accounts shall:

- (a) be in such format as RfL may reasonably specify from time to time;
- (b) be prepared consistently in accordance with the Operator's normal accounting policies, details of which shall be supplied on request to RfL; and
- (c) identify to the reasonable satisfaction of RfL, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of this Agreement together with a commentary of the impact those changes have had on the Management Accounts and Annual Management Accounts.

3.9 Each set of Annual Audited Accounts shall:

- (a) save as stated in the notes thereto, be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 1985; and
- (b) together with those notes and subject to any qualifications contained in any relevant auditors' report, give a true and fair view of the state of affairs and profits of the Operator for the period covered by such accounts.

Parent Accounts

3.10 The Operator shall, upon the request of RfL, promptly deliver to, or procure delivery to, RfL, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports. If the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent shall be delivered to RfL.

4. SAFETY AND QUALITY INFORMATION

Safety

4.1 The Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

4.2 The Operator shall notify RfL as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Operator shall provide RfL with a copy of such notification or notice.

Quality Management

4.3 The Operator shall deliver to RfL on or before the Start Date the Quality Plan. The Quality Plan shall cover all of the obligations of the Operator under this Agreement. The purpose of the Quality Plan is to ensure that the Operator manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

4.4 The Quality Plan shall be of a standard to the reasonable satisfaction of RfL.

4.5 The Operator shall implement the Quality Plan in accordance with its terms throughout the Concession Period.

5. FURTHER INFORMATION

5.1 The Operator shall:

- (a) deliver to RfL, or procure the delivery to RfL of, such information, records or documents as it may request within such period as it may reasonably require and which relate to or are connected with the Operator's performance of this Agreement; and
- (b) procure that each Affiliate of the Operator complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Operator in connection with the Operator's performance of this Agreement.

5.2 The information referred to in paragraph 5.1(a) shall include:

- (a) any agreement, contract or arrangement to which the Operator is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Operator has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

5.3 RfL may require the Operator to provide:

- (a) the information required to be provided under this Schedule 16 more frequently than set out in this Schedule 16;
- (b) the information required to be provided under this Schedule 16, or, in RfL's discretion, more detailed financial information, at any time in connection with the re-letting of the Concession; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by RfL, acting reasonably, from time to time.

6. CONTRAVENTIONS OF THIS AGREEMENT

6.1 The Operator shall notify RfL, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Operator of any provision of this Agreement. This includes where the Operator is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Operator shall deliver to RfL, or procure the delivery to RfL of, such information, records or documents as RfL may request within such period as RfL may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Agreement.

7. INFORMATION FROM THIRD PARTIES

7.1 The Operator shall, if RfL so requests, use all reasonable endeavours to ensure that RfL has direct access to any information, data or records relating to the Operator which is or are maintained by third parties and to which RfL is entitled to have access, or of which RfL is entitled to receive a copy under this Agreement.

7.2 The Operator shall, if RfL so requests, procure the provision by RSP to RfL of such information, data and records as the Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as RfL may specify from time to time.

7.3 The obligations of the Operator under this Schedule 16 to provide information to RfL shall not apply if RfL notifies the Operator that it has received the relevant information directly from any other person (including any Infrastructure Manager or RSP). The Operator shall, if RfL so requests, confirm or validate any such information which is received from any such other person.

7.4 The Operator shall promptly advise RfL of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will materially affect the continuity of any of the records that are provided pursuant to this Schedule 16. Any such advice shall include an assessment of the materiality of the relevant change.

8. COMPATIBILITY OF INFORMATION

8.1 All financial, operational or other information, and any data and records required to be provided to RfL under this Agreement shall be provided, if so requested by RfL, in a form compatible with RfL's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 9.

8.2 The Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to RfL under this Agreement will not result in any

infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9. DEVELOPMENT OF COMPUTER SYSTEMS

9.1 The Operator shall at all times during the Concession Period, subject to paragraph 9.4, have the necessary Computer Systems to enable it to comply with its information-provision obligations in paragraph 8.

9.2 The Operator shall co-operate in accordance with paragraph 9.3 with RfL and any third party that RfL may reasonably specify in the development of:

- (a) the Operator's Computer System;
- (b) RfL's Computer System;
- (c) any railway industry-wide Computer System; and/or
- (d) any other Computer System, including any new Computer System, RfL may specify,

in order that Computer Systems within the railway industry use (where appropriate) the same or compatible computer language, format, networks and protocols.

9.3 In co-operating with RfL and/or any third party in developing any of the Computer Systems specified by RfL in accordance with paragraph 9.2, the Operator shall, when requested by RfL:

- (a) make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:
 - (i) attend meetings with RfL and/or such third party to discuss and review the need for enhancement or replacement of any Computer System;
 - (ii) provide the Operator's opinion on any updated specifications for the enhancement of any Computer System;
 - (iii) provide the Operator's opinion on any specifications for any replacement Computer System;
 - (iv) review and comment upon implementation timetables and programmes for any enhancement of any Computer System or any replacement Computer System;
 - (v) make available files and data from existing Computer Systems for downloading onto any enhanced or new Computer System installed;
 - (vi) assist with the commissioning of and fault finding with any enhanced or new Computer System installed; and
 - (vii) make recommendations for modifications to any existing (whether enhanced or otherwise) or new Computer System in the light of operational experience; and
- (b) allow RfL's employees, agents and contractors access to any existing Computer System to effect any necessary change-over arrangements before the introduction of any enhanced or new Computer System.

9.4 If and to the extent requested by RfL, the Operator shall:

- (a) carry out the procurement, project management and acceptance of any enhancement of any existing Computer System, or replacement of an existing Computer System with a new Computer System; and
- (b) enter into such maintenance or support contracts as are necessary to maintain or support any enhanced or new Computer System,

and the cost and revenue effects arising from the Operator's compliance with this paragraph 9.4 shall be a Change.

9.5 The Operator shall use any enhanced or new Computer System developed with the co-operation of RfL in accordance with paragraph 9.3 for the purposes for which such Computer System was intended, and the cost and revenue effects arising from the Operator's compliance with this paragraph 9.5 shall be a Change.

10. DEVELOPMENT OF RAILWAY INDUSTRY STANDARDS

10.1 The Operator shall at all times during the Concession Period co-operate with TfL, RfL and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to *railway industry standards* in this paragraph 10 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.

10.2 In co-operating with RfL and/or any third party in developing any railway industry standards, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with RfL and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any railway industry standards;
- (b) provide the Operator's opinion on any proposed railway industry standards;
- (c) provide the Operator's opinion on any existing railway industry standards or any replacement railway industry standards;
- (d) review and comment upon implementation timetables and programmes for any railway industry standards or any replacement railway industry standards;
- (e) make recommendations for modifications to any existing or new railway industry standards in the light of operational experience;
- (f) make representations to competent authorities to prevent the introduction of new railway industry standards where in the Operator's opinion the introduction of such new railway industry standards would cause disproportionate additional cost; and
- (g) make representations to competent authorities to seek derogations from the application of new railway industry standards where such new railway industry standards are judged inappropriate by the Operator.

11. SYSTEM INTERFACE COMMITTEES

11.1 The Operator shall at all times during the Concession Period co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of any system interface recommendations made by those committees.

11.2 In co-operating with any relevant System Interface Committee, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
- (b) provide the Operator's opinion on any such proposed recommendations;
- (c) review and comment upon implementation timetables and programmes for any such recommendations;
- (d) make recommendations for modifications to any existing or system interface recommendations in the light of operational experience; and
- (e) make representations to competent authorities to seek derogations from the application of such recommendations where the Operator reasonably believes that such derogations are appropriate.

12. DEVELOPMENT OF BUSINESS CASES

The Operator shall co-operate with RfL in the development of business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

13. DEVELOPMENT OF RAILWAY INDUSTRY INFORMATION NETWORK

13.1 The Operator shall at all times during the Concession Period, co-operate with the reasonable requirements of RfL and the ORR in the development, modification, agreement and implementation of the central source of railway industry data and analytical tools to support decision-making (the *Information Network*).

13.2 In co-operating with RfL and/or the ORR in developing the Information Network, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with RfL and/or the ORR to discuss and review the development of the Information Network, including:
 - (i) the requirements (if any) to be placed on the Operator to provide information from time to time for inclusion within the Information Network;
 - (ii) the extent, nature and accessibility of the information to be stored at the Information Network; and
 - (iii) the timescales for the establishment of the Information Network; and

- (b) comply with any such requirements or to make representations to the ORR where any such requirements, in the Operator's reasonable opinion, would cause disproportionate additional cost.

APPENDIX 1 TO SCHEDULE 16

Efficient Operator

1. INFORMATION ABOUT THE EFFICIENCY OF THE OPERATOR

1.1 The Operator shall:

- (a) at all times during the Concession Period maintain records in relation to the areas and the information described in this Appendix 1; and
- (b) subject to paragraph 1.2, provide to RfL the information set out in the following tables at the frequency specified in the column of each such table headed “When information to be provided”.

1.2 When so requested by RfL, the Operator shall, within such reasonable period as RfL may specify, make such information available for review by RfL by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by RfL; and
- (b) any particular day, week or other longer period as is reasonably specified by RfL.

1.3 The following key shall apply to the tables in this Appendix 1:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within ten days of the last day of each Reporting Period;
- C = Information to be provided annually within ten days of the last day of each Concession Year; and
- D = Information to be provided whenever a change to the information contained in the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet – General*) to this Agreement occurs.

Table 1 Rolling Stock Vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Total of rolling stock vehicles in the Train Fleet	[number]	[number]	[number]	D
Total of rolling stock vehicles scheduled to be in service in the Peak as a percentage of the number of rolling stock vehicles in the Train Fleet	[%]	[%]	[%]	A

1.4 Where trains operated by the Operator consist of locomotives and coaches, the Operator shall separate the information provided for locomotives and coaches.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Number of scheduled unit diagrams per Reporting Period divided by the number of drivers employed	A
The number of depot maintenance employees (including train maintenance staff, depot drivers and supervisory and administrative staff at the relevant depot) engaged in the maintenance of the Interim Fleet and/or the DMU Fleet divided by the number of rolling stock vehicles in the Interim Fleet and/or the DMU Fleet as appropriate	A

APPENDIX 2 TO SCHEDULE 16

Key Assets

1. INFORMATION ABOUT ASSETS USED IN THE LRC

1.1 The Operator shall at all times during the Concession Period maintain (and shall provide copies to RfL when requested to do so from time to time) records covering the following information:

- (a) for each Primary Concession Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
- (b) a printed or electronic list of all assets owned by the Operator from time to time (excluding, unless otherwise requested by RfL, any office furniture and consumable items).

1.2 Without limiting paragraph 1(b), the Operator shall maintain a separate printed or electronic list (in a format acceptable to RfL) of:

- (a) all assets owned or operated by the Operator which have been supplied, or their supply has been procured, by RfL to the Operator during the Concession Period, whether pursuant to the Stations Enhancements Works Agreement or otherwise; and
- (b) the locations of those assets.

APPENDIX 3 TO SCHEDULE 16

Operational Information

1. INFORMATION ABOUT THE PERFORMANCE OF THE OPERATOR

1.1 The Operator shall at all times during the Concession Period, maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Operator’s opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

1.2 The Operator shall, subject to paragraph 1.3, provide to RfL the information set out in the following table at the frequency specified in the column of each such table headed “When information to be provided”.

1.3 When so requested by RfL, the Operator shall, within such reasonable period as RfL may specify, make such information available for review by RfL by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by RfL; and
- (b) any particular day, week or other longer period as is reasonably specified by RfL.

1.4 The following key shall apply to the table in this Appendix 3:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
- C = Information to be provided annually within ten days of the last day of each Concession Year.

Table Operational Information

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Plan of the Day which were the subject of a <i>Cancellation</i>	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a <i>Partial Cancellation</i>	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a <i>Cancellation</i> attributable to the Operator’s implementation of a Service Recovery Plan	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Plan of the Day which were the subject of a <i>Partial Cancellation</i> attributable to the Operator's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a <i>Cancellation</i> for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term <i>Partial Cancellation</i> for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term <i>Cancellation</i> for reasons attributable to the exercise by any Infrastructure Manager of its rights pursuant to the relevant Track Access Agreement	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term <i>Partial Cancellation</i> for reasons attributable to the exercise by any Infrastructure Manager of its rights pursuant to the relevant Track Access Agreement	[number]	B
Any instance of 50 per cent. or more of the Passenger Services in the Timetable being the subject of a <i>Cancellation</i> on any day on any line or route or in any Service Group	[number]	Within two Business Days of the occurrence
Where there is a difference between the Timetable and the Plan of the Day on any day which is attributable to the introduction, removal or alteration of a Passenger Service by the Operator (or with the agreement of the Operator in contravention of its obligations under Schedule 1 (<i>Passenger Service Obligations</i>)), the following: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Capacity		
Number of Passenger Services that are the subject of a <i>Short Formation</i>	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services that that are the subject of a Short Formation , for reasons attributable to the Operator's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that that are the subject of a Short Formation , for reasons attributable to a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Operator	[minutes]	B
Number of Minutes Delay attributable to any Infrastructure Manager	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is separately in dispute between any Infrastructure Manager and the Operator	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between any Infrastructure Manager and the Operator	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Operator's previous report pursuant to paragraph 2.1 of Schedule 7 (<i>Operational Performance</i>) and the number of such Minutes Delay attributed to each of the Operator any Infrastructure Manager as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Number of Minutes Delay attributable to the Operator under any Network Rail TAA as a consequence of LUL's performance under the ELL Core Route TAA	[minutes]	B
Impact Minutes		
Number of Impact Minutes that occur in any Reporting Period under the TSA	[minutes]	B
Number of Impact Minutes attributable in any Reporting Period to: (a) an Infrastructure Controller Matter (as defined in the TSA); (b) an Operator Fault (as defined in the TSA); (c) a Maintainer Fault (as defined in the TSA); and (d) a No Fault Found Matter (as defined in the TSA)	[minutes]	B
The amount of any Impact Minute Deduction for any Reporting Period, including confirmation as to whether any deduction cap has been reached under the TSA	[£]	B

Information to be provided	Information (format)	When information to be provided
The amount of any <i>Impact Minute Bonus</i> for any Reporting Period, including confirmation as to whether any bonus cap has been reached under the TSA	[£]	B
PPM		
PPM performance by Route	[number]	B
PPM performance across the LRC	[number]	B
Train Fleet Reliability		
Train Fleet availability and reliability by class of rolling stock vehicle	[number/ miles per casualty]	B
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A
Aggregate Train Mileage operated	[mileage]	A

APPENDIX 4 TO SCHEDULE 16

Ticket and Revenue Information

1. INFORMATION ABOUT TICKET SALES, REVENUE AND COMMISSION

1.1 The Operator shall at all times during the Concession Period, maintain records in relation to the collection of Ticket Revenue, covering the areas and the information described in this Appendix 4. Such information shall include details as to the number of Fares sold in aggregate and by ticket type and the Ticket Revenue allocated to the Operator by RSP or otherwise attributable to the sale of Fares in respect of passenger journeys made on the Passenger Services.

1.2 The Operator shall, subject to paragraph 1.3, provide to RfL the information set out in the following table at the frequency specified in the column of each such table headed “When information to be provided”.

1.3 When so requested by RfL, the Operator shall, within such reasonable period as RfL may specify, make such information available for review by RfL by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by RfL; and
- (b) any particular day, week or other longer period as is reasonably specified by RfL.

1.4 The following key shall apply to the table in this Appendix 4:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and
- C = Information to be provided annually within ten days of the last day of each Concession Year.

Table Ticket Sales and Other Information

Information to be provided	Information (format)	When information to be provided
Ticket Revenue		
Total Ticket Revenue	[£]	B
Total Ticket Revenue by ticket type	[£]	B
Total Ticket Revenue by Route	[£]	B
Penalty Fares		
Number of penalty fare notices issued	[number]	B
Number of penalty fare notices issued by Route	[number]	B
Value of penalty fares in respect of which penalty fares notices issued	[£]	B

Information to be provided	Information (format)	When information to be provided
Value of penalty fares in respect of which penalty fares notices issued by Route	[£]	B
Number of penalty fares that remain unpaid at the end of each Reporting Period	[number]	B
Excess Fares		
Number of excess fares issued	[number]	B
Number of excess fares issued by Route	[number]	B
Value of excess fares issued	[£]	B
Value of penalty fares issued by Route	[£]	B
Value of recorded Fares recoveries	[£]	B
Commission		
Total commission earned by the Operator through the sale of Fares for passenger journeys on railway passenger services other than the Passenger Services	[£]	B
Ancillary Services		
The extent and nature of the Ancillary Services (other than the Passenger Services)	[description]	C
Revenue accruing to the Operator from the carrying out of Ancillary Services	[£]	C
Revenue accruing to the Operator from the carrying out of Ancillary Services by Ancillary Service	[£]	C
Advertising Revenue		
Advertising revenue accruing to the Operator from advertising on trains	[£]	C
Advertising revenue accruing to the Operator from advertising on Stations	[£]	C
Car Park Revenue		
Total car park revenue accruing to the Operator	[£]	C
Total car park revenue accruing to the Operator by Station car park	[£]	C

APPENDIX 5 OF SCHEDULE 16

Sustainability Plans

1. Within one Reporting Period of the last day of each Concession Year, the Operator shall provide to RfL a sustainability report in respect of that Concession Year, which shall include the information described below and any other information reasonably requested by RfL, in each case, relating to that Concession Year:

- (a)
 - (i) passenger kilometres, number of passenger journeys and unit kilometres by Route;
 - (ii) 'NOx', 'PM10' and 'SO2' for air quality, in terms of both tonnes and per passenger kilometre;
 - (iii) CO2 emissions (tonnes and per passenger kilometre);
 - (iv) energy consumption (amounts of electricity, gas, diesel fuel (stating type), split by traction and non traction), and percentage of renewable energy;
 - (v) number of noise related complaints;
 - (vi) commercial and industrial waste, and percentage recycled, in terms of both tonnes and per passenger kilometre;
 - (vii) tonnes of hazardous solid waste, litres of hazardous liquid waste and percentage recycled;
 - (viii) number of pollution spill incidents to land or water caused by the Operator (that is, excluding infrastructure);
 - (ix) cubic metres of water consumed; and
 - (x) delivery of:
 - (A) regenerative braking;
 - (B) use of photo-voltaic cells, windmills and similar sustainable energy sources; and
 - (C) low-power lighting;
- (b) a description of initiatives proposed by the Operator that impact on the Passenger Services and concern use of sustainable energy, plans to minimise environmental pollution of all types and proposals to encourage recycling and manage litter, so as to ensure that the development of the transport system contributes to the protection of the natural environment and bio-diversity; and
- (c) a summary of how such initiatives are being progressed, developed and/or implemented and the impact once implemented.

2. In addition, the Operator shall provide to RfL the information set out in paragraph 1(a) for every Reporting Period within ten days of the last day of each Reporting Period.

SCHEDULE 17

PRESERVATION OF ASSETS

- Schedule 17.1: Maintenance of Concession**
- Schedule 17.2: Maintenance of Operating Assets and Branding**
- Schedule 17.3: Key Contracts**
Appendix: List of Key Contracts
- Schedule 17.4: Transfer of Access Agreements and Property Leases**
- Schedule 17.5: Designation of Concession Assets**
Appendix: List of Primary Concession Assets
- Schedule 17.6: Dealing with Concession Assets**

SCHEDULE 17.1

Maintenance of Concession

1. MAINTENANCE AS GOING CONCERN

1.1 The Operator shall maintain and manage the business of providing the Concession Services so that, to the greatest extent possible and practicable:

- (a) the Operator is able to perform its obligations under this Agreement; and
- (b) a Successor Operator would be able to take over the business of providing the Concession Services immediately at any time.

1.2 The Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Concession Employees and Primary Concession Assets for such purpose.

1.3 The Operator shall maintain and manage the business of providing the Concession Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Concession Period to, and continued immediately thereafter by, a Successor Operator.

1.4 The Operator shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Concession Period.

1.5 The Operator shall comply with all reasonable requirements of RfL to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer in the manner contemplated in this Agreement to any Successor Operator following the expiry of the Concession Period.

2. POST-CONCESSION TIMETABLES

2.1 Both prior to and following the selection of a Successor Operator (whether a Train Operator or otherwise and whether or not subject to the satisfaction of any conditions), the Operator shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, RfL; and
- (b) take such steps as may reasonably be requested by RfL,

so as to ensure the continuity of, and orderly handover of control over of the Concession Services.

2.2 The steps that RfL may reasonably request the Operator to take pursuant to paragraph 2.1 include:

- (a) participating in any timetable development process that takes place during the Concession Period, but which relates to any timetable period applying wholly or

partly after the expiry of the Concession Period (*Successor Operator Timetable*), including bidding for and securing any Successor Operator Timetable, whether or not:

- (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Concession Period;
- (c) assisting RfL or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Operator shall not be required to enter into any such Access Agreement unless RfL has first provided to it confirmation in writing that it will include that Access Agreement in any Transfer Notice pursuant to paragraph 3.1 of Schedule 18.4 (*Provisions Applying on and after Termination*).

SCHEDULE 17.2

Maintenance of Operating Assets and Branding

1. OPERATING ASSETS

1.1 The Operator shall maintain, protect and preserve the assets (including any intellectual property or intangible assets) employed in the performance of its obligations under this Agreement and the Station Enhancements Works Agreement (the *Operating Assets*) in good standing or good working order, subject to fair wear and tear.

1.2 The Operator shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Concession Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Concession Services.

1.3 Where any Operating Asset is lost, destroyed or otherwise damaged beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Operator shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.

1.4 RfL may at any time require the Operator to provide to RfL a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as RfL may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Operator shall comply with RfL's requirements in respect of such schedule of condition.

1.5 The Operator shall keep vested in it at all times during the Concession Period all Concession Assets designated as such pursuant to Schedule 17.5 (*Designation of Concession Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Concession Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that RfL may designate such assets as Primary Concession Assets.

2. BRAND LICENCES AND BRANDING

Brand Licences

2.1 The Operator shall comply with its obligations under each of the Brand Licences.

Branding

2.2 Other than is provided in this paragraph 2, the Operator may not apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Concession Services without RfL's prior written consent.

2.3 The Operator shall co-operate with RfL to finalise and implement RfL's branding requirements for the LRC in accordance with this paragraph 2. RfL shall notify the Operator no later than 16 July 2007 of those requirements.

2.4 Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall procure that the following are branded in accordance with RfL's requirements notified to it pursuant to paragraph 2.3 within the timescale specified in that paragraph:

- (a) the exterior and interior of the Interim Fleet;
- (b) all staff uniforms;
- (c) all relevant publicity material that RfL requires the Operator to publish; and
- (d) all Stations, Operator Access Stations and the immediate vicinity thereof.

2.5 Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall, as and when instructed by RfL from time to time, procure that any other assets owned or used by the Operator in the provision of the Concession Services are applied with such registered or unregistered trade marks (including company names, livery or other distinctive get up) as RfL may specify in such instruction.

2.6 RfL shall meet the reasonable costs of the Operator in complying with its obligations under paragraph 2.5.

2.7 The Operator shall procure that the 'Double Arrow' symbol is prominently displayed at the entrance to each Station.

SCHEDULE 17.3

Key Contracts

1. KEY CONTRACTS

1.1 The provisions of this Schedule 17.3 apply to all contracts designated as Key Contracts from time to time.

1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix (*List of Key Contracts*) to this Schedule 17.3.

2. DESIGNATION OF KEY CONTRACTS

2.1 Where RfL considers that it is reasonably necessary for securing the continued provision of the Concession Services or the provision of services similar to the Concession Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2.

2.2 RfL may at any time, by serving notice on the Operator, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Operator is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Operator or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. DE-DESIGNATION OF KEY CONTRACTS

RfL may at any time, by serving a notice on the Operator, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. RE-DESIGNATION OF KEY CONTRACTS

RfL may at any time, by serving notice on the Operator, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 from the date specified in such notice.

5. DIRECT AGREEMENTS

5.1 Unless RfL otherwise agrees, or unless directed to do so by the ORR, the Operator shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or

- (b) has entered into a Direct Agreement with RfL in respect of that prospective Key Contract, providing on a basis acceptable to RfL, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
- (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of the Operator.

5.2 Where RfL designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Operator is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Operator is already a party to a contract, licence or other arrangement which, by virtue of RfL's designation or re-designation, is classified in such category,

the Operator shall use all reasonable endeavours to assist RfL in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Operator shall pay to RfL an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by RfL under the provisions of any Direct Agreement and which may be notified to the Operator as a result of, or in connection with:

- (a) any breach by the Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. EMERGENCIES

Where any emergency may arise in connection with the provision and operation of the Concession Services, the Operator:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist RfL in entering into the same;
- (c) shall promptly inform RfL of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as RfL may request.

7. NO AMENDMENT

The Operator shall not without the prior consent of RfL (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

8.1 The Operator shall not:

- (a) execute any Rolling Stock Related Contract; or
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Operator or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement,

without, in either case, the prior written consent of RfL (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to RfL.

8.2 The Operator shall not, without the prior written consent of RfL:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
- (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (*new insurance arrangements*).

8.3 The Operator shall, in addition, if it enters into any new insurance arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Operator, whether on a reciprocal basis or otherwise.

9. REPLACEMENT OF KEY CONTRACTS

The Operator shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of RfL in relation to such replacement contract.

10. TERMINATION OF KEY CONTRACTS

Whether or not this Agreement is continued after the Initial Expiry Date in accordance with Schedule 21 (*Continuation of LRC*), the Operator shall, to the extent so requested by RfL, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 17.3**List of Key Contracts**

The following items have as at the date of the Concession Agreement been agreed between the parties to be Key Contracts:

1. Any Access Agreement to which the Operator is a party other than in its capacity as a Facility Owner.
2. Any Property Lease.
3. Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1, Table 2 and Table 3 of the Appendix (*The Train Fleet*) to Schedule 4.1 (*The Train Fleet - General*).
4. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Operator in the provision of the Passenger Services.
5. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the RfL is required to such subcontracting or delegation under paragraph 10 of Schedule 1.2 (*Passenger Service Operating Obligations*)).
6. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
7. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
8. Any contract or arrangement for the supply of spare parts or Spares.
9. Any contract or arrangement for the maintenance of track and other related infrastructure.
10. Any licences of Marks to the Operator.
11. Any POM maintenance contract to which the Operator is or becomes a party.

SCHEDULE 17.4

Transfer of Access Agreements and Property Leases

1. NOVATION OF ACCESS AGREEMENTS DURING THE CONCESSION PERIOD

1.1 The Operator shall, to the extent so requested by RfL (other than on termination of this Agreement, for which the provisions of paragraph 1 of Schedule 18.4 (*Provisions Applying on and after Termination*) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

1.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. ASSIGNMENT OF PROPERTY LEASES DURING THE CONCESSION PERIOD

2.1 The Operator shall (other than on termination of this Agreement, for which the provisions of paragraph 4.5 of Schedule 18.4 (*Provisions Applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

2.2 Such assignment shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 2.2(a), and the Operator shall indemnify RfL or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

2.3 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 2.1 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 2.2 shall apply to any such assignment.

2.4 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 2.

SCHEDULE 17.5

Designation of Concession Assets

1. CONCESSION ASSETS

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Operator from time to time during the Concession Period shall be designated as Concession Assets.

1.2 The rights and liabilities of the Operator in respect of the following items shall not be designated as Concession Assets:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Notice or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution; and
- (e) such other property, rights and liabilities as the Operator and RfL may agree from time to time or as RfL may de-designate as Concession Assets under paragraph 6.

2. PRIMARY CONCESSION ASSETS

The following property, rights and liabilities shall (to the extent that they constitute Concession Assets) be designated as Primary Concession Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the Appendix (*List of Primary Concession Assets*) to this Schedule 17.5 (which constitute Primary Concession Assets agreed between the parties as at the date of this Agreement), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 6 during the Concession Period, on the date of such designation;
- (c) any property or right which is vested in the Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Concession Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Operator under any Key Contract designated in accordance with Schedule 17.3 (*Key Contracts*), on the date of such designation; and
- (e) the rights and liabilities of the Operator in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. DESIGNATION OF ADDITIONAL PRIMARY CONCESSION ASSETS

RfL may at any time and from time to time during the Concession Period, by serving notice on the Operator, designate any or all of the Concession Assets as Primary Concession Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. DESIGNATION DURING LAST 12 MONTHS OF CONCESSION PERIOD

If RfL designates a Concession Asset as a Primary Concession Asset under paragraph 3 at any time during the last 12 months of the Concession Period then, within 28 days of such designation, RfL may de-designate such Primary Concession Asset by serving notice on the Operator. Such de-designation shall take effect upon delivery of such notice.

5. DESIGNATION OF KEY CONTRACTS AS PRIMARY CONCESSION ASSETS

RfL shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Concession Asset at any time during the Concession Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.

6. DESIGNATION OF FARES AND DISCOUNT CARDS

RfL may designate any Fare or Discount Card as a Primary Concession Asset at any time during the Concession Period by serving a notice on the Operator. Such designation shall take effect from delivery of such notice.

7. RIGHTS AND LIABILITIES

RfL, in designating the rights and liabilities of the Operator (whether under a particular contract or other arrangement) as a Primary Concession Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Concession Period) or to those relating only to the Concession Services or a particular part thereof.

8. DISPUTES OVER DESIGNATION

8.1 The Operator may object in writing to RfL to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Operator's opinion, reasonably necessary to secure the continued provision of the Concession Services by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or to facilitate the transfer to such Successor Operator of the provision of the Concession Services at such time.

8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Concession Period or 14 days of a designation made during the last 12 months of the Concession Period.

8.4 RfL shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Operator regarding the use of the relevant Primary Concession Asset otherwise than in the provision and operation of the Concession Services.

8.5 If the Operator's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Operator may refer the dispute for resolution in accordance with the Dispute Resolution Rules.

8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing

that the Concession Services may continue to be provided by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or otherwise facilitating the transfer of the provision of the Concession Services at such time, and accordingly whether or not they should cease to be so designated.

8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Concession Period, then such dispute shall be deemed to cease immediately before the expiry of the Concession Period and the relevant Concession Assets shall continue to be designated as Primary Concession Assets on and after the expiry of the Concession Period.

9. PROVISION OF INFORMATION TO RfL

9.1 The Operator shall provide such information as RfL may reasonably require in order to satisfy RfL that any Concession Assets which are to be designated as Primary Concession Assets after the Start Date under this will at the time of such designation be vested in the Operator. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Operator shall further provide such information as to the property, rights and liabilities of the Operator as RfL may reasonably require in connection with the designation of Primary Concession Assets. Such information shall be supplied to RfL within such timescale as RfL may reasonably require.

10. DE-DESIGNATION OF CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS

10.1 RfL and the Operator may agree in writing at any time during the Concession Period that a Concession Asset shall cease to be so designated as a Concession Asset or that a Primary Concession Asset shall cease to be so designated as a Primary Concession Asset, and the relevant Concession Asset or Primary Concession Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 RfL may in addition at any time during the Concession Period, by serving notice on the Operator, cause a Concession Asset which is not a Primary Concession Asset to cease to be so designated as a Concession Asset. Such Concession Asset shall cease to be so designated on the date specified in such notice.

10.3 RfL may in addition, at any time during the Concession Period, by serving notice on the Operator, cause a particular Primary Concession Asset to cease to be designated as such. Such Primary Concession Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Concession Asset, no later than one year prior to the expiry of the Concession Term.

11. SPARES

The obligation of the Operator to maintain, preserve and protect Primary Concession Assets under this Schedule 17.5 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Concession Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Operator for use in the provision of the Concession Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 17.5

List of Primary Concession Assets

1. The rights and liabilities of the Operator under the Universal Licence Agreement between the Board and the Operator dated 12 November 1995.
2. The rights and liabilities of the Operator under the Sub-licence Deed between the Board and the Operator dated 12 November 1995.
3. The rights and liabilities of the Operator under the Master Software Licence between the Board and the Operator dated 12 November 1995.
4. The rights and liabilities of the Operator under the Computer Services Agreement between the Board and the Operator dated 12 November 1995.
5. All Existing POMs.

SCHEDULE 17.6**Dealing with Concession Assets****1. ASSETS NOT DESIGNATED AS PRIMARY CONCESSION ASSETS**

1.1 This paragraph 1 relates to any Concession Assets that are property or rights and are not designated as Primary Concession Assets.

1.2 Subject to paragraph 3.3, RfL consents to the Operator:

- (a) transferring or agreeing to transfer any such Concession Assets or any interests in, or right over, any such Concession Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Concession Assets.

2. LIABILITIES NOT DESIGNATED AS PRIMARY CONCESSION ASSETS

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Concession Assets.

2.2 RfL consents to the Operator entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS

3.1 This paragraph 3 relates to Concession Assets (whether or not designated as Primary Concession Assets) which are property or rights.

3.2 RfL hereby consents to the installation of Spares which have been designated as Primary Concession Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 RfL hereby consents to the Operator creating or agreeing to create any Security Interest over any of these Concession Assets to the extent that the terms of any such Security Interest provide that:

- (a) if the relevant Concession Asset becomes the subject of a Transfer Notice, it shall be fully and automatically released from the relevant Security Interest immediately before the Transfer Date (as defined in the Transfer Notice);
- (b) if the relevant Concession Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Concession Asset ceases to be designated as a Concession Asset.

3.4 The Operator shall give not less than 14 days' prior written notice to RfL of the date on which it intends to create a Security Interest over a Primary Concession Asset and shall provide RfL with such information in relation thereto as RfL may reasonably require.

4. PROHIBITION ON OTHER SECURITY INTERESTS

The Operator shall not create or agree to create a Security Interest over any Concession Asset except on the terms permitted under paragraph 3.3(a).

5. SECURITY OVER PRIMARY CONCESSION ASSETS

The Operator shall, if and to the extent required by RfL in respect of a Primary Concession Asset, immediately grant in favour of RfL a first priority Security Interest over such Primary Concession Asset and shall promptly enter into such documents, and make such filings, recordings and registrations, in respect of such Security Interest, as RfL may reasonably require to ensure the validity, enforcement and priority thereof.

6. MISCELLANEOUS

The Operator shall promptly inform RfL of any Security Interest arising at any time over any of its property or rights and shall provide RfL with such information in relation thereto as it may reasonably require.

SCHEDULE 18

OBLIGATIONS ASSOCIATED WITH TERMINATION

Schedule 18.1:	Reletting Provisions
Schedule 18.2:	Last 12 or 13 Months of Concession Period
Schedule 18.3:	Handover Package
	Appendix: Form of Handover Package
Schedule 18.4:	Provisions Applying on and after Termination
	Appendix 1: Form of Transfer Notice
	Appendix 2: Form of Supplemental Agreement

SCHEDULE 18.1

Reletting Provisions

1. RELETTING OF CONCESSION

1.1 The Operator acknowledges that RfL may wish, at or before the expiry of the Concession Period, either to invite persons (including the Operator) to tender for the right to provide all or some of the Passenger Services under a concession agreement or alternatively to enter into a concession agreement in respect of the Passenger Services without having gone through a tendering process.

1.2 The Operator further acknowledges that RfL has entered into an agreement with the Secretary of State in respect of putting in place, amongst other things, suitable contingency arrangements to secure in certain circumstances, the provision of the Passenger Services, including if no further concession agreement is entered into on the termination of this Agreement in respect of such Passenger Services.

1.3 The Operator hereby accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.6 (*Concession Services*), Schedule 17 (*Preservation of Assets*) and this Schedule 18.

2. PREPARATION FOR RELETTING

2.1 The Operator shall, if so requested by RfL, provide RfL and its representatives and advisers with access to the Concession Employees and all books, records and other materials kept by or on behalf of the Operator in connection with the Concession Services for the purpose of assisting RfL and such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Concession Services;
- (b) to prepare invitations to other potential operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any concession agreement or other agreement relating to the Concession Services, whether or not having gone through a tendering process.

2.2 (a) The Operator shall, without requiring RfL's advisers to enter into a confidentiality agreement with the Operator (provided RfL has complied with paragraph 2(b) of Schedule 20 (*Confidentiality*)), make available to RfL and its representatives and advisers such information (including financial and operational information) as they shall reasonably require in connection with the matters referred to in paragraph 2.1. The Operator shall prepare and present such information in such manner (including in disaggregated form) as RfL may require, and shall provide such assistance as RfL may require in connection with the verification of such information.

- (b) The Operator shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as RfL shall require from time to time.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate concession agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Concession Services (whether or not together with other railway passenger services) at or following the end of the Concession Period, the Operator agrees and acknowledges that RfL may require:

- (a) that the Operator provides RfL with additional information and reports and analysis in respect of such Service Groups as RfL may specify. This may include:
 - (i) information relating to the operational and financial performance of the Operator in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) that the Operator reorganises the business of providing the Concession Services in order to facilitate the transfer anticipated by this Schedule 18.1 on an ongoing basis of the business of providing the Concession Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Concession Services within that Service Group.

2.4 RfL may disclose to any potential Successor Operator any reports and accounts delivered to it under Schedule 16 (*Information and Industry Initiatives*).

3. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR

3.1 The Operator shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Concession Services at the end of the Concession Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of Schedule 17 (*Preservation of Assets*) and this Schedule 18) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of this Agreement, the Operator may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

SCHEDULE 18.2

Last 12 or 13 Months of Concession Period

1. LAST 12 OR 13 MONTH PERIOD

1.1 Where reference is made in this Agreement to the last 12 or 13 months of the Concession Period, such period shall be deemed (except where the actual date of expiry of the Concession Period is known) to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date;
- (b) the date on which RfL notifies the Operator that such period of 12 or 13 months shall be deemed to commence on the grounds that RfL reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which RfL notifies the Operator that such period of 12 or 13 months shall be deemed to commence on the grounds that RfL considers it reasonably likely that this Agreement will be terminated by agreement between the parties within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c) or, in each case, such earlier date as RfL may determine.

1.3 If the last 12 or 13 months of the Concession Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1.1 of Schedule 21 (*Continuation of LRC*) is given, then the last 12 or 13 months of the Concession Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

2. CONCESSION EMPLOYEES

Terms of Employment of Existing Employees

2.1 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Concession Employee (in particular, the Operator shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Concession Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Concession Employee of no more than the amount determined in accordance with the following formula:

$$\frac{\text{MAEI} + \text{JAEI} + \text{SAEI} + \text{DAEI}}{4}$$

where:

MAEI is the increase in the Average Earnings Index between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JA EI is the increase in the Average Earnings Index between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAEI is the increase in the Average Earnings Index between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAEI is the increase in the Average Earnings Index between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Concession Period;
- (c) results in any such employment not being terminable by the Operator or other relevant employer within six months of the expiry of the Concession Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Concession Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Operator.

2.2 Without limiting the foregoing, the Operator shall consult RfL as soon as reasonably practicable in any circumstances in which RfL's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for RfL to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided RfL:

- (a) makes an overall increase in Concession Payments equal to the amount of the direct net losses suffered by the Operator on the days when the Passenger Services are affected by industrial action taken by the Concession Employees which is a consequence of a refusal by RfL to agree to the variation or addition; and
- (b) agrees that, to the extent that the Operator would otherwise be in contravention of this Agreement as a consequence of the industrial action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining RfL's consent).

Terms of Employment of New Employees

2.4 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Concession Employee where the employment of such Concession Employee by the Operator or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Concession Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Concession Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Concession Employees permitted under paragraph 2.1, the Operator shall not, and shall secure that each other relevant employer shall not, without the prior written consent of RfL (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Concession Period the number of Concession Employees such that:

- (a) the total number of Concession Employees or the total cost per annum to the Operator and each other relevant employer of employing all Concession Employees is increased; or
- (b) the total number of Concession Employees is decreased,

in each case, by more than five per cent. during such period of 12 months.

SCHEDULE 18.3

Handover Package

1. HANDOVER PACKAGE STATUS

1.1 The Operator shall:

- (a) maintain the Handover Package;
- (b) update it at least every three Reporting Periods;
- (c) deliver an updated version to each of RfL and the solicitor holding the Handover Package referred to in paragraph 3(b) every six Reporting Periods; and
- (d) make it available to RfL for inspection or audit by RfL or its representatives every six months during the Concession Period or otherwise whenever requested.

1.2 The Operator shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Concession Period and shall accordingly agree with RfL from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by RfL.

2. DIRECTOR'S CERTIFICATE

Once in each Concession Year, the Operator shall provide to RfL a certificate signed by a nominated and duly authorised director of the Operator, addressed to RfL, which confirms that the Handover Package contains the information and objects specified in the Appendix (*Form of Handover Package*) to this Schedule 18.3 and that such information is accurate as at the date of the certificate.

3. HANDOVER PACKAGE INFORMATION

Without prejudice to the preceding provisions of this Schedule 18.3, the Operator shall provide to RfL the following information and letters on or prior to the Start Date, and shall supply revised information and/or letters to RfL as and when required in order to ensure that such information and letters remain accurate and up to date:

- (a) details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- (b) a letter in a form approved by RfL:
 - (i) from the Operator to RfL confirming that an irrevocable instruction has been given to the solicitor holding the Handover Package (or other persons authorised by RfL for such purpose) that any of RfL, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming RfL's right to audit the Handover Package at any time; and

- (ii) from the solicitor holding the Handover Package (or other person authorised by RfL for such purpose) to RfL confirming that it or she will release the Handover Package to any of RfL, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by RfL;
- (c) a list of all key contacts, as set out in the Appendix; and
- (d) a letter in a form approved by and addressed to RfL confirming the details of any insurer providing insurance to the Operator, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of RfL, a Successor Operator or its agent on demand.

APPENDIX TO SCHEDULE 18.3**Form of Handover Package****1. KEY CONTACTS**

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Operator's business. This list shall include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list shall also include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. PROPERTY

A list of all property owned, leased, operated or occupied by the Operator which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

3. CONTRACTS

A printed or electronic list (in a format acceptable to RfL) of all contracts (sales, purchases or otherwise including leases and licences) between the Operator and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Operator and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by RfL.

4. SYSTEMS

A list of the electronic systems in use by the Operator, together with the name, office address and telephone number of the Operator's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

5. DAILY OPERATIONS

A printed or electronic list (in a format acceptable to RfL) of all assets owned or operated by the Operator, together with their location.

6. INSURANCE

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Operator, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 18.4

Provisions Applying on and after Termination

1. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THIS AGREEMENT

1.1 The Operator shall, to the extent so requested by RfL on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

1.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. CO-OPERATION WITH SUCCESSOR OPERATOR

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Concession Services, the Operator shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) where a Successor Operator has not been so appointed, RfL,

and shall take such steps as may be reasonably requested by RfL in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Operator shall:

- (a) bid for and use reasonable efforts to secure the Timetable and the Train Plan for the railway passenger services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period); and
- (b) make appropriately skilled and qualified Concession Employees reasonably available to attend such meetings with RfL, the Successor Operator, any Infrastructure Manager, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) Shared Facility agreements;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts; and
 - (F) any other Key Contract; and
 - (ii) without prejudice to RfL's rights under this Schedule 18.4, those rights and liabilities as may be specified in any Transfer Notice.

3. TRANSFER OF PRIMARY CONCESSION ASSETS

Transfer Notice

3.1 (a) RfL shall have the right to give, and the Operator shall have the right to require RfL to give, a Transfer Notice on or within 14 days before the expiry or termination of the Concession Period.

- (b) RfL may (and shall if required by the Operator) give one or more such Transfer Notices for the transfer of the Primary Concession Assets specified in any such Notice.
- (c) The Operator shall transfer to the Successor Operator the property, rights and liabilities specified in the Transfer Notice on the date specified in such Transfer Notice.
- (d) Any Primary Concession Assets which are not specified in the Transfer Notice shall cease to be designated as such 14 days after service of such Transfer Notice.

Supplemental Agreement

3.2 Any Transfer Notice shall impose on the Operator and the Successor Operator an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for:

- (a) the transfer by the Operator to the Successor Operator of the Primary Concession Assets specified in the Transfer Notice; and
- (b) the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Supplemental Agreement.

3.3 The Operator shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.4 (a) RfL may require the Operator to pay to any Successor Operator, or may require any such Successor Operator to pay to the Operator, on the day specified in the Transfer Notice such sum as RfL may determine should be so paid having regard to:

- (i) RfL's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Concession Assets being transferred thereunder;
 - (ii) RfL's estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Operator and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as RfL may consider appropriate.
- (b) The Operator shall pay to any such Successor Operator the sum determined by RfL in accordance with paragraph 3.4(a) on the day specified in the Transfer Notice.

Possession of Concession Assets

3.5 On the day specified in the Transfer Notice, the Operator shall deliver up to RfL (or its nominee) possession of the Primary Concession Assets transferred to the Successor Operator under the Supplemental Agreement.

4. ASSOCIATED OBLIGATIONS ON TERMINATION

Assistance in Securing Continuity

4.1 (a) In order to facilitate the continuity of the Concession Services on expiry of the Concession Period, the Operator shall take such steps, both before and after the expiry of the Concession Period, as RfL may reasonably require, to assist and advise any Successor Operator in providing and operating the Concession Services.

- (b) In particular, the Operator shall provide any Successor Operator with such records and information relating to or connected with the Concession Services as RfL may reasonably require (other than confidential financial information but including all records relating to the Concession Employees).

Access

4.2 On the expiry of the Concession Period, the Operator shall grant RfL and its representatives such access as RfL may reasonably request to any property owned, leased or operated by the Operator at such time, for the purpose of facilitating the continued provision of the Concession Services.

Key Contracts

4.3 (a) The Operator shall provide such assistance to any Successor Operator as RfL may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

(b) In satisfaction of its obligations under paragraph 4.3(a), the Operator shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Concession Period.

Change of Name

4.4 The Operator shall cease to use any trade marks which are licensed to the Operator under any of the Brand Licences forthwith upon expiry of the Concession Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

4.5 (a) The Operator shall, on the expiry of the Concession Period, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

- (b) Such assignment shall be on such terms as RfL may reasonably require, including:
- (i) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i) and the Operator shall indemnify RfL or its nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Operator shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct,

subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.

- (d) The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.3(a).

5. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER

5.1 The Operator shall immediately on the expiry of the Concession Period make available to RfL:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Operator is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the Concession Services where a procurement or bidding process has been initiated.

5.2 The Operator agrees that RfL or its agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as it sees fit (for the purposes of continuing the operation of the Concession Services).

6. MAINTENANCE RECORDS

The Operator shall immediately on expiry of the Concession Period provide to RfL:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Concession Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

7. TICKETING ARRANGEMENTS

The Operator shall provide immediately on expiry of the Concession Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and

- (d) commissions owed and/or due.

8. OPERATOR'S INTELLECTUAL PROPERTY

8.1 (a) On the expiry of the Concession Period, the Operator will grant to any Successor Operator licences of any intellectual property which:

- (i) is owned by or licensed to the Operator;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Concession Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of RfL, be necessary for any Successor Operator to operate the Concession Services on an efficient and economic basis after the expiry of the Concession Period.
- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Operator shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 8.1. The Operator shall not enter into a licence that does not include such a provision without first obtaining RfL's prior written consent (such consent not to be unreasonably withheld).

8.2 (a) Any such licence shall be granted to the relevant Successor Operator for such period as RfL may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Concession Services and shall be free of charge and royalty-free for a period of one month or less.

- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Concession Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Operator and the relevant Successor Operator are unable to agree such royalty, the Operator shall submit such dispute for resolution in accordance with such dispute resolution rules as RfL may require.

8.3 Any such licence shall be in such form as RfL shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Concession Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;
- (c) contain an indemnity from the Operator to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Operator

provided that it shall not be reasonable for the Operator to require any such trade mark to be used in a manner materially different from its use during the Concession Period.

9. TRANSFER OF EMPLOYEES

9.1 The Operator shall indemnify RfL and keep RfL indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Operator or any other event or occurrence prior to the Expiry Date and which RfL may incur in relation to any contract of employment or collective agreement concerning one or more of the Concession Employees pursuant to the provisions of TUPE or otherwise including any such matter relating to or arising out of:

- (a) the Operator's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to RfL in accordance with TUPE; or
- (b) anything done or omitted before the Expiry Date by or in relation to the Operator in respect of any such contract of employment or collective agreement or any Concession Employee, which is deemed by TUPE to have been done or omitted by or in relation to RfL save where the thing done or omitted to be done before the Expiry Date relates to RfL's failure to comply with its obligations referred to in paragraph 9.2.

9.2 RfL shall, to the extent that any contract of employment or collective agreement in relation to any Concession Employee transfers to RfL in accordance with TUPE, co-operate with the Operator in the delivery to each such employee of letters in an agreed form as soon as reasonably practicable after the Expiry Date (to the extent not already delivered prior to the Expiry Date).

APPENDIX 1 TO SCHEDULE 18.4

Form of Transfer Notice

TRANSFER NOTICE

To: [OPERATOR] (the *Operator*)

Attn: [_____] [_____]

To: [SUCCESSOR OPERATOR] (the *Successor Operator*)

Attn: [_____] [_____]

From: Rail for London Limited
 Windsor House
 42-50 Victoria Street
 London SW1H 0TL (*RfL*)

Date: [Date]

Dear Sirs

Concession Agreement dated [_____] [_____] between RfL and the Operator relating to the London Rail Concession (the *Concession Agreement*).

1. Capitalised terms used and not defined in this Transfer Notice shall have the meaning given to them in the Concession Agreement.
2. Pursuant to paragraph 3.1 of Schedule 18.4 (*Provisions Applying on and after Termination*) to the Concession Agreement, we hereby give you notice that we require the Operator to transfer to the Successor Operator on [_____] [_____] (the *Transfer Date*) all of the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
3. The Operator agrees to transfer to the Successor Operator on the Transfer Date the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
4. Each of the Operator and the Successor Operator hereby agrees to (a) enter, on or before the Transfer Date, into an agreement substantially in the form of the Supplemental Agreement attached as Schedule 2 to this Transfer Notice; and (b) comply with its obligations thereunder.
5. On the Transfer Date the [Operator][Successor Operator] shall pay to the [Successor Operator][Operator] the sum of £[_____] which is the estimated transfer price referred to in paragraph 3.3(a) of Schedule 18.4 to the Concession Agreement. Such amount shall be paid in accordance with clause 2.2 of the Supplemental Agreement.

Yours faithfully

[Rail for London Limited]

By:.....

Name: [____ _]

Title: [____ _]

We hereby agree to the terms of this Transfer Notice.

[OPERATOR]

By:.....

Name: [____ _]

Title: [____ _]

[SUCCESSOR OPERATOR]

By:.....

Name: [____ _]

Title: [____ _]

Schedule 1 to the Transfer Notice

[List Relevant Concession Assets to be transferred to the Successor Operator]

Schedule 2 to the Transfer Notice

[Form of Supplemental Agreement]

APPENDIX 2 TO SCHEDULE 18.4

Form of Supplemental Agreement

Dated _____ **20**[_____]]

[OUTGOING OPERATOR]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer notice dated [_____] given
by Rail for London Limited in respect of
certain property rights and liabilities of
[OUTGOING OPERATOR]

Rail for London Limited
Windsor House
42-50 Victoria Street
London SW1H 0TL

This Supplemental Agreement is made on [_____] 20[___]

BETWEEN

- (1) [OUTGOING OPERATOR] whose registered office is at [registered office] (the **Transferor**); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the **Transferee**).

WHEREAS

(A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a concession agreement with Rail for London Limited (**RfL**) dated [_____] (the **Concession Agreement**).

(B) This Agreement terminated on [_____] and the Transferee has been selected by RfL to continue the provision of all or part of such services pursuant either to a concession agreement with RfL or arrangements made with RfL.

(C) The Transferor has agreed to transfer to the Transferee certain property, rights and liabilities of the Transferor.

(D) This Agreement is supplemental to the Transfer Notice and sets out the terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

Business means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

Completion Payment has the meaning ascribed to that term in clause 2.2;

Net Asset Statement means the statement to be drawn up pursuant to clause 2.3;

Net Asset Value means the aggregate of the amounts of the Relevant Concession Assets, the Relevant Contract Liabilities and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Concession Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee in accordance with the Transfer Notice;

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Concession Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 18.4 (*Provisions Applying on and after Termination*) to the Concession Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by RfL;

Taxation comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date has the meaning given to it in the Transfer Notice;

Transfer Notice means the notice dated [_____] given by RfL to the Transferor and the Transferee;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1; and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement, unless defined herein, terms and expressions defined in the Concession Agreement shall have the same meaning and the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations.

2. AGREEMENT TO TRANSFER AND TRANSFER PRICE

Agreement to Transfer

2.1 (a) As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations): (i) the Transferor transfers, assigns and conveys to the Transferee each of the Relevant Concession Assets, the Relevant Contract Liabilities and the Relevant Employee Liabilities (together, the **Transferring Assets and Liabilities**); and (ii) the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.

- (b) Each of the Transferee and the Transferor agrees to enter into and execute and deliver, and procure that any relevant third party enters into and executes and delivers, with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements) and obtain such consents and approvals as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1(a).

Amount and Payment

2.2 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as set out in the Transfer Notice (the **Completion Payment**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.2(a) of Schedule 18.4 to the Concession Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.6.

Net Asset Statement

2.3 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.4 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule to this Agreement;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.5 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

2.6 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. REFERENCES TO THE REPORTING ACCOUNTANTS

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that

neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if the Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of *Reporting Accountants*;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. WARRANTY

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Concession Assets are, to the extent they are property or rights, transferring to the Transferee, free and clear of all Security Interests.

5. INTEREST

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes

as the transfer of a business as a going concern (*TOGC*) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.

6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.

6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Concession Assets, Relevant Contract Liabilities and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.4 to 6.6 inclusive shall apply *mutatis mutandis* to such payment substituting *Transferor* for *Transferee* and vice versa.

6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.

6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

- (a) preserve those records in such manner and for such periods as may be required by law; and
- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

Transfer Regulations

7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Notice are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “time of transfer” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer’s contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor’s failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
 - (i) the Transferor’s rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee’s failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made

available to RfL under Schedule 18.3 (*Handover Package*) to the Concession Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the *Undisclosed Employee*) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of its employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms *mutatis mutandis* as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to its or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy,

equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to RfL under Schedule 18.4 (*Provisions Applying on and after Termination*) to the Concession Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [*name of Transferor*] at:

[*address*]

[*fax*]

Attention: [*name*]

(b) in the case of the Transferee to [*name of Transferee*] at:

[*address*]

[*fax*]

Attention: [*name*]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two Business Days from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF THE
[*TRANSFEROR*]

}

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[*TRANSFeree*]

}

DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

1. The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

2. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

3. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 19

PENSIONS

Schedule 19:

Pensions

SCHEDULE 19

Pensions

1. CONCESSION SECTION - GENERAL

1.1 The Operator shall, in respect of the Concession Services, constitute and administer a section under the Railways Pension Scheme that provides for, and meets the needs of, employees of the Operator and their dependents, on a Shared Cost basis (the *Concession Section*). Subject to paragraphs 4, 5 and 6.1(b), each employee employed by the Operator in the fulfilment of its obligations under this Agreement shall be offered membership of the Concession Section by the Operator.

1.2 The Operator shall comply with all relevant employment and pensions legislation and shall perform its obligations under this Schedule 19 in a manner which is consistent with the Railways Pension Scheme.

2. EMPLOYEES TRANSFERRING FROM SILVERLINK SECTION

This paragraph 2 and paragraph 3 shall apply in respect of any employees of the Operator who become active members of the Concession Section, having been active members of the Silverlink Train Services Limited Shared Cost Section of the Railways Pension Scheme (the *Silverlink Section*) immediately before the Start Date:

- (a) if at the Start Date the employer contribution rate under the Concession Section:
- (i) exceeds [REDACTED]⁷⁵ of Section Pay, then RfL will reimburse to the Operator, by way of an adjustment to the Concession Payments, such excess amount of employer contributions for the period commencing on the Start Date and ending on the date when the new Schedule of Contributions becomes effective following the 2007 Valuation, provided that RfL shall not reimburse the Operator for any additional costs incurred by the Operator:
 - (A) as a result of any enhancement in members' benefits or the making of any redundancies;
 - (B) in respect of any Protected Employees who transfer out of the Concession Section; or
 - (C) as a result of any contravention of paragraph 6.1;
 - (ii) is less than [REDACTED]⁷⁶ per cent. of Section Pay, then the Operator will reimburse to RfL, by way of an adjustment to the Concession Payments, such saving in employer contributions for the period commencing on the Start Date and ending on the date when the new Schedule of Contributions becomes effective following the 2007 Valuation; or

⁷⁵ This information is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

⁷⁶ This information is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

- (iii) is equal to the employer contribution rate at the date of this Agreement under the Silverlink Section, then no adjustment shall be made to Concession Payments;
- (b) if at the Start Date the employee contribution rate under the Concession Section exceeds the employee contribution rate under the Silverlink Section of [REDACTED]⁷⁷ of Section Pay, then RfL will not reimburse members or the Operator such excess amount of employee contributions; and
- (c) RfL will not reimburse the Operator for any matching BRASS contributions that are paid by the Operator.

3. 31 DECEMBER 2007 VALUATION AND BULK TRANSFER

3.1 This paragraph 3 shall apply in respect of the first actuarial valuation (the **2007 Valuation**) of the Concession Section under the scheme specific funding provisions of Part 3 of the Pensions Act 2004, with an effective date (the *Actuarial Effective Date*) on or after the Start Date (as at the date of this Agreement, the expected Actuarial Effective Date is 31 December 2007):

- (a) the Operator shall not take any action on, before or after the Actuarial Effective Date that would materially impact on the past service position under the 2007 Valuation, and in particular, the Operator shall defer the effects of any salary negotiations until at least the day after the Actuarial Effective Date (and any salary increases shall not be backdated);
- (b) the Operator shall use all reasonable endeavours to procure that the Trustee will, as a result of the 2007 Valuation, establish:
 - (i) future service contribution rates for the Operator and the active members; and
 - (ii) a past service funding deficit or surplus;
- (c) the Operator shall consult with RfL concerning any discussions between the Operator and the Trustee regarding the 2007 Valuation, including the actuarial method and assumptions to be adopted, and matters under Part 3 of the Pensions Act 2004 (including any statement of funding principles, schedule of contributions, statutory funding objective and Recovery Plan), and shall have regard to any reasonable representations of RfL in that regard;
- (d) the Operator shall promptly supply to RfL any documentation, related material or communication from the Trustee (or related parties) in respect of the 2007 Valuation or other matters within Part 3 of the Pensions Act 2004, including a copy of the formal valuation report, the Statement of Funding Principles and resulting Schedule of Contributions;
- (e) RfL shall pay to the Operator each by way of an adjustment to the Concession Payments an amount (subject to compliance with paragraph 3.1(f) and 6.1) equal to each amount which the Operator is required under the 2007 Valuation (and the Schedule of Contributions in place as a result) to pay to the Trustee to make up any funding deficit in the Concession Section identified by the Trustee in respect of accrued (past service) pension as at the Actuarial Effective Date, provided that, RfL

⁷⁷ This information is exempt from disclosure under section 4.3(2) of the Freedom of Information Act 2000.

shall only be liable for the deficit derived from the 2007 Valuation that is expressed in nominal terms and not the deficit as expressed as a percentage of salaries. The Operator shall promptly pay each such amount it has been required to pay by the Trustee to the Trustee. The funding deficit referred to in this paragraph 3.1(e) shall take account of any payment required to be made by Silverlink Train Services Limited as required under Article 7(4)(a) of the Railways Pension (Protection and Designation of Schemes) Order 1994 or otherwise;

- (f) if the Schedule of Contributions resulting from the 2007 Valuation takes into account actual salary increases effective after the Actuarial Effective Date, the amount payable by RfL to the Operator under paragraph 3.1(e) shall be reduced so as to ensure that the Operator bears the impact on the funding deficit of any such increases to the extent that those actual salary increases exceed the long-term level of salary increases assumed in the 2007 Valuation; and
- (g) if the 2007 Valuation does not reflect the bulk transfer of assets and liabilities to the Concession Section in respect of the past service benefits of the transferring Silverlink Section members (accrued prior to the Start Date), the following shall apply:
 - (i) RfL shall, to the extent not already paid under paragraph 3.1(e), pay to the Operator, by way of an adjustment to Concession Payments, an amount (subject to compliance with paragraph 3.1(f) and 6.1(a)) equal to each amount (expressed in nominal terms only and not as a percentage of salaries) which the Operator is required by the 2007 Valuation to pay to the Trustee to make up any funding deficit in the Concession Section identified by the Trustee in respect of accrued (past service) benefits accrued before the Start Date, provided that, RfL shall only be liable for the deficit derived from the 2007 Valuation that is expressed in nominal terms and not the deficit as expressed as a percentage of salaries; and
 - (ii) the Operator shall hold such amount on trust and promptly pay each such amount to the Trustee. The deficit referred to in this section shall take account of any payment required to be made by Silverlink Train Services Limited as required under the Railways Pension (Protection and Designation of Schemes) Order 1994 or otherwise.

3.2 Following completion of the 2007 Valuation, any revised employer and employee contribution rate notified by the Trustee following this or a later formal valuation or other actuarial assessment will be the sole responsibility of the Operator and the active members of the Concession Section, and RfL shall not be obliged to reimburse to the Operator all or part of the revised rates.

4. RESTRICTIONS ON MEMBERSHIP

The Operator will restrict membership of the Concession Section which has adopted the Shared Cost Arrangement to those employees employed by the Operator in the fulfilment of its obligations under this Agreement.

5. CLOSED SCHEMES

Subject to any requirements of HM Revenue & Customs, the Operator shall take such steps as may be necessary (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in active membership of the Closed Schemes in accordance with their terms. For the purposes of this paragraph 5:

- (a) ***Closed Scheme Employees*** means such of the employees of the Operator who were, immediately prior to the commencement of their employment with the Operator, active members of any of the Closed Schemes; and
- (b) ***Closed Schemes*** means the British Railways Superannuation Fund and the BR (1974) Pension Fund.

6. VARIATIONS IN BENEFITS AND CONTRIBUTIONS; INVESTMENTS

6.1 The Operator shall promptly consult with RfL in relation to any proposal it considers would fall within the scope of paragraphs 6.1(a) to (e) (inclusive) prior to putting such a proposal to the Pensions Committee of the Concession Section, the Trustee of the Railways Pension Scheme, or to any trade union or works council. The Operator shall not, without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Operator or its subsidiaries in such a way as to increase the part of those earnings which qualifies as pensionable earnings (including Section Pay) under the Rules applicable to the Concession Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of the Concession Section, including varying or providing different or additional benefits under the Concession Section or promising to do so, unless:
 - (i) such change is required by Law; or
 - (ii) such change only affects benefits payable in respect of past service of members of the Concession Section and on or prior to the effective date of the change the Operator pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on the Concession Section;
- (b) provide retirement, death, disability or life assurance benefits for or in respect of any of its employees other than under the Concession Section or as provided in paragraphs 4 or 5;
- (c) omit to provide the above-mentioned benefits for and in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Operator shall not be obliged for the purposes of this Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
- (d) take any action (or consent to the taking of any action) which could affect the contributions payable by the Participating Employer under the Concession Section, including making any redundancies, exercising any discretion allowed to the Operator as Designated Employer arising out of any actuarial valuation of the Concession Section, and varying or providing different or additional benefits under the Concession Section in respect of future service, unless such action is required by Law; or
- (e) take (or omit to take) any action which could result in the Concession Section being wound up, in whole or in part.

6.2 The Operator:

- (a) shall:

- (i) use all reasonable endeavours to procure that the provisions of clause 5G (*Consultation with Pensions Committees*) of the Railways Pension Scheme are amended such that they do not apply in respect of the Concession Section; and
 - (ii) in any event consult with RfL as to the manner in which the Section Assets of the Concession Section are to be invested as part of its discussions with the Trustee or any Pensions Committee in this regard; and
- (b) shall not propose or agree to any amendment to the Railways Pension Scheme without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit).

6.3 The Operator and RfL acknowledge that the Railways Pension Scheme is in the process of being reviewed by the Railways Pension Commission and that such review may result in changes to the benefits and contributions under the Railways Pension Scheme. The Operator and RfL agree to negotiate in good faith in order to agree any appropriate changes to the Concession Section and to the payments referred to in paragraphs 2 and 3 of this Schedule 19.

7. OTHER TRANSFERS TO THE CONCESSION SECTION

The Operator and RfL acknowledge that:

- (a) article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 shall apply where, for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to the Concession Section from another section of the Railways Pension Scheme, other than as contemplated by paragraph 2, in relation to Protected Employees (as defined under that Order) who had accrued benefits in such other section prior to the Start Date and who become members of that Concession Section; and
- (b) RfL shall not be obliged to reimburse the Operator for any amounts being due as a result.

8. DISCHARGE OF OBLIGATIONS

8.1 RfL may at any time during the Concession Period seek information from the Trustee with a view to satisfying itself that the Operator (as Participating Employer) has fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to the Concession Section. The Operator hereby consents to disclosure of any such information to RfL by the Trustee.

8.2 The Operator shall, at its expense, promptly provide such information in relation to the Concession Section, including actuarial advice and information, as RfL may from time to time request and shall authorise and consent to the Trustee doing so.

8.3 The Operator shall use all reasonable endeavours to provide to RfL:

- (a) within one month of the expiry of each Concession Year; and
- (b) at other times as soon as practicable following a request by RfL (including in respect of the final Concession Year during the Concession Period, any request of RfL that is made within a reasonable period of the expiry of the Concession Period),

a certificate signed by the Trustee stating either that the Operator (as Participating Employer) has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Concession Section or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 8.3(a), it shall cover the relevant Concession Year; where the certificate has been given pursuant to paragraph 8.3(b), it shall cover such period as RfL shall specify.

8.4 If the Trustee does not certify that the Operator (as Participating Employer) has fully complied with its obligations under the Railways Pension Scheme or if RfL otherwise reasonably considers that the Operator (as Participating Employer) has not complied with such obligations, RfL shall be entitled to withhold from any Concession Payments payable by it under Schedule 11 (*Payments*) an amount which is, in RfL's opinion, no greater than the amount of any contribution that the Operator (as Participating Employer) has thereby failed to make or avoided making.

8.5 RfL may withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Operator (as Participating Employer). Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Concession Payment becomes payable under Schedule 11, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that RfL has not so determined within four weeks after the expiry of the Concession Period, the Operator's right to receive the amount so withheld under this Agreement shall lapse and RfL shall not be obliged to pay such amount.

9. TERMINATION OF PROVISIONS

9.1 Unless on the termination of this Agreement (whether through default, effluxion of time or otherwise) the Operator agrees to remain the Designated Employer in relation to the Concession Section, RfL shall procure that the Successor Operator is substituted for the Operator as the Designated Employer in relation to the Concession Section so that following such termination:

- (a) the Operator shall have no liability for any deficit in the value of the Concession Section that may be payable by the Operator, other than in respect of unpaid contributions owed by the Operator to the Concession Section for any period prior to the termination of this Agreement;
- (b) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator shall procure that the value of such surplus is retained in the Concession Section for the benefit of Successor Operators; and
- (c) no claims arise against the Operator under Section 75 of the Pensions Act 1995.

9.2 Paragraph 9.1 is subject to the Operator complying with its obligations under this Schedule 19 in relation to the Concession Section.

9.3 If the Concession Section is wound up through any act or omission of the Operator in contravention of paragraph 6.1(e), then:

- (a) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator hereby assigns that benefit to RfL and the right to any surplus shall vest in RfL absolutely; and

(b) any claims that the Trustee may have in relation to the Concession Section under Section 75 of the Pensions Act 1995 shall be payable by the Operator.

9.4 This paragraph 9 shall remain in force notwithstanding the termination of this Agreement.

10. DEFINITIONS

Unless otherwise defined in this Agreement, terms used in this Schedule 19 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 20
CONFIDENTIALITY AND PUBLICITY RESTRICTIONS

Schedule 20: Confidentiality and Publicity Restrictions

SCHEDULE 20

Confidentiality and Publicity Restrictions

1. CONFIDENTIALITY

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and paragraphs 2 to 8 inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement) and shall not, except with the other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. DISCLOSURE OF CONFIDENTIAL INFORMATION

Each party may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or
- (g) by the Operator, to the ORR, the Rail Passengers' Council or a Local Authority.

3. PUBLICATION OF CERTAIN INFORMATION

3.1 Notwithstanding the provisions of paragraph 1, RfL may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to RfL by the Operator or a third party):

- (a) the amount of any Concession Payments payable under this Agreement and the aggregate amount of Concession Payments paid in each year under this Agreement;
- (b) such information as RfL may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (c) any Passenger's Charter Statistics and the amount of any payments by the Operator under the Passenger's Charter;
- (d) such information as may reasonably be required in connection with the retendering or reletting of the Concession or any part thereof or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (e) any reports and accounts delivered to it under Schedule 16 (*Information and Industry Initiatives*);
- (f) the results of any monitoring or measurement of the performance of the Operator in the provision of the Concession Services (including any information provided under Schedule 15 (*Agreement Management Provisions*));
- (g) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (h) the results of any National Passenger Survey or Customer Satisfaction Survey;
- (i) the results of any assessment or inspection under Schedule 14;
- (j) details of the Operator's plans and performance in respect of safety;
- (k) such information as RfL may reasonably require to publish in connection with any Priced Option;
- (l) such information as RfL may reasonably require to include in its annual report in respect of the Operator provided that, in preparing that report, RfL shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to RfL; and
- (m) such information as RfL may reasonably require to publish at or around the expiry or possible termination of the Concession Period in order to secure continuity of the provision and operation of the Concession Services.

3.2 Without prejudice to any other provision of this Schedule 20, RfL may publish any other information relating to the Operator if it has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of RfL within 14 days of such

notification that the publication of such information would be materially detrimental to its business. If the Operator attempts so to demonstrate to RfL but it is not so satisfied, RfL shall allow seven more days before publishing the relevant information.

4. PASSENGER SERVICE DEVELOPMENT INFORMATION

Nothing in this Schedule 20 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to any Infrastructure Manager, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Rail Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (*Passenger Service Development*).

5. PUBLICATION BY RfL

Nothing in this Schedule 20 shall be deemed to prohibit, prevent or hinder, or render RfL liable for, the disclosure of any information by RfL to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

6. NO PUBLICATION BY OPERATOR WITHOUT CONSENT

6.1 Subject to paragraph 6.3 and whether or not any other restriction contained in this Schedule 20 applies, the Operator shall not, and shall procure that its Concession Employees and Subcontractors do not, make any announcement (including any communication to the public, to any clients or suppliers of either party or to all or any of the employees of either party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about any member of the TfL Group (including any information that is confidential by virtue of this Schedule 20) without the prior written approval of RfL.

6.2 RfL shall have absolute discretion in deciding whether to give any consent referred to in paragraph 6.1.

6.3 Paragraph 6.1 shall not apply:

- (a) if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over the Operator or any of its Affiliates (including the Financial Services Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such announcement will be made only after consultation with RfL; or
- (b) to the Operator making such announcements to its Concession Employees and Subcontractors as are necessary to instruct or direct any of them for the purpose of carrying out its obligations or exercising its rights, in each case, under this Agreement, provided that, the Operator shall not be entitled by virtue of this paragraph 6.3(b) to make any such announcement concerning any matter that relates to the Operator's relationship with RfL or any other member of the TfL Group.

7. PROVISION OF INFORMATION TO THE ORR

The Operator hereby authorises RfL to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to RfL in relation to the Operator under this Agreement.

8. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL

The parties recognise that the Comptroller and Auditor General may, in pursuance of its functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which it has obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 20.

9. FREEDOM OF INFORMATION

9.1 The Operator acknowledges that RfL:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with RfL to enable RfL to comply with its obligations under the FOI Legislation; and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining the consent of the Operator.

9.2 Without limiting paragraph 9.1, the Operator shall and shall procure that its Subcontractors (if any) shall:

- (a) transfer to the Concession Manager (or such other person as may be notified by RfL to the Operator) each Information Request relevant to the Concession Agreement, the Concession Services or any member of the TfL Group that it or they (as the case may be) receive as soon as reasonably practicable and in any event, within two Business Days of receiving such Information Request; and
- (b) in relation to Information held by the Operator on behalf of RfL, provide to RfL with details about and/or copies of all such Information that RfL requests and such details and/or copies shall be provided within five Business Days of a request from RfL (or such other period as RfL may reasonably specify), and in such forms as RfL may reasonably specify.

9.3 RfL shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to any Information Request in accordance with the FOI Legislation.

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

10. CONTINUING OBLIGATION

This Schedule 20 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.

SCHEDULE 21
CONTINUATION OF LRC

Schedule 21: **Continuation of LRC**

SCHEDULE 21**Continuation of LRC****1. CONTINUATION OF TERM****Two-year Extension at RfL's Discretion**

1.1 RfL may, in its sole discretion, not less than nine months before the Initial Expiry Date, notify the Operator that this Agreement shall continue after the Initial Expiry Date on the terms set out in this Agreement until the date specified in paragraph (b) of the definition of Expiry Date.

1.2 If RfL serves such notice, this Agreement shall continue on its terms until the date specified in paragraph (b) of the definition of Expiry Date, unless otherwise terminated in accordance with its terms.

Continuation for Additional Seven Reporting Periods

1.3 (a) RfL's rights pursuant to this paragraph 1.3 shall apply regardless of when this Agreement is scheduled to terminate.

(b) If RfL gives notice to the Operator not less than three months before:

- (i) the Initial Expiry Date; or
- (ii) if this Agreement is continued beyond the Initial Expiry Date in accordance with paragraph 1.1, the date on which this Agreement is due to expire following such continuation,

then in either case, this Agreement shall continue after such date on the terms set out in this Agreement for not less than one and not more than seven Reporting Periods, as RfL may stipulate in such notice.

2. KEY CONTRACTS

The Operator shall enter into any and all Key Contracts which are necessary for this Agreement to continue or be extended in accordance with this Schedule 21.

SCHEDULE 22
OTHER PROVISIONS

Schedule 22:

Other Provisions

SCHEDULE 22

Other Provisions

1. VARIATIONS TO THIS AGREEMENT

1.1 The terms of this Agreement may be varied as follows but not otherwise:

(a) by RfL, in relation to:

(i) any aspect of the Concession Services; and

(ii) any provision of this Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Operator referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement; and

(b) in relation to any other provision of this Agreement, by agreement in writing between the parties to that effect,

(each a **Variation**).

1.2 Without prejudice to RfL's rights under paragraph 1.1(a), the terms of each of clause 4 (*Term*) (to the extent any Variation would have the effect of shortening the Concession Term), Schedule 11 (*Payments*), Schedule 12 (*Changes*), Schedule 13 (*Financial Obligations and Covenants*), Schedule 14 (*Remedies, Termination and Expiry*), Schedule 17 (*Preservation of Assets*), Schedule 21 (*Continuation of LRC*) and this Schedule 22 shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.

1.3 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 RfL may:

(a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

(b) require the Operator to provide any information that RfL reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that RfL is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.

1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.

1.7 The Operator may notify RfL of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

- (a) the time scale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the Concession Services and the Operator's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the Variation proposed by the Operator in terms of the Revised Inputs that the Operator considers the Variation would require.

1.8 RfL shall be under no obligation to consider a Variation proposed by the Operator but if it wishes to do so, it shall do so pursuant to paragraph 1.1 of this Schedule 22.

1.9 Where the Operator proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Operator through costs saving measures (a *Protected Proposal*), RfL may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 7 of Schedule 12.3 (*Runs of the Financial Model*).

2. CAPITAL EXPENDITURE

Capital Expenditure Threshold

2.1 The Operator shall notify RfL promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, RfL shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Operator to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Operator failing to comply with the requirements of the Fund contained in Schedule 13 (*Financial Obligations and Covenants*).

Operator to Seek Finance

2.2 If RfL elects to require the Operator to use all reasonable endeavours as described in paragraph 2.1(c) then the Operator shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Operator and the Parent;

- (b) if it is unable to raise funding, provide RfL with all information RfL may reasonably require in relation to the efforts made by the Operator and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Operator shall provide to RfL letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if RfL so requires, arrange and attend meetings with them for RfL to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that RfL considers to be commercial terms or at rates which are consistent with market conditions at that time RfL may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Operator shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

2.4 The expression *Capital Expenditure* when used in this Schedule 22 refers to the nature of the expenditure incurred by the Operator and, accordingly, does not include expenditure incurred under operating leases.

3. RIGHTS CUMULATIVE

The rights of RfL under this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under the general Law. The exercise of such rights shall not limit RfL's right to make payment adjustments, claim damages in respect of contraventions of this Agreement or pursue any available remedies under general Law.

4. DISPUTES UNDER THIS AGREEMENT

Escalation procedure

4.1 RfL and the Operator shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement (a *Dispute*) before taking any further action.

4.2 If the Dispute is not settled through discussion between the Concession Manager and the Contract Manager within a period of seven Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) (*Senior Personnel*) of each of the parties for resolution.

4.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either party may, subject to paragraphs 4.8 and 4.9, propose by notice (a *Dispute Notice*) to the other party that a structured mediation or negotiation be entered into with the assistance of a mediator.

Principles of mediation

4.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of any Dispute Notice, either party may apply to the Centre for Effective Dispute Resolution (*CEDR*) in London to appoint a mediator. The costs of that mediator shall be divided equally between the parties or as the parties may otherwise agree in writing.

4.5 Where a Dispute is referred to mediation under paragraph 4.4, the parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

4.6 If the parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the parties' authorised representatives, shall be final and binding on the parties.

4.7 If either party refuses at any time to participate in the mediation procedure and in any event if the parties fail to reach agreement on the Dispute within 40 Business Days of the service of the relevant Dispute Notice, either party may commence proceedings.

Reasonable determinations by RfL

4.8 Where this Agreement provides that RfL may reasonably determine any matter and a Dispute has arisen in relation to whether RfL has been reasonable in making any such determination, the matter shall not be capable of referral to mediation under paragraph 4.3, but the Operator shall be entitled to challenge that determination on the basis that it is unreasonable. RfL's determination shall prevail unless and until it is agreed or found to have been unreasonable.

Dispute Resolution Rules

4.9 Where either party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of RfL under applicable Law, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

4.10 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between RfL and the Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Continuing obligations and rights

4.11 The Operator and RfL shall continue to comply with their respective obligations under this Agreement without delay while any Dispute is being resolved pursuant to this paragraph 4.

4.12 Neither party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this

paragraph 4, nor shall this paragraph 4 apply in respect of any circumstances where such remedies are sought.

5. DISPUTES UNDER OTHER AGREEMENTS

5.1 The Operator shall notify RfL of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Operator’s ability to comply with its obligations under this Agreement or on the provision of the Concession Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

5.2 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

5.3 The Operator shall provide such further details of any dispute referred to in paragraph 4.4 as RfL may reasonably request from time to time.

6. NOTICES

Notices

6.1 (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 14.4 (*Termination and Expiry*), Schedule 21 (*Continuation of LRC*) or any dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party.

(b) Any other notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:

- (i) in accordance with paragraph 5.1(a); or
- (ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Concession Manager as appropriate.

Name: Rail for London Limited

Address: Windsor House, 42-50 Victoria Street, London SW1H 0TL

E-mail: To be advised to the Operator by RfL from time to time

Attention: Managing Director

Name: MTR Laing Metro Limited
Address: Allington House, 150 Victoria Street, London SW1E 5LB
E-mail: To be advised to RfL by the Operator from time to time
Attention: Managing Director

Deemed Receipt

6.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Business Days after posting unless otherwise proven;
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
- (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a “delivered” confirmation (provided that the sender shall not be required to produce a “read” confirmation).

7. ASSIGNMENT

7.1 The Operator shall not without the prior written consent of RfL assign, transfer or otherwise dispose of, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Operator to receive monies under a Supplemental Agreement).

7.2 The Operator hereby agrees that RfL may without the Operator’s consent, assign, transfer or otherwise dispose of any of its rights and obligations under this Agreement to any other member of the TfL Group.

8. SET OFF

RfL may set off:

- (a) any matured obligation owed by the Operator under this Agreement;
- (b) any other matured obligation owed by the Operator to RfL under or in relation to this Agreement;
- (c) any monetary penalty payable under the Act,

against any obligation (whether or not matured) owed by RfL to the Operator. If an obligation is unascertained or unliquidated, RfL may, acting reasonably, estimate such obligation and set off in respect of the estimated amount, in which case, when the obligation is ascertained or liquidated, RfL or the Operator shall make a payment to the other (as appropriate) in respect of any amount by which the ascertained or liquidated amount differs from the estimated amount.

9. MISCELLANEOUS PROVISIONS

Waivers

9.1 (a) Either party may at any time waive any obligation of the other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

(b) No waiver by either party of any default by the other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

9.2 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

9.3 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

9.4 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Rights of Third Parties

9.5 (a) A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this paragraph 9.5.

(b) Each of TTL, LUL, TfL and any other member of the TfL Group may, to the same extent as if it were a party, enforce and rely on any provision of this Agreement where any such member is expressed to have a right in respect of any such provision, but subject to paragraph 9.5(d).

(c) Any Successor Operator or potential Successor Operator nominated by RfL and notified to the Operator for the purposes of this paragraph 9.5 may enforce and rely on the provisions of Schedule 18 (*Obligations associated with Termination*) to the same extent as if it were a party, but subject to paragraphs 9.5(d) and (e)

- (d) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 9.5(b) or 9.5(c).
- (e) Any person nominated under paragraph 9.5(b) shall only be entitled to enforce and rely on Schedule 18 to the extent determined by RfL (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 18, any legal proceedings in relation thereto must be commenced within one year of the expiry of the Concession Period and any such person shall not be entitled to enforce or rely on Schedule 18 to the extent that it has consented to any particular act or omission of the Operator which may constitute a contravention of Schedule 18 or has been afforded a reasonable opportunity to indicate to the Operator that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by RfL unless otherwise agreed).

RfL's Consent or Approval

9.6 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of RfL, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) RfL shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

Performance by TfL Group

9.7 The Operator agrees that performance by any member of the TfL Group of any obligation of RfL under this Agreement shall constitute good and valid discharge of such obligation.

10. ENFORCEMENT COSTS

The Operator shall compensate RfL for all reasonable costs incurred by RfL as a result of the Operator failing to perform its obligations under this Agreement in accordance with their terms in the exercise of RfL's rights under Schedule 13 (*Remedies and Termination*).

11. CURRENCY

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, RfL may, by reasonable notice to the Operator and the Operator may by reasonable notice to RfL, elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

12. ARM'S LENGTH DEALINGS

12.1 The Operator shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms.

12.2 [REDACTED]⁷⁸

⁷⁸ This information is exempt from disclosure under [REDACTED] and 4.3(2) of the Freedom of Information Act 2000.

SCHEDULE 23

LIST OF DOCUMENTS IN THE AGREED TERMS

<i>CBP</i>	Carriage of Bicycle Policy
<i>DL</i>	Depot Lease
<i>EATPS</i>	ELL Assumed TPS
<i>EDR</i>	Equality and Diversity Requirements
<i>FM</i>	Financial Model
<i>LOA</i>	LOCOG Option Agreement
<i>MSSMQ</i>	Mystery Shopper Survey Methodology and Questionnaire
<i>NTLTS</i>	New Trains Lease Term Sheet
<i>NPMT</i>	New POMs Maintenance Terms
<i>OM</i>	Operational Model
<i>PC</i>	Passenger's Charter
<i>PCM</i>	Passenger Count Methodology
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>SL</i>	Station Lease
<i>SLC0</i>	Service Level Commitment 0
<i>SLC1</i>	Service Level Commitment 1
<i>SLC2</i>	Service Level Commitment 2
<i>SP2S</i>	Stations Phase 2 Specification
<i>STA</i>	Silverlink Transfer Agreement
<i>TCDP</i>	Technical Case Development Procedure
<i>TP</i>	Train Plan
<i>TSAAA</i>	TSA Agency Agreement
<i>TTSM</i>	Ticketless Travel Survey Methodology

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2 July 2007

RAIL FOR LONDON LIMITED

and

MTR LAING METRO LIMITED

LONDON RAIL CONCESSION

CONCESSION AGREEMENT

